

PROPOSED REVISIONS TO THE CHILDREN'S COURT RULES AND FORMS

The Children's Court Rules Committee has recommended proposed amendments to Rule 10-322 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at [http://nmsupremecourt.nmcourts.gov/](http://nmsupremecourt.nmcourts.gov) or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2016, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

10-322. Defenses and objections; when and how presented; by pleading or motion.

A. **When presented.** A respondent in a proceeding may serve a response within twenty (20) days after the service of the summons and petition. Unless a different time is fixed by the court, after service of a motion under Paragraph B of this rule, any responsive pleading shall be filed within ten (10) days after the denial of the motion. Although a response to a petition is not required, the effect of failure to respond is a general denial and any defense in law or in fact which is not affirmatively pled by a respondent [~~shall~~ may be deemed waived and [~~shall~~ may not be allowed unless the court, for good cause shown, allows [~~the same~~] it.

B. **How presented.** Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading, except that the following defenses may, at the option of the respondent, be made by motion:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) improper venue;
- (4) insufficiency of process;
- (5) insufficiency of service of process;
- (6) failure to state a claim upon which relief can be granted;
- (7) failure to join a necessary party. A motion making any of these defenses shall

be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

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

Proposed Rule Changes Comment Form.

SUPREME COURT OF NEW MEXICO
FILED

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MAR 31 2016

A handwritten signature in black ink, appearing to be "T. Cady", written over the date stamp.

Rule No: Proposal 2016-29

Comments:

Opposed. At present, affirmative defenses are deemed asserted and preserved in contested proceedings in adjudicatory hearings and termination of parental rights hearings in neglect and abuse cases. I see no reason to add complexity to the current rule. Frankly, some contract attorneys (some relatively new to the process) may not be familiar with the complexity of asserting available affirmative defenses in responses to contested proceedings, or may not become aware of them at the time required.