

PROPOSED REVISIONS TO THE CHILDREN’S COURT RULES AND FORMS

PROPOSAL 2024-002

March 13, 2024

The Children’s Court Rules Committee has recommended amendments to Rules 10-345 and 10-346 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 website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 12, 2024, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

10-345. Permanency and permanency review hearings.

A. **Initial permanency hearing.** Within six (6) months after the conclusion of the initial judicial review of a child’s dispositional order or within twelve (12) months of a child entering foster care, as defined in Section 32A-4-25.1(E) NMSA 1978 [(2016)], whichever occurs first, the court shall conduct a permanency hearing to determine what permanency plan is in the child’s best interest.

B. **Notice.** The department shall be responsible for obtaining a setting for the initial and any subsequent permanency or permanency review hearings and shall give notice of the hearing to all other parties and any other persons as required by law.

C. ~~[Pre-permanency]~~ **Permanency hearing report**~~[-conference]~~. Not less than five (5) days ~~[prior to]~~ before a permanency hearing, the department shall prepare and serve on each party a ~~[pre-]~~permanency hearing report. The report shall include the department’s proposed permanency plan. The ~~[pre-]~~permanency hearing report shall also set forth any changes to the disposition plan.

D. **Pre-hearing mandatory meeting.** Not less than five (5) days ~~[prior to]~~ before the initial permanency hearing, the parties shall participate in a pre-hearing mandatory meeting. The department shall give notice of the time and place of the meeting to each party.

E. **Initial permanency order.** At the conclusion of the permanency hearing, the court shall enter an order establishing one (1) of the permanency plans set forth in Section 32A-4-25.1(B) NMSA 1978 [(2016)] for the child.

F. Permanency review hearing; when required.

(1) If the court adopts a permanency plan of reunification under Paragraph E of this rule at the conclusion of the initial permanency hearing, the court shall schedule a permanency review hearing within three (3) months, which may be vacated if the child is reunified.

(2) At the conclusion of any permanency review hearing, the court shall enter an order changing the plan, dismissing the case, or returning the child to the child's parent, guardian, or custodian as set forth in Section 32A-4-25.1(D) NMSA 1978 [(2016)].

G. Subsequent permanency hearings. The court shall hold permanency hearings at least every twelve (12) months when a child is in the legal custody of the department. At each hearing, the court shall review the permanency plan in effect, determine [that] whether the department has made reasonable efforts to finalize the plan in effect, and determine whether changes to the plan are appropriate.

H. Permanency and review hearings for older children; fostering connections program notification; transition plans.

(1) At every permanency and judicial review hearing after the child attains sixteen (16) years and six (6) months of age, the court shall make a finding about whether the child has been notified about the fostering connections program and the benefits of the program.

(2) At the first hearing after the child's seventeenth birthday, the department shall present the child's transition plan to the court and the court shall order a transition plan for the child, which shall be reviewed at every subsequent judicial review and permanency hearing.

(3) At the review hearing that occurs as close as possible, but not after the child turns seventeen (17) years and nine (9) months, the court shall make a finding of whether the child has decided to participate in the fostering connections program and whether the child has been provided an opportunity to develop a voluntary services and support agreement.

[Approved, effective February 15, 1999; Rule 10-325 NMRA, recompiled and amended as Rule 10-345 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as provisionally amended by Supreme Court Order No. 21-8300-007, effective for all cases pending or filed on or after November 12, 2021; as amended by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary.— This rule uses “child” throughout to mirror statutory language, but the Committee recognizes that this rule also impacts youth, those older children who are closer to the age of eighteen (18).

This rule implements hearing requirements for youth imposed by the Abuse and Neglect Act and by the Fostering Connections Act, Articles 4 and 26 of the Children's Code, respectively.

For details about the requirements of the discharge hearing (the last review or permanency hearing held before the child's eighteenth birthday), [see] see Rule 10-360 NMRA.

