

**PROPOSED REVISIONS TO THE CHILDREN'S COURT RULES  
PROPOSAL 2026-004**

**March 6, 2026**

The Children's Court Rules Committee has recommended amendments to Rules 10-107, 10-241, 10-243, 10-243.1, and 10-343 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 <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> 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 5, 2025**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

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**10-107. Time.**

A. **Computing time.** This rule applies in computing any time period specified in these rules, in any local rule or court order, or in any statute, unless another Supreme Court rule of procedure contains time computation provisions that expressly supersede this rule.

(1) ***Period stated in days or a longer unit; eleven (11) days or more.*** When the period is stated as eleven (11) days or a longer unit of time,

(a) exclude the day of the event that triggers the period;

(b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) ***Period stated in days or a longer unit; ten (10) days or less.*** When the period is stated in days but the number of days is ten (10) days or less,

(a) exclude the day of the event that triggers the period;

(b) exclude intermediate Saturdays, Sundays, and legal holidays; and

(c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) ***Period stated in hours.*** When the period is stated in hours,

(a) begin counting immediately on the occurrence of the event that triggers the period;

(b) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) **Unavailability of the court for filing.** If the court is closed or is unavailable for filing at any time that the court is regularly open,

(a) on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

(b) during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

(5) **“Last day” defined.** Unless a different time is set by a court order, the last day ends

(a) for electronic filing, at midnight; and

(b) for filing by other means, when the court is scheduled to close.

(6) **“Next day” defined.** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(7) **“Legal holiday” defined.** “Legal holiday” means the day that the following are observed by the judiciary:

(a) New Year’s Day, Martin Luther King Jr.’s Birthday, Presidents’ Day (traditionally observed on the day after Thanksgiving), Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(b) any other day observed as a holiday by the judiciary.

**B. Extending time.**

(1) **In General.** When an act may or must be done within a specified time, the court may, for cause shown, extend the time

(a) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **Exceptions.** A court shall not extend the time for taking any action under Rules 10-211, ~~[10-241]~~ 10-243, 10-243.1, 10-343, or 12-201 NMRA, except to the extent and under the conditions stated in those rules.

**C. Additional time after certain kinds of service.** When a party may or must act within a specified time after service and service is made by mail, facsimile, or by deposit at a location designated for an attorney at a court facility under Rule 10-104(C)(1)(e) NMRA, three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. **Public posting of regular court hours.** The court shall publicly post the hours that it is regularly open.

[As amended, effective September 1, 1995; Rule 10-106 NMRA recompiled and amended as Rule 10-107 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. S-1-RCR-2023-00046, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — The district court has a “reasonable time” to rule on a timely-filed motion to extend time limits in Children’s Court cases. See *State v. Sandoval*, 2003-NMSC-027, ¶ 17, 134 N.M. 453, 78 P.3d 907.

In 2014, the Joint Committee on Rules of Procedure amended the time computation rules, including Rules 1-006, 2-104, 3-104, 5,104, 6-104, 7-104, 8-104, 10-107, and 12-308 NMRA, and restyled the rules to more closely resemble the federal rules of procedure. See Fed. R. Civ. Pro. 6; Fed. R. Crim. Pro. 45.

Subparagraph (A)(4) of this rule contemplates that the court may be closed or unavailable for filing due to weather, technological problems, or other circumstances. A person relying on Subparagraph (A)(4) to extend the time for filing a paper should be prepared to demonstrate or affirm that the court was closed or unavailable for filing at the time that the paper was due to be filed under Subparagraph (A)(1), (A)(2), or (A)(3).

In 2026, this rule was amended to correct a typographical error in Subparagraph (B)(2). The general extension provisions under Paragraph B of this rule do not apply to proceedings governed by Rules 10-243 and 10-243.1, but those general extension provisions do apply to Rule 10-241. Time extension for proceedings governed by Rules 10-243 and 10-243.1 is only permitted as those rules allow.

[Adopted by Supreme Court Order No. 14-8300-016, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**10-241. Insanity at time of commission of alleged offenses; notice of incapacity to form specific intent.**

A. **Defense of insanity.** Unless upon good cause shown the court waives the time requirement of this rule, notice of the defense of insanity of the respondent child at the time of the commission of the delinquent act or alleged youthful offender offense must be given within ten (10) days after whichever of the following events occurs latest:

- (1) service of the petition;
- (2) an attorney is appointed or enters an appearance on behalf of the respondent child; or
- (3) a notice is filed of an intent to seek adult sanctions.

