

PROPOSED REVISIONS TO THE DOMESTIC RELATIONS FORMS

PROPOSAL 2024-014

March 13, 2024

The Domestic Relations Rules Committee has recommended amendments to Forms 4A-501, 4A-502, 4A-503, 4A-504, 4A-505, 4A-506, 4A-507, 4A-508, 4A-509, 4A-510, 4A-511, 4A-512, 4A-513, 4A-514, 4A-515, and 4A-516 NMRA and the adoption of new Form 4A-503.1 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.

4A-501. Petition to appoint kinship guardians.

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

PETITION TO APPOINT KINSHIP GUARDIAN(S)²

Petitioner(s),³ _____, request(s) the court to grant an Order Appointing Kinship Guardian(s) of the minor child(ren), _____.

The court has jurisdiction of the parties and the subject matter of the cause of action.

A. INFORMATION ABOUT PETITIONER(S)³

1. Petitioner #1 Name and address:

2. Petitioner #2 Name and address:

3. Petitioner(s) are currently providing adequate care, maintenance, and supervision for

_____ (names of minor child(ren)).

~~[[] Petitioner(s) have a Guardianship Assistance Agreement with the Children, Youth and Family Department ("CYFD"). Attach a copy of the agreement (check if applicable).]~~

B. INFORMATION ABOUT THE CHILD(REN)⁴

1. Child's Name _____

a. Address _____

b. Place and year of birth

City _____

State _____

Month and year of birth _____

c. Are Petitioner(s) related to the child? ____ Yes ____ No

d. If yes, what is the relationship?

If no, describe Petitioner(s)'s connection with the child.

e. Is the child fourteen (14) years of age or older? ____ Yes ____ No

If yes, has the child stated that ~~[he/she wants]~~ they want the named Petitioner(s) as the guardian(s)? ____ Yes⁵ ____ No

- f. ~~[Is the child a Native American child?⁶]~~ Is the child an enrolled member of an Indian tribe or eligible for membership? ____ Yes ____ No
If yes, what tribe is the child enrolled with or eligible to be enrolled with?

Have you ~~[contacted/informed]~~ notified the tribe of this Petition? ____ Yes ____ No

If yes, ~~[who did you contact and how did you make contact?]~~ list the specific actions you have taken to notify the tribe and the results of those contacts, including the names, addresses, titles, and telephone numbers of the persons contacted. Attach copies of all correspondence with the Indian tribe.

~~[Tribal contact information (address and phone number):~~

2. Child's Name _____
a. Address _____

- b. Place and year of birth
City _____
State _____
Month and year of birth _____

- c. Are Petitioner(s) related to the child? ____ Yes ____ No

- d. If yes, what is the relationship?

If no, describe Petitioner(s)'s connection with the child.

- e. Is the child fourteen (14) years of age or older? ____ Yes ____ No
If yes, has the child stated that ~~[he/she wants]~~ they want the named Petitioner(s) as the guardian(s)? ____ Yes⁵ ____ No

- f. ~~[Is the child a Native American child?⁶]~~ Is the child an enrolled member of an Indian tribe or eligible for membership? ____ Yes ____ No
If yes, what tribe is the child enrolled with or eligible to be enrolled with?

Have you [~~contacted/informed~~] notified the tribe of this Petition? ____ Yes
____ No

If yes, [~~who did you contact and how did you make contact?~~] list the specific actions you have taken to notify the tribe and the results of those contacts, including the names, addresses, titles, and telephone numbers of the persons contacted. Attach copies of all correspondence with the Indian tribe.

[~~Tribal contact information (address and phone number):~~

C. **INFORMATION ABOUT CHILD'S PARENTS (RESPONDENTS)**^[7]⁶

1. Respondent #1

a. _____ (*name of Respondent-parent if known*) is the parent of _____.

b. This Respondent-parent is ____ alive ____ deceased (*if deceased, provide proof of death*)

c. If alive, list address (*include physical street address, city, state, and zip code*):

Is Respondent #1 an enrolled member of an Indian tribe or eligible for membership in an Indian tribe? ____ Yes ____ No
If yes, what tribe is Respondent #1 enrolled with or eligible to be enrolled with?

d. On information and belief, (*complete only one choice below*)

i. Respondent-parent _____ (*name*) consents to the appointment of Petitioner(s) as Kinship Guardian(s).^[8]⁷

Or

ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (*explain why you think this parent is unable or unwilling to*

provide care [including whether parent(s) have signed a Voluntary Placement Agreement with CYFD]]):

2. Respondent #2

a. _____ (name of Respondent-parent if known) is the parent of _____.

b. This Respondent-parent is _____ alive _____ deceased (if deceased, provide proof of death)

c. If alive, list address (include physical street address, city, state, and zip code):

Is Respondent #2 an enrolled member of an Indian tribe or eligible for membership in an Indian tribe? _____ Yes _____ No
If yes, what tribe is Respondent #2 enrolled with or eligible to be enrolled with?

d. On information and belief, (complete only one choice below)

i. Respondent-parent _____ (name) consents to the appointment of Petitioner(s) as Kinship Guardian(s).^[8] ⁷

Or

ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (explain why you think this parent is unable or unwilling to provide care [including whether parent(s) have signed a Voluntary Placement Agreement with CYFD]]):

D. FACTS REGARDING REQUEST FOR GUARDIANSHIP

1. Consent to Guardianship

- a. Does Respondent #1 consent to the guardianship? ____ Yes ____ No
If no, has the child(ren) lived with Petitioner(s) without Respondent #1 in the home for ninety (90) days immediately prior to filing this petition?
____ Yes ____ No
- b. Does Respondent #2 consent to the guardianship? ____ Yes ____ No
If no, has the child(ren) lived with Petitioner(s) without Respondent #2 in the home for 90 days immediately prior to filing this petition?
____ Yes ____ No

2. Describe how the child came to reside with you and why you want guardianship.

~~[] Parent(s) signed a Voluntary Placement Agreement with CYFD, placing the children in CYFD's legal custody, and to the best of Petitioner's knowledge, the Voluntary Placement Agreement has not been revoked.~~

~~[] Petitioner(s) signed a Guardianship Assistance Agreement with CYFD and to the best of petitioner(s) knowledge, it has not been revoked.]~~

3. If a Respondent-parent is willing and able to parent the child(ren), are there extraordinary circumstances that justify granting the guardianship?^{9]} ____
____ Yes (please explain) ____ No

E. OTHER INFORMATION

1. Are there any other court cases involving these children? ____ Yes ____ No

____ Unsure

If yes, please provide:

Case Number _____

Type of case _____

2. Is there current CYFD involvement?^{10]}

____ Yes ____ No

If yes, what is the contact information for the CYFD case worker?

a. Name: _____

Position (if known): _____

Phone Number and/or email address: _____

b. If yes, does CYFD have legal custody of any of the child(ren) named in this petition? Yes _____ No _____. If yes, CYFD must be served with a copy of this petition.¹⁰

c. If yes, does CYFD consent to this guardianship?
_____ Yes _____ No _____ Don't know (*please explain*):

3. Has CYFD filed a court case against the parents concerning this child?
_____ Yes _____ No

4. Do any other person(s) have or claim to have court ordered custody of the child(ren)?^{[10]9} _____ Yes _____ No
If yes, the name(s), phone number(s), and address(es) are:

5. Do any other person(s) have court ordered visitation with the child(ren)?^{[10]9}
_____ Yes _____ No
If yes, the name(s), phone number(s), and address(es) are:

6. Petitioner(s) are requesting child support from Respondents.¹¹
_____ Yes _____ No

7. Petitioners accept the duties and responsibilities of guardianship, including providing for the care, maintenance, and supervision of the child(ren).

