Children's Court Rules and Forms

ARTICLE 1
General Provisions; All Proceedings

10-101. Scope and 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;

(b) to be members of families in need of court ordered services as defined in the Family in Need of Services Act;

(c) 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;

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

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

(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" or "youthful offender" as those terms are defined in the Children's Code [32A-1-1 NMSA 1978];

(5) the Children's Code [32A-1-1 NMSA 1978] and the Rules of Civil Procedure for the District Courts govern the procedure in all other proceedings under the Children's Code [32A-1-1 NMSA 1978]. In case of a conflict between the Children's Code [32A-1-1 NMSA 1978] and the Rules of Civil Procedure for the District Court, the Children's Code [32A-1-1 NMSA 1978] shall control.

B. **Construction.** These rules are intended to provide for the just determination of children's court proceedings. They 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. **Title.** These rules and forms shall be known as "Children's Court Rules".

D. **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 10-101 SCRA 1986; as amended effective February 1, 1982; January 1, 1987; March 1, 1994; April 1, 1997.]

Committee commentary. — Although there are various statutory provisions authorizing the supreme court to adopt rules of procedure in civil and criminal cases, including rules for the children's court, the rulemaking power of the supreme court is a constitutional power which inherently belongs to the judicial branch of government under the doctrine of separation of powers. See State v. Roy, 40 N.M. 397, 60 P.2d 646 (1936); State v. Arnold, 51 N.M. 311, 183 P.2d 845 (1947).

The rulemaking power traditionally extends only to proceedings conducted by the judicial branch of government. Thus the supreme court in the original rules of procedure governing the children's court did not establish procedures to be followed by the human services department (formerly the health and social services department) regarding alleged neglected children until formal court action had begun. The standing committee on criminal proceedings in the district court recommended to the supreme court that expanded neglect rules be adopted to assure uniformity in proceedings and eliminate any confusion caused by the absence of a clearly defined procedure. The supreme court accepted the recommendation and as of November 1, 1978, Children's Code provisions governing neglect prior to the onset of formal court action are modified by these rules. Effective February 1, 1982, these rules apply to abused children cases.

The supreme court did not believe this was a departure from its traditional view of its rulemaking procedure since Section 32-1-4 NMSA 1978 authorizes the supreme court to adopt rules of procedure in children's court proceedings and the Children's Code itself envisions that the human services department will be primarily responsible in neglect and abuse situations. See Section 32-1-15 NMSA 1978.

A more complete discussion of the rulemaking power of the supreme court is found at the beginning of the commentaries to the Rules of Criminal Procedure for the District Courts.

Rules 10-101 and 10-102 set forth the scope, purpose and construction of the Children's Court Rules of Procedure. The scope of the rules is specifically limited to children's court proceedings in which a child is alleged to be delinquent, in need of supervision, neglected or abused. Section 32-1-10 NMSA 1978 of the Children's Code gives the children's court exclusive original jurisdiction of a number of other proceedings. These rules are not intended to establish procedures for these other proceedings, nor do they apply to court proceedings involving juveniles who allegedly have violated municipal ordinances or Motor Vehicle Code provisions which are not governed by the Children's Code under Sections 32-1-30 and 32-1-48 NMSA 1978.

As of January 1, 1982 no judicial district had established a family court division under Section 32-1-4 NMSA 1978. If such a division were to be established, these rules would apply only to proceedings in which a child is alleged to be delinquent, in need of supervision, neglected or abused. Other proceedings over which a family court would have jurisdiction pursuant to Section 32-1-10 NMSA 1978 are not intended to be within the scope of these rules.

In terms of purpose and construction, it must be emphasized that the procedures set forth in these rules supersede many of the procedures set forth in the Children's Code in effect at the time of adoption of the original rules and the revised rules.

ANNOTATIONS

Cross references. — For provisions of the Children's Code, see 32A-1-1 NMSA 1978 et seq.

For Children's Code definitions, see 32A-1-4 NMSA 1978.

For establishment of children's court as division of district court (or additional family court division), see 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.

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.

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. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated February 2, 1994, this rule, defining certain terms, is withdrawn effective for cases filed in the Children's Court on and after March 1, 1994.

10-103. General rules of pleading.

A. **Pleadings.** There shall be a petition and, except for the child in a delinquency proceeding, a response.

B. **Response.** Except for a child alleged to be a delinquent child, every respondent shall serve a response within thirty (30) days after being served with the summons and petition.

C. **Form.** 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, but in other documents filed with the court it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

D. **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.

E. **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.

F. **Defects, errors, omissions and clerical mistakes.** No pleading shall be deemed invalid, nor shall the inquiry, hearing, judgment or other proceeding thereon be stayed or in any manner affected because of any defect, error, omission, imperfection or inconsistency therein which does not prejudice the substantial rights of the respondent 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 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.

G. **Amendment of offense; delinquency proceedings.** At any time prior to commencement of the adjudicatory hearing in a delinquency proceeding and subject to the provisions of Rule 10-107, the court may allow the petition to be amended to charge the respondent with an additional or different offense. Upon allowing such an amendment and upon the request of the respondent, the court shall grant a continuance to allow further time for preparation.

H. **Defenses; how presented.** Except in delinquency proceedings, every defense, in law or fact, to a claim for relief in any pleading, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, 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. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the party may assert at the trial any defense in law or fact to that claim for relief.

I. **Signing of pleadings.** 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 required 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. 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 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 action. Similar action may be taken if scandalous or indecent matter is inserted. A "signature" means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

[As amended, effective September 1, 1995; January 1, 1997.]

Committee commentary. — No substantive changes were made in this rule in 1978. The rule contains the basic guidelines for pleadings in children's court proceedings.

Paragraphs A and B are identical to Rule 5-202 of the Rules of Criminal Procedure for the District Courts. Forms adopted by the supreme court show the proper caption for the pleadings.

Paragraph C is substantially identical to Rule 5-202 of the Rules of Criminal Procedure for the District Courts.

Paragraph D is patterned after Paragraph A of Rule 5-204 of the Rules of Criminal Procedure for the District Courts and is designed to prevent challenges to pleadings based on technical defects, errors, omissions or variances. The court may allow the pleadings to be amended to cure such technical defects if the request is made prior to the conclusion of the adjudicatory hearing and if substantial rights of the respondent are not prejudiced. If such an amendment affects the ability of a party to present his case, a continuance must be granted.

Paragraph E is designed to allow the addition of a new or different offense to a petition if the motion to amend is made before the adjudicatory hearing begins and the amendment conforms to the requirements of Rule 10-107 for joinder of offenses. The respondent in such a case is entitled to a continuance if he requests it. A continuance at the request of the state is left to the discretion of the court.

Paragraph F is identical to Rule 5-206 of the Rules of Criminal Procedure for the District Courts.

It should be noted that in children's court proceedings, the term "offense" has an expanded meaning and includes not only violations of criminal statutes and ordinances, but also violations of those standards of conduct defined by the Children's Code in 32-1-3 NMSA 1978 as constituting "need of supervision" and "neglect."

New Mexico has enacted an Electronic Authentication Documentation Act which provides for the Secretary of State to register electronic signatures using the public key technology. See Section 14-15-4 NMSA 1978.

ANNOTATIONS

Cross references. — For signing of civil and criminal pleadings in district court, see Rules 1-011 NMRA and 5-206 NMRA.

For defenses and objections in the district court, see Rule 1-012 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 1995 amendment, effective September 1, 1995, added Paragraphs A and B and redesignated former Paragraphs A to E as Paragraphs C to G; added the last sentence in Paragraph C; added "or in another pleading or in any motion" and added the last sentence in Paragraph D; in Paragraph F, rewrote the paragraph heading and added the last sentence; in Paragraph G, added "delinquency proceedings" in the paragraph heading and inserted "in a delinquency proceeding"; added Paragraph H; redesignated former Paragraph F as Paragraph I and rewrote that paragraph; and made gender neutral and minor stylistic changes throughout the rule.

The 1997 amendment, effective January 1, 1997, added the last sentence in Paragraph I defining "signature".

Amendment of petition. — This rule contains no authority to amend the charging document in a delinquency case after commencement of the adjudicatory hearing. In re Garrison P., 2002-NMCA-094, 132 N.M. 626, 52 P.3d 998.

To allow the state to add to the petition a previously uncharged act against a previously uncharged victim after the completion of the trial and after the witnesses have testified, transgresses fundamental notions of fairness and due process. In re Garrison P., 2002-NMCA-094, 132 N.M. 626, 52 P.3d 998.

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 § 72 et seq.

10-103.1. 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 ten (10) 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 initialed by opposing counsel shall accompany the motion.

C. **Opposed motions.** The motion shall recite that concurrence of opposing counsel 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 concurrence from opposing counsel 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 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 of the Rules of Civil Procedure for the District Courts. A motion for new trial in a neglect or abuse or termination of parental rights proceeding shall comply with Rule 1-059 of the Rules of Civil Procedure for the District Courts.

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 fifteen (15) days after service of the motion. A motion for new trial in a delinquency proceeding shall comply with Rule 5-604 of the Rules of Criminal Procedure for the District Courts.

E. **Reply brief.** Any reply brief shall be filed within fifteen (15) days after service of any written response.

[Adopted, effective September 1, 1995; May 1, 1998.]

ANNOTATIONS

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

10-103.2. 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 10-007, 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 trial or hearing.

[Adopted, effective September 1, 1995; as amended, effective May 1, 1998.]

ANNOTATIONS

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

10-103.3. Form of papers.

Except exhibits and papers filed by electronic transmission pursuant to Rule 10-105.2 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 corner; 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 corner 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.]

ANNOTATIONS

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

10-104. Summons.

A. **Scope.** Parties in children's court proceedings, except the respondent in a delinquency proceeding, shall be served with a copy of the petition and summons as provided in this rule. Service of the petition and summons upon the respondents in delinquency proceedings shall be made pursuant to Rule 10-104.1 of these rules.

B. **Form.** The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the party to be served and state the

name and address of the petitioner or the petitioner's attorney. It shall also state the time within which the party must respond, and notify the party that failure to do so may result in a judgment against the party for the relief demanded in the petition. The court may allow a summons to be amended. The summons shall be substantially in the form approved by the Supreme Court.

C. **Issuance.** Upon or after filing the petition, the state shall present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal and issue it to the state for service upon the party. A summons, or a copy of the summons if addressed to multiple parties, shall be issued for each party to be served.

D. **Service with petition; by whom made.**

(1) A summons shall be served together with a copy of the petition. The petitioner is responsible for service of a summons and petition within the time allowed under Paragraph K of this rule and shall furnish the person making service with the necessary copies of the summons and petition.

(2) Service may be made by any person who is not a party and who is at least eighteen (18) years of age. At the request of the petitioner, however, the court may direct that service be made by the sheriff, a deputy sheriff or other person or officer specially appointed by the court for that purpose.

E. **Service upon parties within the United States.** Unless otherwise provided by law, service upon a party, other than a minor or an incompetent person, may be made within the United States by delivering a copy of the summons and of the petition to the party personally or by leaving copies thereof at the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

F. **Service upon parties in a foreign country.** Unless otherwise provided by federal law, service upon a party, other than a minor or an incompetent person, may be made 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;

(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 law of the foreign country, by

(i) delivery to the party personally of a copy of the summons and the petition; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

G. **Service upon minors and incompetent persons.**

(1) Service within the United States upon a minor, as defined in this rule, may be made by delivering a copy of the summons and petition, in the manner provided by Paragraph E of this rule, to the respondent child and to a custodial parent, custodian, guardian or conservator of the minor. Notice of the proceedings shall be given to any known guardian ad litem. Notice to any known guardian ad litem shall be served as provided in Rule 10-105 of these rules.

(2) Service in the United States upon an incompetent person, as defined in this rule, may be made by service of the summons and petition in the manner provided by Paragraph E of this rule:

(a) on the incompetent person's guardian ad litem, if any; or

(b) if there is no guardian ad litem, by service upon a conservator of the estate or guardian of the person.

(3) Service upon an infant or incompetent outside the United States shall be made in a manner prescribed by Subparagraph (2)(a) or (2)(b) of Paragraph F of this rule or by such means as the court may direct.

(4) Notwithstanding any other provision of this rule, a party who is an alleged abused or neglected child shall be served by service on the guardian ad litem appointed to represent the child in the proceeding.

H. **Service upon governmental entities.** Service of a summons upon a federal, state or local governmental entity shall be made in the manner as provided in the Rules of Civil Procedure for the District Courts.

I. **Service by publication.** Service upon a party may be made by publication upon the filing of a certificate by the petitioner substantially in the form approved by the Supreme Court certifying that: after diligent inquiry and search efforts petitioner has been unable to serve the party; the party is deliberately concealed to avoid service of process or cannot be discovered after reasonably diligent inquiry and search efforts;

and process cannot be served upon the party by any other means permitted by this rule. Upon the filing of the certificate, the clerk of the court shall cause to be issued a notice of the pendency of the proceeding substantially in the form approved by the Supreme Court. The clerk's notice of pendency of the proceeding shall be published in some newspaper in general circulation in the county for four (4) consecutive weeks. The publication of the notice shall be established by the affidavit of the publisher, manager or agent of the newspaper, and it shall be taken and considered as sufficient service of process.

J. **Proof of service.** The person making service shall make proof of service to the court. Proof of service in a place not within the United States shall, if made under Subparagraph (1) of Paragraph G, be made pursuant to the applicable treaty or convention, and shall, if made under Subparagraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

K. **Time limit for service.** If service of the summons and petition is not made upon a party within one hundred twenty (120) days after the filing of the petition, the court, upon motion or on its own initiative after notice to the petitioner, shall dismiss the action without prejudice as to that party or direct that service be made within a specified time; provided that if the petitioner shows good cause for the failure, the court shall extend the time for service for an appropriate period. This paragraph does not apply to service in a foreign country pursuant to Paragraph G.

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

(1) a "minor" means a person under the age of eighteen (18) who has not been emancipated pursuant to the provisions of the Emancipation of Minors Act or other law. The term "minor" includes a "child" or an "infant" when those terms are used in any law or court rule; and

(2) an "incompetent" means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that the person is unable to manage the person's personal care or property and financial affairs.

[As amended, effective September 1, 1995.]

Committee commentary. — The rule governs the issuance of summons and service of the summons and a copy of the petition. The procedure set forth is unique to children's court proceedings in two ways. First, it differs from the summons format used in civil cases and criminal cases in the district courts in that the respondent is told he must appear before the court at the time specified in the notice of adjudicatory hearing (see approved summons form). The summons itself does not specify the time and place of

appearance nor does it command the respondent to submit a written answer to the petition. No time is specified for appearance in the summons since one of the events that triggers the time limit for the commencement of the adjudicatory hearing is the date the petition is served on the respondent (Rules 10-227 and 10-308). Accordingly, it is highly unlikely that the adjudicatory hearing will have been scheduled at the time the summons is issued.

Under Rule 10-104, the notice of adjudicatory hearing must be served at least five days before the date the hearing is set.

The second unusual aspect of the summons procedure is the requirement for service of informational copies. See Paragraph F. The summons itself directs only the respondent to appear to answer the allegations of the petition. The parents, guardian or custodian of a child alleged to be in need of supervision cannot be ordered to answer the allegations of the petition. The parents of an alleged delinquent child may be named as parties pursuant to Section 32-1-47 NMSA 1978. In any event, as noted in the commentary to Rule 10-104, the original committee felt that the interests of the parents in the matter, even if they are not named as parties, required that they be informed of the proceedings. In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Rule 10-105 differs from Rule 10-104 in that Rule 10-105 requires that the summons and copy of the petition be served on both parents, if not living together, unless parental rights have been terminated by court order, a parent is deceased or the children's court attorney certifies that the parent cannot be located. Rule 10-104 requires that service of other pleadings and orders be made only on the parent with legal custody. The requirement of Paragraph F of Rule 10-105 is designed to assure that a parent not living in the family home is aware that his or her child has allegedly committed a delinquent act, is allegedly a child in need of supervision or is allegedly being abused or neglected by the other parent, guardian or custodian. In such situations, the absent parent, once aware of the problem, may come forward to offer assistance.

Paragraph A of Rule 10-105 requires that a summons be issued upon the docketing of a petition. Once served, the summons will provide the basis for issuance of a bench warrant if the respondent does not appear at the adjudicatory hearing (Rule 10-206).

Paragraph B of Rule 10-105 simply provides that the summons used will be in the form approved by the supreme court.

Paragraph C of Rule 10-105 requires that the summons and copy of the petition be served upon issuance of the summons. This requirement is intended to prevent unreasonable delays in service which might have the effect of lengthening the time limit for the commencement of the adjudicatory hearing. See Rules 10-226 and 10-308.

Paragraph D of Rule 10-105 requires personal service of the summons and petition on a respondent alleged to be delinquent or in need of supervision, unless otherwise ordered by the court. The method of service is governed by Rule 1-004 of the Rules of

Civil Procedure for the District Courts. (See also Paragraph A of Rule 5-209 of the Rules of Criminal Procedure for the District Courts.) Likewise, service on the respondent in a neglect case follows Rule 1-004 of the Rules of Civil Procedure for the District Courts. Service by publication on the respondent in a neglect case is authorized under certain circumstances. A special publication form has been approved by the supreme court for this purpose.

Parties other than the respondent shall be served with summons pursuant to Paragraph E of Rule 10-105. Included in the category "other parties" are an alleged neglected or abused child and the parents, guardian or custodian of an accused child if, at the time of issuance of the summons, they have been allowed to intervene in the action pursuant to Rule 10-108 or if a parent has been named as a party pursuant to Section 32-1-47 NMSA 1978.

The guardian ad litem of the alleged neglected or abused child is served in the same manner as an attorney for a party. The guardian ad litem must be appointed no later than at the time the neglect or abuse petition is filed. See Rules 10-108 and 10-305.

Rule 10-105 supersedes the procedural aspects of Sections 32-1-20, 32-1-21 and 32-1-37 NMSA 1978. It differs from Section 32-1-20 NMSA 1978 in several ways: (1) the summons is directed to the respondent; (2) the requirement that the child's spouse, if any, be served, is dropped; (3) issuance of a summons to a person does not necessarily make that person a party to the action (see Rule 10-108); and (4) the summons need not contain an advisement of rights. The provisions of Section 32-1-21 NMSA 1978, including the time limits, have been replaced by Rule 10-105. The provisional hearing procedure set forth in Section 32-1-37 NMSA 1978 when service is by publication has been superseded.

ANNOTATIONS

Cross references. — As to summonses, and service thereof, in children's court, see 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.

Compiler's notes. — Former Rule 10-104 NMRA was recompiled as Rule 10-105 NMRA in 1995.

The commentary above does not reflect the recompilation of Rules 10-104 and 10-105 NMRA in 1995.

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.

10-104.1. Service of summons on child in delinquency proceeding; failure to appear.

A. **Issuance.** Upon the filing of a petition alleging a delinquent act, upon request of the children's court attorney, the clerk shall forthwith issue a summons. Separate or additional summons may be issued against the same child.

B. **Service.** Service of a summons on a child alleged to have committed a delinquent act shall be by mail or by personal service.

C. **Execution; form.** The summons shall be substantially in the form approved by the Supreme Court.

D. **Summons; time to appear.** If service is by mail, service shall be made at least ten (10) days before the child is required to appear, unless a shorter time is ordered by the court. If service is made by mail an additional three (3) days shall be added.

E. **Summons; service by mail.** Service upon the child in a delinquency proceeding may be accomplished by mailing the summons and petition to the child by first class mail.

F. **Failure to appear.** If a child fails to appear in person, or by counsel when permitted by these rules, at the time and place specified in the summons, the court may:

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

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

G. **Return.** If service is made by mail return shall be by the children's court attorney filing a certificate of mailing. If service is by personal service, the person serving the process shall make proof of service by a certificate of service in the form approved by the Supreme Court. Where service within the state includes mailing, the return shall state the date and place of mailing.

[Adopted, effective September 1, 1995.]

10-105. Notice of hearings; service and filing of pleadings and other papers.

A. **When required.** Except as provided in these rules, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous respondents, 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. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 10-104.

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 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 it 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.

Delivery of a copy within this rule means:

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

(2) sending a copy by facsimile or electronic transmission when permitted by Rule 10-105.1 or Rule 10-105.2 of these rules;

(3) leaving it at the attorney'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

(4) if the 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.

C. **Filing; certificate of service.** All papers after the petition required to be served upon a party, together with a certificate 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) interrogatories;

(5) answers or objections to interrogatories;

(6) requests for production of documents;

(7) responses to requests for production of documents;

(8) requests for admissions;

(9) responses to requests for admissions; and

(10) depositions.

Except for the papers described in Subparagraphs (1), (2), (3) and (10) of this paragraph, counsel shall file a certificate with the court within a reasonable time after service, indicating the date of service of any paper not filed with the court.

D. **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 1-005.1 or 1-005.2 of these rules. A paper filed by electronic means in compliance with Rule 10-105.1 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.]

Committee commentary. — The rule establishes the basic procedure for the service of most notices and pleadings in a children's court proceeding. Notices and pleadings requiring special service are specifically excluded in Paragraph B of Rule 10-104. The procedure used to serve the notices and pleadings does not vary significantly from the procedures used in civil proceedings and adult criminal proceedings in the district courts. The persons upon whom the notices and pleadings are to be served does differ.

Certain provisions of Rules 10-104, 10-105 and 10-108 reflect the view of the original committee that the parents, guardian or custodian of a respondent alleged to be delinquent or in need of supervision have a legitimate interest in children's court proceedings. The actions of the children's court may effectively limit or nullify the traditional right of the parents, guardian or custodian to the custody, supervision and control of their child. See In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

The Children's Code subjects parents to specific liabilities. In delinquency cases, the parents may be made parties, may be ordered to submit to counseling or participate in a probation, treatment or institutional treatment program, and, if made a party and have not been determined to be indigent, shall be ordered to pay the reasonable costs of support, maintenance and treatment if the child is institutionalized. See Section 32-1-47 NMSA 1978.

In abuse, neglect and need of supervision cases, the parents may be required to pay the reasonable costs of support and treatment if legal custody is vested in someone other than the parents. See Sections 32-1-41 and 32-1-47 NMSA 1978.

In delinquency, abuse, neglect or need of supervision proceedings, the parents may be ordered to pay the fees of the child's court-appointed attorney, the costs of medical and other examinations ordered by the court and court costs. See Section 32-1-41 NMSA 1978 and commentary to Rule 10-205.

Nevertheless, in delinquency proceedings, it is only the child, not the parents, guardian or custodian, who is the accused and whose actual liberty may be in question. Thus, the original committee felt that the interests of the parents, guardian or custodian of the accused child in the proceedings, although not raising them to the position of "parties" unless formal intervention is sought pursuant to Rule 10-108, do require that they be informed of the status of the proceedings.

Specifically, Subparagraph (1) of Paragraph A of Rule 10-104 requires service on each party. In delinquency proceedings, the parties are the state, the respondent and the parents of an alleged delinquent child if named pursuant to Section 32-1-47 NMSA 1978. In abuse and neglect proceedings, the parties are the state, the respondent and the child allegedly abused or neglected. See Rule 10-108.

