

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS AND THE CIVIL FORMS
PROPOSAL 2022-007**

March 7, 2022

The Domestic Relations Rules Committee has recommended new Rules 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, and 1-156 NMRA, new Forms 4A-514, 4A-415, 4A-516, and 4A-517 NMRA and 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, and 4A-513 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 web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Sally A. Paez, Deputy Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2022, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]

A. Scope. Rules 1-150 to 1-156 NMRA apply to all kinship guardianship petitions. A petition about a child with at least one living parent shall be governed by the Domestic Relations Code. Kinship guardianship matters involving the Children, Youth and Families Department as a party may be assigned to the family court division or the children's court division at the discretion of the chief judge of the district, or under local rule. A local rule shall be created to address reassignment of kinship guardianship cases, when necessary.

B. Forms. Self-represented litigants must use Forms 4A-501 through 4A-513 NMRA in all cases under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978. Attorneys shall file pleadings that are consistent with both court rules and forms.

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

[NEW MATERIAL]

Rule 1-151. Petition; parties; intervention; joinder and sealing.

A. Who may file. A petition for the appointment of a guardian shall only be filed by a person meeting the definition of caregiver in Section 40-10B-5(A) NMSA 1978.

B. Petition; content. A petition seeking the appointment of a guardian shall be verified by the petitioner and shall

- (1) allege facts consistent with Section 40-10B-5(B) NMSA 1978; and
- (2) include a copy of a guardianship assistance agreement created between the department and the kin caregiver, if one exists, which shall be filed under seal in accordance with the requirements of Rule 1-079 NMRA.

C. Parties; department as a party. The parties to a kinship guardianship petition shall be identified as set forth in Rule 1-001 NMRA.

(1) When the Children, Youth and Families Department ("the department") is a party, the petitioners shall serve the department with a copy of the petition under Rule 1-004 NMRA. The department shall designate and provide contact information for the department's agent who will accept service of kinship guardianship petitions.

(2) When the department has legal custody of a child by court order, the department may file to intervene.

(3) When the department has legal custody of a child but not through a voluntary placement agreement or a guardianship assistance agreement with petitioner, the department must file an answer, objection, or consent to the petition by the same method and rules that apply to any other named respondents.

(4) When the department has legal custody of the child by written voluntary placement agreement with the parent and has a guardianship assistance agreement with the petitioner, the court shall join the department as a party.

(a) When the department is joined as a party, it shall file the following under seal:

(i) a response to the petition for kinship guardianship, including the department's specific actions related to a written voluntary placement agreement with an Indian child's parents and how they meet the requirements of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.;

(ii) the written voluntary placement agreement for the child;

(iii) notice when a written voluntary placement agreement or a guardianship assistance agreement has been revoked by any party; and

(iv) notice that a petition alleging abuse or neglect has been filed against the parents or caregivers about the same child, including the case number. The department shall disclose in the petition alleging abuse or neglect that there is a pending kinship guardianship case, including the case number.

(b) When the department is a party, the court may, on motion of a party or the court's own motion, seal hearings, documents, exhibits, records, and pleadings related to the confidential information about the department's involvement with the child, parents, and caregiver, under Rule 1-079 NMRA. No party shall disclose any documents, exhibits, records, and pleadings that are sealed without a specific order from the court.

(c) When the department is joined under this subparagraph and the petitioners are self-represented and while the guardianship assistance agreement between the department and these petitioners remains unrevoked, the department shall be responsible for

(i) serving the kinship guardianship petition on a child's parents or guardians consistent with Rule 1-004 NMRA, including bearing any cost of service;

(ii) timely requesting all hearing settings;

(iii) creating and providing notice of hearings to all parties and the child's tribe;

(iv) issuing subpoenas for witnesses for a kinship guardianship hearing;

(v) if parents are consenting, preparing the court-approved forms for parental consent, including making a notary public available to the parents;

(vi) preparing the department's consent to the appointment of the petitioner as guardian using the court-approved form, Form 4A-514 NMRA; and

(vii) creating orders as directed by the judge.

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

Committee commentary — The terms “guardianship assistance agreement” and “voluntary placement agreement,” as used in this rule and the other rules in this section, are defined under NMSA 1978, Section 40-10B-3.

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

[NEW MATERIAL]

Rule 1-152. Mandatory and discretionary appointment of guardian ad litem; powers and duties of the guardian ad litem; payment.