8. No guardian of the child(ren) is currently appointed under a provision of the Uniform Probate Code, Section 45-1-101 NMSA 1978.

9. It is in the best interests of the child(ren) that Petitioner(s) be appointed as kinship guardian(s).

WHEREFORE, Petitioner(s) respectfully request(s) an Order Appointing Kinship Guardian(s) of the minor child(ren).

VERIFICATION

Petitioner #1:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #1

Address, phone number, and email for Petitioner #1

Petitioner #2:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #2

Address, phone number, and email for Petitioner #2

USE NOTES

1. Enter the initials of each child. Each child should be listed in the petition under Section A.
2. Forms 4A-501 to -513 NMRA are required to be used by persons representing themselves in kinship guardianship proceedings. Parties represented by an attorney may use other forms that serve the same purpose.
3. A petitioner must be an adult with whom the child has a significant bond. *See* NMSA 1978, Section 40-10B-5 (2022) for persons who may file as a petitioner under the Kinship Guardianship Act.
4. Fill out Section B for each child you are seeking guardianship over. If you are applying for guardianship of more than two children, repeat the sections as necessary for each child.

5. Any minor child fourteen (14) years of age or older must be served with a copy of this petition. If a child is fourteen (14) years of age or older and does not want the petitioner(s) to be the child's guardian, the court will not appoint the petitioner(s). *See* NMSA 1978, § 40-10B-11(B) (2001). If the child is fourteen (14) years of age or older and consents to the petitioner(s) as guardian(s), please use the Nomination of Kinship Guardian Form, Form 4A-506 NMRA.

~~[6. The Indian Child Welfare Act defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." *See* 25 U.S.C. § 1903(4) (1978).]~~

~~[7.]~~ 6. If there are more than two parents for the children involved, repeat the information for each additional parent. Unless the child's parent is deceased or the parent's parental rights have been terminated, use Form 4-206 NMRA for service of process on each parent named in the petition unless (a) the parent has waived service in writing; (b) the parent is deceased; or (c) the parent's rights as a parent have been terminated by a court order.

~~[8.]~~ 7. Form 4A-505 NMRA must be signed, notarized, and filed with the court for each respondent-parent who consents to the guardianship.

~~[9.]~~ 8. For example: Has the child lived with the petitioner(s) for so long that removing the child would cause anguish or harm to the child? Are there other reasons why the child should not be with the parent? Explain why neither parent can care for the children.

~~[10.]~~ 9. If there are other people claiming to have court-ordered custody or court-ordered visitation of the child(ren), they must also be served with a copy of the petition and notice of the hearing.

~~[11.]~~ 10. If CYFD has legal custody of any child named in this petition, CYFD must be served with a copy of this petition. CYFD has designated addresses and individuals to accept service of the petition. Court clerks and the local CYFD office will supply the address and contact information for the address and person that will accept service on behalf of CYFD.

~~[12.]~~ 11. Both parents may be ordered to pay child support. The petitioners' income should not be used for calculation of child support.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-981 recompiled and amended as 4A-501 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-502. Motion for service by publication.

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

MOTION FOR SERVICE BY PUBLICATION²

Petitioner(s), _____ (*name(s) of Petitioner(s)*), state(s) that after diligent inquiry and search efforts, Petitioner(s) have been unable to serve process on _____ (*name of Respondent*), and the following diligent efforts were made to locate and serve the Respondent with a summons and petition:

(*Check each method of service attempted and complete applicable blank spaces.*)³

☐ Personal service;

☐ Service at Respondent's last known residential address by
_____ (*name of person attempting service*);

☐ Service by mail or courier service under Rule 1-004(F) NMRA;

☐ Service at Respondent's last known business address;

☐ Service at the address listed at the motor vehicle division for Respondent's driver's license;

☐ Service at the address listed in the last telephone directory listing for the following city or county (*list cities and counties*): _____;

☐ A search of the records of the following courts (*list courts*):

_____;

☐ A search of the records of inmates at the following jails/prisons:

_____;

☐ Contacted the post office for the zip code of the last known address of Respondent and there was no forwarding address;

☐ Other (*describe other attempts to locate and serve Respondent, including searches using the internet, Facebook, or other social media*):

___;

WHEREFORE, Petitioner(s) ask(s) the court to permit service on Respondent by publication of the attached Notice of Pendency of Action.⁴

Submitted by,

Signature

Printed name

Address

Phone number and email address

VERIFICATION

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the motion for service by publication; and that the contents of the motion are true and correct to the best of my information and belief.

Date: _____

Signature of Petitioner

USE NOTES

1. Enter the initials of each child listed in the Petition to Appoint Kinship Guardian(s).
2. You need to try to find and serve the respondent(s) with the petition and other documents you filed in the kinship guardianship case. If you are unable to find the respondent, you may want to consider service by publication in a newspaper. If there is more than one respondent that you need to serve by publication (for example the mother and the father of the child), you need to file one motion for each respondent. The information you provide about trying to locate the respondent in the motion is for each individual respondent. If the court allows you to serve by publication, you may use only one Notice of Pendency of Action and include all of the respondents in the same document.
3. Check all of the boxes that apply. You need to tell the court about all of the efforts you made to find and serve the respondent. Be prepared to show the court your efforts to search records to find the respondent, including, for example, a letter from the postmaster, any court docket printouts, or any returned mail.
4. Complete and attach a Notice of Pendency of Action, Form 4A-503 NMRA.

[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-503. Notice of pendency of action.¹

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,² (a) Child(ren) (*use initials only*), and concerning

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

NOTICE OF PENDENCY OF ACTION

STATE OF NEW MEXICO to _____,³ Respondent(s).

Greetings:

You are hereby notified that _____,⁴ Petitioner(s), filed a Petition to Appoint Kinship Guardian(s) for _____⁵ against you in the above entitled court and cause.

Unless you enter your appearance and written response in this cause on or before thirty (30) days after the last date of publication, a judgment by default will be entered against you.

Name and address of Petitioner or Petitioner's attorney:

USE NOTES

1. This form must be filled out and attached to Form 4A-502 NMRA, Motion for Service by Publication.

2. Enter initials of each child listed in the Petition to Appoint Kinship Guardian.

3. Enter name of the respondent. If there is more than one respondent and all respondents are located in the same area (*i.e.*, will be notified by the same newspaper), you may

list all of the respondents' names. If the respondents are in different areas (e.g., New Mexico and Texas), then you must fill out a separate Notice of Pendency of Action for each respondent.

4. Enter names of all petitioners.

5. Enter the initials and year of birth for each minor child that is named in the petition.

[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

4A-503.1. Notice to Tribe of pendency of action.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

_____, Respondent #1,

_____, Respondent #2.

NOTICE TO TRIBE OF PENDENCY OF ACTION

STATE OF NEW MEXICO to _____, *Name of Tribe of which the Indian child is a member or eligible for membership.*

Greetings:

You are hereby notified that _____,¹ Petitioner(s), filed a Petition to Appoint Kinship Guardian(s) for _____², child(ren) that the court knows or has reason to know are members or eligible for membership in the tribe.

The above referenced tribe is hereby notified that the tribe has the right to intervene as a party to this proceeding.

The above referenced tribe is hereby notified that the tribe has the right to petition the district court to transfer this proceeding to tribal court.

The above referenced tribe is hereby notified that the tribe has the right to participate in this proceeding whether or not the tribe intervenes as a party to this proceeding.