B. **Mental examination.** Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child.

C. **Determination of issue of insanity.** When the defense of insanity at the time of the commission of the delinquent act or alleged youthful offender offense is raised, the issue shall be determined in nonjury trials by the court and in jury trials by a special verdict of the jury. When the determination is made and the respondent child is discharged on the ground of insanity, a judgment dismissing the petition with prejudice shall be entered, and any proceedings for commitment of the respondent child because of any mental disorder or developmental disability shall be pursuant to law.

D. **Statement made during mental examination or treatment.** A statement made by the child during a mental examination or treatment subsequent to the commission of the alleged delinquent act or alleged youthful offender offense shall not be admissible in evidence in any criminal or delinquency proceeding before or at adjudication on any issue other than that of the child's sanity, ability to form specific intent or competency to participate in the proceedings.

E. **Notice of incapacity to form specific intent.** If the respondent child intends to call an expert witness on the issue of whether the respondent child was incapable of forming the specific intent required as an element of an alleged delinquent act or alleged youthful offender offense, notice of such intention shall be given in the same manner and time as notice of insanity as a defense.

[As amended, effective January 1, 1987; as amended and recompiled effective May 15, 2000; Rule 10-220 NMRA, recompiled and amended as Rule 10-241 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014.]

**Committee commentary.** — In 2026, Rule 10-107(B)(2) was amended to correct a typographical error that had erroneously identified proceedings under this rule as an exception to the general provisions for extending time. The time limit to raise the defense of insanity shall be governed under this rule and the general provisions for extending time under Rule 10-107(B)(1) NMRA.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **10-243. Adjudication in delinquency proceedings; time limits.**

A. **Child in detention.** If the child is in detention, the adjudicatory hearing shall be commenced within thirty (30) days from whichever of the following events occurs latest:

- (1) the date the petition is served on the child;
- (2) the date the child is placed in detention;
- (3) if an issue is raised concerning the child's competency to participate at the adjudicatory hearing, the date an order is entered finding the child is competent to participate at the adjudicatory hearing. The court may order periodic judicial reviews pending completion of the competency evaluation. At each judicial review the child's attorney shall advise the court of the status of the evaluation;

- (4) if the proceedings have been stayed pursuant to Rule 10-242 NMRA on a finding of incompetency to stand trial, the date an order is filed finding the child competent to participate in an adjudicatory hearing;

(5) if a mistrial is declared or a new adjudicatory hearing is ordered by the children's court, the date such order is filed;

(6) in the event of an appeal, the date the mandate or order is filed in the children's court disposing of the appeal;

(7) if the child fails to appear at any time set by the court, the date the child is taken into custody in this state after the failure to appear or the date an order is entered quashing the warrant for failure to appear. If the child is taken into custody in another state, the thirty (30) days shall begin to run on the date the child is returned to this state;

(8) the date the court allows the withdrawal of a plea or rejects a plea; or

(9) if a notice of intent has been filed alleging the child is a "youthful offender," as that term is defined in the Children's Code [Chapter 32A NMSA 1978], the return of an indictment or the filing of a bind over order that does not include a "youthful offender" offense.

**B. Child not in detention.** If the child is not in detention, or has been released from detention prior to the expiration of the time limits set forth in this rule for a child in detention, the adjudicatory hearing shall be commenced within one-hundred twenty (120) days from whichever of the following events occurs latest:

(1) the date the petition is served on the child;

(2) if an issue is raised concerning the child's competency to participate at the adjudicatory hearing, the date an order is entered finding the child is competent to participate at the adjudicatory hearing;

(3) if the proceedings have been stayed on a finding of incompetency to participate in the adjudicatory hearing, the date an order is filed finding the child competent to participate in an adjudicatory hearing;

(4) if a mistrial is declared or a new adjudicatory hearing is ordered by the children's court, the date such order is filed;

(5) in the event of an appeal, the date the mandate or order is filed in the children's court disposing of the appeal;

(6) if the child fails to appear at any time set by the court, the date the child is taken into custody in this state after the failure to appear or the date an order is entered quashing the warrant for failure to appear. If the child is taken into custody in another state, the one-hundred twenty (120) days shall begin to run on the date the child is returned to this state;

(7) the date the court allows the withdrawal of a plea or rejects a plea; or

(8) if a notice of intent has been filed alleging the child is a "youthful offender," as that term is defined in the Children's Code, the return of an indictment or the filing of a bind over order that does not include a "youthful offender" offense.