Subparagraph (2) of Paragraph A of Rule 10-104 requires service upon the parents, guardian or custodian of a respondent alleged to be delinquent or in need of supervision. If the parents reside together, service of one copy of the notice or pleading suffices. If the parents do not reside together, only the parent, guardian or custodian having legal custody of the child is required to be served. The court may order that additional or different persons receive the copies of the notices and pleadings.

If a party or person required to be served is represented by an attorney or guardian ad litem, service is to be made upon his attorney or guardian ad litem under Paragraph D of Rule 10-104.

Written motions which may be heard ex parte are exempt from this rule. These motions include a stay pending appeal under Rule 10-118 and an ex parte custody order, Rule 10-301.

Paragraph B of Rule 10-104 enumerates the notices and pleadings which are not covered by Rule 10-104 and which are governed by the provisions of other rules.

Except for the summons and copy of the petition and the ex parte custody order, the notices are not within the provisions of Rule 10-104 because the time limits involved in the relevant proceeding are such that the five-day notice requirement of Paragraph C of Rule 10-104 is inappropriate or unworkable.

Paragraph D of Rule 10-104 defining how service is made is substantially similar to Paragraph B of Rule 5-103 of the Rules of Criminal Procedure for the District Courts. The guardian ad litem receives service on behalf of the alleged abused or neglected child he represents. In terms of service, the role of the guardian ad litem is similar to that of the attorney for the respondent. See commentary to Rule 10-108 for discussion of the role of the guardian ad litem.

Paragraph D of Rule 10-104 relates to service by mailing. The "outgoing mail container" referred to in Subparagraph (2) of Paragraph D of Rule 10-104 denotes a container specifically designated and used solely for the purpose of receiving outgoing mail. The contents of the container should regularly and frequently be delivered to the United States postal service.

Paragraph C of Rule 10-104 on the filing of papers follows Paragraphs C and D of Rule 5-103 of the Rules of Criminal Procedure for the District Courts.

Paragraph F of Rule 10-104 on proof of service follows Paragraph E of Rule 5-103 of the Rules of Criminal Procedure for the District Courts. The last sentence makes clear that failure to make proof of service is not a jurisdictional defect.

Paragraph G of Rule 10-104 contains a unique procedure if the person entitled to service cannot be located. Paragraph B of Rule 5-103 of the Rules of Criminal Procedure for the District Courts provides that in such cases the pleading shall be left with the clerk of the court and placed in the court file. Paragraph G of Rule 10-104 (and Rule 10-105) provide that if the parents, guardian or custodian of the accused child or the respondent in an abuse or neglect action cannot be found, the children's court attorney must file an affidavit to that effect with the court. Such a filing suspends the requirements of Rule 10-104. The notice requirements of the rule are not suspended if the person who cannot be found is the respondent in a delinquency or need of supervision proceeding. If, after the affidavit is filed, the person returns and makes his presence known, good faith and probably due process will require that such person receive all notices and pleadings filed subsequent to his return.

If an affidavit is filed in connection with the service of summons and petition under Paragraph F of Rule 10-105, that affidavit will fulfill the requirements of Paragraph G of Rule 10-104.

The only notice provision of the Code specifically superseded by Rule 10-104 is Section 32-1-29A(3) NMSA 1978 relating to transfer hearings.

The basic effect of Rule 10-104 on the Code is to put in notice time limits where none existed before, to establish a procedure for service of copies of notices and pleadings and to clarify who is to receive copies of notices and pleadings.

ANNOTATIONS

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

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.

Recompilations. — In 1995, Former Rule 10-104 NMRA was recompiled as this rule. Former Rule 10-105 NMRA was recompiled as Rule 10-104 NMRA.

Compiler's notes. — The commentary above does not reflect the recompilation of Rules 10-104 and 10-105 NMRA in 1995.

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.

10-105.1. 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 transmission by court of notices, orders or writs; receipt of affidavits.** Facsimile transmission may be used by the court for issuance of any notice, order or writ or receipt of an affidavit. 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 document shall be filed with the court unless it is on plain paper and substantially satisfies all of the requirements of Rule 10-103.3 of these rules.

D. **Pleadings or papers faxed directly to the court.** A pleading or paper may be faxed directly to the court 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) 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 faxed 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. **Transmission by facsimile.** A notice, order, writ, pleading or paper may be faxed to a party or attorney who 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. **Proof of service by facsimile.** Proof of facsimile service must include:

(1) a statement that the pleading or paper was transmitted by facsimile transmission and that the transmission was reported as complete and without error;

(2) the time, date and sending and receiving facsimile machine telephone numbers; and

(3) the name of the person who made the facsimile transmission.

I. **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.

[Adopted, effective January 1, 1997.]

10-105.2. 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. **Registration for electronic service.** The clerk of the Supreme Court shall maintain a register of attorneys who agree to accept documents by electronic transmission. The register shall include the attorney's name and preferred electronic mail address.

C. **Electronic transmission by the court.** The court may send any document by electronic transmission to an attorney registered 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 by electronic transmission in accordance with this rule and any technical specifications for electronic transmission:

(1) in any court that has adopted technical specifications for electronic transmission;

(2) if a fee is not required or if payment is made at the time of filing.

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

F. **Service by electronic transmission.** Service pursuant to Rule 10-105 of these rules may be made by electronic transmission on any attorney who has registered pursuant to Paragraph B of this rule and on any other person who has agreed to service in this manner.

G. **Time of filing.** If electronic transmission of a document is received 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 electronic transmission is received after the close of business, the document will be considered filed on the next business day of the court. For any questions of timeliness, the time and date registered by the court's computer will be determinative.

H. **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.

I. **Proof of service by electronic transmission.** Proof of service by electronic transmission shall be made to the court by a certificate of an attorney or affidavit of a non-attorney and shall include:

(1) the name of the person who sent the document;

(2) the time, date and electronic address of the sender;

(3) the electronic address of the recipient;

(4) a statement that the document was served by electronic transmission and that the transmission was successful.

[Approved, effective July 1, 1997.]

10-105.3. 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 10-105 NMRA, and a certificate of service shall be filed with the court.

[Approved by Supreme Court Order 07-8300-12, effective June 6, 2007.]

ANNOTATIONS

Effective dates. — Rule 1-053.3 NMRA was approved June 6, 2007 by Supreme Court Order 07-8300-12 effective immediately.

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

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

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

ANNOTATIONS

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 Department v. Browind C., 2007-NMCA-023, 141 N.M. 166, 152 P.3d 153.

10-106. 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 10-212, 10-226 or 10-308, 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.]

Committee commentary. — No substantive changes were made in this rule in 1978. The rule substantially follows Rule 5-104 of the Rules of Criminal Procedure for the District Courts. Under Paragraph A, except as noted below, the time limits contained in these rules are computed in exactly the same manner as time is computed under either the Rules of Criminal Procedure for the District Courts or the Rules of Civil Procedure for the District Courts.

The exceptions to the general method of time computation are the time limits for giving notice of detention, Rule 10-208, and notice of custody, Rule 10-302. These notices are required to be given within 24 hours from the time the child was placed in detention or taken into custody, including Saturdays, Sundays and legal holidays, even if the 24-hour period ends on one of these days.

Paragraph B on enlargement of time limits is comparable to Paragraph B of the Rules of Criminal Procedure for the District Courts. The court may not extend the time for commencement of detention hearings or custody hearings unless the respondent's attorney agrees in writing to the extension. Under Rules 10-226 and 10-308, only the Supreme Court may extend the time for commencement of adjudicatory hearings.

Paragraph C on additional time after service by mail follows Paragraph D of Rule 5-104 of the Rules of Criminal Procedure for the District Courts.

Paragraph D on time for motions is patterned after Paragraph F of Rule 5-103 of the Rules of Criminal Procedure for the District Courts.

ANNOTATIONS

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.

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.

10-107. 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.]

ANNOTATIONS

Recompilations. — Rule 10-107, relating to joinder and severance of offenses, was recompiled as 10-204.1 in 1998.

Effective dates. — Pursuant to a court order dated May 6, 2002, this rule is effective July 1, 2002.

10-108. Parties; intervention.

A. **Delinquency proceedings.** In proceedings on petitions alleging delinquency, the parties to the action are the child alleged to be delinquent and the state.

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 who has allegedly neglected or abused a child or is in need of court ordered services; and

(3) the child alleged to be neglected or abused or in need of court ordered services. The court shall appoint a guardian *ad litem* to represent the child alleged to be

neglected or abused or in need of court ordered services upon the filing of a petition alleging neglect or abuse or a family in need of court ordered services.

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 proceedings; necessary parties.** In termination of parental rights proceedings, the parties are the state, the parents of the child who have a constitutionally protected liberty interest in the child, the legal guardians of the child and any other person required by law to be made a party. If a supplemental petition to terminate parental rights is filed in an abuse or neglect proceeding and a parent has not been joined as a party in the abuse or neglect proceeding, the department shall name the parent as a party in the termination of parental rights proceeding.

E. **Intervention.**

(1) At any stage of an abuse or neglect proceeding, a parent who has not been named as a party or, if the abused child is an Indian, the child's Indian tribe may intervene.

(2) 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:

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

(b) in neglect, abuse or family 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 or any other person permitted by law;

(c) in a delinquency, neglect, abuse or family in need of court ordered services proceeding any person with a statutory right to intervene in the proceedings; or

(d) 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.

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.

[As amended, effective July 1, 1995; February 15, 1999.]

Committee commentary. — Rule 10-108 is essentially a definitional section. It was changed in 1978 to reflect the enactment of Section 32-1-47 NMSA 1978 (formerly Section 13-14-44.1 NMSA 1953), allowing the parent of an alleged delinquent child to be named a party to the action.

Under Paragraph A of Rule 10-108, the parties in delinquency and need of supervision proceedings are the respondent - the accused child - the state, a parent of a child alleged to be delinquent if named pursuant to Section 32-1-47 NMSA 1978, and, of course, anyone allowed to intervene under the rule. Depending on the stage of the proceeding, the state may be represented by either a juvenile probation officer or the children's court attorney. The children's court attorney must represent the state at adjudicatory hearings under Rules 10-227 and 10-308. Otherwise, his appearance at the various hearings is discretionary, although it would be unlikely that a probation officer would represent the state at release or transfer hearings.

Paragraph B of Rule 10-108 defines the parties in neglect and abuse cases. In addition to the accused and the state, the alleged neglected or abused child, represented by a guardian ad litem, is a party. The guardian ad litem must be appointed upon the filing of the neglect or abuse petition (Rule 10-305), although nothing prohibits appointment prior to the filing. The role of the guardian ad litem has been well defined. His appointment:

. . . is a position of the highest trust and no attorney should ever blindly enter an appearance as guardian ad litem and allow a matter to proceed without a full and complete investigation into the facts and law so that his clients will be fairly and competently represented and their rights fully and adequately protected and preserved. Bonds v. Joplin's Heirs, 64 N.M. 342 at 345, 328 P.2d 597 (1958).

In the 1978 revisions to the rules, the role of the guardian ad litem continues even after final disposition (Rule 10-309).

The major difference between the role of the guardian ad litem in a neglect or abuse case and the role of the accused's attorney in a delinquency or need of supervision proceeding is that in the former, the guardian ad litem does what he considers to be in the best interests of the child, while in the latter the attorney, although he may advise differently, follows the instructions of his client, even though he may not consider those instructions to be in the client's best interests. The guardian ad litem has much greater freedom.

Paragraph D of Rule 10-108 allows the parents, guardian or custodian of the respondent in delinquency and need of supervision proceedings to become a party by moving the court for permission to intervene in the proceeding. In neglect or abuse proceedings, the parent, guardian or custodian who is not alleged to have neglected or abused the child may be permitted to intervene. The motion envisioned by the

committee would be similar to an application for permissive intervention under Rule 1-024 of the Rules of Civil Procedure for the District Courts, with the court considering whether the intervention would unduly delay the proceedings or prejudice the rights of the respondent. For example, in delinquency and need of supervision proceedings, the risks of delay and confusion seem most acute in those situations in which the parents, guardian or custodian filed the original complaint against their child. In such circumstances, intervention by the parents, guardian or custodian may result in both the state and the parents, guardian or custodian prosecuting the child. Intervention would probably be most desirable in those situations where the accused child does not wish to contest the allegations of the petition, but his parents, guardian or custodian do.

In the event that the court considers it necessary to have the parents, guardian or custodian appear before the court and intervention has not been sought and the parents have not been named as parties under Section 32-1-47 NMSA 1978, their appearance may be compelled by subpoena under Rule 10-109. Compare In re Downs, 82 N.M. 319, 481 P.2d 107 (1971).

Rule 10-108 supersedes Subsections K and L of Section 32-1-27 NMSA 1978 relating to appointment of guardians ad litem to the extent that the rule is in conflict with these subsections. The court is left with the discretion to make such an appointment in other proceedings under the criteria set forth in the statute.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added "intervention" in the section heading and rewrote this rule.

The 1999 amendment, effective for cases filed in the Children's Court on and after February 15, 1999, in Subparagraph B(2), substituted "a parent who has allegedly" for "the custodial parent or parents of the child alleged to have been", added "a child or is" following "abused"; redesignated Paragraphs D and C as Paragraphs C and D respectively; in Paragraph D, added "who have a constitutionally protected liberty interest in the child" following "parents of the child" and added the last sentence; in Paragraph E, added Subparagraph (1), numbered the undesignated paragraph as Subparagraph (2), and redesignated Subparagraphs (1) through (4) as Items (2)(a) through (2)(d); in Item E(2)(b), deleted "parent" preceding "guardian"; in the undesignated paragraph following Item E(2)(d), substituted "subparagraph (2) of this paragraph" for "this paragraph".

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).

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).

Applicability of child custody jurisdiction statute. — That the nonparent custodians of a child were "acting as parents" pursuant to 40-10-3H NMSA 1978 [now see 40-10A-102(13)] 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).

10-109. 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 10-105, 10-105.1 or 10-105.2 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) 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.

(2)

(a) 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, statement, hearing or trial.

(b) Subject to Subparagraph (2) of Paragraph D of this rule, 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 all parties 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.

(3)

(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;

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

(iv) subjects a person to undue burden.

(b) To protect a person subject to or affected by the subpoena, the court may quash or modify the subpoena if the 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.

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.

[Approved, effective April 1, 2002.]

Committee commentary. — See Rule 1-045 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. Prior to the adoption of this rule, Rule 1-045

NMRA governed subpoenas in criminal cases. This rule is substantively the same as Rule 5-511 NMRA.

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

ANNOTATIONS

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."

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).

10-110. 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 the children's court attorney, 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 department 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; and

(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.

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 11-412 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.]

Committee commentary. — Prior to the March 20, 2000 amendment of this rule, this rule was the same as Rule 5-116 NMRA of the Rules of Criminal Procedure for the District Courts. The March 20, 2000, amendments limit the applicability of this rule to abuse or neglect, termination of parental rights or guardianship proceedings in which the respondent may be accused of a criminal offense arising out of the proceedings.

Paragraph C was added as part of the March 20, 2000 amendments.

ANNOTATIONS

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.

10-111. 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. **Review of the special master's report.** After the time for filing exceptions has expired the children's court may:

(1) adopt the report or proposed order, modify it or reject it in whole or in part; or

(2) receive evidence excluded by the special master to which exceptions have been taken.

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.]

Committee commentary. — Rule 10-111 was added in 1978 to provide assistance to the children's court judge in large judicial districts by allowing a special master to exercise all powers of the court, other than power to preside at jury trials, transfer hearings and dispositional hearings. The 1981 legislature specifically provided for the use of special masters in other judicial districts and provided less restrictive qualifications than provided in this rule. The committee believes that the use of special masters is an inherent power of the judiciary; however, consistent with legislative intent, the court deleted the geographical limitations in Rule 10-111. The committee did not recommend any change in the qualifications for special masters. See Section 32-1-38.1 NMSA 1978 and the definition of "court" found as Subsection C of Section 32-1-3 NMSA 1978.

A major goal of the juvenile justice system is early and prompt judicial disposition of a case. Rule 10-111 is designed to allow supplementation of judicial resources whenever the children's court judge "is unable to expeditiously dispose of pending children's court cases" or some other "exceptional condition" requires the appointment. The supreme court need not approve the appointment of a special master in each individual case.

The power to appoint special masters is an inherent power of the judiciary. McCann v. Maxwell, 170 Ohio St. 282, 189 N.E.2d 143 (1963). See North Carolina R.R. v. Swasey, 90 U.S. 405, 23 L. Ed. 136 (1875). Typically, this power has been limited to unusual or complex cases. Thus, Rule 1-053 of the Rules of Civil Procedure for the District Court provides:

A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

The committee believed that the court's inability to "expeditiously dispose of pending children's court cases" was the type of exceptional condition which warranted appointment of a special master. This conclusion was based on two considerations: (1) the goal of prompt disposition, previously discussed and (2) the very short time limits established in the rules and the Children's Code.

The time limits in these rules are not to be tolled or enlarged if a special master is appointed.

Once it was determined that a special master was a necessary addition to the system, the committee endeavored to draft a rule which would meet the requirements of both the state and federal constitutions.

A special master in a juvenile case has been held to be a ministerial officer and not a judicial officer so long as the master's recommendations are not binding on the district judge. In re Anderson, 272 Md. 85, 321 A.2d 516 (Md. Ct. App. 1974). Under Rule 10-111F, the court is not bound by the findings and conclusions of the special master and may, in fact, receive evidence excluded by the special master if the claimed error is properly preserved. The court retains full power over the dispositional hearing pursuant to Paragraph C of Rule 10-111. The children's court judge always has responsibility for the final decision in the case.

Under Rule 10-111 a child is subject to a "single proceeding which begins with a master's hearing and culminates with an adjudication by the children's court judge". Thus there is no violation of the double jeopardy clause of the United States Constitution. Swisher v. Brady, 438 U.S. 204, 98 S. Ct. 2699, 57 L. Ed. 705 (1978).

This rule was amended in 1990 to authorize the appointment of special advocates to assist the children's court by investigating facts and making reports to the court. The 1991 amendments eliminated the authority of special advocates to enter into ex parte communications with the children's court judge. [As revised, effective November 1, 1991.]

ANNOTATIONS

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.

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).

10-112. 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 a detention or custody hearing or the appointment of counsel shall not preclude the disqualification of a judge.

B. **Procedure for excusing a children's court judge.** 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 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 or reassignment of the case to a judge.

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 electing to excuse a judge shall serve notice of such election on all parties.

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 a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record

and determining that the proceedings in the case may be completed without prejudice to the parties. The successor judge may recall any witness.

[As amended, effective August 1, 1989; July 1, 1995.]

Committee commentary. — In 1989, Rule 10-112 was amended to adopt the peremptory disqualification procedures approved by the Supreme Court for civil cases. See Rule 1-088.1.

Paragraph D of Rule 10-112 applies to disqualifications pursuant to Section 38-3-9 NMSA 1978. In Frazier v. Stanley, 83 N.M. 719, 497 P.2d 230 (1972), the New Mexico Supreme Court held that the right to disqualify a judge pursuant to Section 38-3-9 NMSA 1978 (formerly Section 21-5-8 NMSA 1953) was applicable to the Juvenile Code, predecessor statute to the Children's Code. The court held that Juvenile Code proceedings were "either civil or criminal (and) (i)n either case, petitioner was a party to the action or proceeding and entitled to exercise the right of disqualification given her by Section 38-3-9, supra". 83 N.M. at 720.

Under Section 38-3-9 NMSA 1978, the party himself, not his attorney, must sign the affidavit of disqualification, and this procedure is continued under Rule 10-112. Rule 10-112, although following the procedures outlined in Section 38-3-9 NMSA 1978, does not follow the time limits for disqualification set forth in Section 38-3-10 NMSA 1978.

Paragraph B of Rule 10-112 is intended to make clear that the action of a judge at a detention or custody hearing or the action of the judge in appointing counsel is not considered an exercise of discretion in determining the validity of a later disqualification. See Smith v. Martinez, 96 N.M. 440, 631 P.2d 1308 (1968).

Paragraph C of Rule 10-112 follows Rule 5-106 of the Rules of Criminal Procedure for the District Courts.

Rule 10-112 is not meant to restrict disqualifications pursuant to Art. VI, Sec. 18, of the New Mexico Constitution, nor to disqualifications pursuant to Sections 32-1-29 or 32-1-36 NMSA 1978. Section 32-1-36 NMSA 1978 allows disqualification upon objection by the child in certain situations involving consent decrees, and Section 32-1-29 NMSA 1978 permits disqualification upon objection of a party when the judge presides at a transfer hearing.

ANNOTATIONS

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

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.

10-113. 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.]

Committee commentary. — Rule 10-113 was formerly Rule 12. It was renumbered in 1978. See Rules 5-107 and 5-112 of the Rules of Criminal Procedure for the District Courts. See also discussion of attorney discipline in commentary to Rule 10-204.

The requirement in Paragraph A of Rule 10-113 that counsel "immediately" file a written entry of appearance is designed to prevent the unnecessary appointment of an attorney for a respondent alleged to be delinquent or in need of supervision when that respondent already has retained private counsel. Under Rule 10-204, appointment of counsel occurs automatically within five days of the filing of a petition or at the conclusion of the detention hearing unless counsel has entered an appearance on behalf of the respondent.

It should also be noted that the time limits for pretrial motions in Rule 10-114 and the time limit for a demand for jury trial in Rule 10-228 begin running from the time of appointment or entry of appearance.

Paragraph D was derived from Rule 1-011 of the Rules of Civil Procedure for the District Courts. It eliminates any need for endorsements on petitions by the children's court attorney. See Section 32-1-17 NMSA 1978.

ANNOTATIONS

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.

Compiler's notes. — Rule 10-204 NMRA, referred to in the second sentence in the second paragraph of the committee commentary, was amended in 1982 and no longer deals with the appointment of an attorney.

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.

10-114. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated July 17, 1995, this rule, relating to filing of motions, is withdrawn effective September 1, 1995.

10-115. Rules of evidence.

Except as otherwise provided by these rules, the New Mexico Rules of Evidence shall govern all proceedings in the children's court.

Committee commentary. — Rule 10-115 was formerly Rule 14. It was renumbered in 1978.

Rule 10-115 carries forth the provision of Rule of Evidence 11-1101 that the Rules of Evidence apply to all the courts of the state.

Rule of Evidence 11-1101 makes the rules inapplicable to sentencing proceedings, issuance of arrest warrants and search warrants, granting or revoking probation and proceedings with respect to release on bail or otherwise. By analogy, these exceptions apply to the issuance of arrest and search warrants under Rule 10-206, to detention hearings under Rule 10-211 (a proceeding with respect to release on bail or otherwise), to dispositional hearings under Rules 10-229 and 10-309 (sentencing proceedings) and to reviews of dispositional judgments under Rule 10-311.

