

PROPOSED REVISIONS TO THE CHILDREN'S COURT RULES AND FORMS

The Children's Court Rules Committee has recommended proposed amendments to Rule 10-163 NMRA and proposed new Form 10-727 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments and new material 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/> 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.

10-163. Special masters.

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

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

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

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

C. **Powers.** Unless the order otherwise specifies, the special master has the power to perform any of the functions of a children's court judge pursuant to the provisions of the Children's Court Rules except [~~that the special master shall not preside at a preliminary hearing or examination, jury trial, bench trial, adjudicatory hearing or dispositional hearing without concurrence of the parties~~] as provided in this paragraph. All recommendations of the special master are contingent upon the approval of the children's court judge as provided in Paragraph F of this rule.

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

(2) **Proceedings under the Delinquency Act.** An order shall be filed in each case under the Delinquency Act, Sections 32A-2-1 to -33 NMSA 1978, in which a special master is appointed. The special master has the power to make a judicial determination of probable cause, to preside over a detention hearing, to advise a party of basic rights, and to appoint counsel, a guardian, or a custodian. The special master shall not preside over any other proceeding unless the child waives the right to have a children's court judge preside over each such proceeding. A waiver shall be in writing in a form substantially approved by the Supreme Court.

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

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

- (1) those items to which exception is taken;
- (2) a short resume of all facts relevant to the issues presented for review with appropriate references to the pages of the record proper and pages or sequential time or counter numbers of the transcript. If reference is made to evidence the admissibility of which is in controversy, reference shall be to the place in the transcript of proceedings where the evidence was identified, offered and received or rejected;
- (3) a citation to any authority which may assist the children's court judge in reviewing the exceptions; and
- (4) a statement of the precise relief sought.

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

- (1) **Review of recommendations.**
 - (a) The court shall review the recommendations of the special master and determine whether to adopt the recommendations.
 - (b) If a party files timely, specific objections to the recommendations, the court shall conduct a hearing appropriate and sufficient to resolve the objections. The hearing shall consist of a review of the record unless the court determines that additional evidence will aid in the resolution of the objections.
 - (c) The court shall make an independent determination of the objections.
 - (d) The court may adopt the recommendations, modify them, reject them in whole or in part, receive further evidence, or may recommit them to the special master with instructions.

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

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

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

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

Committee commentary. — A major goal of the juvenile justice system is early and prompt judicial disposition of a case. Rule 10-163 NMRA is designed to allow supplementation of judicial

resources. Paragraph F has been amended to conform with the changes in Rules 1-053.1 and 1-053.2 NMRA.

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

[NEW MATERIAL]

10-727. Waiver of right to have a children’s court judge preside over hearing.

[For use with Rule 10-163(C)(2) NMRA]

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

In the Matter of _____, a Child. No. _____

**WAIVER OF RIGHT TO HAVE A
CHILDREN’S COURT JUDGE
PRESIDE OVER HEARING**

I, the child in the above-named proceedings, have been advised of my right to have a children’s court judge preside over all hearings in my case.

I understand that a special master has been appointed by a children’s court judge to preside over the _____ (*type of hearing*) hearing on _____ (*date*).

I understand that the special master may preside over the hearing only if I waive my right to a children’s court judge.

Being fully advised, I waive my right to have a children’s court judge preside over the hearing referenced above.

Child

Date

Child’s Attorney

Date

APPROVED:

Children’s Court Special Master

Children’s Court Attorney

[Approved by Supreme Court Order No. _____, effective _____.]

Proposed Rule Changes Comment Form.

Name: Terence G Cady

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Email: terencecady@comcast.net

Rule No: 10-163

Comments:

Special Masters in children's court cases:

Approve only as to temporary custody hearings in abuse and neglect cases.

SUPREME COURT OF NEW MEXICO
FILED

MAR 31 2016

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