**C. Multiple petitions.** If more than one petition is pending, the time limits applicable to each petition shall be determined independently.

**D. Extensions of time.** For good cause shown, the time for commencement of an adjudicatory hearing may be extended by the children's court, ~~[provided that]~~ but the aggregate of all extensions granted by the children's court shall not exceed ninety (90) days, except upon a showing of exceptional circumstances. ~~[An order granting an extension shall be in writing and shall state the reasons supporting the extension.]~~ An order extending time beyond the ninety (90)-day limit set forth in this paragraph shall not rely solely on circumstances that were used to support another extension, but the court may consider the totality of the circumstances existing at the time of the present motion seeking extension.

E. **Procedure for extensions of time.**

(1) Motion seeking extension of time. The party seeking an extension of time shall file with the clerk of the children’s court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule. ~~[, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit.]~~ A party seeking an extension of time shall ~~[forthwith]~~ serve a copy of the motion [thereof] on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. ~~[No hearing shall be held except upon order of the children’s court. If the children’s court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.]~~

(2) Order extending time. An order granting an extension of time shall

(a) be in writing,

(b) state the reasons supporting the extension, and

(c) set the date by which the adjudicatory hearing must commence.

F. **Effect of noncompliance with time limits.**

(1) The children’s court may deny an untimely motion for extension of time or may grant it if the moving party failed to act because of excusable neglect and may impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

G. **Time waiver.** These limits may be waived through a waiver of time limits under NMSA 1978, Section 32A-2-7 [NMSA-1978].

[As amended, effective February 1, 1997; May 15, 2000; as recompiled and amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 09-8300-003, effective April 6, 2009; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015; ; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

**Committee commentary.** — The adjudicatory hearing is sometimes described in the Children’s Code as the “hearing on the petition” and is the equivalent to a trial in the adult criminal system. In 2026, the committee clarified that because this rule contains its own specific procedures for extensions of time, it is excluded from the general procedures for extensions contained in Rule 10-107(B) NMRA. It also clarified what constitutes a timely motion. The committee believes the provisions for resolving noncompliance with this rule’s time limits both affirms the state’s obligation to seek timely adjudication, and the court’s discretion to grant untimely motions, as well as the court’s discretion to impose appropriate sanctions or remedial measures.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-015, effective December 31, 2014; as amended by Supreme

Court Order No. 15-8300-017, effective December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending on or after \_\_\_\_\_.]

**10-243.1 Adjudication in youthful offender proceedings; time limits.**

A. **Youthful offender offenses.** The following time limits shall apply when a notice of intent to seek adult sanctions has been filed and an indictment or bind over order is returned that includes a “youthful offender” offense.

(1) **Arraignment.** The alleged youthful offender shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the information or indictment or the date of arrest, whichever is later.

(2) **Time limits for commencement of adjudicatory hearing.** The adjudicatory hearing of an alleged youthful offender shall be commenced within six (6) months after whichever of the following events occurs last:

(a) The date of arraignment, or waiver of arraignment, in the children’s court of any alleged youthful offender;

(b) If the proceedings have been stayed to determine the competency of the youthful offender to participate at the adjudicatory hearing, the date an order is filed finding the alleged youthful offender competent to participate at the adjudicatory hearing;

(c) If a mistrial is declared or a new adjudicatory hearing is ordered by the children’s court, the date such order is filed;

(d) In the event of an appeal, including interlocutory appeals, the date the mandate or order is filed in the children’s court disposing of the appeal; or

(e) If the alleged youthful offender is arrested or surrenders in this state for failure to appear, the date of arrest or surrender of the youthful offender.

B. **Extensions of time.** The children’s court may extend the time for commencement of the adjudicatory hearing as set forth in ~~[this]~~ this paragraph. ~~[An order granting an extension shall be in writing and shall state the reasons supporting the extension.]~~

(1) For good cause shown, the children’s court may extend the time for commencement of the adjudicatory hearing for six (6) months.

(2) The children’s court may grant one (1) additional six (6)-month extension but in doing so shall consider the following factors:

(a) the complexity of the case;

(b) the length of the delay in bringing the alleged youthful offender to adjudication;

(c) the reason for the delay in bringing the alleged youthful offender to adjudication;

(d) whether the alleged youthful offender has asserted the right to a speedy adjudication or acquiesces in the delay; and

(e) the extent of prejudice, if any, to the parties from the delay.