Within specific children's court rules, the Rules of Evidence are specifically made inapplicable to the determination of a factual basis for an admission or consent decree, Rules 10-224 and 10-307; to ex parte custody proceedings, Rule 10-301; custody

hearings, Rule 10-303; and the release hearing, Rule 10-212, under the general policy of Rule 11-1101 of the Rules of Evidence.

The only other provisions of the Children's Court Rules which deal with evidentiary matters are Rules 10-224 and 10-307 relating to the inadmissibility of consent decree discussions in other proceedings.

The Children's Code itself contains two evidentiary provisions which are apparently in conflict with one another and at least partially in conflict with the Rules of Evidence. The New Mexico Supreme Court applies the same constitutional standards for waiver of constitutional rights to children and adults. State v. Henry, 78 N.M. 573, 434 P.2d 692 (1967). See also Section 32-1-27 NMSA 1978. Children may waive their constitutional rights. See Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968) and Bouldin v. Cox, 76 N.M. 93, 412 P.2d 392 (1966) (waivers of counsel); Lopez v. United States, 399 F.2d 865 (9th Cir. 1968) and West v. United States, 399 F.2d 467 (5th Cir. 1968) (waiver of Miranda rights).

ANNOTATIONS

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

Expert witness. — A state police narcotics agent who had conducted 200 to 300 similar tests, 80 of which had been used in various cases, preliminary hearings and children's cases not involving felonies, was sufficiently expert to qualify for purposes of delinquency petitions involving marijuana offense which would have been a misdemeanor if committed by an adult. Doe v. State, 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.

10-116. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated July 17, 1995, this rule, relating to clerical mistakes, is withdrawn effective September 1, 1995.

10-117. 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.

Committee commentary. — Rule 10-117 was formerly Rule 18. It was renumbered in 1978.

See Rule 1-061 of the Rules of Civil Procedure for the District Courts and Rule 5-113 of the Rules of Criminal Procedure for the District Courts. Rule 11-103 of the Rules of Evidence governs harmless error in the admission or exclusion of evidence.

Rule 10-117 was amended in 1981 to clarify that failure to comply with time limits is not grounds for dismissal of an action unless expressly provided otherwise by the rules. Rules 10-226, 10-229 and 10-308 provide for dismissal with prejudice for failure to comply with the time limits for adjudicatory and dispositional hearings.

In State v. Doe, 91 N.M. 393, 574 P.2d 1021 (Ct. App. 1978), the New Mexico Court of Appeals dismissed a petition with prejudice which had not been filed within the time prescribed by Section 32-1-14 NMSA 1978. The court dismissed the petition with prejudice, basing its decision on the statute. Section 32-1-14 NMSA 1978 was amended in 1981 to delete both the time limit and dismissal with prejudice requirement provisions.

Rules 10-226 and 10-308 provide time limits for adjudicatory hearings and Rule 10-229 provides time limits for dispositional hearings. These rules specifically require dismissal with prejudice if the time limit is not met. Since the decision in State v. Doe, supra, and apparently based on that holding, the court of appeals has dismissed petitions for failure to comply with time limits for dispositional and probation revocation hearings.

State v. Doe, 93 N.M. 31, 595 P.2d 1221 (Ct. App. 1979), held that a violation of the time requirements of Rule 10-229 requires dismissal. The delay of a child's arrival at the youth diagnostic center, followed by the withdrawal of the child's original attorney and a request for continuance of the hearing by a second attorney, resulting in the hearing being held more than seventy-five days following the completion of the adjudicatory hearing, does not affect the requirement of dismissal. State v. Doe, 94 N.M. 282, 609 P.2d 729 (Ct. App. 1980).

State v. Doe, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979), held that failure of the court to commence the hearing to revoke probation within the time prescribed by the rules requires that the revocation petition be dismissed with prejudice.

State v. Doe, 93 N.M. 748, 605 P.2d 256 (Ct. App. 1980), held that the hearing on a petition to extend custody pursuant to 32-1-38 NMSA 1978 must be held within 30 days after the date of termination of the prior custody or the date the respondent is arrested after his failure to appear, whichever shall last occur. The time limits of Rule 10-226 are applicable to petitions to extend custody. Failure to hold the hearing on the petition to extend custody within 30 days of the date of the applicable occurrence stated above requires dismissal with prejudice of the petition to extend custody.

ANNOTATIONS

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, ___P.3d_____.

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, ___P.3d_____.

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).

10-118. Stay pending appeal; application in the court of appeals.

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 the Rules of Appellate Procedure.

[As amended, effective July 1, 1988.]

Committee commentary. — This rule was revised in two ways in 1978: (1) the time in which an answer is to be filed in response to an application for stay was expanded from three days to seven days (see Rule 10-106 for computation of time limits), and (2) the role of the children's court judge in the appellate stay procedure was deleted. Requirements regarding reports of the evidence submitted in the children's court are now fulfilled by certificate of counsel.

This rule sets forth the general procedure for staying a judgment of the children's court. Both the attorney general and the children's court attorney must be served with the application. Although the attorney general represents the state on appeal, the trial attorney may be involved in opposing the application. To give effect to 32-1-39B NMSA 1978, the rule requires the application to present alternatives for placement of the child pending the appeal.

ANNOTATIONS

Cross references. — As to appeals from children's court, see 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.

10-119. 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.]

ANNOTATIONS

Cross references. — See Rule 1-085 NMRA.

10-120. New adjudicatory hearing; relief from judgment or order.

A. **Motion for new adjudicatory hearing.** A motion for a new adjudicatory hearing 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 10-230 NMRA or Rule 10-310 NMRA. A motion for a new adjudicatory hearing 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. A new adjudicatory hearing may be granted upon a finding by the court that the newly discovered evidence:

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

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

(3) is material to the issue;

(4) is not merely cumulative; and

(5) is not merely impeaching or contradictory.

A motion for new adjudicatory hearing is automatically denied:

(1) if not granted within ten (10) days from the date it is filed; or

(2) 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.]

ANNOTATIONS

Cross references. — For remand from the appellate court, see Rule 10-119 NMRA.

Effective dates. — Pursuant to a court order dated March 6, 2003, this rule is effective May 1, 2003.

10-121. 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.]

ANNOTATIONS

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

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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated December 5, 2001, this rule is effective February 1, 2002.

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

A. **Duty to disclose.** If, subsequent to compliance with Rule 10-213, 10-214, 10-308, 10-309 or 10-350 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 10-113 of these rules.

[10-215 NMRA; as amended and recompiled, effective February 1, 2002.]

Committee commentary. — This rule was amended in 1982 to be consistent with Rule 5-505 NMRA of the Rules of Criminal Procedure for the District Courts.

ANNOTATIONS

The 2001 amendment, effective February 1, 2002, in Paragraph A, deleted "a request or order for discovery pursuant to" preceding "Rule 10-213", inserted "10-308, 10-309 or 10-310 NMRA" following "10-214" and inserted "or termination of parental rights hearing" following "adjudicatory hearing".

Compiler's notes. — Former Rule 10-215 NMRA pertaining to "continuing duty to disclose; failure to comply", was recompiled as this rule, effective February 1, 2002.

10-138. Depositions; statements; protective orders.

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

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

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

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

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

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

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

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

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

B. **Written showing of good cause.** Upon motion, the court may permit the showing of good cause required under Paragraph A of this rule to be in the form of a written statement for inspection by the court in camera, if the court concludes from the statement that there is a substantial need for the in camera showing. If the court does

not permit the in camera showing, the written statement shall be returned to the movant upon request. If no such request is made, or if the court enters an order granting the relief sought, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court having jurisdiction in the event of an appeal.

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

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

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

ANNOTATIONS

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

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

ARTICLE 2
Delinquency Proceedings

10-201. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated August 12, 1996, this rule, relating to preliminary inquiry and time limits, is withdrawn effective October 1, 1996. For present comparable provisions, see Rule 10-204 NMRA.

Cross references. — For preliminary inquiry and complaints in delinquency proceedings, see 32A-2-7 NMSA 1978.

10-202. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated August 12, 1996, this rule, relating to notice of preliminary inquiry, is withdrawn effective October 1, 1996. For present comparable provisions, see Rule 10-204 NMRA.

10-203. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated August 12, 1996, this rule, relating to authorization of petition and request for attorney, is withdrawn effective October 1, 1996. For present comparable provisions, see Rule 10-204 NMRA.

10-204. 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.

B. **Petitions; form.** Petitions 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 child is in detention a petition shall be filed within two (2) days from the date of detention.

D. **Notice of filing of petitions in delinquency proceedings.** If the parents, guardians or custodians of a 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 10-105 of these rules.

[As amended, effective October 1, 1996.]

Committee commentary. — Rule 10-204 was formerly Rule 23. It was renumbered in 1978.

The rule sets forth the procedure for initiating formal court action in a delinquency or need of supervision proceeding.

Under Paragraph A of Rule 10-204 the filing of a petition is a two-step process: (1) probation services conducts a preliminary inquiry and either authorizes or refuses to authorize 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. He may do so even if probation services has not authorized a petition. He may refuse to do so even if probation services has authorized the filing of the petition. However, probation services must have completed a preliminary inquiry before the

petition can be filed. The original committee believed that the children's court attorney is responsible for prosecuting the case, and he should make the ultimate decision whether or not to proceed.

Paragraph B of Rule 10-204 sets forth the form and contents of the petition. Forms for petitions have been approved by the supreme court.

Paragraph C of Rule 10-204 establishes time limits for filing of the petition. The time limit for filing of a petition when the child is in detention is also the time limit for completion of the preliminary inquiry. For computation of the time limits see Rule 10-106.

Rule 10-204 covers the subject matter dealt with in Sections 32-1-14D, 32-1-17, 32-1-18, 32-1-19 and 32-1-26A(1) NMSA 1978. The most significant changes are in the procedure for filing a petition and in the time limits for filing a petition when the child is not in detention.

Paragraph A of Rule 10-204 supersedes conflicting provisions contained in Sections 32-1-17 and 32-1-18 NMSA 1978. Initiating formal court action is a procedural matter.

The requirement that the children's court attorney consult with probation services is believed to be directory and not mandatory. See State ex rel. Attorney General v. Reese, 78 N.M. 241, 430 P.2d 399 (1967). Rule 10-113 of these rules makes the endorsement on each petition that the filing of the petition is in the best interest of the child and the public unnecessary. See also art. 20, § 1 of the New Mexico Constitution.

In no case may anyone but the children's court attorney file a petition. (See Rule 10-305 for the filing of neglect petitions.) Probation officers are not allowed to sign any petitions, including petitions to revoke probation. (See Rule 10-232.) Of course, a parent, guardian, a representative of an agency licensed or authorized to provide care or supervision of children, etc., may make a complaint to probation services or the human services department.

In State v. Doe, 91 N.M. 393, 574 P.2d 1021 (Ct. App. 1978), the court held that a petition not filed within the mandatory time period must be dismissed with prejudice pursuant to the language of former Section 32-1-14D NMSA 1978. Under Rule 10-117, the only jurisdictional time limits are those contained in Rules 10-226 and 10-308 regarding the commencement of adjudicatory hearings on delinquency, need of supervision and abuse and neglect petitions and Rule 10-229 regarding the commencement of dispositional hearings. This is consistent with the general policy followed in the Rules of Criminal Procedure for the District Courts. Enforcement of the other provisions of the rules, including time limits, is through Rule 10-113 which allows the court to impose sanctions on an attorney who willfully violates the rules. This is also consistent with the policy of the Rules of Criminal Procedure and similar provisions in other rules adopted by the supreme court. For example, in State v. Lucero, 87 N.M. 369, 533 P.2d 758 (1975), the supreme court directed the court of appeals to hear an

appeal on its merits with leave to "impose such sanctions as it deems appropriate" on an attorney for violation of the appellate rules. See also Rule 5-702 and commentary thereto of the Rules of Criminal Procedure for the District Courts.

Although Section 32-1-3P NMSA 1978 was amended to delete the requirement that a delinquent child be in need of care or rehabilitation, Section 32-1-31E NMSA 1978 requires the court to find that a delinquent child is in need of care and rehabilitation and if the court does not so find, the petition shall be dismissed and the child released. "Need of care and rehabilitation" is still a requirement for delinquency.

ANNOTATIONS

Cross references. — As to signing of petition, see 32A-1-10 NMSA 1978.

As to form and content of petition, see 32A-1-11 NMSA 1978.

As to time limit for filing of petition when child is detained, see 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.

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).

10-204.1. Delinquency proceedings; 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 such allegation stated in a separate count if such allegations, whether felonies or misdemeanors or both:

(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.]

Committee commentary. — The rule sets forth the bases for joining offenses and respondents in children's court proceedings and the basis and method of relief from prejudicial joinder.

Paragraph A of Rule 10-107 on joinder of allegations of offenses follows Rule 5-203 of the Rules of Criminal Procedure for the District Courts. The issue of whether mandatory joinder is required by the supreme court order issued in December, 1979, was raised by the committee in December, 1981. It was the consensus of the supreme court that its earlier order did not extend to juvenile proceedings. See commentaries to Rule 5-203 of the Rules of Criminal Procedure for the District Courts. Paragraph B of Rule 10-107 relating to joinder of respondents is patterned after Paragraph B of Rule 5-203 of the Rules of Criminal Procedure for the District Courts. See also Section 32-1-47 NMSA 1978 for permissive joinder of parents in delinquency proceedings and Rule 10-108 of these rules.

Paragraph C of Rule 10-107 governs joinder in neglect or abuse actions. A single petition may allege that a parent, guardian or custodian has neglected or abused more than one child or that both parents, guardians or custodians have neglected or abused one or more children. Of course, some connection between the alleged acts of neglect or abuse or the children involved is envisioned. Thus, Paragraph C of Rule 10-107 would permit joinder in a single petition of allegations that one parent neglected or abused only one of a couple's children and that the other parent neglected or abused another of their children. It would allow in a single petition allegations of separate acts each amounting to neglect or abuse.

Under Paragraph D of Rule 10-107, relief from joinder is available only to the respondent. The relief may be granted only upon motion and hearing, and the moving respondent must show prejudice.

Evidence against a joint respondent which violates the constitutional right of confrontation of the moving respondent is not admissible against the moving respondent. Bruton v. United States, 391 U.S. 123, 130-31, 88 S. Ct. 1620, 20 L. Ed. 2d

476 (1968). The Bruton holding has been held applicable to delinquency proceedings in at least one jurisdiction. In re Appeal No. 977, 22 Md. App. 511, 323 A.2d 663 (1974).

ANNOTATIONS

Cross references. — As to petition initiating proceedings under Children's Code, see 32A-1-10, 32A-1-11 and to 32A-2-8 NMSA 1978.

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

10-205. Appointment of counsel; payment of fees.

A. **Appointment.** Within five (5) days from the date the petition is filed, or at the conclusion of the detention hearing, whichever occurs first, unless counsel has entered an appearance on behalf of the child, the court shall advise the public defender that the child is not represented by counsel and the public defender shall provide a defense for the child.

B. **Notice to parents.** If the public defender is asked to represent the child, the public defender shall serve on the parents, guardian or custodian a written notice on a form approved by the Supreme Court that if they can afford an attorney to represent the 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 return it to the public defender within the prescribed time, they may be charged for all legal representation of the 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 ten (10) days after receipt of notice from the public defender 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 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 procedures set forth in Children's Court Rule 10-408.

[As amended, effective November 1, 1995.]

Committee commentary. — Prior to the 1982 amendments, the Children's Code provided for the appointment of counsel to represent any child who cannot afford counsel and for the reimbursement of the state if the parents, guardian or custodian can afford to pay the costs of representation. Subsection B of Section 32-1-27 NMSA 1978 requires the public defender to represent a child determined indigent.

The 1981 session of the legislature did not amend several other sections of the Code which provide for the appointment of counsel by the court. See Subsection H of Section 32-1-27 NMSA 1978 (appointment of counsel by the court in delinquency and need of supervision cases); Subsection J of Section 32-1-27 NMSA 1978 (appointment of counsel by the court in neglect and abuse cases); and Section 32-1-41 NMSA 1978 (appointment of counsel is a charge upon the funds of the court). Since counsel appointed by the court must be paid out of court funds, it is presumed that in most cases the public defender will be requested to represent the child. Rule 10-205 was drafted to implement the 1981 requirement that the public defender represent the child.

The committee was of the opinion that the provisions of the Indigent Defense Act apply to a determination of who is a needy parent, guardian or custodian under the Children's Code. See Sections 31-16-1 through 31-16-10 NMSA 1978.

The committee did not believe that it was necessary to advise the child at each stage of the proceedings of the child's right to counsel in that the public defender has a duty to represent the child under the Children's Code and presumably will be present at each stage of the proceedings.

ANNOTATIONS

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.

10-206. Warrants.

A. **Arrest warrants.** Warrants for the arrest of a child alleged to have committed a delinquent act or a criminal offense 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.]

Committee commentary. — Rule 10-206 was formerly Rule 24. It was renumbered in 1978.

The rule governs the use of arrest, search and bench warrants in delinquency and need of supervision proceedings.

Under Paragraph A of Rule 10-206, arrest warrants are specifically authorized for both children alleged to be delinquent and those in need of supervision. The manner of obtaining, executing and returning the warrant does not differ materially from that used in adult criminal proceedings and is governed by Paragraph C of Rule 5-208 and by Rule 5-210 of the Rules of Criminal Procedure for the District Courts. However, in children's court proceedings, only the district court or children's court is authorized to issue the warrants.

Paragraph B of Rule 10-206 on bench warrants applies not only to respondents but to any other 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. Thus a bench warrant may be issued for the arrest of a parent, guardian, custodian or witness who disobeys a subpoena.

Paragraph C of Rule 10-206 technically allows the use of search warrants in both delinquency and need of supervision proceedings. The original committee felt that it would be an unusual case in which a search warrant would be justified in a need of supervision proceeding. Accordingly, the search warrant form approved by the supreme court is designed for use in cases involving allegations of delinquency. The issuance, execution and return of the search warrant is governed by Rule 5-211 of the Rules of Criminal Procedure for the District Courts.

Rule 10-206 does not apply to neglect or abuse proceedings. The original committee decided that neglect proceedings generally lack sufficient similarity to criminal cases for warrants to be appropriate.

Rule 10-206 supersedes the provisions of Section 32-1-22A NMSA 1978 when such arrests would require warrants if the person to be arrested were an adult. Nothing in the rule is designed to limit the authority of a law enforcement officer to make a warrantless arrest in those situations when such an arrest would be valid if the person arrested were an adult.

ANNOTATIONS

Cross references. — As to when taking child into custody is authorized, see 32A-2-9 NMSA 1978.

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.

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).

10-207. Place of detention.

A. **Delinquents.** An alleged or adjudicated delinquent may not be detained in an adult facility.

B. **Youthful offender.** Notwithstanding the provisions of any other children's court rule, an alleged or adjudicated youthful offender may not be detained in an adult facility unless the court has determined to impose adult sanctions.

C. **Serious youthful offender.** Notwithstanding the provisions of any other children's court rule, a child alleged to be a serious youthful offender shall not be detained in an adult facility unless the court makes findings that such detention is appropriate.

[As amended, effective November 1, 1995.]

Committee commentary. — Rule 10-207 was formerly Rule 25. It was renumbered in 1978.

The provisions for release provided in Rule 10-207 are essentially those contained in Section 32-1-23 NMSA 1978. The only significant difference is that release may be made upon the written promise of the child to appear before the court when directed to do so, rather than the written promise of the parents, guardian or custodian that the child will appear before the court when directed to do so. The rule is not meant to allow the issuance of a bench warrant to the child or his parents, guardian or custodian for failure to appear before probation services as part of the preliminary inquiry. Under Section 32-1-14B NMSA 1978, participation in the preliminary inquiry is voluntary.

Even if the child is released, the matter may be referred to probation services for further action. If the child is taken to a medical facility, the child also may be referred to probation services for determination of the appropriateness of detention prior to the detention hearing.

Paragraph B of Rule 10-207 is directed to advisement of rights by law enforcement officers. Subparagraphs (1), (2) and (4) of Paragraph B essentially restate Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Subparagraph (3) is a right granted the child in Section 32-1-27 NMSA 1978. See the commentary to Rule 10-208 for a full discussion of the distinction between the use of the terms "in custody" and "detention".

ANNOTATIONS

Cross references. — As to release or delivery of child from custody, see 32A-1-15 and 32A-2-10 NMSA 1978.

For criteria for detention of children, see 32A-2-11 NMSA 1978.

For basic rights of child alleged to be delinquent or in need of supervision, see 32A-1-16 and 32A-2-14 NMSA 1978.

The 1995 amendment, effective November 1, 1995, rewrote the rule.

Compiler's notes. — Section 32-1-23 NMSA 1978, referred to in the second paragraph of the committee commentary, was amended in 1981 to allow for the child to be released upon his written promise to appear. The section was subsequently repealed in 1993.

Delinquency proceedings "criminal". — Juvenile proceedings to determine delinquency, which may lead to commitment to state institution, must be regarded as "criminal" for purposes of privilege against self-incrimination. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

Inadmissible confessions. — Use of confession obtained from minor, when one obtained from adult under similar circumstances would not be admissible, would be grossly unfair and could not be justified on any theory. State v. Ortega, 77 N.M. 7, 419 P.2d 219 (1966).

Confessions not tainted. — Where juveniles were advised of rights guaranteed in criminal proceedings, and there was no suggestion that they thought they were confessing as juveniles or to improve their position with police or juvenile authorities, fact that defendants were technically in custody of juvenile court, although not yet delivered to juvenile authorities, during taking of confessions by interrogating officers, did not taint confessions to such an extent as to make them involuntary or to make their use "fundamentally unfair". State v. Ortega, 77 N.M. 7, 419 P.2d 219 (1966).

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, "Children's Waiver of Miranda Rights and the Supreme Court's Decisions in Parham, Bellotti, and Fare," see 10 N.M.L. Rev. 379 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Juvenile Courts § 10 et seq.

10-208. Placing child in detention.

A. **Referral to probation services.** Upon delivery of a child who may be held in custody to probation services or to a place of detention, a probation officer shall interview the child and, if possible, the child's parents, guardian or custodian to determine if continued detention is necessary under the criteria set forth in Rule 10-209 of these rules or the provisions of the Children's Code [32A-1-1 NMSA 1978 et seq.].

B. **Notice of detention.** If the probation officer determines that continued detention is necessary, the person in charge of the place of detention shall advise the child's parents, guardian or custodian as soon as practicable but no later than twenty-four (24) hours from the time the child was delivered to probation services or to a place of detention, including Saturdays, Sundays and legal holidays:

(1) the child has been placed in detention;

(2) the reason the child has been placed in detention;

(3) the place where the child is detained and the visiting hours there;

(4) if no petition is filed, the 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 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 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 child of the contents of the statement of probable cause. A copy of the statement of probable cause shall be provided to the child or the 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.]

Committee commentary. — Rule 10-208 establishes the procedure for placing a child in detention when he is not released pursuant to Rule 10-207.