Name and address of Petitioner or Petitioner's attorney: _____

USE NOTES

1. Enter names of all petitioners.
 2. Enter initials and date(s) of birth of each child listed in the Petition to Appoint Kinship Guardian.
 3. Petitioner(s) shall ensure that this completed form is mailed, by certified mail with return receipt requested, to a representative authorized to accept service on behalf of the tribe. Contact information for authorized representatives can be found at <https://www.bia.gov/bia/ois/dhs/icwa/agents-listing/>.
 4. Petitioner(s) shall file proof of service with the Court when service has been completed.
- [Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-504. Order for service of process by publication in a newspaper.

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____, ¹ (a) Child(ren) (*use initials only*), and concerning

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

ORDER FOR SERVICE OF PROCESS

BY PUBLICATION IN A NEWSPAPER

(THIS ORDER IS NOT TO BE PUBLISHED IN NEWSPAPERS)

Petitioner(s) filed a motion requesting that the court approve service of process on _____ (*name of [each] Respondent to be served*) by publication in a newspaper of general circulation.

The court FINDS that Petitioner has made diligent efforts to make personal service, but has not been able to complete service of process. The last known address of _____ (*name of Respondent to be served*) is _____ (*Respondent's last known address*).

The court further FINDS that the newspaper of general circulation in this county is (*name of newspaper*) _____, and that

[1. ~~[]~~ this newspaper is most likely to give Respondent notice of the pendency of the action.

OR

2. ~~[]~~ in the county of _____, State of _____, a newspaper most likely to give notice of the pendency of this proceeding to the person to be served is (*name of newspaper*) _____.]

THEREFORE, IT IS HEREBY ORDERED that Petitioner serve process on _____ (*name of Respondent*) by ~~[publication]~~ publishing the Notice of Pendency of Action (Form 4A-503 NMRA) once a week for three (3) consecutive weeks in the (*name of newspaper*) _____

~~[[] and once a week for (3) three consecutive weeks in (*name of newspaper*) _____ in _____ County.]~~

Petitioner shall file proof of service with a copy of the affidavit of publication when service has been completed.

Dated this _____ day of _____, 20____

District Judge

USE NOTES

1. Enter initials of each child listed in the Petition to Appoint Kinship Guardian.
[Approved by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-017, effective for all pleadings and papers filed on or after December 31, 2017; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-505. Parental consent to appointment of kinship guardian ~~[and waiver of service of process]~~.

STATE OF NEW MEXICO

COUNTY OF _____

JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

**PARENTAL CONSENT TO APPOINTMENT OF KINSHIP GUARDIAN
[AND WAIVER OF SERVICE OF PROCESS]**

1. I, _____ (*name of parent*), am the adoptive or biological parent of _____ (*name(s) of child(ren)*). I do hereby knowingly and voluntarily consent to the following: (*select all that apply*)²

☐ The appointment of Petitioner(s) as TEMPORARY kinship guardian(s) for no more than one hundred eighty (180) days.

☐ The appointment of Petitioner(s) as PERMANENT kinship guardian(s).³

2. I understand that the purpose of the guardianship is to establish a legal relationship between _____ (*child(ren)*) and _____ (*Petitioner(s)*).

3. I agree that it is in the child(ren)'s best interests that Petitioner(s) be named as the child(ren)'s Kinship Guardian(s).

4. I understand that while the guardianship is in effect, Petitioner(s) will have the right to make all decisions about visitation and the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

5. I understand that I might not have visitation and it may be up to Petitioner(s) if I have visitation with my child(ren).

6. I request to be notified of hearings in this case at the address listed below. I understand that I must notify the court of any changes in my address.

7. I understand that the court may require me to pay child support.

8. I understand that I do not have to sign this consent form, and that I have the right to appear in court to contest the guardianship.

9. I understand that I may withdraw this consent before the court enters an order granting the guardianship. I also understand that to withdraw my consent I must notify the court in writing.

10. I understand that if I desire at a later date to revoke the guardianship, I will have to petition the court using Form 4A-512 NMRA and will have to prove that the circumstances have changed and that revocation is in the child(ren)'s best interests.

Signature of Respondent-parent

Address

Telephone number and email address

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____ by _____, Respondent-parent.

Notary Public

My commission expires: _____

USE NOTES

1. Enter the initials of each child listed in the Petition to Appoint Kinship Guardian.
2. You may select either option or both options, depending on whether you consent to the appointment of a temporary kinship guardian or a permanent kinship guardian or both.
3. As used in this form, a permanent kinship guardian is a guardian whose appointment continues until the child's eighteenth birthday or until the guardianship is revoked based on proof that the circumstances justifying the appointment have changed and that revocation is in the child(ren)'s best interests.
[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-985 recompiled and amended as 4A-505 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-506. Nomination of kinship guardian(s).

STATE OF NEW MEXICO
COUNTY OF _____

____ JUDICIAL DISTRICT
____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF
____, ¹ (a) Child(ren) (*use initials only*), and concerning
[____, Respondent(s).]
____, Respondent #1,
____, Respondent #2.

NOMINATION OF KINSHIP GUARDIAN(S)

I, _____ (*name of minor child*), was born in the year
_____ and am _____ years old (*current age*).

I nominate and request the court to appoint _____
(*name(s) of Petitioner(s)*) as my guardian(s).

I affirm under penalty of perjury under the laws of the State of New Mexico that the
statements in this document are true and correct.

Date

Signature of Minor Child

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian.
[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective
January 20, 2005; 4-983 recompiled and amended as 4A-506 by Supreme Court Order No. 16-
8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended
by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after
December 31, 2022; as amended by Supreme Court Order No. _____, effective for all
cases pending or filed on or after _____.]

4A-507. Ex parte motion to appoint temporary kinship guardian(s).

STATE OF NEW MEXICO
COUNTY OF _____
____ JUDICIAL DISTRICT
____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

**EX PARTE MOTION TO APPOINT
TEMPORARY KINSHIP GUARDIAN(S)²**

Petitioner, _____, (*name of Petitioner(s)*), move(s) the court to grant this Ex Parte Motion to Appoint Temporary Kinship Guardian for the minor child(ren). In support of the motion, Petitioner(s) state(s) as follows:

1. A Petition to Appoint Kinship Guardian(s) has been filed in this court under the Kinship Guardianship Act for the following children:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Petitioner(s) incorporate all of the allegations contained in the Petition to Appoint Kinship Guardian(s).

3. Section 40-10B-7(C) NMSA 1978 of the Kinship Guardianship Act allows this court to appoint a temporary guardian ex parte for good cause, to serve for one hundred and eighty (180) days or until the case is decided on the merits, whichever occurs first.

4. There is good cause to appoint a temporary guardian ex parte because (*explain why the court should appoint a temporary guardian without a hearing*):

5. It is in the child(ren)'s best interests that Petitioner(s) be appointed the child(ren)'s temporary guardian(s) until a hearing on the Petition to Appoint Kinship Guardian(s) is heard.

WHEREFORE, Petitioner(s) request(s) that the court appoint Petitioner(s) as Temporary Kinship Guardian(s) of the minor child(ren), _____, to last one hundred and eighty (180) days or until a hearing on the merits is heard, whichever occurs first. If the court does not grant an Order on this Ex Parte Motion for Temporary Kinship Guardianship, Petitioner(s) request(s) that a hearing be set within twenty (20) days of the filing of this motion as provided under Section 40-10B-7(B) NMSA 1978.

Submitted by,

Signature

Printed Name

Address

Phone number and email address

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this _____ day of _____,
_____.