(3) The aggregate of all extensions of time granted by the children’s court shall not exceed one (1) year, except upon a showing of exceptional circumstances. An order extending time beyond the one (1)-year limit set forth in this subparagraph shall not rely solely on circumstances that were used to support another extension, but the court may consider the totality of the circumstances existing at the time of the present motion seeking extension.

C. **Procedure for extensions of time.**

(1) Motion seeking extension of time. The party seeking an extension of time shall file with the clerk of the children’s court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule. ~~[, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit.]~~ A party seeking an extension of time shall ~~[forthwith]~~ serve a copy the motion [thereof] on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. ~~[No hearing shall be held except upon order of the children’s court. If the children’s court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.]~~

- (2) Order extending time. An order granting an extension of time shall
- (a) be in writing,
  - (b) state the reasons supporting the extension, and
  - (c) set the date by which the adjudicatory hearing must commence.

**D. Effect of noncompliance with time limits.**

(1) The children’s court may deny an untimely motion for extension of time or may grant it if the moving party failed to act because of excusable neglect and may impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

[Adopted by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed on or after \_\_\_\_\_.]

**Committee commentary.** — The adjudicatory hearing is sometimes described in the Children’s Code as the “hearing on the petition” and is the equivalent to a trial in the adult criminal system.

In 2026, the committee clarified that because this rule contains its own specific procedures for extensions of time, it is excluded from the general procedures for extensions contained in Rule 10-107(B) NMRA. It also clarified what constitutes a timely motion. The committee believes the provisions for resolving noncompliance with this rule’s time limits both affirms the state’s obligation to seek timely adjudication and the court’s discretion to grant untimely motions, as well as the court’s discretion to impose appropriate sanctions or remedial measures.

[Adopted by Supreme Court Order No. 14-8300-015, effective December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending on or after \_\_\_\_\_.]

**10-343 Adjudicatory hearing; time limits; continuances.**

A. **Time for hearing.** The adjudicatory hearing shall be commenced within sixty (60) days after whichever of the following events occurs latest:

- (1) the date that the petition is served on the respondent;
- (2) the termination of any diversion agreement;
- (3) if a mistrial is declared or a new trial is ordered by the trial court, the date that such order is filed; or

(4) in the event of an appeal from a judgment and disposition on a petition alleging abuse or neglect, the date that the mandate or order is filed in the children's court disposing of the appeal.

B. **Children's court attorney.** The children's court attorney shall represent the state at the adjudicatory hearing.

C. **Extensions of time.** The time for commencement of an adjudicatory hearing may be extended by the children's court for good cause shown, ~~[provided that]~~ but the aggregate of all extensions granted by the children's court shall not exceed sixty (60) days, except upon a showing of exceptional circumstances. ~~[An order granting an extension shall be in writing and shall state the reasons supporting the extension.]~~ An order extending time beyond the sixty (60)-day limit set forth in this paragraph shall not rely solely on circumstances that were used to support another extension, but the court may consider the totality of the circumstances existing at the time of the present motion seeking extension.

D. **Procedure for extensions of time.**

(1) Motion seeking extension of time. The party seeking an extension of time shall file with the clerk of the children's court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion for extension must also contain a request for new adjudicatory setting. The motion shall be filed within the applicable time limit prescribed by this rule ~~[, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or trial court which justify the failure to file the motion within the applicable time limit].~~ A party seeking an extension of time shall ~~[forthwith]~~ serve a copy ~~[thereof]~~ of the motion on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection.

(2) Order extending time. An order granting an extension of time shall be accompanied by a notice of adjudicatory hearing, and the order shall

(a) be in writing,

(b) state the reasons supporting the extension, and

(c) set the date by which the adjudicatory hearing must commence.

~~[No hearing shall be held except upon order of the children's court. If the children's court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.]~~

E. **Effect of noncompliance with time limits.**

(1) The children's court may deny an untimely motion for extension of time or may grant it if the moving party failed to act because of excusable neglect and may impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing on any petition does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

(3) An appeal from an order issued under Rule 10-315 NMRA and NMSA 1978, Section 32A-4-18 ~~[NMSA 1978]~~ shall not affect the time limits set forth in this rule.

