

**PROPOSED REVISIONS TO THE CHILDREN'S COURT RULES  
PROPOSAL 2026-005**

**March 6, 2026**

The Children's Court Rules Committee has recommended amendments to Rule 10-312 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, 2026**, 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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**10-312. Filing of petition; amendment of petition; appointment of guardian ad litem or attorney.**

A. **Form and contents.** Petitions or amended petitions alleging abuse or neglect shall be in a form approved by the Supreme Court.

B. **Time limits.** If a child is taken into custody, a petition alleging abuse or neglect shall be filed by the department within [~~two (2)~~] three (3) days from the date that the child is taken into emergency custody by the department. If a petition is not filed within the time set forth in this paragraph, the child shall be released to the child's parents, guardian or custodian.

C. **Service.** A petition alleging abuse or neglect shall be served as provided by Rule 10-103 NMRA [~~of these rules~~]. A copy of the petition shall also be served on a parent who has not been made a party with a notice that the parent may intervene and request custody of the child.

D. **Appointment of guardian ad litem or attorney.** Upon the filing of a petition in an abuse or neglect proceeding, a guardian ad litem shall be appointed by the court to represent the best interest of any child under the age of fourteen (14). The court shall appoint an attorney to represent any child who is fourteen (14) years of age or older.

E. **Notice to Indian tribes.** If the alleged abused or neglected child is enrolled or eligible for enrollment in an Indian tribe, the Children, Youth and Families Department shall give notice of the filing of the petition to the child's Indian tribe. The form and manner of the notice

shall comply with the provisions of the New Mexico Indian Family Protection Act and federal Indian Child Welfare Act, [of 1978.]

F. **Amended petitions.** The department may file an amended petition alleging abuse or neglect:

- (1) once as a matter of course at any time within twenty (20) days after it is served; or
- (2) upon leave of court.

[Approved April 1, 1976, Children's Court Rule 42 NMSA 1953; recompiled and amended as Children's Court Rule 57 NMSA 1978; as amended effective February 1, 1982; Rule 10-305 SCRA 1986; as amended effective May 1, 1986; Rule 10-305 NMRA, as amended, effective August 1, 1999; as amended by Supreme Court Order No. 06-8300-004, effective March 15, 2006; Rule 10-305 NMRA, recompiled as Rule 10-312 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 10-8300-041, effective January 31, 2011; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — Rule 10-312 NMRA sets the general procedure and time limits for filing of petitions alleging abuse or neglect.

The approved form of summons in abuse or neglect actions provides notice that the respondent's parental rights may be terminated. Form 10-502 NMRA; NMSA 1978, § 32A-4-29 (2022).

[~~See~~] The process for intervention for noncustodial parents is contained in Rule 10-122 NMRA and [Section] NMSA 1978, § 32A-4-27. [~~NMSA 1978 for rights of non-custodial parents to intervene. See also Section 32A-4-29 NMSA 1978.~~]. The committee views the right to intervene as procedural.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]



**STATE OF NEW MEXICO  
SECOND JUDICIAL DISTRICT**

Marie Ward  
Chief Judge

400 Lomas Blvd. NW  
Albuquerque, NM 87102  
(505) 841-7392

April 3, 2026

Elizabeth A. Garcia, Chief Clerk of the Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe NM 87504-0848

Via email only to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)

Re: Proposed Amendments to the Supreme Court Rules

Dear Ms. Garcia,

We wish to submit public comment to the proposed amendments to the Supreme Court Rules as outlined more specifically below.

**Rule 23-118 Juror term of service.**

A juror's term of service shall not exceed three (3) months. Each judicial district may, in its discretion ~~and in consultation with the Administrative Office of the Courts~~, establish terms of jury service not to exceed three (3) months based on the number of trials held, the availability of jurors, and the administrative and financial impact for that judicial district.

*Comment: It is recommended that terms of jury service should be left to the discretion of the individual courts. While the SJDC does not have an issue with the term not exceeding three (3) months, it is aware that the more rural districts may be negatively impacted. Different districts will have different needs and considerations that impact what term makes sense in their district and the districts are in the best position to weigh those considerations.*

## Rule 5-602.1. Competency

### G. Evaluation order.

(2) a provision requiring the evaluator to file a written report with the court in accordance with Paragraph H of this rule within a reasonable time period as ordered by the court. ~~thirty (30) days of the entry of the order, unless the court orders the report to be filed at another time [- and].~~

*Comment: It is recommended to allow individual jurisdictions to determine a reasonable time for submission of the report after evaluation is ordered, based on the availability of resources in the jurisdiction.*

(a) If ~~the defendant fails to appear for~~ a competency evaluation is cancelled, or the court and/or defense counsel is unable to locate the defendant or an address for the defendant, the evaluator or entity scheduling the evaluations shall notify the court, giving a reason for the cancellation, if known, and the court shall make a record of the reason, if known, for the failure to appear for the cancellation; and

*Comment: It is recommended not to use the 'failure to appear' language as reasons for cancellation of an evaluation may include many different circumstances that may be beyond the control of the defendant.*

(b) The court may issue a new or amended order for competency evaluation restarting the ~~thirty (30) day~~ time period to file a written report upon notification by the evaluator for the reason for failure to appear for cancellation of the scheduled competency evaluation or cancellation of a bench warrant for the defendant's arrest.