In the rules, the terms "custody" and "detention" have distinct meanings. "Detention" is never used in reference to alleged neglected or abused children; such children are "in custody". Children alleged to be delinquent or in need of supervision are "detained" or "placed in detention" upon their delivery to a place of detention or to probation services. The only time children alleged to be delinquent or in need of supervision are "in custody" is when they are under the supervision of a law enforcement officer or agency. The period of custody cannot exceed 24 hours under Section 32-1-23E NMSA 1978.

Within that 24 hours, the law enforcement officer must either release the child, deliver him to a medical facility or deliver him to a place of detention or to probation services. Whether or not delivery to a medical facility constitutes "detention" will depend on the circumstances of the case.

Delivery to probation services or to a place of detention does not constitute placing the child in detention. Under Paragraph A of Rule 10-208, probation services must determine whether continued detention is appropriate under the provisions of Sections 32-1-8 or 32-1-22 NMSA 1978 or the criteria set forth in Rule 10-209. The emphasis is on release.

If the child is detained, and a petition is or has been filed, the need for detention is reviewed by the court at a detention hearing under Rule 10-211. If no petition is filed within the time limits, the child must be released.

Paragraph B of Rule 10-208 specifies the provisions of the notice which must be given the parents, guardian or custodian if the child is continued in detention. The notice need not be in writing, and the person in charge of the place of detention gives the notice, not the person (i.e., the law enforcement officer) who originally took the child into custody. The notice must be given within 24 hours of the time the child is formally placed in detention, including Saturdays, Sundays and legal holidays. As in most of the other notice provisions, the person responsible for the notice is expected to make a good faith effort to locate the parents, guardian or custodian of the child. The notice need only go to one parent. If the parents, guardian or custodian cannot be located within the initial 24-hour period, the effort to give them notice should continue. See In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). A written notice of detention form has been provided and approved by the supreme court for this purpose.

ANNOTATIONS

Cross references. — For Children's Code provisions relating to detention of children, see 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.

Compiler's notes. — Section 32-1-23E NMSA 1978, referred to in the last sentence in the second paragraph of the committee commentary, was amended in 1981 to no longer require a 24-hour limitation on the period of custody. The section was subsequently repealed in 1993.

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.

10-208A. 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 child has not been released. The probable cause determination shall be made promptly by a district judge, metropolitan court 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 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 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 child.

D. **Dismissal for failure to show probable cause.** If the court finds that there is no probable cause to believe that the child has committed an offense, the court shall order the immediate release of the child.

[Adopted, effective November 1, 1995.]

10-208B. First appearance; explanation of rights.

Upon the first appearance of a child before a court in response to summons or warrant or following arrest, the court shall inform the 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 child may be used against the child; and

H. the right, if any, to a preliminary examination.

[Adopted, effective November 1, 1995.]

10-209. Criteria for detention.

A child shall not be placed in detention prior to the court's disposition unless probable cause exists to believe that:

A. if not detained, the child will commit injury to the persons or property of others, cause self-inflicted injury or be subject to injury by others;

B. the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child;

C. the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers; or

D. the custody or detention is otherwise authorized by the provisions of the Children's Code [32A-1-1 NMSA 1978].

[As amended, effective November 1, 1995.]

Committee commentary. — A child may be detained only when authorized by Sections 32-1-8 or 32-1-22 NMSA 1978 or by the provisions of these rules.

Rule 10-209 sets forth three criteria for detention which are in addition to the statutory criteria. In addition to the other criteria set forth in Rule 10-209, the child may be detained if probable cause exists to believe that if not detained the child will "be subject to injury by others." This language is contained in Section 32-1-24A(1) NMSA 1978. The other criteria are also taken from Section 32-1-24 NMSA 1978.

The criteria for placing children who are alleged to be neglected or abused in the custody of the Human Services Department is contained in Rule 10-303.

ANNOTATIONS

Cross references. — For criteria for detention of child, see 32A-2-11 NMSA 1978.

The 1995 amendment, effective November 1, 1995, substituted "self-inflicted injury" for "injury to himself" in Paragraph A, substituted "for the child" for "for him" in Paragraph B, and added Paragraph C and redesignated former Paragraph C as Paragraph D.

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).

10-210. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated October 30, 2002, this rule, pertaining to explanation of rights at first appearance, is withdrawn effective immediately.

10-211. Detention hearing; conditions of release.

A. **Detention hearing.** A detention hearing shall be held within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays, from the time:

(1) the petition is filed if the child is in detention at the time the petition is filed; or

(2) the child is placed in detention if the child is placed in detention after the petition is filed.

B. **Notice.** Probation services shall make a reasonable effort to give oral or written notice of the time and place of the detention hearing to the child and, if they can be found, to the parents, guardian or custodian of the child.

C. **Conditions of release.** The court shall review the need for detention pursuant to Rule 10-209. If none of the criteria for detention exist, the court shall release the child on the 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 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. **Failure to appear.** If the child 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 metropolitan court judge, a magistrate or by a special master appointed by a district judge.

[As amended, effective November 1, 1995; February 1, 1997.]

Committee commentary. — The rule governs the procedure at the first formal court appearance for a child in detention who is alleged to be delinquent or in need of supervision.

Paragraph A requires that the detention hearing be held within one day after a petition is filed or within one day of the date the respondent was placed in detention if a petition had previously been filed. The latter requirement is designed to cover those situations in which the petition has already been filed and a later determination is made to arrest the child. To compute the time limits see Rule 10-106.

Paragraph B specifies that the purpose of the detention hearing is to review the necessity for detention under the criteria established in Rule 10-209 and that it is not to determine probable cause. The rule does not provide for release on bail. Bail does not appear to be constitutionally required in juvenile cases if adequate substitutes for bail are provided. *See Williams v. Sanders*, 80 N.M. 619, 459 P.2d 145 (1969).

Paragraph C requires that reasonable notice of the hearing be given the parents, guardian or custodian of the child. The person giving the notice is expected to use good faith in providing notice to the parents, guardian or custodian of the child as soon as it appears that a petition will be filed and a date and time for the detention hearing is ascertained. The notice may be written or oral, although, because of the time

restrictions, it would normally be oral or left in writing at the residence of the parents, guardian or custodian. Only one parent need be notified.

ANNOTATIONS

Cross references. — For detention hearing, see 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.

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).

10-212. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated September 12, 1995, this rule, relating to release hearing and probable cause determination, is withdrawn effective November 1, 1995.

10-213. 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, 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'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;

(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 due process clause of the United States Constitution.

B. **Examining, photographing or copying evidence.** The respondent 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 pursuant to Rule 10-113 NMRA and Rule 10-137 NMRA.

[As amended, effective February 1, 2002.]

Committee commentary. — Rule 10-213 NMRA was revised in 1982 to be consistent with the revised discovery rule for criminal cases in the district courts. The information discoverable under Rule 10-213 NMRA is the same that the state must disclose in adult cases pursuant to Rule 5-501 NMRA of the Rules of Criminal Procedure for the District Courts. Appropriate language changes have been made in this rule to reflect the children's court terminology.

ANNOTATIONS

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.

10-214. Disclosure of evidence and witnesses by the respondent.

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 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, and which the respondent intends to introduce in evidence at the adjudicatory hearing which were prepared by a witness whom the respondent 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, which the respondent intends to introduce in evidence at the adjudicatory hearing or which were prepared by a witness whom the respondent intends to call at the adjudicatory hearing; and

(3) a list of the names and addresses of the witnesses the respondent 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, or the respondent's attorneys in connection with the investigation or defense of the case;

(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 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 state.

If the respondent fails to comply with any of the provisions of this rule, the court may enter an order pursuant to pursuant to Rule 10-113 NMRA and Rule 10-137 NMRA.

[As amended, effective February 1, 2002.]

Committee commentary. — Rule 10-214 was amended in 1982 to be consistent with Rule 5-502 NMRA of the Rules of Criminal Procedure for the District Courts. See commentary to Rule 5-502 NMRA of the Rules of Criminal Procedure for the District Courts for the derivation of this rule. It governs discovery by the state in delinquency proceedings.

ANNOTATIONS

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".

10-215. Recompiled.

ANNOTATIONS

Recompilations. — This rule, pertaining to continuing duty to disclose and the failure to comply was recompiled as Rule 10-137 NMRA, effective February 1, 2002.

10-216. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated December 5, 2001, this rule pertaining to depositions is withdrawn, effective February 1, 2002.

Cross references. — For depositions, see Rule 10-133 NMRA.

10-217. Videotaped depositions; testimony of certain minors who are victims of sexual offenses; delinquency proceedings.

A. **Videotaped depositions.** Upon motion, and after notice to opposing counsel, at any time after the filing of a petition in 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 for any of the reasons set forth in Paragraph N of Rule 10-216 NMRA.

[As amended, effective January 1, 2001.]

Committee commentary. — Rule 10-217 is almost identical to Rule 5-504 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.

ANNOTATIONS

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.

10-218. [Recompiled.]

ANNOTATIONS

Recompilations. — This rule, pertaining to depositions and protective orders was recompiled as Rule 10-138 NMRA, effective February 1, 2002.

10-219. Notice of alibi; delinquency proceedings.

A. **Notice.** In delinquency proceedings, 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 who intends to offer evidence of an alibi in the respondent's 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's intention to claim such alibi. Such notice shall contain specific information as to the place at which the respondent claims to have been at the time of the alleged offense and, as particularly as known to the respondent or the respondent's attorney, the names and addresses of the witnesses by whom the respondent proposes to establish such alibi. Not less than five (5) days after receipt of the respondent'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 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's alibi at the adjudicatory hearing.

B. **Continuing duty to give notice.** Both the respondent 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.

C. **Failure to give notice.** If a respondent fails to serve a copy of the notice of alibi, the children's court may exclude evidence offered by the respondent for the purpose of proving an alibi, except the testimony of the respondent. If such notice is given by a respondent, the children's court may exclude the testimony of any witness offered by the respondent for the purpose of proving an alibi if the name and address of such witness was known to respondent or the respondent'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 thereof on the respondent provided in this rule, the children's court may exclude evidence offered by the state to contradict the respondent's alibi evidence. If such 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 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.

D. **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.]

Committee commentary. — See Rule 5-508 of the Rules of Criminal Procedure for the District Courts and commentary to Rule 10-213. This rule applies only to delinquency proceedings since a need of supervision charge typically involves a course of conduct rather than a specific act. This rule was added in 1978.

ANNOTATIONS

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.

10-220. Insanity at time of commission of delinquent act; notice of incapacity to form specific intent.

A. **Defense of insanity.** In delinquency proceedings:

(1) 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.

(2) 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.

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 psychiatric examination.** A statement made by the child during a psychiatric examination or treatment subsequent to the commission of the alleged delinquent act shall not be admissible in evidence in any criminal or delinquency proceeding 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.]

Committee commentary. — This rule, which was added in 1978, sets forth the procedure to be used in delinquency proceedings if either the defense of insanity or incapacity to form specific intent is raised. The procedure is similar to that in Rule 5-602 of the Rules of Criminal Procedure for the District Courts. However, the time for filing the notice of insanity or incapacity to form specific intent is tied to service of the petition on the respondent or entry of appearance by counsel, rather than arraignment as provided in Rule 5-602.

Paragraph B is similar to Paragraph C of Rule 5-602 of the Rules of Criminal Procedure for the District Courts. Reference to court payment in cases of indigency is deleted. Pursuant to 32-1-32B NMSA 1978, the court may order examination by a psychiatrist or psychologist of any child before the court prior to the adjudicatory hearing if there are indications that the child is mentally ill or mentally retarded. The statutory provision is not limited to the issue of competency. Section 32-1-35 NMSA 1978 further allows the

court at any stage of the proceeding to transfer legal custody of the child for a period of up to 30 days for evaluation if the child appears to be mentally ill or mentally retarded. If at any time in the proceedings, the evidence indicates that the child is mentally retarded or mentally ill, the court may proceed pursuant to 32-1-35 NMSA 1978. Initiation of commitment proceedings is discretionary with the court. State v. John Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Paragraph C follows Subparagraph (2) of Paragraph A of Rule 5-602 and Paragraph D of Rule 5-602; and Paragraph D follows Paragraph E of Rule 5-602.

Section 32-1-35 NMSA 1978 deals generally with the alternatives available when any child appears before the court and shows signs of mental illness or mental retardation. This rule does not modify the general provisions of 32-1-35 NMSA 1978; rather, this rule provides a structure in delinquency proceedings in which the issue of insanity or incapacity to form specific intent can be raised as a legal defense to a specific charge. If the issue of mental illness or mental retardation arises in need of supervision cases, reference should be made to 32-1-35 NMSA 1978 and to Rule 10-221. In neglect cases, 32-1-35 NMSA 1978 governs.

ANNOTATIONS

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".

Compiler's notes. — Section 32-1-35 NMSA 1978, referred to in the second and last paragraphs in the committee commentary, was extensively amended in 1981 to no longer deal with all of the subject matter discussed in the commentary. The section was subsequently repealed in 1993.

10-221. Determination of competency to stand trial; lack of capacity.

A. **How raised.** The issue of respondent's competency to stand trial in delinquency or child in need of supervision proceedings 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:

(1) further proceedings on the petition shall be stayed until the respondent becomes competent to participate in the proceedings;

(2) where appropriate, the children's court judge may order treatment to enable the respondent to attain competency to stand trial; and

(3) the children's court judge may review and amend the conditions of release pursuant to Rules 10-209 and 10-211 of these rules.

E. **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.]

Committee commentary. — See Paragraph B of Rule 5-602 of the Rules of Criminal Procedure for the District Courts. This rule applies to both delinquency and need of supervision proceedings. See commentary to Rule 10-220 for a discussion of the interrelationship of Rule 10-220 and this rule and the provisions of 32-1-35 NMSA 1978 relating generally to the mental illness or mental retardation of children appearing before the court.

Paragraph B is similar to Paragraph C of Rule 5-602 of the Rules of Criminal Procedure for the District Courts. Reference to court payment in cases of indigency is deleted. Pursuant to 32-1-32B NMSA 1978, the court may order examination by a psychiatrist or psychologist of any child before the court prior to the adjudicatory hearing if there are

indications that the child is mentally ill or mentally retarded. The statutory provision is not limited to the issue of competency. Section 32-1-35 NMSA 1978 further allows the court at any stage of the proceeding to transfer legal custody of the child for a period of up to 30 days for evaluation if the child appears to be mentally ill or mentally retarded. If at any time in the proceedings, the evidence indicates that the child is mentally retarded or mentally ill, the court may proceed pursuant to 32-1-35 NMSA 1978. Initiation of commitment proceedings is discretionary with the court. State v. John Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

ANNOTATIONS

Compiler's notes. — Section 32-1-35 NMSA 1978, referred to in the committee commentary, was extensively amended in 1981 to no longer deal with all of the subject matter discussed in the commentary. The section was subsequently repealed in 1993.

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.

10-222. 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 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 ten (10) days after a notice of intent to invoke an adult sentence is filed, a preliminary examination will be conducted unless the case is presented to a grand jury or the child waives the right to a preliminary hearing or grand jury. A preliminary hearing may be conducted by the children's court judge or by a magistrate court or metropolitan court judge.

C. **Transfer for preliminary examination.** If the children's court judge determines that the preliminary hearing is to be conducted by a magistrate or metropolitan court judge, upon completion of the examination, the magistrate or metropolitan court shall transfer the proceedings to the children's court with a finding that there is:

(1) no probable cause to believe that the child has committed a youthful offender offense; or

(2) probable cause to believe that the child committed a youthful offender offense.

D. **Proceedings after transfer by magistrate or metropolitan court.** Upon transfer of a children's case to the children's court by a magistrate or metropolitan court judge pursuant to Paragraph B of this rule, the proceedings shall be reopened and the case assigned to the children's court judge who transferred the proceedings to the magistrate or metropolitan court for a probable cause determination.

[As amended, effective July 1, 1995; April 1, 1997; May 3, 1999.]

Committee commentary. — Rule 10-222 was formerly Rule 30. It was renumbered in 1978.

Rule 10-222 establishes procedures for the hearing to determine whether a child should be transferred to district court to be tried as an adult. Rule 10-223 prescribes time limits for holding a transfer hearing.

Paragraph A of Rule 10-222 requires that the children's court attorney initiate proceedings with a motion for transfer prior to the adjudicatory hearing on the petition. See Breed v. Jones, 421 U.S. 519, 99 S. Ct. 1779, 44 L. Ed. 2d 346 (1975) and State v. Doe, 96 N.M. 515, 632 P.2d 750 (Ct. App. 1981). The committee believes that the term "adjudicatory hearing" is synonymous to the use of the term "trial" for purposes of double jeopardy. See State v. Rhodes, 76 N.M. 177, 413 P.2d 214 (1966).

A motion to transfer is not a preadjudicatory motion and therefore the time limits of Rule 10-114 for filing preadjudicatory motions do not apply to Rule 10-222. State v. Doe, supra.

Paragraph B of Rule 10-222 again emphasizes that the child has a right to be represented by counsel. That question was left undecided in Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968), but is guaranteed by Section 32-1-27H NMSA 1978. However, under Neller, the right may be waived if not timely raised. See also State v. Salazar, 79 N.M. 592, 446 P.2d 644 (1968) and State v. Gallegos, 82 N.M. 618, 485 P.2d 374 (Ct. App. 1971).

Under Paragraph B of Rule 10-222, the hearing is both a probable cause determination and a determination of whether the criteria for transfer set forth in Sections 32-1-29 and 32-1-30 NMSA 1978 exist.

The specific provisions of Paragraph D of Rule 10-222 relating to the conduct of the hearing are taken from the preliminary examination procedures contained in Rule 5-302 of the Rules of Criminal Procedure for the District Courts.

If transfer is ordered, the transfer hearing, although substantially similar to a preliminary examination under Rule 5-302 of the Rules of Criminal Procedure for the District Courts, is not a substitute for the defendant's constitutional right to a preliminary examination if transferred to the district courts. The committee specifically rejected a proposal to that effect as constitutionally impermissible and as unwise in view of the varying considerations present at the two hearings. A child transferred to district court to be tried as an adult is entitled to all the rights afforded an adult defendant. Williams v. Sanders, 80 N.M. 619, 459 P.2d 145 (1969); Neller v. State, supra.

Paragraph E of Rule 10-222 is designed to allow immediate setting of conditions of release by the judge presiding at the transfer hearing if the child is transferred to the district court.

An order transferring the child is immediately appealable. In the Matter of Doe II, 86 N.M. 37, 519 P.2d 133 (Ct. App. 1974).

The statutory bases for Rule 10-222 are Sections 32-1-29 and 32-1-30 NMSA 1978. The statutory provisions relating to the basis for transfer, age for transfer, etc., are substantive and therefore beyond the scope of the supreme court's rulemaking authority. The provisions relating to notice, specifically Sections 32-1-29A(3) and 32-1-30A(3), are procedural and thus are superseded by Rule 10-104 of these rules.

ANNOTATIONS

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.

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.

10-223. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated August 12, 1996, this rule, relating to transfer hearing and time limits, is withdrawn effective October 1, 1996.

10-224. Admissions.

A. **Admissions.** The child 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 to the allegations in the petition.

B. **Inquiry of child.** The court shall not accept an admission without addressing the child in open court and determining that the child:

(1) understands the charges;

(2) understands the possible dispositions authorized by the Children's Code for the offense;

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

(4) understands that an admission waives the right to a trial; and

(5) understands that, if the child admits the allegations of the petition, it may have an effect upon the child's immigration and naturalization status.

C. **Ensuring that the admission is voluntary.** The court shall not accept an admission without addressing the child in open court and determining that the admission is voluntary and not the result of force or threats except promises made as part of the plea agreement.

D. **Factual basis for admission.** The court shall not enter a disposition without making such inquiry as shall satisfy it that there is a factual basis for the admission.

E. **Applicability.** This rule applies to admissions in delinquency and probation revocation proceedings.

[As amended, effective August 1, 1999; November 1, 2000; July 1, 2002.]

Committee commentary. — Rule 10-224 was substantially revised in 1978 to clarify the admission and consent decree procedure.

The rule now defines two types of admissions: the traditional "guilty" plea and a nolo contendere plea. The child must enter one of these two pleas in order to utilize the consent decree procedure. However, the making of an admission in itself does not entitle a child to enter a consent decree.

Consent decrees are still negotiated settlements, approved by the court, under which the child is placed on probation for a period of up to six months, with the possibility of extension for another six months or revocation of the consent decree. See commentary to Rule 10-225 for a discussion of the extension and revocation provisions.

In the event a consent decree has not been negotiated, a child who makes an admission is subject to the discretion of the court in terms of disposition, limited only by the provisions of Section 32-1-38 NMSA 1978. (See Paragraph E of Rule 10-224.) The court is not bound to accept an admission. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Prior to the 1978 revision, a consent decree required that the child "admit sufficient facts to invoke the jurisdiction of the court." In practice, this requirement proved too vague to be workable. Section 32-1-36 NMSA 1978, which deals with consent decrees, does not govern consent decrees in abuse or neglect cases. Consent decrees, like stipulated judgments in civil cases, are procedural matters, governed by court rules.

The statute does provide for reinstatement of the original petition if the child does not fulfill the terms of the consent decree or if a new delinquency or need of supervision petition is filed against the child during the period the consent decree is in effect. See Section 32-1-36D NMSA 1978.

Before entry of the consent decree, the child is fully advised that he will have no rights to an adjudicatory hearing if he enters the consent decree, Paragraph C of Rule 10-224. The original petition is not "reinstated"; rather, the consent decree is revoked. See Rule 10-225.

Prior to approval of a consent decree or acceptance of a formal admission of the allegations of a petition by the court, a petition must have been filed. (See definition of "respondent" in Rule 10-102.) This requirement does not prohibit probation services and the child from agreeing to an informal supervision or informal probation prior to the filing of a petition. However, once the jurisdiction of the court is invoked, only a court order may resolve the case.

Paragraph F of Rule 10-224 defines the dispositional limits of a consent decree. A consent decree cannot be used to place the respondent in an institution or a department of corrections facility, unless the decree is revoked and such placement is appropriate for the original offense. (See Rule 10-225.) The initial term of the consent decree is six months. While probation services may actually negotiate the terms of the decree, the rule requires that the children's court attorney agree to the terms of the consent decree. The original committee believed that once the jurisdiction of the court had been invoked by filing of a petition, the children's court attorney was charged with responsibility for the case and his agreement was essential. To provide otherwise would allow probation services to remove cases from the authority of the children's court attorney.

Paragraph C of Rule 10-224 follows the determination required in Rule 5-303 of the Rules of Criminal Procedure for the District Courts and Rule 11 of the Federal Rules of Criminal Procedure. The determination is required in cases involving either a consent decree or an admission. The original committee believed that such an inquiry is constitutionally mandated. In re Appeal No. 544, 25 Md. App. 26, 332 A.2d 680 (1975); Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971); Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

Paragraph D of Rule 10-224 requires that there be a factual basis for the admission or consent decree agreement.