In recognition of the developing autonomy and maturity of youth, and with the goal of enhancing their [decision-making] decision-making abilities, the Abuse and Neglect Act and the Fostering Connections Act, as well as department rules, require collaboration in the development and implementation of the transition plan. *See* NMSA 1978, § 32A-4-25.2(A) (2009) (“[T]he department *shall meet with the child, the child's attorney and others of the child's choosing, including biological family members,* to develop a transition plan.”); NMSA 1978, § 32A-26-2(G) (1993) (transition plan means “a written, individualized plan *developed collaboratively between the department and the eligible adult* that assesses the eligible adult's strengths and needs, establishes goals and identifies the services and activities that will be provided to the eligible adult

to achieve the established goals, the time frames for achieving the goals and the individuals or entities responsible for providing the identified services and activities as provided by rule”); NMSA 1978, § 32A-26-4(A)(4) (2020) (the department shall provide services including “the development of a transition plan, *developed jointly by the department and the eligible adult*”); NMSA 1978, § 32A-26-5(G) (2020) (“The department and at least one person who is not responsible for case management, in collaboration with the eligible adult and additional persons identified by the eligible adult, shall conduct periodic reviews of the transition plan not less than once every one hundred eighty days to evaluate progress made toward meeting the goals set forth in the transition plan. *The department shall use a team approach in conducting periodic reviews of the transition plan and shall facilitate the participation of the eligible adult.*”); 8.10.9.7(R) NMAC (“ ‘Transition plan’ refers to the plan *developed with the youth* prior to the youth’s 17th birthday.”) (Emphasis added throughout.)
[Provisionally adopted by Supreme Court Order No. 21-8300-007, effective for all cases pending or filed on or after November 12, 2021; provisionally adopted commentary approved as amended by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

10-346. Judicial reviews.

If a judgment has been filed finding a child to be neglected or abused, within sixty (60) days after the date the judgment was filed, the court shall review the treatment plan approved by the court. At least once every six (6) months thereafter, the court shall review the department's progress in implementing the court’s orders. The department shall request a date for each judicial review and give notice as required by law. Not less than five (5) days before a judicial review hearing, the department shall prepare and serve on each party a judicial review hearing report. The report shall set forth any changes to the disposition plan.
[Approved, effective February 15, 1999; Rule 10-325 NMRA, recompiled and amended as Rule 10-346 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]



[rules.supremecourt-grp] Comments by NMJC Legislation and Rules Subcommittee

Judge Emilio Chavez <taodejc@nmcourts.gov>

Thu, Apr 11, 2024 at 9:49 AM

Reply-To: taodejc@nmcourts.gov

To: rules.supremecourt@nmcourts.gov, Angie Schneider <aladaks@nmcourts.gov>, Thomas Pestak <tpestak@sierraco.org>, Jennifer Attrep <coajla@nmcourts.gov>

Attached is NMJC L&R Subcommittee's comments regarding the current proposed rule changes.
Please kindly confirm receipt.

Thank you,

Emilio J. Chavez

Chief Judge

Eighth Judicial District

[105 Albright Street, Suite N](#)

[Taos, NM 87571](#)



NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS (1).docx

21K

NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS

1. Proposal 2024-002 – Permanency Review Hearings [comments begin on p. 4]
 - The proposed changes to Rules 10-345 NMRA and 10-346 are mostly stylistic and appropriate.
2. Proposal 2024-003 – Child’s First Appearance on a Delinquency Petition
 - The proposed changes to Form 10-711 NMRA: The form is for use with Rule 10-224 NMRA and should indicate at the top of the form similar to other delinquency forms. It makes sense to change arraignment to first appearance.
 - However, in the comparable criminal forms the language indicates “I understand that I am charged with the following criminal offense or offenses.” *See e.g.* 9-405 NMRA. Although the suggested change “I understand the allegations in the petition” is correct, it insert “allegations” rather than “offense,” which is the language indicated in Rule 10-224(A) NMRA. A suggestion might be to amend the language to “I understand that I am charged with the following ~~criminal~~ offense or offenses” to track the language of the rule and to be consistent with the criminal form.
 - Rule 10-224(G) NMRA reads, “the right to remain silent, and that any statement made by the respondent child may be used against the respondent child.” The proposed change to Form 10-711 regarding right to remain silent is appropriate but the change should omit “in court”. The proposed changed language might be modified as follows “the RIGHT to remain silent with the understanding that any statement I make may be used against me ~~in court~~, except any “**confidential**” statements I make to my attorney.”
See e.g. Rules 11-503 NMRA; 6-501 NMRA.
3. Proposal 2024-004 – Water Settlement Agreements
 -
4. Proposal 2024-005 – Garnishment [comments begin on p. 50]
 - Rule 1-065.1(E): The word “filed” is missing in the following sentence: “Notwithstanding the foregoing, for cases **filed** on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account.”
 - Rule 2-802(B): The phrase “certificate of service shall be filed by the judgment creditor indicating” is missing in the following sentence: “A separate **certificate of**