A. **Mandatory appointment.** The court shall appoint a guardian ad litem when the following are met:

(1) a parent of the child is participating in the proceedings and objects to the petition to appoint a kinship guardian; or

(2) a parent of the child is petitioning for revocation of an established guardianship created under the Kinship Guardianship Act and the guardian objects to the revocation.

B. **Discretionary appointment.** The court may appoint a guardian ad litem for the child on the motion of a party or solely in the court's discretion.

C. **Powers and duties.** The order of appointment shall be substantially in the form adopted by the Supreme Court. See Form 4A-515 NMRA. A guardian ad litem appointed by the court in these proceedings shall

(1) in connection with a petition to establish a kinship guardianship

(a) make a diligent investigation of the circumstances surrounding the petition, including visiting the child in the home, interviewing the person proposed as guardian, and interviewing the parents of the child, if available;

(b) report to the court about the best interests of the child and the child's position on the requested relief; and

(c) recommend an appropriate transition plan if the child is residing with the petitioner and the petition for kinship guardianship is not granted.

(2) in connection with a petition or motion for revocation of a guardianship

(a) report to the court about the best interests of the child and the child's position on the requested relief; and

(b) recommend an appropriate transition plan if the guardianship is revoked.

D. **Payment.** The court may order all or some of the parties to pay a reasonable fee for a guardian ad litem. If all of the parties are indigent, the court may award a reasonable fee to the guardian ad litem to be paid out of funds of the court.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — *See* Administrative Office of the Courts Court-Appointed Attorneys Payments Guidelines.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

Rule 1-153. Advisement of rights.

At the first appearance of the respondent, the court shall inform the respondent of the following:

A. the right to have the proceedings interpreted into a language the respondent understands;

B. the parties to the case, including whether the Children, Youth and Families Department is a party;

C. allegations of the kinship guardianship petition;

D. the right to a trial on the allegations; and

E. the consequences if the allegations of the petition are found to be true, including the possibility of child support if the kinship guardianship is granted.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

Rule 1-154. Kinship guardianship hearing; elements of proof; judgment.

A. **Applicability of rules of evidence.** The rules of evidence shall apply to the kinship guardianship hearing.

B. **Elements of proof.** The petitioner must prove the following allegations by clear and convincing evidence:

(1) jurisdiction and venue are appropriate;

(2) service on the parents of the child has been completed;

(3) the parents had notice of the kinship guardianship hearing;

(4) the appointment of the proposed guardian is in the best interest of the child;

(5) for a child who has reached the age of fourteen (14), that

- (a) if the proposed guardian is the person nominated by the child, it would be in the child's best interest to appoint that nominee; and
- (b) the child has not filed a written objection to the proposed guardian;
- (6) the petitioner seeking appointment as the guardian is in fact qualified because the petitioner meets the requirements of Section 40-10B-5(A) NMSA 1978;
- (7) no guardian has been appointed for the child under a provision of the Uniform Probate Code; and
- (8) for each parent of the child, at least one of the following:
 - (a) the parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn; or
 - (b) the parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or
 - (c) the child has resided with the petitioner without the parent for a period of ninety (90) days or more immediately preceding the date the petition is filed, and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child; or
 - (d) there are extraordinary circumstances.

C. **Elements not proven.** If the court finds that the elements of proof set forth in Paragraph B have not been proven by clear and convincing evidence, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the child.

D. **Support and visitation.** As part of a judgment entered under the Kinship Guardianship Act, the court may

- (1) order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay; or
- (2) order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interest of the child.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — At least one of the elements must be met for each parent. In many cases, that element will be different for each parent; there is no requirement that the parents meet the same element. *See Freedom C. v. Brian D.*, 2012-NMSC-017, 280 P.3d 909, rev'g 2011-NMCA-040, 149 N.M. 588, 252 P.3d 812.

The court shall consider the potential impact of financial payments under this subsection on the relationship of the parent and child and on the prospects of family reunification. The court may use the child support guidelines set forth in NMSA 1978, Section 40-4-11.1 (2021) to calculate a reasonable payment. *See NMSA 1978, § 40-10B-8(D)* (2020).

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

Rule 1-155. Appointment of guardian.

A. **Letters of guardianship.** When the court enters an order appointing a guardian, it shall issue letters of guardianship for the purpose of, without disclosing unnecessary information,

clearly stating that the kinship guardian has all the authority of a parent, except the right to consent to adoption and any other rights the court orders be retained by a parent, which, if any rights are retained, shall be clearly stated in the letter of guardianship.