[Adopted April 1, 1976, Children's Court Rule 44 NMSA 1953; recompiled and amended effective November 1, 1978, Rule 60 NMSA 1978; amended, effective February 1, 1982; January 1, 1983; May 1, 1986; Rule 10-308 SCRA 1986; Rule 10-308 NMRA; recompiled and amended effective

February 15, 1999; as recompiled by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 08-8300-058, effective January 15, 2009; as amended by Supreme Court Order No. 14-8300-004, effective in all cases filed on or after July 1, 2014; as amended by Supreme Court Order No. 14-8300-015, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases filed or pending on or after \_\_\_\_\_.]

**Committee commentary.** --- In 2026, the committee clarified that because this rule contains its own specific procedures for extensions of time, it is excluded from the general procedures for extensions contained in Rule 10-107(B) NMRA. It also clarified what constitutes a timely motion and further addressed the procedures for ruling on motions for extension of time. The procedure for extending time beyond the sixty (60)-day limit under this rule differs slightly from that under Rules 10-243 and 10-243.1 NMRA because, unlike a discrete and completed incident resulting in an allegation of a delinquent act, conditions resulting in allegations of abuse or neglect may persist and may be aggravated over time. Motions for extension of time shall provide the court with new information, including any increased or decreased risk to the child’s health or safety since a prior motion for extension. The court shall consider the totality of the circumstances in its determination of whether to grant or deny the extension of time. The committee believes the provisions for resolving noncompliance with this Rule’s time limits both affirms the department’s obligation to seek timely adjudication and the court’s discretion to grant untimely motions, as well as the court’s discretion to impose appropriate sanctions or remedial measures.

The committee recognizes that timely adjudications are critical to protecting the rights of parents to the care, custody, and control of their children. While dismissals with prejudice are generally disfavored, dismissal with prejudice in the context of a child abuse or neglect case is a particularly extreme measure because it may result in the return of a child to an abusive or neglectful environment.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Commentary on Proposed Revisions to the Children’s Court Rules:  
Proposal 2026-004  
Submitted By: Jane B. Yohalem  
Rules 10-107, 10-241, 10-243, 10-243.1, and 10-343 NMRA**

In my special concurrence in *State v. Asad P.*, 2025-NMCA-034, ¶¶ 19-25, 577 P.3d 223, *cert. denied* (S-1-SC-40747, Feb. 7, 2025), I pointed out three problems with the Children’s Court rules that are excepted from Rule 10-107’s NMRA extension of time provisions. *See* Rule 10-107(B)(2) (listing the exceptions).

The proposed revisions of Rule 10-107 suggested by the Children’s Court Rules Committee (the Committee) properly add Rules 10-243 and 243.1 to the list of rules that provide their own conditions for the extension of time and removed Rule 10-241 from this list, thereby addressing the first of my concerns.

The Committee’s proposal also addresses the confusion created by leaving in the current Children’s Court Rules the ten-day grace period for filing a motion for extension of time. This ten-day grace period was a hold-over from the rules that required the State to file its request for an extension of time in the Supreme Court, rather than the district court. The authority to extend the time now rests with the district court and this ten-day grace provision is no longer appropriate.

My remaining and primary concern, however, was the lack of clarity about whether the language found in Rule 10-243(F), 10-243.1(D), and 10-343(E)<sup>1</sup>, was intended by our Supreme Court to make dismissal the sole remedy for a late-filed motion for extension of time. The Court of Appeals found this to be the sole remedy under Rule 11-343 NMRA, as it is currently worded, in its decision in *Tanisha G.*, a child abuse and neglect case where CYFD failed to timely seek an extension of time for an adjudicatory hearing. *See CYFD v. Tanisha G.*, 2019-NMCA-067, 451 P.3d 86. As our Court of Appeals pointed out in *Asad P.*, this policy conflicts with the Supreme Court’s opinion in *Duran v. Eichwald*, where the Supreme Court asked the Committee to draft a rule that gave district courts “the discretion to decide whether the failure to timely commence trial should result in dismissal of the charges or whether some other sanction would be more appropriate under the circumstances of the case, such as monetary sanctions against the attorney or a change in the defendant’s conditions of release.” 2009-NMSC-030, ¶ 15, 146 N.M. 341, 210 P.3d 238 (per curiam). *Duran* arose in the context of an appeal by the State from a mandatory dismissal of a delinquency proceeding involving a homicide. Our Supreme Court struggled with the question of whether the language of Rule 10-243(F) made dismissal mandatory despite the seriousness of the charges.