service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.”

5. Proposal 2024-006 – Political Activity and Elections

- The proposed changes are stylistic and appropriate. The inclusion in 21-401(C)(7) of the language “express and implied” is superfluous.

6. Proposal 2024-007 – Lawyer Succession Rule [comments begin on p. 4]

- The proposed changes are necessary and appropriate.

7. Proposal 2024-008 – Surreptitious Recordings of Clients, Third Parties

-

8. Proposal 2024-009 – Providing Financial Assistance to Clients

- The proposed change to Rule 16-108 NMRA is a much needed exception, but perhaps modest gift should be defined.

9. Proposal 2024-010 – Incorporation of Plea Deadlines [comments begin on p. 6]

- The proposed change to Rule 5-304(E) NMRA is important to define a set timeframe for plea deadlines. Instead of creating (F), the new proposed (E) might read no plea agreement shall be entered into later than five (5) days before the scheduled date for jury selection or commencement of a bench trial **unless a written finding of good cause is made by the judge that excuses the untimely submission of the agreement.**
- (F) might also include language “In addition, to finding good cause excusing the untimely plea agreement, the court may consider sanctions against the state and defense counsel.”
- In (F), the phrase “the scheduled date for jury selection or commencement of a bench” might be added in the following sentence for consistency: “A request for the court to approve an untimely plea agreement less than five (5) days before **the scheduled date for jury selection or commencement of a bench** trial shall not be granted except on a written finding by the judge of good cause that excuses the untimely submission of the agreement.”
- In the “Notwithstanding” sentence the committee may want to consider including “a defendant may plead guilty to all **legally permissible** charges . . .” There are often times where a criminal information implicates double jeopardy or there is not a factual basis supporting the allegation.

10. Proposal 2024-011 – Filing of Criminal Complaint Upon Arrest

- The proposed change to Rule 5-210 NMRA providing a definitive timeframe is a much needed change.

11. Proposal 2024-012 – Consolidated Cases [comments begin on p. 5]

- The proposal seeks to create Rule 5-305 NMRA. The proposed new rule is generally accomplished under Rule 5-203(A) or filing a superseding indictment. Rather than creating a new rule, the same purpose might be done by amending in 5-203(A) NMRA to include similar language to 5-203(B) NMRA.
- For example after separate count “**or a separate complaint, indictment or information may be consolidated on motion of a party.**” The language “whether felonies or misdemeanors or both:” is likely unnecessary and could be removed.

12. Proposal 2024-013 – Plea Deadlines, Suppression Hearings, and Extensions for Trial [comments begin on p. 14]

- The proposed change to the committee commentary to Rule 5-212 NMRA should be included in the substantive part of the rule under (D) rather than commentary. The committee may want to consider 7-10 day requirement to allow the court time to rule and the parties to timely enter a plea after the ruling under the new proposed deadline for Rule 5-304 NMRA.

13. Proposal 2024-014 – Kinship Guardianship Forms

- The proposed changes to the forms appear to be appropriate and add consistency.

