

1 **10-314. Explanation of respondent's rights at first appearance; ICWA advisement; appointed**
2 **counsel.**

3 A. **Explanation of rights at first appearance.** At the first appearance of the respondent
4 ~~[on an abuse or neglect petition or a termination of parental rights motion, if the respondent is not~~
5 ~~represented by an attorney], the court shall inform the respondent shall be informed by the court of~~
6 the following:

7 (1) the allegations of the abuse or neglect petition or the termination of parental
8 rights motion;

9 (2) the right to an adjudicatory hearing on the allegations in the petition or the
10 right to a trial on the allegations in the motion;

11 (3) the right to an attorney and that if the respondent cannot afford an attorney,
12 one will be appointed to represent the respondent free of charge; ~~[and]~~

13 (4) the possible consequences if the allegations of the petition or the motion are
14 found to be true; and

15 (5) the right to have the proceedings interpreted into a language the respondent
16 understands.

17 B. **ICWA advisement.** If the child is an Indian child or there is reason to know
18 that the child is an Indian child as defined by the Indian Child Welfare Act, the court shall further
19 inform the respondent of the following:

20 (1) the parent, Indian custodian, or tribe may request that the case be

1 transferred to tribal court;

2 (2) either parent may object to the request to transfer;

3 (3) the department shall place the Indian child in accordance with the
4 placement preferences set forth in ICWA, unless good cause is shown to depart from those
5 preferences;

6 (4) the department shall make active efforts to provide remedial services and
7 rehabilitative programs designed to prevent the breakup of the Indian family; and

8 (5) if a motion for termination of parental rights is filed, the department shall
9 prove the allegations beyond a reasonable doubt.

10 C. **Appointed counsel.** In any proceeding or case that may result in the termination of
11 parental rights, an attorney may not be appointed to represent more than one respondent.

12 [Approved, effective November 1, 1978, Rule 55 NMSA 1978; Rule 10-304 SCRA 1986; as
13 amended, effective August 1, 1999; Rule 10-304 NMRA, recompiled and amended as Rule 10-314
14 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by
15 Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which
16 respondent has not made a first appearance, on or after December 31, 2019.]

17 **Committee commentary.** — Historically, noncriminal proceedings against parents based
18 on their treatment of their children were equitable in nature and were based on the doctrine of *parens*
19 *patriae*. See *In re Santillanes*, 1943-NMSC-011, 47 N.M. 140, 138 P.2d 503 [~~1943~~]. Modern
20 abuse and neglect and termination of parental rights proceedings are typically statutory
21 proceedings. Absent statutory authorization for a right to a jury trial, it has been held that the parents
22 have no such right. *Matter of T.J.*, 1997-NMCA-021, 123 N.M. 99, 934 P.2d 293 (mother not

1 entitled to jury trial under New Mexico constitution or by statute).

2 A new Paragraph B was added to encourage full compliance with the Indian Child
3 Welfare Act, 25 U.S.C. §§ 1901 to 1963, and its implementing regulations, 25 C.F.R. Part 23
4 (effective December 12, 2016). Paragraph B provides the courts with a uniform advisement to
5 alert the parties to the unique protections provided to Indian children, their families, and their
6 tribe(s) in cases subject to the Act, and to highlight some of the Act's procedural requirements.
7 Because of the extensive protections included in the Act, it would be unwieldy to enumerate every
8 provision in this advisement. Practitioners and judges are urged to familiarize themselves with
9 all of the Act's requirements.

10 [As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended
11 by Supreme Court Order No. 19-8300-020, effective for all cases filed, or pending in which
12 respondent has not made a first appearance, on or after December 31, 2019.]