Paragraph F of Rule 10-224 prohibits the court from accepting the admissions contained in a consent decree, and then imposing a more stringent disposition than that negotiated. If the court accepts the consent decree, it must do so on the terms negotiated or on terms more favorable to the respondent. It is entirely within the discretion of the court whether or not to accept a consent decree agreement. Nothing prohibits the court from rejecting the offered decree prior to conducting the hearing required by Paragraph F of Rule 10-224. However, the decree cannot be accepted until after the determination required by Paragraph C is made.

Paragraph G of Rule 10-224 follows the general policy in civil cases and adult criminal cases in the district courts that negotiations leading toward settlements should be

encouraged and thus negotiation discussions should not be admissible if the negotiation efforts fail.

Paragraph H of Rule 10-224 is designed to assure a prompt final disposition for detained children when an admission is made or agreement reached on a consent decree. For computation of the time limit, see Rule 10-106.

Paragraph I of Rule 10-224 was added in 1978.

Rules 10-224 and 10-225 are procedural rules and supersede any conflicting provisions of Section 32-1-36 NMSA 1978. They are designed to clarify the procedure to be used when the respondent in a delinquency or need of supervision proceeding admits the factual allegations of the petition. The rule does not envision the use of any "notice of intent to admit the allegations of the petition" (Section 32-1-32 NMSA 1978) and to the extent this "notice" is called for in the Children's Code, it is superseded by the provisions of Rule 10-224.

In addition to the changes made in the "reinstatement" procedure previously discussed, consent decree procedure also varies from the statute in that supervision may be in the home of another person and the children's court attorney must approve the consent decree.

Subsection F of Section 32-1-36 NMSA 1978, establishing a basis for disqualification of a judge in consent decree situations, is not affected by Rule 10-224 since it deals with a substantive right.

Rule 10-224 was substantially revised in 1978 to clarify the admission and consent decree procedure. It was revised again in 2000 to add Paragraph C and make other changes consistent with Rule 5-303 NMRA.

The rule defines two types of admissions: the traditional "guilty" plea and a nolo contendere plea. The child must enter one of these two pleas in order to utilize the consent decree procedure. However, the making of an admission in itself does not entitle a child to enter a consent decree.

Consent decrees are still negotiated settlements, approved by the court, under which the child is placed on probation for a period of up to six months, with the possibility of extension for another six months or revocation of the consent decree. See commentary to Rule 10-225 NMRA for a discussion of the extension and revocation provisions.

In the event a consent decree has not been negotiated, a child who makes an admission is subject to the discretion of the court in terms of disposition. The court is not bound to accept an admission. *State v. Doe*, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Paragraph C of Rule 10-224 NMRA follows the determination required in Rule 5-303 NMRA of the Rules of Criminal Procedure for the District Courts and Rule 11 of the Federal Rules of Criminal Procedure. The determination is required in cases involving either a consent decree or an admission. The original committee believed that such an inquiry is constitutionally mandated. *In re Appeal No. 544*, 25 Md. App. 26, 332 A.2d 680 (1975); *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971); *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

Rules 10-224, 10-224.1 and 10-225 NMRA are procedural rules and supersede any conflicting provisions of the Children's Code. They are designed to clarify the procedure to be used when the respondent in a delinquency proceeding admits the factual allegations of the petition.

[Committee revisions approved March 9, 2001.]

Rule 10-224 was substantially revised in 1978 to clarify the admission and consent decree procedure. It was revised again in 2000 to add Paragraph C and make other changes consistent with Rule 5-303 NMRA.

The rule defines two types of admissions: the traditional "guilty" plea and a nolo contendere plea. The child must enter one of these two pleas in order to utilize the consent decree procedure. However, the making of an admission in itself does not entitle a child to enter a consent decree.

Consent decrees are still negotiated settlements, approved by the court, under which the child is placed on probation for a period of up to six months, with the possibility of extension for another six months or revocation of the consent decree. See commentary to Rule 10-225 NMRA for a discussion of the extension and revocation provisions.

In the event a consent decree has not been negotiated, a child who makes an admission is subject to the discretion of the court in terms of disposition. The court is not bound to accept an admission. *State v. Doe*, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Paragraph C of Rule 10-224 NMRA follows the determination required in Rule 5-303 NMRA of the Rules of Criminal Procedure for the District Courts and Rule 11 of the Federal Rules of Criminal Procedure. The determination is required in cases involving either a consent decree or an admission. The original committee believed that such an inquiry is constitutionally mandated. *In re Appeal No. 544*, 25 Md. App. 26, 332 A.2d 680 (1975); *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971); *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

Rules 10-224, 10-224.1 and 10-225 NMRA are procedural rules and supersede any conflicting provisions of the Children's Code. They are designed to clarify the procedure to be used when the respondent in a delinquency proceeding admits the factual allegations of the petition.

[Approved March 9, 2001.]

ANNOTATIONS

Cross references. — As to consent decrees, see 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).

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).

10-224.1. Plea agreements.

A. **In general.** The court shall not participate in any plea discussions. A plea and disposition agreement entered into between the 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 at the time the admission is offered. 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.

C. **Rejection of plea.** If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the child personally in open court that the court is not bound by the plea agreement, and advise the child that if the child persists in admitting the allegations, the disposition of the case may be less favorable to the child than that contemplated by the plea agreement.

[Adopted, effective August 1, 1999.]

10-225. Consent decrees; extension, revocation or termination of consent decree.

A. **Consent decrees.** After entry of an admission pursuant to Rule 10-224 NMRA or after a child has been adjudicated as a delinquent, the court may enter a consent decree that places the child under supervision for a period not to exceed six (6) months under conditions established 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. A consent decree and any extension may not exceed one (1) year from the date of the entry of the original consent decree.

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 child objects to the extension, the court shall hold a hearing to determine if the extension is in the best interests of the child and the public.

C. **Revocation of consent decree.** If, prior to the expiration of the consent decree, the 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.]

Committee commentary. — Rule 10-225 was formerly Rule 33. It was renumbered in 1978. The rule governs three situations: extension of a consent decree, termination of a consent decree and violation of a consent decree.

Paragraphs A and B of Rule 10-225 allow extension of a consent decree for a period not to exceed six months if the children's court attorney moves the court for an extension of the decree prior to expiration of the original decree. The child must be given notice of the motion under Rule 10-104 NMRA. A hearing must be held if the child objects to the motion. The original committee envisioned that such a hearing would be in the nature of a dispositional hearing. However, because the possible reasons for seeking the extension are varied (i.e. the child may have allegedly committed another delinquent act which did not warrant revoking the consent decree), the actual format of the hearing has been left open. It is not an ex parte hearing.

Paragraph C of Rule 10-225 governs revocation of the consent decree. Since a consent decree is essentially a negotiated probationary period, the original committee felt that the proceedings to revoke the consent decree should follow the procedure to revoke probation contained in Rule 10-232 NMRA of these rules. The petition is to be filed by the children's court attorney. (See commentary to Rule 10-224 NMRA for a discussion of the jurisdictional basis for the court's authority to order disposition appropriate in the original proceeding.)

ANNOTATIONS

Cross references. — For procedure governing parole revocation, see Rule 10-232 NMRA.

As to 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.

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 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).

10-226. 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 10-221 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 after the failure to appear or the date an order is entered quashing the warrant for failure to appear;

(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 after the failure to appear or the date an order is entered quashing the warrant for failure to appear;

(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 shall be dismissed with prejudice.

[As amended, effective February 1, 1997; May 15, 2000.]

Committee commentary. — Rule 10-226 was revised in 1978.

The time limits for the commencement of the adjudicatory hearing depend upon whether or not the respondent is in detention. Prior to the 1978 revisions to this rule, the time limits were measured only by the date of service of the petition on the respondent. In conformity with similar changes in the Rules of Criminal Procedure for the District Courts, five other events were added from which the time limits are computed. The events are the same whether or not the respondent is in detention and are substantively similar to those added to Rule 5-604 of the Rules of Criminal Procedure for the District Courts.

Paragraph C relating to failure to appear was added in 1978 and Paragraphs D and E concerning time extensions and failure to comply with the time limits were modified in accord with changes in Rule 5-604 of the Rules of Criminal Procedure for the District Courts.

See commentary to Rule 5-604 of the Rules of Criminal Procedure for the District Courts for a discussion of these changes.

The time limits in Rule 10-226 are jurisdictional. See commentary to Rule 10-204.

Rules 10-226 and 10-227 use the term "adjudicatory hearing" rather than the statutory "hearing on the petition" to describe what is the equivalent of a trial in the adult criminal system.

The statutory time limit runs from the date of filing of the petition. Obviously, the time limits do not apply if no adjudicatory hearing is required because an admission has been accepted or because a consent decree agreement has been approved.

Paragraph B of Rule 10-226 was amended in 1982 to clarify when adjudicatory hearings may be held when a child is released prior to the expiration of the time limits for commencement of hearings for children in detention.

ANNOTATIONS

Cross references. — As to time limitations on adjudicatory hearings, see 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.

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 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).

10-227. Delinquency proceedings; 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.]

Committee commentary. — Rule 10-227 was formerly Rule 35. It was renumbered in 1978.

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 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 10-227. See commentary to Rule 10-228 of these rules.

Paragraph A of Rule 10-227, by requiring that adjudicatory hearings be conducted in the same manner as adult criminal trials, follows the recommendation of the national advisory commission on criminal justice standards and goals. The original committee agreed with the NAC commentary that when "the juvenile contests the facts upon which court jurisdiction is sought, the procedure for resolving the dispute should not differ substantially from that used in adult cases." The adoption of the provisions of the Rules of Criminal Procedure for the District Courts also brings the rules into compliance with the due process and fair hearing requirements of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), and In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

Paragraph B of Rule 10-227 requiring the children's court attorney to represent the state in adjudicatory hearings specifically follows NAC Standard 14.4 that: "In all delinquency cases, a legal officer representing the State should be present in court to present evidence supporting the allegation of delinquency." The original committee decided that: (1) a juvenile probation officer is not an attorney and should not be serving in the role of an attorney; (2) that if the juvenile probation officer were allowed to be the "chief prosecutor," his ability to counsel and deal with the respondent on a more informal basis would be compromised; and (3) it is part of the duties of the children's court attorney to represent the state as prosecutor. See Rule 10-102 for the definition of "children's court attorney."

Subsection B of Section 32-1-31 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. Hearings on petitions alleging need of supervision are closed to the public.

ANNOTATIONS

Cross references. — As to children's court attorney, see 32A-1-6 NMSA 1978.

As to conduct of hearings, see 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.

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.

10-228. Jury trial; delinquency proceedings.

A. **Demand.** A demand for trial by jury in delinquency proceedings shall be made in writing to the court within ten (10) days from the date the petition is filed or within ten (10) days from the appointment of an attorney for the respondent or entry of appearance by counsel for the respondent, whichever is later. If demand is not made as provided in this paragraph, trial by jury is deemed waived.

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.]

Committee commentary. — Rule 10-228 was formerly Rule 36. It was renumbered in 1978. This rule was readopted after the decision in State v. Doe, 94 N.M. 637, 614 P.2d 1086 (Ct. App. 1980) to make it clear that the provisions of this rule and Section 32-1-31 NMSA 1978 govern the procedure for demanding a jury trial.

The rule contains special provisions relating to jury trials in the children's court.

Paragraph A of Rule 10-228 requires that the demand for jury trial be in writing and that it be filed within certain time limits.

Paragraph B of Rule 10-228 is patterned after Subparagraph (1)(b) of Paragraph D of Rule 5-606 of the Rules of Criminal Procedure for the District Courts.

Except as provided in Rule 10-228, jury trials are conducted in the same manner as trials are conducted under the Rules of Criminal Procedure for the District Courts. See Rule 10-227.

See also, Section 32-1-31A NMSA 1978 and Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

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

Cross references. — As to jury trial on issue of alleged delinquent acts, see 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.

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.

10-229. 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 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 child has agreed to the delay or has been responsible for the failure to comply with the time limits, the 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 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, 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 child has agreed to the delay or has been responsible for the failure to comply with the time limits, the 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.]

ANNOTATIONS

Committee commentary. — Rule 10-229 was formerly Rule 37. It was renumbered in 1978.

The rule establishes dispositional procedures for use after entry of a judgment that the respondent is a delinquent child or a child in need of supervision.

Paragraph A of Rule 10-229 reflects the original committee's concern that the dispositional hearing is often the crucial stage in children's court proceedings, particularly those involving children in need of supervision in which the facts have been stipulated. As noted in the report by the president's commission on law enforcement and administration of justice, The Challenge of Crime in a Free Society 86-87 (1967):

. . . children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger adheres that the court's coercive power will be applied without adequate knowledge of the circumstances.

The purpose of Paragraph A of Rule 10-229 is to assure that if the accuracy of social, medical, psychological and psychiatric reports which form the basis for disposition is questioned, the respondent has a means to test that accuracy. The original committee was concerned with those instances in which the dispositional reports are conclusionary in nature or substantially based on hearsay. In such cases, the reports are admissible, but defense counsel is allowed an opportunity to show that the conclusion is erroneous or the hearsay unreliable, and the state is allowed the same means to challenge the respondent's evidence under Subparagraph (2) of Paragraph A of Rule 10-229.

Subparagraph (1) of Paragraph A of Rule 10-229 sets a time limit for providing copies of the reports to the parties.

Paragraph B of Rule 10-229 establishes time limits for beginning the dispositional hearing if the respondent is in detention or if the respondent is transferred to a corrections division facility for diagnosis. The statutory maximum period for a diagnostic confinement is ninety days for a child adjudicated as a delinquent and sixty days for a child adjudicated a child in need of supervision. See Section 32-1-32 NMSA 1978. If the respondent is not undergoing diagnosis at a corrections division facility, but is in detention, the dispositional hearing must begin within twenty days from the date the adjudicatory hearing was concluded or an admission accepted by the court. This time limit is to prevent continued detention without prompt final disposition.

The dispositional hearing must begin twenty days after the court receives the diagnostic report of the department. The additional twenty-day leeway is allowed to provide adequate time for receipt and examination of diagnostic reports and to schedule the hearing. This rule supersedes Section 32-1-32 NMSA 1978 in this respect.

There is no time limit for the dispositional hearing of children who are not in detention or undergoing diagnosis.

The time periods of this rule are mandatory. See Rule 10-117. The court must dismiss any case in which the dispositional hearing has not been held within time limits prescribed by this rule. See State v. Doe, 93 N.M. 31, 595 P.2d 1221 (Ct. App. 1979), for a decision issued prior to the amendment of Rules 10-117 and 10-229, clarifying when a proceeding must be dismissed. For decisions discussing "prejudice" in criminal cases where prejudice to the defendant was found, see State v. Orona, 92 N.M. 450, 589 P.2d 1041 (1979); State v. Vigil, 87 N.M. 345, 533 P.2d 578 (1975); State v. Caputo, 94 N.M. 190, 608 P.2d 166 (Ct. App. 1980); Chacon v. State, 88 N.M. 198, 539 P.2d 218 (Ct. App. 1975); State v. Johnson, 84 N.M. 29, 498 P.2d 1372 (Ct. App. 1972) and Barker v. Wingo, 407 U.S. 514 (1972). For decisions where no prejudice to the defendant was found, see State v. Smith, 92 N.M. 533, 591 P.2d 664 (1979); State v. Gallegos, 92 N.M. 370, 588 P.2d 1045 (Ct. App. 1978) and State v. Gutierrez, 91 N.M. 542, 577 P.2d 440 (Ct. App. 1978).

Cross references. — As to hearing regarding disposition of child, see 32A-2-13 NMSA 1978.

For predisposition studies, reports and examinations, see 32A-2-17 NMSA 1978.

For disposition of youthful offender, see 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.

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).

10-230. 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.]

Committee commentary. — This rule (formerly Rule 38) was not substantially changed in 1978.

The rule deals with the conclusion of the adjudicatory hearing and the onset of the time for appeal.

Under 32-1-3N and P and 32-1-31 NMSA 1978, a determination of guilt in a delinquency or need of supervision proceeding requires a two-pronged inquiry: (1) did the child commit a delinquent act or commit an offense defined as need of supervision, and, if so, (2) is the child also in need of care or rehabilitation? If the answer to both inquiries is in the affirmative, then the respondent is either a delinquent child or a child in need of supervision. Such a conclusion is equivalent to a finding of guilty in an adult criminal case.

Accordingly, Paragraph A reflects this two-faceted inquiry. The first entry of judgment goes only to whether or not it has been proven that the acts alleged were committed by the child. This determination, standing alone, does not make the child a "delinquent child" and is therefore not a sufficient basis for the court to proceed to disposition. The court also must determine whether the respondent is in need of care or rehabilitation. If it so determines, the judgment that the respondent is a delinquent child or a child in need of supervision is then entered and has the equivalent effect of a determination of guilty in adult criminal cases. Failure to hold a hearing to determine whether or not the child is in need of care or rehabilitation is reversible error. State v. John Doe, 91 N.M. 356, 573 P.2d 1211 (Ct. App. 1977).

If the answer to either of the two inquiries is in the negative, the judgment to be entered is that the respondent is not guilty.

Paragraph B provides that the time for appeal begins to run from disposition, not from the conclusion of the adjudicatory hearing. See In re John Doe III, 87 N.M. 170, 531 P.2d 218 (Ct. App. 1975).

Section 32-1-39A NMSA 1978 simply allows "a party" to appeal from a judgment of the children's court to the court of appeals "in the manner provided by law." Paragraph C specifies that the appeal will be governed by the New Mexico Rules of Appellate Procedure.

ANNOTATIONS

Cross references. — As to appeals from children's court, see 32A-1-17 NMSA 1978.

As to judgment in proceedings under Children's Code, see 32A-2-18 NMSA 1978.

As to disposition of child, see 32A-2-19 and 32A-4-22 NMSA 1978.

As to limitations on dispositional judgments, and modification, termination or extension of court orders, see 32A-2-23 NMSA 1978.

As to periodic review of dispositional judgments, see 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.

10-230.1. Modification of judgment.

A. **Correction of judgment.** The court may correct an unlawful disposition in a delinquency proceeding 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 the respondent in a delinquency proceeding:

(1) in which the initial commitment period is two (2) years or less, within thirty (30) days after the judgment is filed;

(2) in which the initial commitment period is longer than two (2) years, within ninety (90) days after:

(a) the judgment is filed;

(b) receipt by the court of a mandate affirming the judgment or dismissal of an appeal; or

(3) within thirty (30) days after filing in the children's court of any order or judgment of the appellate court denying review of, or having the effect of upholding the disposition.

(4) upon revocation of probation as provided by law.

C. **Form of order.** A form of order setting a hearing on the motion to modify or reconsider disposition shall be submitted with the motion.

D. **Disposition.** The court shall enter an order either denying or granting a motion to modify or reconsider disposition within ninety (90) 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.]

ANNOTATIONS

Cross references. — For the filing of the judgment on the mandate, see Rule 10-118 NMRA.

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 thirty-day time limit does not apply to court-invited motions to reconsider. State v. Dylan A., 2007-NMCA-114, ____ N.M. ____, ____ P.3d ____, cert. granted, 2007-NMCERT-____.

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.

10-231. Commitment information.

Whenever a child is committed to either the girls' school, the boys' school or the youth diagnostic and development center, the committing court shall provide the following information to that facility if available:

A. medical information. A complete medical report including any psychological and drug involvement information, if applicable;

B. family information. This shall include information relating to number of siblings, family income, and religious background;

C. educational information;

D. employment information;

E. delinquent history; and

F. any other information which is relevant to the background of the child.

10-232. 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.]

Committee commentary. — Rule 10-232 was formerly Rule 39. It was renumbered in 1978.

The children's court attorney must sign the petition. See also Section 32-1-43 NMSA 1978.

There is no provision in the Children's Code similar to Section 31-21-15B NMSA 1978 regarding credit for probation for adults. See State v. Sublett, 78 N.M. 655, 436 P.2d 515 (Ct. App. 1968). Section 32-1-38G NMSA 1978 of the Children's Code provides that any time "prior to the expiration of a judgment of probation," a court may extend the judgment for one year. Section 32-1-38G NMSA 1978 seems to require less than Rule 10-232 does for initiating a petition to revoke probation. However, Section 32-1-43 NMSA 1978, regarding probation revocation, provides that the court not only may extend the judgment, but it may "make any other judgment or disposition that would have been appropriate in the original disposition of the case." Rule 10-232 was amended in 1982 to require the filing of the petition for revocation prior to expiration of the probation period. By requiring that the petition to revoke probation be filed prior to the expiration of the probation period, this rule would be consistent with Rule 10-225 regarding the extension of consent decrees.

Rule 11-509 of the Rules of Evidence establishing a privilege between probation officers and the respondent is inapplicable to probation revocation proceedings since it applies only to statements made during a preliminary inquiry, and none is conducted under Subparagraph (1) of Paragraph A of Rule 10-232. See State v. Doe, 91 N.M. 364, 574 P.2d 288 (Ct. App. 1978).

The 1982 amendments deleting "parole" from this rule were made to be consistent with the amendment of Section 32-1-43 NMSA 1978 by the 1981 legislature. Section 32-1-43.1 NMSA 1978 now requires the field community services division of the corrections department to establish procedures for parole revocations.

ANNOTATIONS

Cross references. — As to establishment of probation services, see 32A-2-5 NMSA 1978.

For powers and duties of probation officers under Children's Code, see 32A-2-5 NMSA 1978.

As to probation and parole revocation, see 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.

Compiler's notes. — Section 32-1-43.1 NMSA 1978, referred to in the second sentence in the last paragraph of the committee commentary, was amended in 1992 to refer to the children, youth and families department, not the field services division. The section was subsequently repealed in 1993.

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.

10-233. Automatic sealing of records.

A. **No adjudication of delinquency.** When a petition for delinquency has been filed that does not result in an adjudication of delinquency, the children's court attorney 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 upon conclusion of the case.

B. **Release from legal custody and supervision.** When a person has been released from the court-ordered supervision of the Children, Youth and Families Department (CYFD or department), and the department has not received any new allegations of delinquency regarding that person for two (2) years since the release, the department shall notify the 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.

C. **Copies of order.** The clerk of the court shall deliver or mail copies of any sealing order to:

(1) the children's court attorney;

(2) CYFD and any other authority granting the release;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records;

(4) any other agency having custody of records or files subject to the sealing order;

(5) counsel of record at the time of disposition; and

(6) the person who is the subject of the sealing order, at that person's last known mailing address.

[Approved by Supreme Court Order 06-8300-30, effective January 15, 2007.]

Committee commentary. — 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 10-103.2(B) 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.

ARTICLE 3
Abuse and Neglect Proceedings

10-301. Ex parte custody orders.

A. **Issuance.** Within two (2) days after a child is taken into custody, the department shall file a motion for an ex parte custody order with a sworn written statement of facts showing probable cause to believe the child has been abused or neglected. The motion and affidavit for ex parte custody order shall be substantially in the form approved by the Supreme Court.

B. **Service.** The order shall be served with the petition.

[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.]

Committee commentary. — The rule establishes a procedure similar to an arrest warrant to cover situations in which a child alleged to be abused or neglected may be taken into custody. Sections 32A-4-6 to 32A-4-8 NMSA 1978 provide for temporary custody prior to the filing of a petition. Rule 10-303 requires a custody hearing to be held within ten (10) days after the petition has been filed.