Notary Public

My commission expires: _____

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian.
 2. An ex parte motion is used when one party asks the court to issue an order without hearing from the other party. This is used only for emergency purposes.
 3. An ex parte motion may be filed at the same time as the petition to appoint kinship guardian(s), *see* Form 4A-501 NMRA, or after the petition is filed.
- [Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-508. Ex parte order appointing temporary kinship guardian(s).

STATE OF NEW MEXICO
COUNTY OF _____

JUDICIAL DISTRICT
_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

**EX PARTE ORDER APPOINTING
TEMPORARY KINSHIP GUARDIAN(S)
[] AND NOTICE OF HEARING**

THIS MATTER, coming before the court ex parte on _____ (*date*) on
Petitioner(s)' Ex Parte Motion to Appoint Temporary Kinship Guardian for the minor child(ren),
and the court being sufficiently advised, FINDS:

1. Section 40 10B 7 NMSA 1978 of the Kinship Guardianship Act allows this court
to appoint a temporary guardian ex parte on good cause shown, to serve for one hundred and eighty
(180) days.

2. A petition to appoint kinship guardian has been filed regarding the following
children:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Based on the Motion, there is good cause for the ex parte appointment of a
temporary guardian.

4. If a party files an objection to this Order and submits a copy to the assigned judge
with a request for hearing, the court shall schedule a hearing to be held within ten (10) days of the
date the objection is filed, as provided in Section 40-10B-7(C) NMSA 1978.

WHEREFORE IT IS ORDERED:

1. Petitioner(s) is/are appointed as the temporary guardian(s) of the following
children:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. The appointment of temporary kinship guardian(s) shall expire in one hundred and eighty (180) days from the date of the filing of this order or further order of this court, whichever occurs first.

3. The guardian(s) has/have the legal rights and duties of a parent except the right to consent to the adoption of the child(ren), as provided in Section 40 10B 13(A) NMSA 1978.

4. The parental rights and duties of _____ (*names of Respondents*) pertaining to the child(ren) are hereby temporarily suspended. This means that while the guardianship is in effect, the guardian(s) have the right to make all decisions about the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

5. Visitation between the legal parents and the minor child(ren), or any other persons, shall be at the discretion of the guardian(s), as provided in Section 40 10B 13(B) NMSA 1978.

6. Petitioner shall immediately have the Petition to Appoint Kinship Guardian(s), this Ex Parte Order Appointing Temporary Kinship Guardian(s), and a copy of the summons personally served on each of the named Respondents.

7. Other orders: _____

8. A hearing on the Petition to Appoint Kinship Guardian is set for: _____

District Court Judge

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian.
[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-509. Motion to appoint temporary kinship guardian(s).

STATE OF NEW MEXICO
COUNTY OF _____

JUDICIAL DISTRICT
_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

**MOTION TO APPOINT
TEMPORARY KINSHIP GUARDIAN(S)²**

Petitioner(s), _____, (*name of Petitioner(s)*), move(s) the court to grant this Motion to Appoint Temporary Kinship Guardian for the minor child(ren) under the Kinship Guardianship Act. In support of the motion, Petitioner(s) state(s) as follows:

1. A Petition to Appoint Kinship Guardian(s) has been filed in this court under the Kinship Guardianship Act for the following child(ren):

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Petitioner(s) incorporate(s) all of the allegations contained in the Petition to Appoint Kinship Guardian(s).

3. Petitioner(s) request(s) appointment of a temporary guardian(s) because (*explain why a temporary guardianship is requested before a final hearing is held on the Petition*):

_____.

4. It is in the child(ren)'s best interests that Petitioner(s) be appointed the child(ren)'s temporary guardian(s) until a hearing on the Petition to Appoint Kinship Guardian(s) is heard.

WHEREFORE, Petitioner(s) request(s) that the court appoint Petitioner(s) as Temporary Kinship Guardian(s) of the minor child(ren).

Submitted by,

Signature

Printed Name

Address

Phone number and email address

VERIFICATION

Petitioner #1:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Temporary Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #1

Petitioner #2:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Temporary Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #2

VERIFICATION OF SERVICE³

I affirm under penalty of perjury under the laws of the State of New Mexico that on _____ (date), I (check the applicable item below and fill in all information)

[] mailed a copy of this motion by United States mail, postage prepaid, to:
Name: _____
Mailing address: _____
City, state, and zip code: _____;

[] delivered a copy of this motion to _____ (*the other party or the other party's attorney*); or

[] emailed a copy of this motion to _____ (*the other party or the other party's attorney*) using the following email address: _____. The time and date of the email was _____ (a.m.) (p.m.) on _____ (*date*).

Signature of person who made service

Date of signature

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian.
2. This motion may be filed at the same time as, or at anytime after, the Petition to Appoint Kinship Guardian is filed.

3. All respondents must be served with this motion unless the respondent(s) has/have signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process, Form 4A-505 NMRA. The Children, Youth and Families Department must be served with a copy of this motion if it has custody of the minor child(ren).

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-984 recompiled and amended as 4A-509 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-510. Order appointing temporary kinship guardian(s).

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

**ORDER APPOINTING
TEMPORARY KINSHIP GUARDIAN(S)
[] AND NOTICE OF HEARING**

THIS MATTER came before the court on Petitioner(s)' motion to appoint temporary kinship guardian of the minor child(ren). Petitioner(s), _____ (*name(s) of Petitioner(s)*), appeared pro se. Respondent #1, _____ (*name of Respondent #1*), [] appeared pro se [] did not appear. Respondent #2, _____ (*name of Respondent #2*), [] appeared pro se [] did not appear. The court having reviewed the motion, heard testimony, and being sufficiently advised, **FINDS:**

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. The court has the authority to appoint a temporary kinship guardian under Section 40-10B-7 NMSA 1978.

3. A Petition to Appoint Kinship Guardian(s) has been filed with this court.

4. Respondent #1

[] consents to the appointment of Petitioner(s) as the guardian(s);

OR

[] does not consent to the appointment of Petitioner(s) as the guardian(s) and the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the Petition for Kinship Guardianship, and Respondent #1 was not residing in the home and is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren);

OR

[] extraordinary circumstances justify granting the guardianship.²

5. Respondent #2

[] consents to the appointment of Petitioner(s) as the guardian(s);

OR

[] does not consent to the appointment of Petitioner(s) as the guardian(s) and the minor child(ren) has/have resided with Petitioner(s) for at least 90 days prior to filing the Petition for Kinship Guardianship, and Respondent #2 was not residing in the home

and is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren);

OR

[] extraordinary circumstances justify granting the guardianship.²

6. It is in the minor child(ren)'s best interests that Petitioner(s) be appointed as the minor child(ren)'s temporary guardian(s).

7. [] A guardian *ad litem* shall be appointed.

8. Other: _____

WHEREFORE IT IS ORDERED:

1. Petitioner(s) is/are appointed as the temporary kinship guardian(s) of the minor child(ren).

2. The appointment of temporary kinship guardianship shall remain in effect for one hundred eighty (180) days from the date of filing of this order or until further order of the court, whichever comes first.

3. Under Section 40-10B-13(A) NMSA 1978, Petitioner(s) has/have the legal rights and duties of a parent except the right to consent to the adoption of the minor child(ren).