14. Proposal 2024-015 – Parentage Forms

-

15. Proposal 2024-016 – Human Rights Act Intentional Discrimination

-

16. Proposal 2024-017 – Firearm Enhancement

- The proposed change to UJI Special Verdict Form 14-6013 NMRA is needed to track the language of NMSA 1978 §31-18-16. The definitions are likewise clear and important for the determination. Likewise, the use note is necessary to provide clarification regarding the changes to the statute. The committee may want to consider an additional sentence to the firearm instruction that the defendant can use a gun without brandishing it

- On the sample verdict form, the committee may want to consider that there may be cases where the jury needs to determine if the firearm was either used, brandished, or discharged.
- Depending on the facts of the case the form might have Used _____ (Yes or No; Brandished _____ (Yes or No); or Discharged _____ (Yes or No)

The sentencing judge would use the highest of the three alternatives to sentence.

17. Proposal 2024-018 – Multiple Defendants

- Prior to changing UJI 14-6003 NMRA the committee should consider if the instruction is necessary? UJI 14-6005 NMRA is short and simple and illustrates the point that the counts should be considered separately as to each defendant. Also, the committee may want to look at UJI's 14-6010 and 14-6012 that include some of the proposed language.
- If a change is necessary, the proposed change to UJI 14-6003 NMRA might be clearer if the instruction read, "In this case, involving multiple defendants, you must consider separately whether each defendant is guilty or not guilty. The state must prove to your satisfaction beyond a reasonable doubt each of the elements of a crime against a defendant to render a verdict of guilty. You should analyze what the evidence in the case shows with respect to each individual defendant. [[Both] [All] defendants are charged with the same crimes.] [The defendants are charged with different offenses. Please review the verdict forms to clarify the offense(s) that [is][are] applicable to each defendant.
- The last two proposed sentences for 14-6003 are redundant as to instructions UJI 14-6010 "If you have agreed upon one verdict [as to a particular charge] [as to a defendant], that form of verdict is the only form to be signed [as to that charge] [as to that defendant] and UJI 14-6012.

Respectfully submitted,

New Mexico Judicial Council Legislation and
Rules Subcommittee

Hon. Jennifer Attrep
Hon. Emilio Chavez
Hon. Thomas Pestak
Hon. Angie Schneider



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] SJDC comments to proposal 2024-002 and 2024-003

Chief Judge Marie Ward <albdmcw@nmcourts.gov>

Fri, Apr 12, 2024 at 5:33 PM

Reply-To: albdmcw@nmcourts.gov

To: Supreme Court Rules <rules.supremecourt-grp@nmcourts.gov>

Attached please find the comments from the SJDC regarding the proposed rules referenced above.

Thank you!

--

Marie C. Ward (she/her)
Chief Judge
Second Judicial District Court
[400 Lomas NW](#)
[Albuquerque, NM 87102](#)
(505)841-7392

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material that is protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, faxing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error please immediately notify the sender by reply e-mail or by telephone at the number above and destroy the e-mail that you have received.



SJDC comments.pdf

221K



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

MARIE C. WARD
CHIEF JUDGE

April 11th, 2024

505-841-7392
POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87103

Elizabeth Garcia, Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: Request for comment on:

- **Proposal 2024-002 – Permanency Review Hearings [Rules 10-345 and 10-346 NMRA]**
- **Proposal 2024-003 – Child’s First Appearance on a Delinquency Petition [Form 10-711 NMRA]**

Dear Ms. Garcia:

Thank you for the opportunity to provide commentary on the proposed changes to the above-referenced rules. I am the Chief Judge of the Second Judicial District Court (“SJDC”), and our Children’s Court Division consists of four (4) judges and three (3) hearing officers/special masters. The daily work of our judicial officers is primarily in abuse/neglect and delinquency, and we are well-positioned to understand the practical effect of the proposed changes.

On behalf of the SJDC, we support the Children’s Court Rules Committee’s recommendations to modify the above-referenced rules. We believe the proposals provide clarity to practitioners and properly capture the legal requirements.

Thank you for your time and consideration in this matter.

Respectfully,

Marie Ward, Chief Judge
Second Judicial District Court