ANNOTATIONS

Cross references. — *See* Children's Court Rule 10-305 for service of the petition alleging abuse or neglect. *See* Children's Court Rules 10-450, 10-451, for motions, affidavits and ex parte custody order forms.

As to taking of child into custody, see 32A-2-9 NMSA 1978.

For definition of "neglected child," see 32A-4-2 NMSA 1978.

As to whom arrest warrants may be directed, see Rule 5-210 NMRA.

See Rule 11-1101 of Rules of Evidence for exclusion from Rules of Evidence. *See* Section 32A-4-16 NMSA 1978 for ex parte custody orders.

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.

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.

10-302. Withdrawn.

ANNOTATIONS

Withdrawals. — Former Rule 10-302 NMRA, relating to notice of custody, is withdrawn effective August 1, 1999.

10-303. Custody hearing; abuse and neglect.

A. **Time limits.** A custody hearing shall be held within ten (10) days from the date a petition is filed alleging abuse or neglect. At the custody hearing the court shall determine if the child should remain or be placed in the custody of the department pending adjudication. Upon written request of the respondent, the hearing may be held sooner, but in no event shall the hearing be held less than two (2) days after the date the petition was filed.

B. **Notice.** The department shall give reasonable notice of the time and place of the custody hearing to the parents, guardian or custodian of the child alleged to be abused or neglected.

C. **Conduct.** At the custody hearing, the court shall release the child to the child's parents, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and no parent, guardian, custodian or other person is providing adequate care for the child;

(2) the child is in immediate danger from the child's surroundings, and removal from those surroundings is necessary for the child's safety or well-being;

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

(4) the child has been abandoned by the child's parent, guardian or custodian; or

(5) no parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the child.

D. **Conclusion.** At the conclusion of the hearing, if the court determines that custody pending adjudication is appropriate, the court may:

(1) award custody of the child to the department with or without rights of visitation for the parents, guardian or custodian of the child; or

(2) return the child to the child's parents, guardian or custodian upon such conditions as will reasonably assure the safety and well-being of the child.

E. **Special masters.** A custody hearing may be held by a special master appointed by the court. All custody orders must be signed by the children's court judge prior to taking effect.

[As amended, effective August 1, 1999.]

Committee commentary. — The custody hearing required by Rule 10-303 is the equivalent of the detention hearing in delinquency and need of supervision cases. It also covers those situations in which the children, youth and families department does not have custody, but desires to take custody of the child pending the adjudicatory hearing.

Paragraph A of Rule 10-303 requires that the hearing be held within ten days from the date the petition is filed, and it may be held sooner upon written request of the respondent. If the child is in custody, the hearing must be held within two days after the petition is filed.

Paragraph B of Rule 10-303 requires that reasonable notice be served on the parents, guardian or custodian of the child. The timeliness of the notice must be interpreted in view of the fact that a longer time limit for the custody hearing is allowed than for a detention hearing in a delinquency or need of supervision proceeding. The notice need be given only to one parent.

Paragraph C of Rule 10-303 provides for the continued pre-adjudicatory custody of a child if there is probable cause to believe the child is an abused or neglected child. *See* Section 32A-4-2 NMSA 1978 for the definitions of "neglected" and "abused" children. *See also* Section 32A-4-6 NMSA 1978 (grounds for taking into custody) and Section 32A-4-8 NMSA 1978 (place of temporary custody).

Paragraph D of Rule 10-303 provides guidelines for the court to use if the child is placed in the custody of the department pending the adjudicatory hearing.

The Rules of Evidence apply to custody hearings. *See* Rule 11-1101 of the Rules of Evidence for exclusions from the Rules of Evidence. *See also Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976), *cert. denied*, 436 U.S. 906 (1978).

ANNOTATIONS

Cross references. — As to criteria for detention of children, see 32A-2-11 NMSA 1978.

See Section 32A-4-18(B) NMSA 1978 for statutory provision relating to custody hearings.

As to 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.

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. Department 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.

10-304. Explanation of respondent's rights at first appearance.

At the first appearance of the respondent in an abuse or neglect proceeding, if the respondent is not represented by an attorney, the respondent shall be informed by the court of:

A. the allegations of the petition;

B. the right to an adjudicatory hearing on the allegations in the petition;

C. 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

D. the possible consequences if the allegations of the petition are found to be true.

[Approved, effective November 1, 1978, Rule 55 NMSA 1978; Rule 10-304 SCRA 1986; as amended, effective August 1, 1999.]

Committee commentary. — *See* Section 32A-4-10(B) NMSA 1978 for the right to counsel of a parent, guardian or custodian in an abuse or neglect proceeding. The right to counsel does not appear to be limited to parents who are respondents in the proceeding.

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 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).

ANNOTATIONS

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.

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. Department 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).

10-305. 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 10-104 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.]

Committee commentary. — Rule 10-305 NMRA sets the general procedure and time limits for filing of petitions alleging abuse or neglect.

The Supreme Court approved form of petition in abuse or neglect actions provides notice that the respondent's parental rights may be terminated. See Rule 10-108 NMRA and Section 32A-4-27 NMSA 1978 for rights of non-custodial parent to intervene. See also Section 32A-4-29 NMSA 1978. The committee views the right to intervene as procedural.

ANNOTATIONS

Cross references. — For Children's Code provisions relating to petitions, see 32A-1-10, 32A-1-11 and 32A-2-8 NMSA 1978.

See Section 32A-4-4 NMSA 1978 for the filing of a petition in an abuse or neglect proceeding.

See Section 32A-4-4 NMSA 1978 for the filing of a petition in an abuse or neglect proceeding.

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 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.

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).

10-305.1. Joinder of parties; severance; abuse and neglect proceedings.

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.]

Committee commentary. — Section 32A-4-29 NMSA 1978 provides termination procedures as part of the disposition. To implement this section the Supreme Court approved form of summons and petition has been amended to advise the respondents that the court may terminate the parental rights of a parent who is a party to the proceeding. See Children's Court Form 10-403 NMRA, summons, and Form 10-454 NMRA for petition.

10-305.2. 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.]

Committee commentary. — Section 32A-4-29 NMSA 1978 provides termination procedures as part of the disposition. To implement this section the Supreme Court approved form of summons and petition has been amended to advise the respondents that the court may terminate the parental rights of a parent who is a party to the proceeding. See Children's Court Form 10-403 NMRA, summons, and Form 10-454 NMRA for petition.

Cross references. — For basic rights, see Section 32A-4-10 NMSA 1978.

10-306. Withdrawn.

ANNOTATIONS

Withdrawals. — This rule, pertaining to discovery, is withdrawn, effective February 1, 2002.

10-306.1. Court ordered diagnostic examinations and evaluations.

At any time after the commencement of an abuse or 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.]

10-307. Admissions 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) declaring his intention not to contest the allegations in the petition.

B. **Consent decrees.** A consent decree in an abuse or neglect proceeding is an order of the court, after an admission 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 or approve a consent decree without first, by addressing the respondent personally in open court, determining that:

(1) he understands the allegations of the petition;

(2) he understands the dispositions that the court may make if the allegations of the petition are found to be true;

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

(4) he understands that if he makes an admission or agrees to the entry of the consent decree, he is waiving the right to a trial; and

(5) 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.

D. **Basis for admission or consent decree.** The court shall not enter judgment upon an admission or approve a consent decree without making such inquiry as shall satisfy the court that there is a factual basis for the admission or consent decree.

E. **Disposition.** After acceptance of an admission, 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 or agreement to a consent decree, later withdrawn, or of statements made in connection therewith, is not admissible in any proceeding against the respondent.

H. **Time limits.** If the child is in the custody of the department, the court shall accept or reject the admission or consent decree within five (5) days after the admission is made or within five (5) days after a consent decree has been submitted to the court for its approval.

I. **Rules of Evidence.** The Rules of Evidence do not apply to inquiries made to determine whether there is a factual basis for an admission or a consent decree.

J. **Extension, termination.** Consent decrees in abuse and neglect proceedings may be extended by the department and terminated in accordance with Rule 10-225.

K. **Revocation.** If, prior to the expiration of the consent decree, the respondent allegedly fails to fulfill the terms of the decree, the children's court attorney 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.]

Committee commentary. — Rule 10-307 was expanded in 1978. 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 or need of supervision 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 10-224 and 10-225 and the commentaries thereto.

ANNOTATIONS

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. Department 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.

10-308. Disclosure by the department; abuse, neglect and termination of parental rights proceedings.

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 respondent and the guardian ad litem:

(1) any statement made by the respondent, or a co-respondent, or copies thereof, which is within 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 within 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 within 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. **Court order relating to discovery.** The court may order any other discovery permitted by the Rules of Civil Procedure for the District Courts. The court may order production of or may limit the production of any books, papers, documents, photographs, tangible objects, reports or other information as may be necessary to ensure a fair consideration of the allegations while considering the best interests of the child.

C. **Examining, photographing or copying evidence.** The respondent may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

D. **Certificate.** The children's court 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 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 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.

E. **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.

F. **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 10-113 NMRA and Rule 10-137 NMRA.

[Approved, effective July 1, 2002.]

ANNOTATIONS

Recompilations. — Rule 10-308 NMRA, relating to adjudicatory hearing and time limits, was recompiled as Rule 10-320 NMRA in 1999.

Effective dates. — Pursuant to a court order dated May 6, 2002, this rule is effective July 1, 2002.

10-309. Disclosure of evidence and witnesses by the respondent; abuse, neglect and termination of parental rights proceedings.

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 department and the guardian ad litem:

(1) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within 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, within 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 department and the guardian ad litem 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;

(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 department and the guardian ad litem.

If the respondent fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 10-113 NMRA or Rule 10-137 NMRA.

[Approved, effective July 1, 2002.]

ANNOTATIONS

Recompilations. — Rule 10-309 NMRA, relating to dispositional hearings, was recompiled as Rule 10-321 NMRA in 1999.

Effective dates. — Pursuant to court order dated May 6, 2002, this rule is effective July 1, 2002.

10-310. Disclosure of evidence and witnesses by the guardian ad litem; abuse, neglect and termination of parental rights proceedings.

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 guardian ad litem shall disclose and make available to the department and the respondent:

(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 within the possession, custody or control of the guardian ad litem, and which the guardian ad litem intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the guardian ad litem 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, within the possession or control of the guardian ad litem, which the guardian ad litem intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the guardian ad litem 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 guardian ad litem 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 department and the respondent 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 guardian ad litem in connection with the investigation or defense of the case;

(2) statements made by the child to the guardian ad litem unless such statements contradict prior statements made by the child in connection with any allegation of abuse or neglect.

D. **Certificate.** The guardian ad litem 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 guardian ad litem 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 department and the respondent.

If the guardian ad litem fails to comply with any of the provisions of this rule, the court may enter any order pursuant to Rule 10-113 NMRA or Rule 10-137 NMRA.

[Approved, effective March 1, 2003.]

ANNOTATIONS

Recompilations. — Former Rule 10–310, pertaining to judgments and appeals, was recompiled as Rule 10-350 NMRA, by a court order adopted December 5, 2001, effective February 1, 2002.

Effective dates. — Pursuant to a court order dated January 23, 2003, this rule is adopted, effective March 1, 2003.

10-311. Withdrawn.

ANNOTATIONS

COMPILER'S NOTES

Withdrawals. — Pursuant to a court order dated June 13, 2000, this rule, pertaining to periodic review of dispositional judgment is withdrawn effective August 1, 2000.

10-320. 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 shall be dismissed with prejudice.

[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.]

Committee commentary. — This rule was amended in 1998 to add a new Subparagraph (2) to Paragraph A to accommodate other pre-adjudication dispositions and to permit the children's court judge to extend the time for adjudicatory hearings for not more than 30 days. *See also* Rule 10-226.

This rule is former Rule 10-308. It was revised in 1978 to expand the time limit for commencement of the adjudicatory hearing when the alleged abused or neglected child is in the custody of the Human Services Department and to expand the "events" which start the time limit running.

Whether or not the alleged abused or neglected child is in the custody of the department, the time limits for commencement of the adjudicatory hearing begin to run from the latest of the four "events" set forth in Paragraphs A and B of Rule 10-320. Before the 1978 revisions, the time limits were keyed to service of the petition on the respondent. In 1978, the "event" approach was adopted for commencement of the time limits in neglect, delinquency and need of supervision proceedings. *See* Rule 10-226 and the commentary thereto.

Like the time limits in Rule 10-226, the time limits in Rule 10-320 are jurisdictional.

[Revised effective February 15, 1999.]

ANNOTATIONS

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).

Compiler's notes. — Pursuant to the court order dated May 28, 1999, the provisional amendment of this rule by court order dated February 15, 1999, was made permanent.

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.

10-321. 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 and the guardian *ad litem* a predisposition report.

B. **Access to reports.** At the time of serving the department's dispositional plan on the parties and guardian *ad litem*, the department shall serve each party and the guardian *ad litem* 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.]

Committee commentary. — See Rule 10-230 and commentary thereto.

Three changes were made in Rule 10-309 in 1978. First, the guardian ad litem was added to the list of those to receive predisposition reports. As the attorney for the child, who is a party to the action, the guardian ad litem must receive all pleadings, reports, etc. (See Rule 10-103.) The rule has not always been followed, and the 1978 committee wished to emphasize that the guardian ad litem is entitled to the reports.

The second change made in 1978 was the addition of the requirement that status reports be filed at least every six months, rather than once a year, if legal custody of the child is granted to the human services department. The last change made was the addition of the requirement that the status report be filed and copies sent to the court, the attorneys and the guardian ad litem. (See the commentary to Rule 10-108 for a discussion of the duties of a guardian ad litem.) These changes were made to provide a better monitoring system of children in the custody of the department.

Section 32-1-32A NMSA 1978 requires that the court direct the preparation of a predisposition study and report.

ANNOTATIONS

Cross references. — As to hearing of evidence on disposition of child, see 32A-2-16 NMSA 1978.

As to predisposition studies, reports and examinations, see 32A-2-17 NMSA 1978.

As to disposition of child, see 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.

Compiler's notes. — Section 32-1-32A NMSA 1978, referred to in the last paragraph of the committee commentary, was amended in 1981 to give the court discretion as to the preparation of a predisposition study and report.

10-325. Judicial review and permanency hearings.

A. **First permanency hearing.** Within six (6) months after the conclusion of the initial judicial review, 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 first and any subsequent permanency hearing 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 settlement conference.** Not less than five (5) days prior to each permanency hearing, the parties shall participate in a pre-hearing settlement conference. The department shall give notice of the time and place of the hearing to each party and to the child's guardian *ad litem*.

E. **Initial permanency order.** At the conclusion of the permanency hearing, the court shall enter an order:

(1) returning custody of the child to the parents and dismissing the case;

(2) returning the child to the child's parent, guardian or custodian, subject to those conditions and limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six (6) months; or

(3) continuing the child in the legal custody of the department with such other disposition as may be in the child's best interest.

F. **Subsequent permanency hearing; when required.** Within three (3) months after the initial permanency hearing order, the court shall hold a subsequent permanency hearing if:

(1) a motion to terminate parental rights has not been filed;

(2) a petition to appoint a permanent guardian has not been filed; or

(3) the child's permanency plan has not been formally changed to provide for emancipation of the child.

G. **Subsequent permanency hearing; disposition.** At the conclusion of the subsequent permanency hearing, the court shall enter an order:

(1) requiring the department to change the child's permanency plan to provide for adoption, emancipation, permanent guardianship or long-term foster care for the child and that additional efforts to reunite the child and parent will not be attempted;

(2) dismissing the case and returning the child to the parent, guardian or custodian; or

(3) returning the child to the parent, guardian or custodian, subject to those conditions the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six (6) months.

H. **Judicial reviews.** If a judgment has been filed finding the 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.]

Committee commentary. — This rule requires the court to conduct a permanency hearing. This hearing was created by the 1997 amendments to the Abuse and Neglect Act. *See* Section 32A-4-25.1 NMSA 1978. Unlike Section 32A-4-25.1 NMSA 1978 this rule does not include evidentiary matters. The Rules of Evidence committee reviewed Subsection I of Section 32A-4-25.1 NMSA 1978, but decided not to recommend proposed amendments to Rule 11-1101 NMRA that would exclude permanency hearings from the Rules of Evidence. The Rules of Evidence are therefore applicable to permanency hearings. *See Ammerman v. Hubbard Broadcasting, Inc.,* 89 N.M. 307, 551 P.2d 1354 (1976), *cert. denied,* 436 U.S. 906 (1978).

Section 32A-4-25.1 provides that at the first permanency hearing there is a presumption that the child is to be returned to the parents. In the second and subsequent permanency hearings, there is a presumption that the child should not be returned to the parents. Rule 11-301 of the Rules of Evidence eliminated the "bursting bubble" theory of presumptions. A presumption now

retains evidentiary effect throughout the trial, so as to permit the fact finder to draw an inference of the presumed fact from proof of the basic or predicate fact.

Considering the language of 32A-4-25.1 in light of the Rules of Evidence, it appears that in the first permanency hearing the department would have the burden of persuasion to prove by a preponderance of the evidence that the child should not be returned to the parents. *See Nichols v. Nichols,* 98 N.M. 322, 648 P.2d 780 (1982). In the second permanency hearing the parents would have the burden of persuasion that the child should be returned to them.

Under our Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but it does not shift to that party the burden of proof in the sense of the risk of nonpersuasion, which remains upon the party on whom it was originally cast.

Jaramillo v. Jaramillo, 113 N.M. 57, 823 P.2d 299 (1991).

In *Jaramillo v. Jaramillo,* the New Mexico Supreme Court rejected the use of presumptions in a child relocation case in favor of the court determining what is in the best interest of the child. The opinion in *Jaramillo* is instructive here. In *Jaramillo,* the

New Mexico Supreme Court quoted from a United States Supreme Court opinion as follows:

Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

See Stanley v. Illinois, 405 U.S. 645, 656-57 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972).

The committee fully endorses the concept of a periodical review by the court to assure that the best interests of the child are not forgotten in an abuse and neglect proceeding. This laudable goal is best implemented by the children's court reviewing the case each time with the best interest of the child in mind.

The Rules of Evidence and Children's Court rules control procedural and evidentiary matters, including the procedures and evidence in permanency hearings. *See Ammerman v. Hubbard Broadcasting, Inc.,* 89 N.M. 307, 551 P.2d 1354 (1976), *cert. denied,* 436 U.S. 906 (1978).

10-330. Termination of parental rights; commencement of proceedings.

A. **Commencement.** A termination of parental rights proceeding may be commenced by filing a motion to terminate parental rights:

(1) at any stage of the abuse or neglect proceeding by the department; or

(2) at any time after the disposition hearing, by any party authorized by law to file a motion to terminate parental rights.

B. **Joinder.** A termination of parental rights proceeding may be commenced by filing a motion to terminate parental rights. If a parent has not previously been made a party to the proceeding, that parent shall be joined as a party to the proceeding. The parent shall be served with a summons and a copy of the motion in the manner provided by Rule 10-104 NMRA.

C. **Contents of motion or petition.** The motion or petition shall be substantially in the form approved by the Supreme Court.

[Approved, effective August 1, 2000.]

Committee commentary. — The child's guardian *ad litem* is a party to an abuse or neglect proceeding. *See* Rule 10-108 NMRA.

Although Section 32A-4-29 NMSA 1978 could be read to permit a motion to be filed at any stage of the proceedings by any person who has a statutory right to intervene, including a person with a constitutionally protected liberty interest, this rule makes it clear that only parties may file a motion to terminate parental rights. Paragraph E of Rule 10-108 NMRA provides for intervention in abuse and neglect proceedings only if the judge finds it will not unduly delay or prejudice the adjudication of rights of the original parties. This eliminates last minute delays in disposition hearings which could adversely affect the rights of the original parties.

If the judge does not permit intervention in the abuse or neglect proceeding, termination procedures may be filed pursuant to Section 32A-5-16 NMSA 1978. The Rules of Civil Procedure for the District Courts govern terminations under Section 32A-5-16 NMSA 1978. *See* Rule 10-101 NMRA.

See State v. Joe R., 1997-NMSC-038, 123 N.M. 711, 945 P.2d 76 for termination of parental rights of parent incarcerated in penitentiary.

Section 32A-4-29 NMSA 1978 permits a motion to terminate to be filed by any person having a legitimate interest, including a relative or foster parent. Rule 10-108 provides for numerous parties. These parties must be joined and served personally. More than the filing of a simple motion may be necessary.

10-331. Explanation of *pro se* respondent's rights at first appearance; termination of parental rights proceeding.

A. **Explanation of rights.** If the first appearance of a respondent is at a termination of parental rights proceeding, if the respondent is not represented by an attorney, the respondent shall be informed by the court of:

(1) the allegations of the motion to terminate parental rights;

(2) 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 consequences if the allegations of the motion are found to be true.

B. **Appointment of counsel.** In any proceeding or case that may result in the termination of parental rights, an attorney may not represent more than one parent.

[Approved, effective August 1, 2000.]

10-350. Judgment and appeals; proceedings.

A. **Entry of judgment.** The judge shall sign a written judgment and disposition in abuse and neglect proceedings. The judgment and disposition shall be filed. The clerk shall give notice of entry of the judgment and disposition.

B. **Appeals.** Appeals from judgments on petitions alleging abuse or neglect shall be governed by the Rules of Appellate Procedure.

[10-310 NMRA, as amended, effective May 1, 1986; January 1, 1987; recompiled, effective March 1, 2003.]

ANNOTATIONS

Cross references. — For stay pending appeal, see Rule 12-206 of the Rules of Appellate Procedure.

Prior history. – Adopted April 1, 1976, Children's Court Rule 46 NMSA 1953; recompiled as Children's Court Rule 62 NMSA 1978, effective November 1, 1978; amended, effective February 1, 1982 and May 1, 1986; recompiled as Rule 10-310 SCRA 1986; recompiled as Rule 10-310 NMRA; recompiled as Rule 10-350, effective March 1, 2003.

Recompilations. – This rule was recompiled from Rule 10-310 NMRA, by a court order dated January 23, 2003, effective March 1, 2003.

ARTICLE 4
Children's Court Forms

10-401. Certificate.

[Rule 10-104]

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[1]

_____ , 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
[ ] 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

[1] 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

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

10-402. Notice of Pendency of Action.

[Rule 10-104]

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)[1]]

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

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

[As amended, effective September 1, 1995.]

ANNOTATIONS

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.

[Rule 10-104]

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) [1]] 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

[1] 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.

[Rule 10-104.1]

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.

[Rule 10-104.1]

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 NOTES

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.

[10-109]

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 NOTES

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.

Effective dates. — Pursuant to a court order dated January 31, 2002, this form is effective April 1, 2002.

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

10-406. Petition.

[Rule 10-204]

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*[2] allegedly violated). The acts alleged were committed within _____ county.

(complete applicable alternatives)

The child is:

[ ] not in detention.

[ ] being detained at _____ *(address)* _____, New Mexico. The child has been in detention since _____ , _____ at _____ _____.m.