4. Respondents' parental rights pertaining to the minor child(ren) are temporarily suspended until further order of the court. This means that while the guardianship is in effect, the guardian(s) have the right to make all decisions about the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

5. Interim visitation shall be as follows:

[] Visitation between the legal parents and the minor child(ren), or any other persons, shall be at the discretion of the temporary guardian(s) as provided in Section 40-10B-13(B) NMSA 1978;

OR

[] Visitation shall be as follows: _____

6. Interim child support shall be as follows:

☐ No child support is ordered at this time;

OR

☐ Child support is ordered as follows: _____

7. ☐ As this is a contested case, a guardian *ad litem* shall be appointed. A separate order will be entered appointing the guardian *ad litem*.³

8. Other: _____

9. A hearing on the Petition to Appoint Kinship Guardian is set for: _____

District Judge

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).

2. In considering whether there are extraordinary circumstances, the court may consider, for example, whether the child lived with the petitioner(s) for so long that removing the child would cause anguish or harm to the child, and whether there are other reasons why the child should not be with the parent.

3. Use Form 4-402 NMRA to order the appointment of a guardian *ad litem*.
[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-987 recompiled and amended as 4A-510 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-511. Order appointing kinship guardian(s).

STATE OF NEW MEXICO

COUNTY OF _____

JUDICIAL DISTRICT
_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

**ORDER APPOINTING
KINSHIP GUARDIAN(S)**

THIS MATTER came before the court on _____ (*insert date*) regarding the Petition to Appoint Kinship Guardian(s) for the minor child(ren). Petitioner(s) _____ (*name(s) of Petitioner(s)*) appeared pro se. Respondent #1, _____ (*name of Respondent #1*), [] appeared pro se [] did not appear. Respondent #2, _____ (*name of Respondent #2*), [] appeared pro se [] did not appear. The court having reviewed the petition, heard testimony, and being sufficiently advised, **FINDS:**

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. All necessary parties have been given adequate notice of the proceedings.

3. The name and age of the minor child(ren) are as follows:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Petitioner(s) is/are the minor child(ren)'s _____ (*relationship*) and is/are proper person(s) to be kinship guardian(s) under the Kinship Guardianship Act.

5. (*Select all that apply*)

[] **Respondent #1** is the minor child(ren)'s legal parent and

[] consents to the appointment of Petitioner(s) as the guardian(s);

[~~or~~] **OR**

☐ the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent #1 was not residing in the home during that time;

OR

☐ There are **extraordinary circumstances** in this matter as follows, which include that Respondent #1 is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren)²:

☐ **Respondent #2** is the minor child(ren)'s legal parent and

☐ consents to the appointment of Petitioner(s) as the guardian(s);

☐ ~~OR~~ **OR**

☐ the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent #2 was not residing in the home during that time;

OR

☐ There are **extraordinary circumstances** in this matter as follows, which include that Respondent #2 is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren):

6. Petitioner(s) is/are providing appropriate care, maintenance, and supervision for the minor child(ren).

7. The Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, and the Indian Family Protection Act, Sections 32A-28-1 through 32A-28-42 NMSA 1978:

☐ ~~does~~ do not apply to this matter or

☐ ~~does~~ do apply to this matter.

If the Indian Family Protection Act applies in this matter, the court makes the following additional findings regarding the domicile and residence of the minor child, and how the minor child will continue to participate in the cultural learning and activity of their

tribe: _____

☐ A Cultural Compact between the minor child's kinship guardian(s) and the minor child(ren)'s tribe is attached and incorporated by reference herein.

8. The requirements of Section 40-10B-8(B) NMSA 1978 have been proven by clear and convincing evidence.

9. It is in the minor child(ren)'s best interests that Petitioner(s) be appointed as the minor child(ren)'s kinship guardian(s).

10. Other: _____

WHEREFORE IT IS ORDERED:

1. Petitioner(s) is/are appointed as the kinship guardian(s) of the minor child(ren).
2. The appointment of kinship guardianship shall remain in effect until the minor child(ren) reach(es) the age of eighteen (18) or until further order of the court, whichever comes first.
3. Under Section 40-10B-13(A) NMSA 1978, Petitioner(s) has/have the legal rights and duties of a parent except the right to consent to the adoption of the minor child(ren).
4. Respondents' parental rights pertaining to the minor child(ren) are hereby suspended until further order of the court.
5. Visitation shall be as follows:

☐ Under the Kinship Guardianship Act, Section 40-10B-13(B) NMSA, visitation between the legal parents and the minor child(ren), or any other persons shall be at the discretion of the guardian(s);

or

☐ Visitation shall be as follows: _____

6. Child support shall be as follows:

☐ No child support is ordered because Petitioner(s) waive a request for child support at this time, but reserve his/her/their right to request child support at a later time;

Or

☐ Child support is ordered as follows: _____

7. This order allows the kinship guardian to apply for State programs and assistance on behalf of the minor child(ren) without reference to the kinship guardian(s)'s income.

8. Other: _____

District Court Judge

Signature of Petitioner #1

Printed name

Address

Telephone number and email address

Signature of Petitioner #2

Printed name

Address

Telephone number and email address

Signature of Respondent #1

Printed name

Address

Telephone number and email address

Signature of Respondent #2

Printed name

Address

Telephone number and email address

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s). [Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-988 recompiled and amended as 4A-511 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-512. Motion to revoke kinship guardianship.

STATE OF NEW MEXICO

COUNTY OF _____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

MOTION TO REVOKE KINSHIP GUARDIANSHIP

COME(S) NOW [Respondent] [Kinship Guardian] [Other] (*circle one*), _____
_____ (*name*) pro se, and respectfully requests that this court revoke the

kinship guardianship of _____ (*name(s) of child(ren)*). As grounds for this motion, movant states the following:

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. The name, year of birth, and age of the minor child(ren) are as follows:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Kinship guardian(s), _____ (*name(s) of kinship guardian(s)*), were appointed on _____ (*date*).

4. The circumstances have changed as follows (*describe what has changed and why the guardianship should be revoked*):

5. A transition plan is attached to this motion. A transition plan must be attached to this motion or the judge may not grant this motion.²

6. It is in the child(ren)'s best interests to revoke the guardianship.

7. ☐ I have contacted the other parties and they
☐ agree with this motion;
☐ do not agree with this motion; or
☐ did not respond after I asked them if they agreed or disagreed with this motion;

OR

☐ I have not contacted the other parties.

WHEREFORE, Movant(s) respectfully request(s) that the court, after a hearing, grant the Motion to Revoke Kinship Guardianship.

Respectfully submitted by:

Respectfully submitted by,

Signature

Printed name

Address

Phone number and email address

VERIFICATION OF SERVICE

I affirm under penalty of perjury under the laws of the State of New Mexico that on _____ (date), I (check the applicable item below and fill in all information)

[] mailed a copy of this motion by United States mail, postage prepaid, to:

Name: _____

Mailing address: _____

City, state, and zip code: _____;

[] delivered a copy of this motion to _____ (the other party or the other party's attorney); or

[] emailed a copy of this motion to _____ (the other party or the other party's attorney) using the following email address: _____. The time and date of the email was _____ (a.m.) (p.m.) on _____ (date).

Signature of person who made service

Date of signature

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).
2. Describe the plan for moving the child(ren) from the kinship guardians to the parent. Include information about how quickly the move will occur and how the child(ren)'s needs will be met like school, doctor(s), activities, and visits with the kinship guardians.
[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-991 recompiled and amended as 4A-512 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-513. Order revoking kinship guardianship.

STATE OF NEW MEXICO
COUNTY OF _____
_____, JUDICIAL DISTRICT
_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF
_____, ¹ (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

ORDER REVOKING KINSHIP GUARDIANSHIP

THIS MATTER having come before the court on (*insert date*) _____ regarding
_____'s Motion to Revoke Kinship Guardianship of the minor child(ren) and the
court being sufficiently advised, **FINDS:**

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1
to -15 NMSA 1978.