B. **Caption; department a party.** If the Children, Youth and Families Department ("the department") is a party to the case, all orders that are likely to be disclosed to a non-party, including the letters of guardianship, shall use the following caption only: "In the Matter of [initials of child]," and shall include the case number.

C. **Caption; department not a party.** If the department is not a party to the case, the case caption shall be "In the Matter of [initials of child]," and shall name the petitioner and respondents.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary — A letter of guardianship allows a kinship guardian to provide a short and easily-understood notice to all third-parties (be it schools, doctors, or the Social Security Administration) that a child has a kinship guardian and the guardian is the legal custodian of that child. Many orders appointing kinship guardians include sensitive information about parents and have information that is not necessary for a third party to know (such as the amount of child support or whether the parents must test negative for drugs before visiting).

The form letter of guardianship, Form 4A-516 NMRA, excludes private information about the parties and the child but provides information about what authority the kinship guardian has regarding the child.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

Rule 1-156. Successor guardian.

If a guardian appointed under the Kinship Guardianship Act dies or is incapacitated, a new petition for the appointment of a guardian may be filed by the new caregiver. The court is not bound by any agreements made between the Children, Youth and Families Department ("the department") and a kin caregiver addressing a successor guardian in a guardianship assistance agreement, but under Section 40-10B-19(B) NMSA 1978, the department may be required to pay the costs associated with a qualified successor guardian in obtaining a subsidized guardianship of the child in an amount limited by the Kinship Guardianship Act.

[Adopted by Supreme Court Order No. _____, effective _____.]

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).

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 THE 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~~ 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 the named Petitioner(s) as the guardian(s)?
_____ Yes⁵ _____ No

f. Is the child a Native American child?⁶ _____ Yes _____ No

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

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

If yes, who did you contact and how did you make contact?

Tribal contact information (address and phone number):

2. Child's Name _____

a. Address _____

b. Place and year of birth

City _____

State _____

Month and [Year] 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 the named Petitioner(s) as the guardian(s)?
_____ Yes⁵ _____ No

f. Is the child a Native American child?⁶ _____ Yes _____ No
If yes, what tribe is the child enrolled with or eligible to be enrolled with?

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

If yes, who did you contact and how did you make contact?

Tribal contact information (address and phone number):

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

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):

_____.

d. Upon 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. Upon 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.

[] The 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.

[] The 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 Children, Youth, and Families Department (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

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

3. [~~Is there a~~] Has CYFD filed a court case [~~filed~~] against the parents concerning this child?
Yes _____ No _____. [~~(If the children are in the custody of CYFD there is a CYFD court case filed)~~]

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 pursuant to a provision of the Uniform Probate Code, NMSA 1978, Section 45-1-101.

9. It is in the best interests of the child(ren) that the 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, _____, the 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, _____, the 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 4A-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 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). 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).

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 herein, 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.

[44]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 as 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. _____, effective _____.]

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).

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 Paragraph F of Rule 1-004 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)*: _____;

☐ Searched 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 upon 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, _____, the 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. _____, effective _____.]

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).

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 said cause on or before thirty (30) days after the last date of publication [_____*(date)*],⁶ 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~~[name]~~ and year of birth for each minor child that is named in the petition.

~~[6. Enter the date that is thirty (30) days from the first date the notice will be published in the newspaper.]~~

[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. _____, effective _____.]

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).

ORDER FOR SERVICE OF PROCESS BY PUBLICATION IN A NEWSPAPER

Petitioner(s) filed a motion requesting that the Court approve service of process upon _____ (*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 once a week for three consecutive weeks in the (*name of newspaper*) _____

☐ and once a week for 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. _____, effective _____.]

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), and concerning
_____, Respondent(s).

**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 have received a copy of the Petition To Appoint Kinship Guardian(s) filed by _____ (*name(s) of Petitioner(s)*), and~~] 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 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 _____ (*children*) 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).

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.]~~ 7. I understand that the Court may require me to pay child support.

~~[8-]~~ 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.

[9.] 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 _____, the 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 upon 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 upon 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. _____, effective _____.]

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), and concerning
_____, Respondent(s).

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~~ 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. _____, effective _____.]

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).

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	<u>Birth Year</u>	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. _____, effective _____.]

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).

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 upon 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	<u>Birth Year</u>	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Based upon 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	<u>Birth Year</u>	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.

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. _____, effective _____.]

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).

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	<u>Birth Year</u>	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Petitioner(s) incorporate 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, _____, the 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, _____, the 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 ~~[faxed]~~ a copy of this motion to _____ (the other party or the other party's attorney) using the following ~~[fax number]~~ email address: _____.