Probation services has completed a preliminary inquiry in this matter and the children's court attorney, after consultation with probation services, has determined that the filing of a petition is in the best interest of the public and the child.

Children's Court Attorney

Address

Telephone number

USE NOTES

[1] If any information concerning the child's birth date, address, family or guardian is not known, please state "not known".

[2] If the delinquent act is a violation of a traffic ordinance, 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.

[Rule 10-205]

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.

[Rule 10-113]

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[1]:

_____
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

1. *See* Rule 10-113 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

Effective dates. — Pursuant to a court order dated February 19, 2001, this form is effective April 2, 2001.

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

[Rule 10-113]

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[1]:

_____
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

1. *See* Rule 10-113 NMRA for when approval of the court is required prior to withdrawal of counsel.

[Approved, effective April 2, 2001.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated February 19, 2001, this form is effective April 2, 2001.

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

[Rule 10-113]

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[1]:
_____

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

1. This form may be used in an abuse or neglect or delinquency proceeding if notice of substitution of counsel is filed not less than fifteen (15) days prior to the adjudicatory hearing.

[Approved, effective April 2, 2001.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated February 19, 2001, this form is effective April 2, 2001.

10-408. Eligibility determination for indigent defense services.

[For use with Children's Court Rule 10-205 NMRA]

STATE OF NEW MEXICO

_____COUNTY

_____JUDICIAL DISTRICT

IN THE CHILDREN'S COURT

No. _____

IN THE MATTER OF

_____, A CHILD

ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES

CHILD'S NAME: _____ D.O.B.: _____ AGE: _____
AKA: _____ SEX: M F SS#:
CHILD'S ADDRESS: _____ PHONE:
*P/G/C ADDRESS: _____ PHONE:
*P/G/C ADDRESS: _____ PHONE:
CHARGES:
CHILD LIVES WITH: PARENTS ____ GUARDIAN ____ CUSTODIAN ____ FRIEND ____ OTHER ____
PARENT'S MARITAL STATUS: SINGLE ____ MARRIED ____ DIV. ____ SEP. ____ WIDOWED ____
NUMBER OF DEPENDENTS IN HOUSEHOLD: _____
[ ] Child is in custody.
[ ] Child is not in custody.

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)
AFDC $_____ Food Stamps $_____ Medicaid $_____ DSI $_____
Public Housing $_____

NET INCOME:	**CHILD**	**PARENTS, GUARDIANS OR CUSTODIANS**
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	$_____	$_____
.....	Equity	$_____	$_____
Motor vehicles	Equity	$_____	$_____
.....	Equity	$_____	$_____
Other personal property: *(describe)*			
_____	Equity	$_____	$_____
_____	Equity	$_____	$_____

SCREENING USE ONLY

TOTAL ASSETS		$_____+	$_____

=
____/____/____
B

EXCEPTIONAL EXPENSES *(total exceptional expenses of parent, guardian, custodian)):*

Medical Expenses *(not covered byinsurance)*.....	$_____
Court-order support payments/alimony.....	$_____
Child-care payments *(e.g. day care)*.....	$_____
Other *(describe)*	$_____
	$_____

SCREENING USE ONLY

TOTAL EXCEPTIONAL EXPENSES	$_____

=
____/____/____
C

*"P/G/C" means parent(s)/guardian/custodian

STATE OF NEW MEXICO

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

State of _____)
) 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 CHILDREN'S COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED OF THIS DECISION.

____ I wish to appeal.
____ I do not wish to appeal.

I state upon my oath or affirmation that this document and the financial and other statements in it are true and correct to the best of my information and belief. I hereby authorize the screening agent, district defender and the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies.

_____

Date

Signature of applicant

State of NEW MEXICO)
COUNTY OF)
_____

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

_____

Notary

My commission expires: _____

COLUMN "A" (net income)
plus COLUMN "B" (assets) **SCREENING USE ONLY**
minus COLUMN "C" (exceptional expenses) **AVAILABLE FUNDS**
equals AVAILABLE FUNDS /_____/ .....

_____ The parent(s)/guardian/custodian is indigent.

_____ The parent(s)/guardian/custodian is **not** indigent.

_____ The parent(s)/guardian/custodian (has) (have) (has not) (have not) paid the statutory indigency application fee.

_____ The applicant [has] [has not] paid the statutory application fee.

Receipt number: _____

Signature of screening agent Title

Based on the above answers and information, I find that the applicant (is) (is not) indigent.

(Complete the following only if the court has determined the child is unable to pay the statutory application fee).

_____ I find that the child is unable to pay the statutory indigency application fee, and I therefore waive the payment of the indigency application fee.

Judge or authorized designee

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 application fee may be waived when an applicant is homeless or incarcerated **and** unable to pay the fee.

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 a state or federally administered public

assistance program for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), food stamps, medicaid, disability security income (DSI), 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. 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 Human Services Department, the parent(s), guardian or custodian is presumed indigent 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 disability of the child, indigency will be presumed until the child's competency to stand trial and indigency is determined by the public defender or court. If because of the mental disability of the child, the interviewer is unable to complete the indigency application or believes the information is unreliable, the Department of Health case management services (DHMS) section should be checked.

III. FINANCIAL RESOURCES

If the parent(s), guardian or custodian is not presumptively indigent, the screening shall examine the financial resources of the parent(s), guardian or custodian 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 household salary and wages of the child and the parent(s), guardian and custodian of the child who have a legal obligation of support to the child, minus deductions required by law (FICA, state and federal withholding). 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 parent(s), guardian or custodian is unemployed and

has no income, the screening agent shall inquire as to how the parent(s), guardian or custodian "gets by". Proof of income is not required, but responses should 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 parent(s), guardian or custodian 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 person 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, workers' compensation, unemployment benefits, regular support from any family member, public or private employee pensions, or income from dividends, interests, rents, estates, trusts or gifts. If the child lives alone but receives food or rent from a family member, the food or rent shall be considered as regular support from the child'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.

B. Assets

The screening agent shall consider all household assets of the parent(s), guardians and custodians of the child 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 shall be valued at fair market value less any outstanding obligations against the property.

C. Exceptional Expenses

The screening agent shall consider any unusual expenses of the parent(s)/guardian/custodian that would, in all probability, prohibit the parent, guardian or custodian 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, 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 court ordered and actually paid on a regular basis; 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 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, the child is presumed not indigent and is not eligible for free representation unless the parent, guardian or custodian 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) days after the date of the decision.

VI. REIMBURSEMENT

A parent, guardian or custodian applicant 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.

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 copy of the last eligibility determination form 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 October 15, 1986; as amended, effective August 1, 1989; December 1, 1994; August 1, 1997; November 1, 2004.]

ANNOTATIONS

Cross references. — For indigency determination, see 31-15-12 NMSA 1978.

For appointment of public defender under Delinquency Act, see 32A-2-14B NMSA 1978.

For indigency standard under Delinquency Act, see 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.

10-408A. Order of Appointment.

[Section 32-1-56]

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 _____, _____

(Clerk) (Judge)

Date

[Adopted, effective August 1, 1989.]

ANNOTATIONS

Compiler's notes. — Section 32-1-56 NMSA 1978 was repealed in 1993. For present comparable provisions, see 32A-2-20 NMSA 1978.

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

**[For use with Children's Court
Rules 10-113, 10-305 and 10-305.1 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 NOTES

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.

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

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

**[For use with Children's Court
Rules 10-113, 10-305 and 10-305.1 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 NOTES

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.

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

10-409. Affidavit for Arrest Warrant.

[Rule 10-206]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

AFFIDAVIT FOR ARREST WARRANT

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. However, only this form may be used in need of supervision cases in the Children's Court.

The undersigned, being duly sworn, on his oath states that he has reason to believe that on or about the _____ day of _____, _____, in _____ County, New Mexico, the above-named respondent, a child,

(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, the title of the ordinance and the date of passage)

Section 35-15-2 NMSA 1978.

2
[ ] is a child in need of supervision by reason of

(state acts or standard of conduct giving rise to allegations of need of supervision)

The undersigned further states the following facts on oath to establish probable cause to believe that the above-named respondent is
[ ] delinquent
[ ] in need of supervision:
(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

10-410. Arrest Warrant.

[Rule 10-206]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

ARREST WARRANT

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. However, only this form may be used in need of supervision cases in the Children's Court.

1

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

YOU ARE HEREBY COMMANDED to arrest the above-named respondent, a child, and deliver said child without unnecessary delay to probation services or to a place of detention authorized under the Children's Code. Said child is alleged to be:

(check one)

[ ] a delinquent child

[ ] a child in need of supervision.

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 _____, _____ .

Signature

Title

10-411. Affidavit for Search Warrant.

[Rule 10-206]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

AFFIDAVIT FOR SEARCH WARRANT

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.

1

_____, being duly sworn, on his oath, states that:
(check one)

[ ] he has reason to believe [ ] he is positive

that:
(check one or both)
[ ] on the following described premises
[ ] on the person of
(here name person and/or describe premises)
in the above-named county of this state there is now being concealed
certain property, namely:
(describe property as particularly as possible)
which: *(check appropriate boxes)*
[ ] has been obtained in a manner which constitutes a delinquent act

[ ] is designed or intended for use, or which has been used as a means of committing a delinquent act

[ ] would be material evidence in a delinquency proceeding 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).

Affiant's Name
(please print or type)

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 _____, _____.

Officer Authorized to Administer Oaths

Title

10-412. Search Warrant.

[Rule 10-206]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child No. _____

SEARCH WARRANT

Either this form or the form approved for search warrants in adult criminal proceedings may be used in the Children's Court.

1

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

Proof by Affidavit for Search Warrant, which is attached to and hereby made a part of this Warrant, having been submitted to me by , who

(check one)

[ ] has reason to believe

that there is now being concealed

[ ] is positive
(check one or both)

[ ] on the premises described in the Affidavit

[ ] on the person named in the Affidavit

the property described in the Affidavit, which
(check appropriate boxes)

[ ] has been obtained in a manner which constitutes a delinquent act

[ ] is designed or intended for use or which has been used as a means of committing a delinquent act

[ ] would be material evidence in a delinquency proceeding, and that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are set forth in the Affidavit for Search Warrant, which is attached to and hereby made a part of this Search Warrant.

I am satisfied that there is probable cause to believe that the property described in the Affidavit is being concealed on the *(check one or both)* [ ] person [ ] premises described in the Affidavit and that grounds for the issuance of the Search Warrant exist.

[ ] I further find that there is probable cause to believe that the property described in the Affidavit may be moved or destroyed unless seized immediately.

YOU ARE HEREBY COMMANDED to search forthwith

(check one or both)
[ ] the person [ ] the place described in the Affidavit
for the property described in the Affidavit, serving this Warrant and copy of the Affidavit,

and making the search
[ ] between the hours of 6:00 a.m. and 10:00 p.m.,
[ ] at any time of the day or night,

Paragraph B of Rule 5-211 of the Rules of Criminal Procedure for the District Courts provides that if the sworn written statement is positive that the property is on the person or in the place to be searched and states probable cause to believe that the property may be moved or destroyed unless seized immediately, the Warrant may direct that it be served at any time.

2
and if the property be found there, to seize it, leaving a copy of this Warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this Warrant, the return and inventory list to this Court within three (3) days after seizing the property described.
Dated this _____ day of _____, _____

Judge, District Court

Children's Court Division

RETURN AND INVENTORY

I received the attached Search Warrant on _____, _____, and executed it on _____, _____, at _____ m. I searched the [ ] person [ ] the 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 *(Signature)* and _____ *(Signature)*.

This inventory is a true and detailed account of all the property taken by me on the Warrant.

Officer

Return made this _____ day of _____, _____, at _____ m.

Judge, District Court
Children's Court Division

After careful search, I could not find at the place, or on the person described, the property described in the Warrant.

Officer

Date

ANNOTATIONS

Compiler's notes. — Paragraph B of Rule 5-211, R. Crim. P. (Dist. Cts.) referred to in the second footnote, was amended in 1980 and now provides that the issuing judge, for reasonable cause shown, may authorize the search warrant's execution at any time.

10-413. Notice of Detention.

[Rule 10-208]

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.

[Rule 10-212]

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.

Signature

10-415. Motion for extension of consent decree.

[Rule 10-225(B)]

_____ 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, 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

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.

[10-210]

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.

[Rule 10-230]

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.

[Rules 10-230 and 10-310]

STATE OF NEW MEXICO COUNTY OF _____

IN THE DISTRICT COURT

CHILDREN'S COURT DIVISION

In the Matter of

_____, a Child

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

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

10-418. Petition to revoke probation.

[Rule 10-232]

_____ 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 NOTES

1. This form may also be used to revoke a consent decree.

2. A petition to revoke probation or a consent decree may be served in the manner provided for service of pleadings and papers. *See* Rules 10-105, 10-105.1 and 10-105.2 NMRA.

[As amended, effective August 1, 1999.]

ANNOTATIONS

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.

[Rule 10-223 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

(check one)

[ ] 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.

[ ] 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 of the department; that two (2) years have elapsed since the release; and that the department has not received any new allegations of delinquency regarding _____ *(insert name of child)* during that time period.

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:

1. Children's court attorney:

_____
Name

_____
Address

2. CYFD and any other authority granting the release:

_____
Name

_____
Address

3. Law enforcement officer, department and central depository having custody of the law enforcement files and records:

_____
Name

_____
Address

4. Any other agency having custody of records or files subject to this order:

_____
Name

_____
Address

5. Counsel of record at the time of disposition:

_____
Name

_____
Address

6. Person who is the subject of this order at that person's last known address:

_____
Name

_____
Address

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 persons and agencies listed herein.

IT IS FURTHER ORDERED THAT, upon entry of this sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted.

IT IS FURTHER ORDERED THAT all persons and agencies to whom this sealing order is directed shall reply to any inquiry that no record exists with respect to the person who is the subject of this sealing order.

Children's court judge

CERTIFICATE OF SERVICE

I certify that I delivered or mailed a copy of this order to the above-named persons and agencies at the above-listed addresses.

Clerk

Date

[Approved by Supreme Court Order 06-8300-30, effective January 1, 2007.]

ANNOTATIONS

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

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.

[RULE 10-310]

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.

[10-224]

_____ 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. Admission or no contest advice of rights by judge.

[10-224, 10-224.1]

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

No. _____

In the Matter of
_____, a Child

ADMISSION OR NO CONTEST

ADVICE OF RIGHTS BY JUDGE

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 to the offenses alleged.

_____ (a) the right to trial by jury, if any;

_____ (b) the 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 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.

_____ 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 this admission of the charges may have an effect upon the child's immigration or naturalization status.
_____	9.	That under the circumstances, it is reasonable that the child admit the charges alleged in the petition.

On the basis of these findings, I conclude that the child knowingly, voluntarily and intelligently agrees to committing the above charges and accepts the agreement. A copy of this affidavit shall be made a part of the record in the above-styled case.

_____
Children's Court Judge Date

CERTIFICATE BY CHILD

I certify that 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.

Child

CERTIFICATE OF COUNSEL

I have conferred with my client with reference to the execution of this certificate. I have explained to my client its contents in detail.

Defense counsel

[Approved, effective August 1, 1999.]

10-425. Consent decree.

[10-224]

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

No. _____.

IN THE MATTER OF:
_____, a child

CONSENT DECREE

The court being fully advised finds:

1. The court has personal and subject matter jurisdiction.

2. The child has freely and voluntarily admitted to or declared the intention not to contest the following delinquent acts (*set forth common name of delinquent acts*)

.

3. After personally addressing the child in open court, the court has determined that the child understands:

a. the charges alleged in the petition filed in this case;

b. the dispositions authorized by the Children's Code;

c the right to deny the allegations of the petition and have a trial.

4. The child's best interests will be served by suspending proceedings for a period of _____ months, during which the child will be on supervised probation.

5 The state and child have agreed that the following charges will be dismissed or will not be filed:

.

IT IS THEREFORE ORDERED that the child is placed on probation under the terms and conditions of the plea and disposition agreement signed by the child and the state and considered a part of this consent decree.

_____
Date Children's court judge

_____
Children's court attorney Child's attorney

[Approved, effective August 1, 1999.]

10-430. Statement of Probable Cause.

[10-208, 10-208A]

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.

[10-208, 10-208A]

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.]

10-450. Motion for ex parte custody order.

[Rule 10-301]

_____ 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. — *See* Rule 10-301 NMRA for *ex parte* custody orders.

10-451. Affidavit for ex parte custody order.

[Rule 10-305]

_____ 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. — *See* Section 32A-4-16 NMSA 1978 for *ex parte* custody orders. *See* Section 32A-4-18 NMSA 1978 for grounds for the court to grant custody to the department.

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.

[Rule 10-301]

_____ 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 NOTES

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.

[Rule 10-301]

_____ 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 NOTES

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.

[Rule 10-305]

_____ 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.

[Rule 10-305]

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 NOTES

1. This form is used if a parent has not been named as a party. A copy of the petition and a copy of a motion to intervene is to be served with this notice.

2. Use this paragraph if an ex parte custody order has been signed placing the child or children in the custody of the department.

[Approved, effective August 1, 1999.]

10-457. Motion to intervene.

[Rule 10-305]

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.

[10-330]

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 NOTES

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 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

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[1]

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

1. 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. — *See* Section 32A-4-33 NMSA 1978 for confidentiality of certain records in abuse and neglect proceedings.

See Rule 11-408 NMRA for compromise negotiations.

See Rule 11-502 NMRA for reports that are privileged by statute.

See Section 32A-4-3 NMSA 1978 for required reporting of child abuse.

Effective date. — The Supreme Court, by Supreme Court Order 05-8300-09, approved Children's Court Form 10-471, effective September 1, 2005.

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

[32A-6-11.1C 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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated May 6, 2002, this form is effective July 1, 2002.

10-492. Mental health review report.

[32A-6-12K NMSA 1978]

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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated May 6, 2002, this form is effective July 1, 2002.

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

[32A-6-11.1H and L NMSA 1978]

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 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

Effective dates. — Pursuant to a court order dated May 6, 2002, this form is effective July 1, 2002.

10-494. Attorney's certificate.

[32A-6-12J NMSA 1978]

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.

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

Effective dates. — Pursuant to a court order dated May 6, 2002, this form is effective July 1, 2002.

10-495. Notice of independent counsel.

[32A-6-12I NMSA 1978]

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.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated May 6, 2002, this form is effective July 1, 2002.

Table Of Corresponding Rules

The first table below reflects the disposition of the former Rules of Procedure for the Children's Court. The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Children's Court Rule.

The second table below reflects the antecedent provisions in the former Rules of Procedure for the Children's Court (right-hand column) of the present Children's Court Rules (left-hand column).

Former Rule	NMRA
1	10-101
2	10-101
3	10-102
4	10-103
5	10-104
6	10-105
7	10-106
8	10-107
9	10-108
10	10-109
11	10-111
12	10-112
13	10-113
14	10-114
15	10-115
16	10-116
17	10-117
18	10-118
19	10-201
20	10-202
21	10-203
22	10-204
22.1	10-205
23	10-206
24	10-207

Former Rule	NMRA
34	10-216
34.1	10-217
35, 36	Withdrawn
37	10-218
38	10-219
39	10-220
40	10-221
41	10-220, 10-221
42	Withdrawn
43	10-222
43.1	10-223
44	10-224
45	10-225
46	10-226
47	10-227
48	10-228
49	10-229
50	10-230
50.1	10-231
51	10-232
52	10-301
53	10-302
54	10-303
55	10-304
56	Withdrawn

25	10-208
26	10-209
27	10-210
28	10-211
29	10-212
30	10-213
31	10-214
32	Withdrawn
33	10-215
57	10-305
58	10-306
59	10-307
60	10-308
61	10-309
62	10-310
63	10-311
64	10-110

NMRA	Former Rule
10-101	1, 2
10-102	3
10-103	4
10-104	5
10-105	6
10-106	7
10-107	8
10-108	9
10-109	10
10-110	64
10-111	11
10-112	12
10-113	13
10-114	14
10-115	15
10-116	16
10-117	17
10-118	18
10-201	19
10-202	20
10-203	21
10-204	22
10-205	22.1
10-206	23
10-207	24
10-208	25
10-209	26

NMRA	Former Rule
10-214	31
10-215	33
10-216	34
10-217	34.1
10-218	37
10-219	38
10-220	39, 41
10-221	40, 41
10-222	43
10-223	43.1
10-224	44
10-225	45
10-226	46
10-227	47
10-228	48
10-229	49
10-230	50
10-231	50.1
10-232	51
10-301	52
10-302	53
10-303	54
10-304	55
10-305	57
10-306	58
10-307	59
10-308	60

Court Orders

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT
OF RULE 10-118 OF THE RULES OF
PROCEDURE FOR THE CHILDREN'S COURT

The matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that Rule 10-118 of the Children's Court Rules be and the same is hereby amended;

IT IS FURTHER ORDERED that the amendment of Rule 10-118 of the Children's Court Rules shall be effective on and after July 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Children's Court Rules by publishing the same in the SCRA 1986.

DONE at Santa Fe, New Mexico this 16th day of February, 1988.

/s/ TONY SCARBOROUGH
Chief Justice

/s/ DAN SOSA, JR.
Senior Justice

/s/ HARRY E. STOWERS, JR.
Justice

/s/ MARY C. WALTERS
Justice

/s/ RICHARD E. RANSOM
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT
OF RULE 10-112 AND ADOPTION OF
FORM 10-408A OF THE RULES OF
PROCEDURE FOR THE CHILDREN'S COURT

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that Rule 10-112 of the Children's Court Rules be and the same is hereby amended and the adoption of Children's Court Form 10-408A is hereby approved;

IT IS FURTHER ORDERED that the amendment of Rule 10-112 and the adoption of Form 10-408A of the Children's Court Rules shall be effective on and after August 1, 1989;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment and adoption of the above Children's Court Rules by publishing the same in the SCRA 1986.

DONE at Santa Fe, New Mexico this 16th day of May, 1989.

/s/ DAN SOSA, JR.
Chief Justice

/s/ HARRY E. STOWERS, JR
Justice

/s/ TONY SCARBOROUGH
Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT
OF RULE 10-408 OF THE RULES OF
PROCEDURE FOR THE CHILDREN'S COURT

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that the amendment of Form 10-408 is hereby approved;

IT IS FURTHER ORDERED that the amendment of Form 10-408 of the Children's Court Rules shall be effective on and after August 1, 1989;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment and adoption of the above Children's Court Rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 31st day of May, 1989.

/s/ DAN SOSA, JR.
Chief Justice

/s/ TONY SCARBOROUGH
Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT OF
RULE 10-111 OF THE RULES OF
PROCEDURE FOR THE CHILDREN'S COURT

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Wilson concurring:

NOW, THEREFORE, IT IS ORDERED that Rule 10-111 of the Children's Court Rules be and the same is hereby amended;

IT IS FURTHER ORDERED that the amendment of Rule 10-111 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after March 1, 1991;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Children's Court Rules by publishing the same in the Bar Bulletin and the SCRA 1986.