2. The name, year child was born, and age of the minor child(ren) are as

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Kinship guardian(s), _____ (*name(s) of kinship
guardian(s)*), were appointed by this court on _____ (*date*).

4. The guardianship should be revoked for the following reasons: _____

WHEREFORE IT IS ORDERED:

1. The Order Appointing Kinship Guardianship of _____ (*name(s) of
child(ren)*) is hereby revoked.

2. The parental rights of _____ (*names of Respondent(s)*) are
hereby restored.

3. Other: _____

[] This case is dismissed with prejudice.

District Court Judge

Submitted by:

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).
[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-514. Department consent to appointment of kinship guardian and waiver of service of process.

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

**DEPARTMENT CONSENT TO APPOINTMENT OF KINSHIP GUARDIAN
AND WAIVER OF SERVICE OF PROCESS**

1. The Children, Youth and Families Department has legal custody of the ~~[child by way of an unrevoked Voluntary Placement Agreement (VPA) with the following parents:]~~ following child(ren):

[a. ~~Name and relationship to child(ren):~~ _____

b. ~~Name and relationship to child(ren):~~ _____

c. ~~Name and relationship to child(ren):~~ _____

~~For the following child(ren):~~ (include full names and dates of birth):

2. The Children, Youth and Families Department is the legal custodian and has received a copy of the Petition to Appoint Kinship Guardian(s) filed by (name(s) of Petitioner(s)): _____;

3. The Children, Youth and Families Department hereby knowingly and voluntarily consents to the following: (*select all that apply*)²

☐ The appointment of Petitioner(s) as TEMPORARY kinship guardian(s) for no more than one hundred eighty (180) days.

☐ The appointment of Petitioner(s) as PERMANENT kinship guardian(s).³

4. The Children, Youth and Families Department understands that the purpose of the guardianship is to establish a legal relationship between _____ (child(ren)) and _____ (Petitioner(s)).

5. The Children, Youth and Families Department states that it is in the child(ren)'s best interests that Petitioner(s) be named as the child(ren)'s kinship guardian(s).

6. The Children, Youth and Families Department understands that while the guardianship is in effect, Petitioner(s) will have the right to make all decisions about visitation and the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

7. The Children, Youth and Families Department waives the right to be served with the Petition, and understands it will be made a party to this case and concurs.

8. The Children, Youth and Families Department understands that the Department or the parents may withdraw a consent before the court enters an order granting the guardianship. The Children, Youth and Families Department understands that to withdraw its consent, it must notify the court in writing.

9. The Children, Youth and Families Department understands that if it desires at a later date to revoke the guardianship, a petition to revoke the guardianship must be filed.

Signature of counsel for CYFD

Address

Telephone number

Email address

USE NOTES

1. Enter the initials of each child listed in the Petition to Appoint Kinship Guardian.
 2. You may select either option or both options, depending on whether you consent to the appointment of a temporary kinship guardian or a permanent kinship guardian or both.
 3. As used in this form, a permanent kinship guardian is a guardian whose appointment continues until the child's eighteenth birthday or until the guardianship is revoked based on proof that the circumstances justifying the appointment have changed and that revocation is in the child(ren)'s best interests.
- [Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-515. Order appointing guardian ad litem.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

_____,
Petitioner,

No: _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____, (a) Child(ren) (*use initials only*), and concerning
[_____, Respondent(s).]
_____, Respondent #1,
_____, Respondent #2.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER came before the court on _____, 20____.
Petitioner(s), _____ (name(s) of
Petitioner(s)), appeared pro se. Respondent #1, _____ (name of
Respondent #1), [] appeared pro se [] did not appear. Respondent #2, _____
(name of Respondent #2), [] appeared pro se [] did not appear. The court having reviewed the
motion, heard testimony, and being sufficiently advised, **FINDS:**

1. The court has jurisdiction over the parties and subject matter. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B- 1 to -15 NMSA 1978.

2. This action concerns the following minor [child] [children]:

_____	year of birth _____	age _____;
_____	year of birth _____	age _____;
_____	year of birth _____	age _____;
_____	year of birth _____	age _____;

3. Good cause exists to appoint a guardian *ad litem* (GAL) under the Kinship Guardianship Act, Section 40-10B-9 NMSA 1978, and Rule 1-152 NMRA to represent the [child's] [children's] best interests in this case.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Appointment and duties to the court: _____ is hereby appointed as GAL.

2. The GAL shall perform each of the following duties on behalf of the court:

a. If the appointment is to determine if a petition for kinship guardianship should be granted or denied

(i) make a diligent investigation of the circumstances surrounding the petition for guardianship;

(ii) visit the [child] [children] in the home;

(iii) if the [child] [children] are six (6) years old or older, interview the [child] [children] face to face;

(iv) interview the person(s) proposed as guardian(s);

(v) interview the parents of the [child] [children], if available;

(vi) interview any mental health professionals working with the [child] [children], Petitioner(s), and Respondent(s); and

(vii) recommend an appropriate transition plan if the [child] [children] is/are residing with Petitioner(s) and the petition for kinship guardianship is not granted or is revoked.

b. If the appointment is to determine if a petition or motion for revocation of a guardianship should be granted or denied;

(i) conduct an investigation of the [child] [children]'s best interests as described in Subsections (a)(ii) through (vi) above; and

(ii) recommend an appropriate transition plan in the event the guardianship is revoked; and

c. In any kinship guardianship case

(i) submit, but do not file, a written report of investigation and separate written recommendations to all parties and counsel at least eleven (11) days before the recommendations are filed with the court, except in the case of emergency;

(ii) file the recommendations, but not the report, with the court; and

(iii) at a hearing held in connection with proceedings described in sections (a) or (b) above, report to the court concerning the best interests of the [child] [children] and the [child] [children]'s position on the requested relief.

d. In addition to the foregoing, the court directs the GAL to: _____

3. Adoption of GAL recommendations.

a. If the parties are willing to adopt the GAL's recommendations, they shall submit a stipulated order adopting the recommendations within eleven (11) days after the recommendations are filed.

b. If any of the parties are not willing to adopt the recommendations, that party may file objections to the recommendations within eleven (11) days after the recommendations are filed along with a request and notice for hearing on the objections. The objections shall specifically state what recommendations are objected to and the basis for the objection. The court may set a hearing on the objections.

c. A party's failure to file timely objections to the recommendations of the GAL shall be deemed a waiver of the right to object, and the court shall, without the necessity of a hearing, enter an order adopting the GAL's recommendations.

4. Acceptance of appointment. If the named GAL is willing to serve, the named GAL shall forthwith file an entry of appearance. If the named GAL is unable or unwilling to serve, the named GAL shall promptly advise the court.

5. Expiration of appointment. This appointment shall expire on _____.

6. Immunity of GAL. The GAL serves as an arm of the court and assists the court in discharging its duty to adjudicate the [child's] [children's] best interests.

7. Duties of parties. The parties and minor children over the age of fourteen (14) shall assist the GAL in carrying out the duties set forth in this order, including providing information and documents requested by the GAL and signing any releases requested by the GAL.

8. GAL fees.

a. On or before _____, 20____, Petitioner(s) shall advance \$_____, Respondent #1 shall advance \$_____, and Respondent #2 shall advance \$_____ to the GAL as a retainer toward the GAL's fees and expenses. The GAL shall be paid at an hourly rate of \$_____. When the GAL fees exceed the retainer, Petitioner(s) shall pay_____% , Respondent #1 shall pay _____%, and Respondent #2 shall pay _____% of the additional GAL fees.

b. The GAL shall submit itemized monthly invoices for professional services to the parties.

c. The GAL may recommend reallocation of GAL fees and expenses.

d. Either party or the GAL may request a hearing on the GAL fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed \$_____.

e. GAL fees are considered in the nature of support of the child.

f. The GAL shall not begin work until receiving an endorsed copy of the order appointing the GAL and full payment of the retainer.