The transmission was reported as complete and without error. The time and date of the transmission 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. _____, effective _____.]

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).

**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 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.

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 [is hereby]
appointed [and shall serve as the guardian ad litem]. 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 Court 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.

[2-] 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. _____, effective _____.]

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).

**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	<u>Birth Year</u>	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

☐ 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 ~~[and is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren).]~~ 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

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

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 to 1963,

☐ does not apply to this matter or

☐ does apply to this matter.

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:

[] Pursuant to the Kinship Guardianship Act, NMSA 1978 §40-10B-13(B), 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 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.

[~~7.~~] 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. _____, effective _____.]

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).

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	<u>Birth Year</u>	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:

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 ~~[faxed]~~ a copy of this motion to _____ (*the other party or the other party's attorney*) using the following email address ~~[fax number]~~: _____.

The transmission was reported as complete and without error. The time and date of the email transmission 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. _____, effective _____.]

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).

ORDER REVOKING KINSHIP GUARDIANSHIP

THIS MATTER having come [~~came~~] 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 follows:

Child's name	<u>Birth Year</u>	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. _____, effective _____.]

[NEW MATERIAL]

Form 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) (*initials only*), and concerning

_____, Respondent(s).

**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 a unrevoked Voluntary Placement Agreement (VPA) with the following parents:

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)¹

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

☐ The appointment of Petitioner(s) as PERMANENT kinship guardian(s).²

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

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 upon proof that the circumstances justifying the appointment have changed and that revocation is in the child(ren)'s best interests.

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 upon whether you consent to the appointment of a temporary kinship guardian or a permanent kinship guardian or both.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

Form 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).

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 (hereinafter "GAL") pursuant to 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 at six (6) years old or older, interview the
[child] [children] face-to-face

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

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

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

(vii) recommend an appropriate transition plan if the [child] [children] is/are residing with the 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 sections 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, such 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 \$ _____ and Respondent 1 shall advance \$ _____. 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 _____% and 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 a copy of the endorsed 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. _____, effective _____.]

[NEW MATERIAL]

4A-516. Letters of guardianship.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

In the Matter of _____, (a) Child(ren),
and Concerning

_____, Petitioner(s)

_____, Respondent(s).

LETTERS OF GUARDIANSHIP

On _____, 20____ this Court entered an order appointing
_____ (Petitioner(s)) as the Guardian(s) of _____
_____ (minor child(ren)) under Section 40-10B-1 to -21
NMSA 1978 (2001, as amended through 2020) 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 the 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. _____, effective _____.]

[NEW MATERIAL]

4A-517. Kinship guardianship information sheet.

KINSHIP GUARDIANSHIP INFORMATION SHEET.

NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET

Type or print responses. Use only for Kinship Guardianship Cases.

1. **Petitioner's attorney information.** *(Complete only if Petitioner has an attorney.)*

Petitioner's name: _____

Attorney's name: _____

Attorney's address: _____

City: _____

State: _____

Zip code: _____

Telephone: _____

Email address: _____

2. **Information regarding petitioner(s) and respondent(s).** There may be multiple petitioners and respondents, fill out the information for each petitioner and respondent. (*Do not use an attorney's mailing address. Use a separate sheet if necessary.*)

Petitioner 1

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

Petitioner 2 (if applicable)

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

Respondent 1

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

Respondent 2

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

Respondent 3 (if applicable) Respondent 4 (if applicable)

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

Name: _____
(*Last name, first, middle*)
Other names (*e.g. maiden name*): _____

Address: _____
City: _____
State: _____
Zip code: _____
Email Address: _____
Date of birth: _____
Social Security number: _____

3. **Minor children.** (Provide the date of birth and social security number for *each* minor child. Use a separate sheet if necessary.)

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

[Adopted by Supreme Court Order No. _____, effective _____.]



**New Mexico
Courts**

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Comments to provisionally approved amended rules

1 message

Rachel Kolman <taodrck@nmcourts.gov>

Wed, Apr 6, 2022 at 1:53 PM

Reply-To: taodrck@nmcourts.gov

To: nmsupremecourtclerk <nmsupremecourtclerk-grp@nmcourts.gov>

Please see attached.

Thank you,
Rachel Kolman
Domestic Violence / Domestic Relations Hearing Officer
Eighth Judicial District Court
[105 Albright, Suite N](#)
[Taos, NM 87571](#)
575.758.3173 phone
taodrck@nmcourts.gov



Response to proposed revisions to Rules.docx

20K

Response to proposed revisions to Rules.