DONE at Santa Fe, New Mexico this 29th day of November, 1990.

/s/ DAN SOSA, JR.
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ KENNETH B. WILSON
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT OF
RULE 10-111 OF THE RULES OF
PROCEDURE FOR THE CHILDREN'S COURT

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Ransom, Justice Baca, Justice Montgomery and Justice Franchini concurring:

NOW, THEREFORE, IT IS ORDERED that Rule 10-111 of the Children's Court Rules be and the same is hereby amended;

IT IS FURTHER ORDERED that the amendment of Rule 10-111 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after November 1, 1991;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Children's Court Rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 13th day of August, 1991.

/s/ DAN SOSA, JR.
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ GENE E. FRANCHINI
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

8000 Misc.
IN THE MATTER OF THE AMENDMENT
OF FORM 10-408 OF THE CHILDREN'S
COURT RULES AND FORMS

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED Form 10-408 of the Children's Court Rules and Forms be and the same is hereby amended;

IT IS FURTHER ORDERED that the amendment of Form 10-408 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after December 1, 1993;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Children's Court Rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 12th day of October, 1993.

/s/ RICHARD E. RANSOM
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST

Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 94-8300
IN THE MATTER OF THE AMENDMENT
OF RULE 10-101 OF THE CHILDREN'S
COURT RULES AND FORMS

This matter coming on for consideration by the Court, and the Court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini, and Justice Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 10-101 of the Children's Court Rules and Forms be and the same hereby is amended;

IT IS FURTHER ORDERED that the amendment of Rule 10-101 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after March 1, 1994;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the Children's Court Rules and Forms by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico, this 2nd day of February, 1994.

/s/ RICHARD E. RANSOM
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 94-8300
IN THE MATTER OF THE WITHDRAWAL

OF RULE 10-102 OF THE CHILDREN'S
COURT RULES AND FORMS

This matter coming on for consideration by the Court, and the Court being sufficiently advised, Chief Justice Ransom, Justice Baca, Justice Montgomery, Justice Franchini, and Justice Frost concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 10-102 of the Children's Court Rules and Forms be and the same hereby is withdrawn;

IT IS FURTHER ORDERED that the withdrawal of Rule 10-102 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after March 1, 1994;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the Children's Court Rules and Forms by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico, this 2nd day of February, 1994.

/s/ RICHARD E. RANSOM
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 95-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 10-108, 10-112, 10-222,
AND FORM 10-415A OF THE CHILDREN'S
COURT RULES AND FORMS

This matter coming on for consideration by the Court, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-108, 10-112, 10-222 and form 10-415A of the Children's Court Rules and Forms be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of Rules 10-108, 10-112, 10-222, and form 10-415A of the Children's Court Rules and Forms shall be effective for cases filed in the Children's Court on and after July 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized and directed to give notice of the amendment of the Children's Court Rules and Forms by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico this 19th day of April, 1995.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

/s/ PAMELA B. MINZNER
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO 95-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-103, 10-103.1, 10-103.2,
10-103.3, 10-114, 10-116, AND 10-228
OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Standing Committee on Children's Court Rules, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-103, 10-103.1, 10-103.2, 10-103.3, 10-114, 10-116, and 10-228 of the Children's Court Rules and Forms be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of Rules 10-103, 10-103.1, 10-103.2, 10-103.3, 10-114, 10-116, and 10-228 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after September 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico this 17th day of July, 1995.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

/s/ PAMELA B. MINZNER
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO 95-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-104, 10-104.1, 10-111,
10-121 AND 10-106 OF THE CHILDREN'S
COURT RULES AND 10-401, 10-402, 10-403,
10-404, AND 10-404A OF THE CHILDREN'S
COURT FORMS

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Standing Committee on Children's Court Rules, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost, and Justice Pamela B. Minzner concurring:

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-104, 10-104.1, 10-111, 10-121, and 10-106 of the Children's Court Rules and to Forms 10-401, 10-402, 10-403, 10-404, and 10-404A of the Children's Court Forms be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms of the Children's Court Rules and Forms shall be effective for cases filed in the Children's Court on and after September 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico this 17th day of July, 1995.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

/s/ PAMELA B. MINZNER
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 95-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 10-205, 10-207, 10-208,
10-209, 10-211, 10-212 AND ADOPTION OF
NEW RULES 10-208A AND 10-208B AND
NEW FORMS 10-430, 10-431 OF
THE CHILDREN'S COURT RULES AND FORMS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Children's Court Rules Committee to amend Rules 10-205, 10-207, 10-208, 10-209, 10-211 and 10-212 and to adopt new Rules 10-208A and 10-208B and new Forms 10-430 and 10-431 of the Children's Court Rules and Forms, and the Court being sufficiently

advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-205, 10-207, 10-208, 10-209, 10-211 and 10-212 and new Rules 10-208A and 10-208B of the Children's Court Rules and new Forms 10-430 and 10-431 be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after November 1, 1995;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of existing rules and adoption of new Children's Court Rules and Forms by publishing the same in the Bar Bulletin and SCRA 1986.

DONE at Santa Fe, New Mexico this 21st day of August, 1995.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

/s/ PAMELA B. MINZNER
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 10-201, 10-202, 10-203,
10-204, 10-223, AND FORMS 10-405 AND
10-406 OF THE CHILDREN'S COURT
RULES AND FORMS

ORDER

This matter coming on for consideration by the Court upon recommendation of the Children's Court Rules Committee to amend Rules 10-201, 10-202, 10-203, 10-204, 10-

223 and Forms 10-405 and 10-406 of the Children's Court Rules and Forms, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-201, 10-202, 10-203, 10-204, 10-223 and Forms 10-405 and 10-406 of the Children's Court Rules and Forms be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after October 1, 1996;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of existing rules and adoption of new Children's Court Rules and Forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 12th day of August, 1996.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT
OF NMRA, 10-103 OF THE
RULES OF PROCEDURE FOR THE
CHILDREN'S COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules

of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 10-103 of the Rules of Procedure for the Children's Courts hereby is approved;

IT IS FURTHER ORDERED that the amendment of Rule 10-103 of the Rules of Procedure for the Children's Courts shall be effective on and after January 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 11th day of October, 1996.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE ADOPTION
OF NMRA, 10-105.1 OF THE
RULES OF PROCEDURE FOR THE
CHILDREN'S COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the adoption of Rule 10-105.1 of the Rules of Procedure for the Children's Courts hereby is approved;

IT IS FURTHER ORDERED that the adoption of Rule 10-105.1 of the Rules of Procedure for the Children's Courts shall be effective on and after January 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 11th day of October, 1996.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ DAN A. McKINNON, III
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 96-8300
IN THE MATTER OF THE AMENDMENT
OF RULES 10-211, 10-226, 10-227,
OF THE CHILDREN'S COURT RULES

ORDER

This matter coming on for consideration by the Court upon recommendation of the Children's Court Rules Committee to amend Rules 10-211, 10-226 and 10-227 of the Children's Court Rules, and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-211, 10-226 and 10-227 of the Children's Court Rules be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after February 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of existing rules and adoption of new Children's Court Rules and Forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 20th day of December, 1996.

/s/ JOSEPH F. BACA
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENT
OF RULE 10-105.2 NMRA OF THE
CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Task Force on Electronic Filings, a subcommittee of the Rules of Civil Procedure for the District Courts Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Richard E. Ransom, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 10-105.2 of the Children's Court Rules hereby is approved;

IT IS FURTHER ORDERED that the amendment of Rule 10-105.2 of the Children's Court Rules shall be effective on and after July 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 28th day of January, 1997.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ RICHARD E. RANSOM
Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENT
OF RULE 10-229 OF THE
CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rule 10-229 of the Children's Court Rules, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rule 10-229 of the Children's Court Rules be and the same hereby is approved;

IT IS FURTHER ORDERED that the amendment of the above-referenced rule of the Children's Court Rules shall be effective for cases filed on and after April 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 21st day of February, 1997.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENT
OF RULE 10-101, 10-105, 10-222,
10-230, AND FORM 10-416 OF THE
CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rules 10-101, 10-105, 10-222, 10-230, and Form 10-416 of the Children's Court Rules, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 10-101, 10-105, 10-222, 10-230, and Form 10-416 of the Children's Court Rules hereby are approved;

IT IS FURTHER ORDERED that the amendment of the above-referenced rules and form of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after April 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 28th day of February, 1997.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 97-8300
IN THE MATTER OF THE AMENDMENT
OF FORM 10-408 OF THE CHILDREN'S
COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the request of the New Mexico Public Defender Department to amend Form 10-408 of the Children's Court Rules to comply with newly-adopted federal rates for indigent defense services, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Dan A. McKinnon, III, concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment to Form 10-408 of the Children's Court Rules be and the same hereby is approved;

IT IS FURTHER ORDERED that the amendment of the above-referenced form of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after August 1, 1997;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the above-referenced form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 26th day of June, 1997.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ DAN A. McKINNON, III

Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 98-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-103.1, 10-103.2, AND 10-204.1
NMRA OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon request of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Gene E. Franchini, Justice Joseph F. Baca, Justice Pamela B. Minzner, and Justice Patricio M. Serna concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to rules 10-103.1, 10-103.2, and 10-204.1 NMRA of the Children's Court Rules be and the same hereby are approved;

IT IS FURTHER ORDERED that the amendments of rules 10-103.1, 10-103.2, and 10-204.1 NMRA of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after May 1, 1998;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 7th day of April, 1998.

/s/ GENE E. FRANCHINI
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENTS OF
RULES 10-108, 10-321 and 10-325 OF
THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon request of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-108, 10-321 and 10-325 of the Children's Court Rules hereby are approved;

IT IS FURTHER ORDERED that the amendments of Rules 10-108, 10-321 and 10-325 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after February 15, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 15th day of January, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE PROVISIONAL AMENDMENT OF
RULE 10-320 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon request of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 10-320 of the Children's Court Rules hereby are **approved provisionally for six months until July 15, 1999**;

IT IS FURTHER ORDERED that the amendments of Rule 10-320 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after February 15, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 15th day of January, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENTS OF
RULE 10-222 AND THE ADOPTION OF NEW RULE
10-230.1 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca,

Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 10-222 of the Children's Court Rules hereby are approved;

IT IS FURTHER ORDERED that the recommendation to adopt new Rule 10-230.1 hereby is approved;

IT IS FURTHER ORDERED that the amendments of Rule 10-222 and the adoption of Rule 10-230.1 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after May 3, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the new rule and the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 4th day of March, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE ADOPTION OF NEW
RULE 10-306.1 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that new Rule 10-306.1 of the Children's Court Rules hereby is ADOPTED;

IT IS FURTHER ORDERED that new Rule 10-306.1 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after June 1, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of new Rule 10-306.1 of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 15th day of April, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-111, 10-224, 10-224.1, 10-225,
10-232, 10-301, 10-302, 10-303, 10-304,
10-305, 10-305.1, 10-415, 10-418, 10-421,
10-423, 10-424, 10-425, 10-450, 10-451,
10-452, 10-453, 10-454, 10-455, 10-456,
AND 10-457 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-111, 10-224, 10-224.1, 10-225, 10-232, 10-301, 10-302, 10-303, 10-304, 10-305, 10-305.1, 10-415, 10-418, 10-421, 10-423, 10-424, 10-425, 10-450, 10-451, 10-452, 10-453, 10-454, 10-455, 10-456, and 10-457 of the Children's Court Rules hereby are approved;

IT IS FURTHER ORDERED that the above-referenced rules of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after August 1, 1999;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 28th day of May, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 99-8300
IN THE MATTER OF THE AMENDMENT OF
RULE 10-320 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, provisionally adopted the amendments to Rule 10-320 by order dated January 15, 1999, Chief Justice Pamela B. Minzner, Senior Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the provisional order adopting the amendments to Rule 10-320 of the Children's Court Rules hereby is withdrawn and the amendments to Rule 10-320 hereby are APPROVED and ADOPTED;

IT IS FURTHER ORDERED that the amendments of Rule 10-320 of the Children's Court Rules continue to be in effect for cases filed in the Children's Court;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 28th day of May, 1999.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS OF
RULE 10-110 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee to adopt proposed amendments to Rule 10-110, and the Court having considered said request and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 10-110 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rule 10-110 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after March 20, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 8th day of February, 2000.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS OF
RULES 10-220 AND 10-226 OF THE
CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee to adopt proposed amendments to Rules 10-220 and 10-226, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-220 and 10-226 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rules 10-220 and 10-226 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after May 15, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 27th day of March, 2000.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE WITHDRAWAL OF
RULE 10-311 AND THE AMENDMENTS OF
RULES 10-330, AND 10-331 AND
FORM 10-470 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee to withdraw Rule 10-311 and approve amendments to Rules 10-330 and 10-331, and Form 10-470, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes, concurring;

NOW, THEREFORE, IT IS ORDERED that the withdrawal of Rule 10-311 and amendments to Rules 10-330 and 10-331, and Form 10-470 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules shall be effective for cases filed in the Children's Court on and after August 1, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the withdrawal of Rule 10-311 and amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 13th day of June, 2000.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-105, 10-206, 10-224 AND
ADOPTION OF NEW RULE 10-119 OF THE
CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 10-105, 10-206, 10-224 hereby are APPROVED;

IT IS FURTHER ORDERED that new Rule 10-119 hereby is ADOPTED;

IT IS FURTHER ORDERED that the amendments of Rules 10-105, 10-206, and 10-224 and the adoption of new Rule 10-119 of the Children's Court Rules be effective for cases filed on or after November 1, 2000;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above referenced rules and the adoption new Rule 10-119 by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 14th day of September, 2000.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 00-8300
IN THE MATTER OF THE AMENDMENTS OF
RULE 10-217 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Children's Court Rules Committee, and the Court being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to rule 10-217 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rule 10-217 of the Children's Court Rules shall be effective for cases filed in the Children's Court on and after January 1, 2001;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the Children's Court Rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 16th day of November, 2000.

/s/ PAMELA B. MINZNER
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 01-8300
IN THE MATTER OF THE AMENDMENT OF
RULE 10-113 AND ADOPTION OF NEW FORMS
10-407.1, 10-407.2, AND 10-407.3 OF
THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to approve amendments to Rule 10-113 and to adopt new Forms 10-407.1, 10-407.2, and 10-407.3, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rule 10-113 hereby are APPROVED;

IT IS FURTHER ORDERED that new Forms 10-407.1, 10-407.2, and 10-407.3 hereby are ADOPTED;

IT IS FURTHER ORDERED that the amendments of Rule 10-113 and the adoption of new Forms 10-407.1, 10-407.2, and 10-407.3 of the Children's Court Rules be effective for cases filed on or after April 2, 2001;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above referenced rule and the adoption of the new forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 19th day of February, 2001.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 01-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-131, 10-132, 10-133, 10-134, 10-135,
10-136, 10-137, 10-138, 10-208, 10-213, 10-214,
10-215, 10-216, 10-218, 10-219, 10-306,
AND 10-350 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to approve amendments to Rules 10-131, 10-132, 10-133, 10-134, 10-135, 10-136, 10-137, 10-138, 10-208, 10-213, 10-214, 10-215, 10-216, 10-218, 10-219, 10-306, and 10-350, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 10-131, 10-132, 10-133, 10-134, 10-135, 10-136, 10-137, 10-138, 10-208, 10-213, 10-214, 10-215, 10-216, 10-218, 10-219, 10-306, and 10-350 hereby are APPROVED;

IT IS FURTHER ORDERED that the above-referenced amendments of the Children's Court Rules be effective for cases filed on or after February 1, 2002;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above referenced rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 5th day of December, 2001.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE ADOPTION OF
NEW RULE 10-109 AND NEW FORM 10-405
OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to adopt new Rule 10-109 and new Form 10-405, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that new Rule 10-109 and new Form 10-405 hereby are APPROVED;

IT IS FURTHER ORDERED that the adoption of new Rule 10-109 and new Form 10-405 of the Children's Court Rules be effective for cases filed on or after April 1, 2002;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the new rule and form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 31st day of January, 2002.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-103.3, 10-107, 10-224, 10-225,
10-308, AND 10-309 AND FORMS 10-491,
10-492, 10-493, 10-494, AND 10-495 OF
THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to approve amendments to Rules 10-103.3, 10-107, 10-224, 10-225, 10-308, and 10-309 and Forms 10-491, 10-492, 10-493, 10-494, and 10-495, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-103.3, 10-107, 10-224, 10-225, 10-308, and 10-309 and Forms 10-491, 10-492, 10-493, 10-494, and 10-495 hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of the above-referenced rules and forms of the Children's Court Rules shall be effective for cases filed on or after July 1, 2002;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above referenced rule and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 6th day of May, 2002.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ JOSEPH F. BACA

Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 02-8300
IN THE MATTER OF THE WITHDRAWAL OF
RULE 10-210 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to withdraw Rule 10-210, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Gene E. Franchini, Justice Pamela B. Minzner, Justice Petra Jimenez Maes, and Justice Paul J. Kennedy concurring;

NOW, THEREFORE, IT IS ORDERED that Rule 10-210 hereby is WITHDRAWN effective immediately;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the withdrawal of Rule 10-210 NMRA by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 30th day of October, 2002.

/s/ PATRICIO M. SERNA
Chief Justice

/s/ GENE E. FRANCHINI
Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PETRA JIMENEZ MAES
Justice

/s/ PAUL J. KENNEDY
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 03-8300
IN THE MATTER OF THE AMENDMENT OF
RULE 10-121 AND ADOPTION OF NEW RULE
10-310 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rule 10-121 and adopt new Rule 10-310, and the Court having considered said recommendation and being being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 10-121 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that new Rule 10-310 hereby is APPROVED and ADOPTED;

IT IS FURTHER ORDERED that the amendments to Rule 10-121 and adoption of new Rule 10-310 of the Children's Court Rules be effective for cases filed on or after March 1, 2003;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments and adoption of the new rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 23rd day of January, 2003.

/s/ PETRA JIMENEZ MAES
Chief Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ RICHARD C. BOSSON
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 03-8300
IN THE MATTER OF THE AMENDMENT OF
RULES 10-113 AND 10-120 AND FORM 10-470
OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rules 10-113 and 10-120 and Form 10-470, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-113 and 10-120 and Form 10-470 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rules 10-113 and 10-120 and Form 10-470 of the Children's Court Rules be effective for cases filed on or after May 1, 2003; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 6th day of March, 2003.

/s/ PETRA JIMENEZ MAES
Chief Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ RICHARD C. BOSSON
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 03-8300
IN THE MATTER OF THE AMENDMENT OF
RULE 10-230.1 OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rule 10-230.1, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 10-230.1 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments to Rule 10-230.1 of the Children's Court Rules shall be effective for cases filed on or after June 15, 2003;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 15th day of April, 2003.

/s/ PETRA JIMENEZ MAES
Chief Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ RICHARD C. BOSSON
Justice

/s/ EDWARD L. CHAVEZ
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 04-8300

IN THE MATTER OF THE AMENDMENTS OF

RULES 2-203 and 3-203 AND FORMS 9-505, 9-403, AND 10-408

FOR COURTS OF LIMITED JURISDICTION AND DISTRICT COURTS

CONCERNING ELIGIBILITY FOR DETERMINATION FOR INDIGENT DEFENSE SERVICES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules for Courts of Limited Jurisdiction Committee to adopt amendments to Rules 2-203 and 3-203, and Forms 9-505, 9-403, and 10-408 concerning eligibility for determination for indigent defense services for Courts of Limited Jurisdiction and for District Courts, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 2-203 and 3-203, and Forms 9-505, 9-403, 10-408 concerning eligibility for determination for indigent defense services for Courts of Limited Jurisdiction and for District Courts hereby are APPROVED effective for cases filed on or after November 1, 2004;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 19th day of August, 2004.

/s/ PETRA JIMENEZ MAES
Chief Justice

/s/ PAMELA B. MINZNER
Justice

/s/ PATRICIO M. SERNA
Justice

/s/ RICHARD C. BOSSON
Justice

/s/ EDWARD L. CHAVEZ
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 05-8300-09
IN THE MATTER OF THE ADOPTION OF
NEW FORM 10-471 NMRA
OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee

to adopt new Form 10-471 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that new Form 10-471 NMRA of the Children's Court Rules Committee hereby is APPROVED;

IT IS FURTHER ORDERED that new Form 10-471 NMRA of the Children's Court Rules shall be effective for cases filed on or after September 1, 2005; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the new form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 12th day of July, 2005.

/s/ RICHARD C. BOSSON
Chief Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice
/s/ EDWARD L. CHÁVEZ
Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 06-8300-04
IN THE MATTER OF THE AMENDMENTS OF
RULES 10-229 and 10-305 AND ADOPTION OF
NEW RULE 10-305.2 AND NEW FORMS 10-408B
AND 10-408C OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to amend Rules 10-229 and 10-305 and to adopt new Rule 10-305.2 and new Forms 10-408B and 10-408C, and the Court having considered said recommendation and being sufficiently advised,

Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rules 10-229 and 10-305 of the Children's Court Rules hereby are APPROVED;

IT IS FURTHER ORDERED that new Rule 10-305.2 and new Forms 10-408B and 10-408C hereby are ADOPTED;

IT IS FURTHER ORDERED that the amendments to Rules 10-229 and 10-305 and new Rule 10-305.2 and new Forms 10-408B and 10-408C of the Children's Court Rules be effective for cases filed on or after March 15, 2006; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments and adoption of the new rule and forms by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 2nd day of February, 2006.

/s/ RICHARD C. BOSSON
Chief Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice
/s/ EDWARD L. CHÁVEZ
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 06-8300-30
IN THE MATTER OF THE ADOPTION OF
NEW RULE 10-233 AND NEW FORM 10-420 NMRA
OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee to adopt new Rule 10-233 and new Form 10-420 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that new Rule 10-233 and new Form 10-420 NMRA hereby are APPROVED and ADOPTED;

IT IS FURTHER ORDERED that the adoption of new Rule 10-233 and new Form 10-420 NMRA of the Children's Court Rules shall be effective for cases filed on or after January 15, 2007; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the adoption of the new rule and form by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 29th day of November, 2006.

/s/ RICHARD C. BOSSON
Chief Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice
/s/ EDWARD L. CHÁVEZ
Justice

_____

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 07-8300-12
IN THE MATTER OF THE ADOPTION OF
NEW RULE 10-105.3 NMRA OF THE CHILDREN'S COURT RULES

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Children's Court Rules Committee

to adopt new Rule 10-105.3 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that new Rule 10-105.3 NMRA of the Children's Court Rules hereby is ADOPTED;

IT IS FURTHER ORDERED that the adoption of new Rule 10-105.3 NMRA of the Children's Court Rules shall be effective immediately; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the new rule by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 6th day of June, 2007.

/s/ EDWARD L. CHÁVEZ
Chief Justice
/s/ PAMELA B. MINZNER
Justice
/s/ PATRICIO M. SERNA
Justice
/s/ PETRA JIMENEZ MAES
Justice
/s/ RICHARD C. BOSSON
Justice