[] The court finds that the parties are unable to pay for the services of a GAL and therefore, the court directs that [] Administrative Office of the Court funds shall be used to pay for the GAL or [] the GAL takes the case pro bono.

9. Hearings. The GAL may request an expedited hearing if there is non-compliance with this order.

10. The parties shall immediately contact the GAL to set up an initial appointment. The GAL's name is _____, phone number is _____, and email is _____.

District Court Judge

CERTIFICATE OF MAILING

I, _____, certify that I caused an endorsed copy of this order appointing guardian ad litem to be served on the following persons by *(delivery)* *(mail)* *(or email)* on this

_____ day of _____, _____:

(Name of Petitioner)

(Name of Petitioner's attorney)

(Name of Respondent #1)

(Name of Respondent #1's attorney)

(Name of Respondent #2)

(Name of Respondent #2's attorney)

(Name of guardian ad litem)

(Name of person signing certificate)

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4A-516. Letters of guardianship.

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

In the Matter of _____, (a) Child(ren), (*use initials only*) and Concerning

_____, Petitioner(s)

[_____, Respondent(s).]

_____, Respondent #1,

_____, Respondent #2.

LETTERS OF GUARDIANSHIP

On _____, 20__ this court entered an order appointing
_____ (Petitioner(s)) as the guardian(s) of _____

_____ (minor child(ren)) under Sections 40-10B-1 to -
21 NMSA 1978 and Rule 1-155 NMRA.

WHEREFORE, the order appointing kinship guardian(s) suspends the rights of the Respondent(s) and vests in the guardian(s) all rights and responsibilities of a parent, except for the right to consent to adoption of the child(ren), including but not limited to:

1. Petitioner(s) is/are permitted to consent to medical, mental health, and dental services and treatment for the minor child(ren) not prohibited by other law;

2. Petitioner(s) is/are permitted to seek tribal, state, and federal benefits on behalf of the child(ren) without reference to the income of Petitioners (the benefits should be based on the parent(s)' income);

3. Petitioner(s) is/are permitted to enroll the child(ren) in school and extracurricular activities, including religious activities and ceremonies;

4. Petitioner(s) shall be considered the education decision maker or surrogate parent under Section 300.519 of the Individuals with Disabilities Education Act.

5. Petitioner(s) is/are permitted to obtain and modify vital records for the child(ren);

6. Petitioner(s) is/are permitted to

_____.

WITNESS, the Honorable _____, District Court Judge, and the seal of the
_____ Judicial District Court on _____.

CLERK OF THE DISTRICT COURT

[SEAL]

Deputy

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]



[rules.supremecourt-grp] Comment on Proposed Change to Kinship Guardianship Forms 2024-014

1 message

Tom Stewart <sildtfs@nmcourts.gov>

Thu, Mar 14, 2024 at 3:16 PM

Reply-To: sildtfs@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Attached is a form I worked on to the Petition for Kinship Guardianship after being frustrated with particularly self-represented petitioner failing to complete the forms. I attempted to streamline the form, prompting for required information and putting information about each party on its own page to facilitate reading and reference to the petition by the Judge and others.

Additional work on this form is no doubt required.

I also urge that simple programming, perhaps using some AI, be developed to guide self-represented petitioners for KG and in other types of cases. This would help to ensure that all required information is collected at the inception of cases and would help eliminate delays caused by folks not realizing the importance of accounting for the whereabouts of absent fathers and other issues that arise that could be eliminated by appropriate machine guidance at court kiosks or online document preparation.

Thank you for your consideration. I hope this is of some assistance.

--

Thomas F. Stewart
District Judge, Division I
Sixth Judicial District Court
P.O. Box 2339
Silver City, New Mexico 88062
sildtfs@nmcourts.gov
My assistant: 575 574-4022

 **REVISED BY ME KINSHIP GUARD PETITION.wpd**

30K

STATE OF NEW MEXICO
COUNTY OF GRANT
SIXTH JUDICIAL DISTRICT

Court Case No. D-608-_____ - _____

Petitioner or Petitioners

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____, Child(ren) (here use initials of children only)

and concerning

_____ Respondent(s) (You *must* list the names of all living parents
and anyone else with legal rights to the child
or children.)

PETITION TO APPOINT KINSHIP GUARDIAN(S)

I, _____, am Petitioner #1 and I request the court to grant
an Order appointing me as Kinship Guardian of the minor child(ren) named below in this
Petition.

(Fill in the next part if there is a second person who will also serve as Kinship Guardian.)

I, _____, am Petitioner #2 and I request the court to grant
an Order also appointing me as Kinship Guardian of the minor child(ren) named below in this
Petition.

The child or children live in _____ County, New Mexico and therefore the
court has jurisdiction of the parties and the subject matter of the cause of action.

A. INFORMATION ABOUT PETITIONER(S), THE PERSON OR PERSONS
REQUESTING LEGAL AUTHORITY OVER THE CHILD OR CHILDREN

1. Petitioner #1's name: _____

Petitioner #1's address: _____

2. Petitioner #2's name: _____

Petitioner #2's address: _____

Petitioner(s) are currently providing adequate care, maintenance, and supervision for the child or children identified on the following page or pages:

(THIS PART OF THE PAGE IS INTENTIONALLY BLANK.)

1. First or only child in case (**DO NOT LEAVE ANY INFORMATION BLANK**):

Child's full name: _____

Child's present address: _____

City and state of Child's birth: _____

Month and year of birth: _____

Mother's name: _____

Father's name: _____

Is the child 14)years of age or older now? _____ Yes _____ No

If this child now over 14 years of age, does the child want the named Petitioner(s) as their Kinship Guardian(s)? _____ Yes _____ No

(If you checked "Yes" fill out a NOMINATION OF KINSHIP GUARDIANSHIP form, Form 4A-506, have the child over 14 years of age sign it and file it with the Court Clerk's Office.)

What is the relationship between the Petitioner(s) and this child? _____

Is the child a Native American child? _____ Yes _____ No

If yes, what tribe or pueblo is the child enrolled with or eligible to be enrolled with? _____

Have you contacted or informed the tribe of this Petition? _____ Yes _____ No

If yes, who did you contact that represents the tribe and how did you make contact? _____

Child #2. (Add an additional sheet for each additional child. **DO NOT LEAVE ANY INFORMATION BLANK**)(Do not file pages if they are blank and not needed):

Child's full name: _____

Child's present address: _____

City and state of Child's birth: _____

Month and year of birth: _____

Mother's name: _____

Father's name: _____

Is the child 14)years of age or older now? _____ Yes _____ No

If this child now over 14 years of age, does the child want the named Petitioner(s) as their Kinship Guardian(s)? _____ Yes _____ No

(If you checked "Yes" fill out a NOMINATION OF KINSHIP GUARDIANSHIP form, Form 4A-506, have the child over 14 years of age sign it and file it with the Court Clerk's Office.)