April 6, 2022

To the Rules Committee:

I am currently the Domestic Relations Hearing Officer / Domestic Violence Special Commissioner in the Eighth Judicial District, Taos County. I have been an attorney in NM for 29 years specializing in children and family issues. My comments today come from my practice during the past year as a DRHO/DVSC.

In response to the proposed revisions the rules of appellate procedure, proposal 2022-006:

I request that the rules committee clarify whether district judges review and determine approval of DVSCs' recommended orders before or after the objection period. The issue balances providing the parties an opportunity to formally object to recommendations of a DVSC before the recommendations become orders versus the need for immediately enforceable orders in domestic abuse/family violence cases.

In the Eighth Judicial, we have three District Judges and two DRHO/DVSC hearing officers. Practice has been in the Eighth, as I believe it is statewide, that DVSCs draft both TROs and OOPs and submit to the district judges for immediate review, approval, filing and serving on the respondent. The practice has been that after the hearing on a petition for order of protection or other motion filed under the FVPA, the DVSC immediately drafts the order from the hearing and submits to the judge for review. These orders include stipulated OOPs, OOPs as recommended by the DVSC after an evidentiary hearing, default OOPs, orders on motions for extension, termination or modification and dismissals.

Both practice and the Supreme Court form OOP indicate that the court enters OOPs immediately with the objection period to follow entry of the order. However, Rule 1-053.1(F) as well as rule 1-053.1(G) as proposed indicates that Judges do not adopt a DVSC recommendation, after a hearing on a petition or motion filed under the Family Violence Protection Act, until after the objection period and resolution of any objections.

I believe that it is the intent of the Family Violence Protection Act for OOPs to be entered and served on Respondents immediately after a hearing with an objection period to follow. The unique nature of domestic abuse/ family violence warrants that orders take effect immediately.

If the intent of the rules committee is for the objection period and resolution of all objections to occur before adoption of OOPs as recommended by DVSCs, then a lag time is created between the hearing and the entry of the OOP of at least 22 days: 11 days for filing objections 11 days for filing response to objections and then if warranted, time for the court to schedule a hearing on the objections. As we struggled with this issue as a district last year, the following questions arose: During the objection period, is the OOP or other order from a hearing under the FVPA in effect or in limbo? If the TRO remains in effect until the court enters the OOP, what happens if a Respondent violates during the objection period? Is a violation during this period an immediate arrestable offense? What happens when the DVSC makes a credible threat finding at the hearing? The intent of the FVPA as well as federal law is for Respondents to turn over firearms immediately, and for the court to have a hearing within 72 hours of a finding of credible threat to ensure that the Respondent has so turned over all firearms. If

the proposed Rule 1-053.1(G) provides for the objection period to occur before the court enters the OOP, does this 72-hour period occur after the objection period?

In addition, I suggest that a supreme court approved form be created for objections under this rule that outlines the requirements in Rule1-053.1(G).

In response to the proposed revision to the rules for the Kinship Guardianship Act 2022-07:

I present these comments as one of the drafters of the initial Kinship Guardianship Act, as an attorney who represented clients petitioning for kinship guardianship, as a CCA who worked for CYFD when the fostering connections procedures were added to the KGA, and now as a DRHO reviewing, hearing and making recommendations in kinship guardianship cases.

As background, the Kinship Guardianship Act was adopted into law over twenty years ago. At that time, the intent was to create a path for creation of a legal guardianship for relatives and other adults who were providing parental care to children in their custody without the help or presence of either parent. It was clear at the time of creation, the KGA was not creating a path for citizens to remove children from parents' custody or to litigate abuse and neglect cases. It was clear, twenty years ago, that only law enforcement or the courts had the authority to remove children from parents' custody and only the state, through CYFD, had the authority and jurisdiction to bring forward an abuse and neglect case requesting suspension or termination of parental rights. A few years ago when the voluntary placement in foster care to kinship guardianship path was created in New Mexico and added to the Kinship Guardianship Act, frankly it mixed apples and bananas into the same act. Although a Voluntary Placement Agreement is a specific agreement that CYFD uses, to the layperson who has a child "placed" by CYFD through a safety plan, the law can be confusing. Although the rules committee cannot revise the law, I would like to see a separate set of rules and forms for cases on the VPA to KGA pathway and cases where the child is not in CYFD custody.

