

1 **10-162. Peremptory challenge to a children’s court judge; recusal; procedure for**
2 **exercising; disability.**

3 A. **Limit on excusals or challenges.** No party shall excuse more than one judge. A
4 party may not excuse a judge after the party has requested that judge to perform any discretionary
5 act. Action by the court in connection with the issuance of an ex parte custody order, a detention
6 hearing, or the appointment of counsel shall not preclude the disqualification of a judge.

7 B. **Procedure for excusing a children’s court judge on first assignment.** A party
8 may exercise the statutory right to excuse the judge before whom the proceeding is pending by
9 filing with the clerk of the children’s court a peremptory election. The peremptory election to
10 excuse, other than one filed by the Children, Youth and Families Department (the Department) in
11 an abuse or neglect case, must be signed by the party or an attorney representing a party within ten
12 (10) days after the latter of[:]

- 13 (1) the first appearance of the party;
14 (2) service of the petition on the party; or
15 (3) mailing by the clerk of notice of assignment of the case to a judge. The
16 Department in an abuse or neglect case shall file any peremptory election to excuse within two (2)
17 days of the filing of the petition.

18 C. **Notice of reassignment; service of excusal.** After the filing of the petition, if the
19 case is reassigned to a different judge, the clerk shall give notice of reassignment to all parties.
20 Any party who is not precluded from electing to excuse a judge shall serve notice of [~~such~~] that
21 election on all parties within ten (10) days of mailing by the clerk of the notice of reassignment.

22 D. **Misuse of peremptory excusal procedure.** Peremptory excusals [~~without cause~~
23 ~~are intended to allow litigants an expeditious method of avoiding assignment of a judge whom the~~

1 ~~party has a good faith basis for believing will be unfair to one side or the other, and they]~~ are not
2 to be exercised to hinder, delay, or obstruct the administration of justice. If it appears that an
3 attorney or group of attorneys may be using peremptory excusals for improper purposes or with
4 such frequency as to impede the administration of justice, the Chief Judge of the district shall send
5 a written notice to the Chief Justice of the Supreme Court and shall send a copy of the written
6 notice to the attorney or group of attorneys believed to be improperly using peremptory excusals.
7 The Chief Justice may take appropriate action to address any misuse, including issuance of an
8 order providing that the attorney or attorneys or any party they represent may not file peremptory
9 excusals for a specified period of time or until further order of the Chief Justice.

10 E. **Recusal.** No children's court judge shall sit in any action in which the judge's
11 impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico
12 or the Code of Judicial Conduct, and the judge shall file a recusal in any such action. Upon receipt
13 of notification of recusal from a children's court judge, the clerk of the court shall give written
14 notice to each party.

15 F. **Disability.** If by reason of death, sickness, or other disability the judge before
16 whom a jury trial has commenced is unable to proceed with the jury trial, any other judge regularly
17 sitting in or assigned to the court, upon certifying familiarity with the record of the jury trial, may
18 proceed with and finish the jury trial or, if appropriate, may grant a mistrial. In a nonjury trial,
19 upon motion of a party, a mistrial shall be granted upon disability of the trial judge.

20 [As amended, effective August 1, 1989; July 1, 1995; Rule 10-112 NMRA, recompiled and
21 amended as Rule 10-162 NMRA by Supreme Court Order No. 08-8300-042, effective January 15,
22 2009; as amended by Supreme Court Order No. 11-8300-030, effective September 9, 2011; as
23 amended by Supreme Court Order No. 15-8300-019, effective for all cases pending or filed on or

1 after December 31, 2015; as amended by Supreme Court Order No. 20-8300-020, effective for all
2 cases pending or filed on or after December 31, 2020.]

3 **Committee commentary.** — Rule 10-162 NMRA is not meant to restrict disqualifications
4 [~~pursuant to~~] under Art. VI, Sec. 18, of the New Mexico Constitution, nor to restrict
5 disqualifications [~~pursuant to~~] under NMSA 1978, Section 32A-2-22(F)[~~NMSA 1978~~].
6 Section 32A-2-22(F)[~~NMSA 1978~~] allows disqualification upon objection by the child in certain
7 situations involving consent decrees.

8 [As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended
9 for stylistic compliance by Supreme Court Order No. 20-8300-020, effective for all cases pending
10 or filed on or after December 31, 2020.]