What is the relationship between the Petitioner(s) and this child? _____

Is the child a Native American child? _____ Yes _____ No

If yes, what tribe or pueblo is the child enrolled with or eligible to be enrolled with? _____

Have you contacted or informed the tribe of this Petition? _____ Yes _____ No

If yes, who did you contact that represents the tribe and how did you make contact? _____

Child # _____. (Add an additional sheet for each additional child. **DO NOT LEAVE ANY INFORMATION BLANK**) (Do not file pages if they are blank and not needed):

Child's full name: _____

Child's present address: _____

City and state of Child's birth: _____

Month and year of birth: _____

Mother's name: _____

Father's name: _____

Is the child 14)years of age or older now? _____ Yes _____ No

If this child now over 14 years of age, does the child want the named Petitioner(s) as their Kinship Guardian(s)? _____ Yes _____ No

(If you checked "Yes" fill out a NOMINATION OF KINSHIP GUARDIANSHIP form, Form 4A-506, have the child over 14 years of age sign it and file it with the Court Clerk's Office.)

What is the relationship between the Petitioner(s) and this child? _____

Is the child a Native American child? _____ Yes _____ No

If yes, what tribe or pueblo is the child enrolled with or eligible to be enrolled with? _____

Have you contacted or informed the tribe of this Petition? _____ Yes _____ No

If yes, who did you contact that represents the tribe and how did you make contact? _____

C. INFORMATION ABOUT CHILD'S PARENTS (RESPONDENTS)⁷

a.

_____ (name of Respondent-parent if known) is the parent of
_____.

b.

This Respondent-parent is _____ alive _____ deceased (if deceased, provide proof of death)

c.

If alive, list address (include physical street address, city, state, and zip code):

_____.

d.

On information and belief, (complete only one choice below)

i.

Respondent-parent _____ (name) consents to the appointment of
Petitioner(s) as Kinship Guardian(s).⁸

Or

ii.

This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (explain why you think this parent is unable or unwilling to provide care including whether parent(s) have signed a Voluntary Placement Agreement with CYFD):

2.

Respondent #2

a.

_____ (name of Respondent-parent if known) is the parent of
_____.

b.

This Respondent-parent is _____ alive _____ deceased (if deceased, provide proof of death)

c.

If alive, list address (include physical street address, city, state, and zip code):

_____.

d.

On information and belief, (complete only one choice below)

i.

Respondent-parent _____ (name) consents to the appointment of
Petitioner(s) as Kinship Guardian(s).⁸

Or

ii.

This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (explain why you think this parent is unable or unwilling to provide care including whether parent(s) have signed a Voluntary Placement Agreement with CYFD):

D. FACTS REGARDING REQUEST FOR GUARDIANSHIP

1.

Consent to Guardianship

a.

Does Respondent #1 consent to the guardianship? _____ Yes _____ No

If no, has the child(ren) lived with Petitioner(s) without Respondent #1 in the home for ninety (90) days immediately prior to filing this petition?

_____ Yes _____ No

b.

Does Respondent #2 consent to the guardianship? _____ Yes _____ No

If no, has the child(ren) lived with Petitioner(s) without Respondent #2 in the home for 90 days immediately prior to filing this petition?

_____ Yes _____ No

2.

Describe how the child came to reside with you and why you want guardianship.

[] Parent(s) signed a Voluntary Placement Agreement with CYFD, placing the children in CYFD's legal custody, and to the best of Petitioner's knowledge, the Voluntary Placement Agreement has not been revoked.

[] Petitioner(s) signed a Guardianship Assistance Agreement with CYFD and to the best of petitioner(s) knowledge, it has not been revoked.

3.

If a Respondent-parent is willing and able to parent the child(ren), are there extraordinary circumstances that justify granting the guardianship?⁹

_____ Yes (please explain) _____ No

E. OTHER INFORMATION

1.

Are there any other court cases involving these children? _____ Yes _____ No

If yes, please provide:

Case Number _____

Type of case _____

2.

Is there current CYFD involvement?

_____ Yes _____ No

a.

If yes, what is the contact information for the CYFD case worker?

Name: _____

Position (if known): _____

Phone Number and/or email address: _____

b.

If yes, does CYFD have legal custody of any of the child(ren) named in this petition? Yes _____
No _____. If yes, CYFD must be served with a copy of this petition.¹⁰

c.

If yes, does CYFD consent to this guardianship?

_____ Yes _____ No _____ Don't know (please explain):

3.

Has CYFD filed a court case against the parents concerning this child?

_____ Yes _____ No

4.

Do any other person(s) have or claim to have court ordered custody of the child(ren)?¹⁰ _____

Yes _____ No

If yes, the name(s), phone number(s), and address(es) are:

5.

Do any other person(s) have court ordered visitation with the child(ren)?¹⁰

_____ Yes _____ No

If yes, the name(s), phone number(s), and address(es) are:

6.

Petitioner(s) are requesting child support from Respondents.¹¹

_____ Yes _____ No

7.

Petitioners accept the duties and responsibilities of guardianship, including providing for the care, maintenance, and supervision of the child(ren).

8.

No guardian of the child(ren) is currently appointed under a provision of the Uniform Probate Code, Section 45-1-101 NMSA 1978.

9.

It is in the best interests of the child(ren) that Petitioner(s) be appointed as kinship guardian(s).

WHEREFORE, Petitioner(s) respectfully request(s) an Order Appointing Kinship Guardian(s) of the minor child(ren).

VERIFICATION

Petitioner #1:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #1

Address, phone number, and email for Petitioner #1

Petitioner #2:

I, _____, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #2

Address, phone number, and email for Petitioner #2

USE NOTES

1. Enter the initials of each child. Each child should be listed in the petition under Section A.
2. Forms 4A-501 to -513 NMRA are required to be used by persons representing themselves in kinship guardianship proceedings. Parties represented by an attorney may use other forms that serve the same purpose.
3. A petitioner must be an adult with whom the child has a significant bond. See NMSA 1978, Section 40-10B-5 (2022) for persons who may file as a petitioner under the Kinship Guardianship Act.
4. Fill out Section B for each child you are seeking guardianship over. If you are applying for guardianship of more than two children, repeat the sections as necessary for each child.
5. Any minor child fourteen (14) years of age or older must be served with a copy of this petition. If a child is fourteen (14) years of age or older and does not want the petitioner(s) to be the child's guardian, the court will not appoint the petitioner(s). See NMSA 1978, § 40-10B-11(B) (2001). If the child is fourteen (14) years of age or older and consents to the petitioner(s) as guardian(s), please use the Nomination of Kinship Guardian Form, Form 4A-506 NMRA.
6. The Indian Child Welfare Act defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." See 25 U.S.C. § 1903(4) (1978).
7. If there are more than two parents for the children involved, repeat the information for each additional parent. Unless the child's parent is deceased or the parent's parental rights have been terminated, use Form 4-206 NMRA for service of process on each parent named in the petition unless (a) the parent has waived service in writing; (b) the parent is deceased; or (c) the parent's rights as a parent have been terminated by a court order.
8. Form 4A-505 NMRA must be signed, notarized, and filed with the court for each respondent-parent who consents to the guardianship.
9. For example: Has the child lived with the petitioner(s) for so long that removing the child would cause anguish or harm to the child? Are there other reasons why the child should not be with the parent?
10. If there are other people claiming to have court-ordered custody or court-ordered visitation of the child(ren), they must also be served with a copy of the petition and notice of the hearing.

11. If CYFD has legal custody of any child named in this petition, CYFD must be served with a copy of this petition. CYFD has designated addresses and individuals to accept service of the petition. Court clerks and the local CYFD office will supply the address and contact information for the address and person that will accept service on behalf of CYFD.

12. Both parents may be ordered to pay child support. The petitioners' income should not be used for calculation of child support.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-981 recompiled and amended as 4A-501 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]



[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

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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