*Comment: It is recommended to remove the thirty-day language to be consistent with the time period may have been originally ordered. It is also recommended to replace 'failure to appear' language with cancellation of a scheduled evaluation to include other circumstances for a cancellation beyond failure to appear.*

### 5.602.2. Proceedings after a finding of incompetency.

C. Cases transferred to the district court and restoration to competency. If a defendant is restored to competency in a case that was transferred to the district court under Rules 6-507.1, 7-507.1, or 8-507.1 NMRA, the district court shall remand the case to the originating court within two (2) days of the finding of competency.

*Comment: It is recommended to include the metropolitan rule as cases are also transferred to the district court following a finding of incompetency under 7-507.1(C)(5) NMRA.*

**F. Finding of dangerousness**

(4)(a) If the court finds the defendant ~~[competent]~~ is restored to competency, the court shall set the matter for trial or, in a case transferred to the district court under Rules 6-507.1, 7-507.1 or 8-507.1, remand the case within two (2) days to the originating court. The court may order continued care or treatment until the conclusion of the criminal proceedings if the defendant is in need of continued care or treatment and the Department agrees to continue to provide it.

*Comment: It is recommended to include the metropolitan rule as cases are also transferred to the district court following a finding of incompetency under 7-507.1(C)(5) NMRA.*

**H. Criminal commitment; hearing.** If the court determines that there is not a substantial probability that a defendant charged with an offense set forth in ~~[Subparagraph (G)(1) of this rule is not likely to attain]~~ NMSA 1978, Sections 32A31-9-1.4(A) (or 32A31-9-1.5(A) will be restored to competency within nine (9) months of the original finding of incompetency, the court shall hold a commitment hearing to determine whether there is clear and convincing evidence [that] of the [defendant] defendant's guilt if the defendant is charged with one of the enumerated charges outlined in Section 31-9-1.5(A) [committed the criminal act charged]. The court shall decide the issue without a jury, and may admit hearsay or affidavit evidence on secondary matters as permitted by law.

*Comment: It is recommended to correct the statute citation to conform to the competency statute.*

**9-210. Warrant for arrest.**

**9-212. Bench Warrant.**

*Comment: It is recommended to include extradition language in 9-210 and to retain the extradition language in 9-212, as it needs to be clear, whether extradition is sought and how the extradition is being authorized. The topic of extradition—and ensuring only defendants that the state intends to prosecute be extradited—has come up in the Second as a concern from the Bernalillo County Sherriff's Office on numerous occasions.*

*Extradition information:*

*The State will extradite the defendant:*

*(check and complete)*

*[ ] from any contiguous state*

*[ ] from anywhere in the continental United States*

[ ] from any other State

[ ] from anywhere

Prosecuting attorney: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Originating officer \_\_\_\_\_

Originating agency \_\_\_\_\_

**Rule 11-515 U Visa, T Visa, VAWA Self-Petition, and Cancellation of Removal Application Privilege.**

*Comment: It is recommended to make the rule more expansive and explicit consistent with Ramirez v. Marsh, 2025-NMSC-050, to clarify and explain that the fact of an application for U/T Visa and VAWA self-petition is not privileged and to clarify the acceptable parameters for cross examination related to the information obtained regarding U/T Visa and VAWA self-petition, if any.*

**Rules 5-111, 5-117, 5-506, 22-201, 22-206, 22-301, 22-302 and 22-303 and withdrawal of Rule 1-092.**

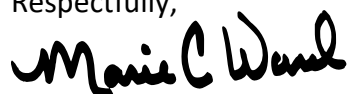
*Comment: The Second Judicial District Court supports the recommendations/comments submitted by the Judicial Technology Council concerning proposed amendments pursuant to its letter of March 5, 2026 and recommends consistency as applied to Children and Criminal Rules of Procedure.*

**Rule 10-312, Filing of petition; amendment of petition; appointment of guardian ad litem or attorney.**

*Comment: The Second Judicial District supports the proposed changes to Rule 10-312.*

The Second Judicial District Court greatly appreciates the work of the Supreme Court and the Committees in drafting the proposed rule amendments. The Second Judicial District Court is grateful for the opportunity to provide public comment. Thank you for your consideration.

Respectfully,



Marie C. Ward

Chief Judge

Second Judicial District Court