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<sup>1</sup>For purposes of this comment and ease of reading, we refer to Subsection (F) of Rule 10-243, but we propose the same changes to each identical counterpart in Rule 10-243.1(D), and 10-343(E).

The Committee amended Rule 10-243(F) in 2009 in response to *Duran* to give the district court discretion to impose a sanction other than dismissal even when the delay in filing the motion for extension of time was found to not be due to excusable neglect. *See* Supreme Court Order No. 09-8300-003. Rule 10-243(F) (2009) read as follows:

**F. Effect of noncompliance with time limits.** If the adjudicatory hearing on any petition is not begun within the times specified in Paragraph A or B of this rule or within the period of any extension granted as provided in this rule, the petition may be dismissed with prejudice or the court may consider other sanctions as appropriate.

In 2014, the rule was again amended. The 2014 version of Rule 10-343 was construed by our Court of Appeals in *Tanisha G.*, together with other language in that rule, to remove the district court's discretion to avoid automatic dismissal of the action if the motion was not filed within the ten-day grace period in Rule 10-343(D).

The Committee has again rewritten these rules to supersede *Tanisha G.* and *Asad P.* and to again give the district court the discretion to impose a sanction other than dismissal when the State fails to timely seek an extension of time. I find the 2026 language proposed by the Committee for Subsection (F)—and its identical counterparts in the other proposed rules—confusing. The proposed language does not clearly state that the district court has discretion to grant the extension and to impose a sanction other than outright dismissal, even if it finds that the State's neglect is not excusable. The language proposed by the Committee reads as follows:

## **F. Effect of noncompliance with time limits.**

(1) The children's court *may deny an untimely motion for extension of time or may grant it if the moving party failed to act because of excusable neglect and may impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.*

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

The italicized language could mean that the district court has discretion to grant the extension and impose a sanction other than dismissal, even when the delay is not excusable, or it could mean that only if the district court finds the State's neglect excusable can it grant the extension, and in its discretion, also sanction the State for the delay.

There is an underlying policy decision about whether to enforce *Duran* and give the district court discretion in these cases to grant a sanctionable late-filed motion for extension of time instead of dismissing the case. That policy decision may be different for Rules 10-243 and 10-243.1, where the rules address a delay in a criminal delinquency proceeding, than it is for Rule 10-343, where the rule addresses dismissal of an abuse and neglect proceeding. The 2026 proposed Committee commentary on Rule 10-343 recognizes that it may endanger a child if the court is required to dismiss the proceedings based on sanctionable late-filing of a motion for extension of time by CYFD. Based on this commentary, the Committee appears to intend to return these rules to the post-*Duran* policy allowing the district

court discretion to sanction the State for late filing with either dismissal or some other sanction, even if the conduct of the State is not excusable. That intent, however, is not clearly stated.

This is a policy call that should be made by the Supreme Court rule by rule, and then clearly stated in each of the rules. To the extent the Supreme Court decides to return to a rule that gives the district court discretion as to the sanction to be imposed on the State if it fails to timely seek an extension of time and is unable to show excusable neglect, I suggest the following language:

**F. Effect of noncompliance with time limits.**

(1) The children's court shall grant an untimely motion for extension of time if the court finds that the moving party failed to act because of excusable neglect. If the court does not find excusable neglect, it may deny the motion for additional time, resulting in the dismissal of the action, or it may grant the motion and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances.

(2) In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

I believe this version of the rule aligns with the policy expressed by our Supreme Court in *Duran*. It authorizes the district court to exercise its discretion to impose sanctions other than dismissal for the State's failure to timely move the district court for an extension of time.

I thank the Supreme Court for its consideration of these comments and the Committee for taking on this very difficult work and providing direction for the correction of this longstanding confusion about the sanctions appropriate for late-filing of motions for extension of time.



New Mexico Courts

Kateri Eisenberg <supkhe@nmcourts.gov>

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**Name** Katherine

Wray

**Phone Number** 505-841-7227

**Email** [coakaw@nmcourts.gov](mailto:coakaw@nmcourts.gov)

**Proposal Number** 2026-004-Extensions-of-Time

**Comment** I agree with Judge Yohalem's suggested adjustments to the Committee's proposed amendments to Rule 10-243(F)(1) and further recommend that the Committee consider whether J. Yohalem's suggested changes should be applied to similar provisions in the other related rules.