Currently I often see as a DRHO, families filing under the KGA and arguing under the extraordinary circumstance provision that children, who have not lived with petitioners for at least 90 days, are unsafe with their parents. These families are asking the court to suspend parental rights, temporarily at first, and keep the children with the guardians. Often, the proposed guardians tell the court that CYFD was involved in "placing the children" with them under a safety plan or upon initial investigation. The proposed guardians often allege that CYFD after "placing the children" with them, instruct them to file for a kinship guardianship and then CYFD closes their investigation because the children are safe with family. This creates what was essentially a removal of a child from a parent and a case based on an argument that the child is not safe with a parent, in a KGA case where there are no attorneys for the parents, the guardians, or the children and there are no caseworkers to create and monitor case plans for parents. Often, the caregivers file these petitions within a few days of the children coming to live with the petitioners, requesting immediate ex parte attention from the court to stabilize a situation and keep the children from returning to a dangerous situation. I bring this to the attention of the rules committee to understand the current context of the cases to which we are applying these rules.

The definition of "parent" in the KGA is not consistent with the definition of "parent" in the children's code or the domestic relations code. It is unclear in the KGA whether notice is required for all biological parents or only for those parents who have a created protected liberty interest. For example, with fathers, does the act require notice to all alleged fathers who may be biological fathers or only for those men who have acknowledged paternity and established a protected liberty interest in the custody of the child? This question can be gender neutral with the same question about notice to second parents, for example second mothers.

Rule 1-154 (B)(5): There is a specific statute for youth who are 14 years and over to nominate a guardian. That section was created initially believing that youth often find safe places for themselves

and when they do so, the court shall appoint that guardian unless contrary to the youth's best interest. The legislature when creating this section had an understanding that youth who are refusing to live with a parent, if forced to return to parents home often will run away and be in unsafe situations. With that context, when there is a youth 14 or older, does section 40-10B-8 apply or just section 40-10B-11? These sections provide different elements of proof needed for appointment of a guardianship. If a 17 year old, leaves home and goes to grandparents and the grandparents file for kinship guardianship and the mother is at the grandparents' home demanding the return of the child, does the grandparent need to wait 90 days to have standing under the KGA or can the KGA be used to stabilize the situation for this youth? The act is not clear whether the 90-day requirement applies for youth over 14 who refuse to live with a parent. Does section 1-154 (B)(8) apply to youth over 14 who have recently left their parents home? Underlying question, does a court need to find that the parent is unable or unwilling to parent for youth 14 and over or can the court just find that the child is in need of stability and is likely to run if returned to the parent?

Rule 1-152 Appointment of GAL. There is no clarity of whether the role of an appointed attorney for a youth 14 and over is a youth attorney or a GAL. We should have youth attorneys for youth 14 and over. The KGA was created initially before youth attorneys were statutorily created in abuse and neglect cases.

Rule 1-152(A)(2) to be consistent with 40-10B-12 should reference "*Any person*" who petitions for revocation of a guardianship and that revocation is contested rather than just if a parent petitions for revocation.

Rule 1-152(D) Payment: How are GALs paid out of "the funds of the court?" Is this an AOC fund or a district court fund? Often guardians are indigent. Sometimes guardians have income but not enough to pay an attorney and certainly not enough to pay for an attorney for themselves as well as to pay a guardian ad litem. Can you set a percentage of federal poverty rate for eligibility for court subsidized GALs?

Rule 1-153 Advisement of Rights: this section needs a subsection on advisement of rights to parents when the child is an Indian child.

Rule 1-153 (E) Advisement of Rights: the advisement of the consequences if the allegations in the petition are found to be true should include an explanation of what it means to have parental rights suspended.

Rule 1-155 committee commentary. The commentary refers to protecting sensitive information about the parents. The commentary should also reference protecting sensitive information about children.

Rule 1-156 Successor Guardianship. This section is specific to the subsidy for VPA to KGA paths.

Section C of the proposed Petition form: information about child's parents should clarify "including anyone with a custodial right to the child, including previously appointed guardians."

Adding the VPA to KGA path cases to one Petition is confusing and lengthy. Can the committee create two form petitions, one for VPA to KGA cases and one for other cases?

Use note 11. The rules need to be clear that when CYFD has custody of a child, only CYFD can petition for KGA or does the KGA now allow foster parents to file for KGA and serve CYFD when CYFD has custody of a child.

When CYFD is working with a family in investigations or in-home services, and the investigation is at a place where CYFD is about to file a case I have seen a rush to the courthouse by family. In those situations, a family member will file a KGA case, the parent files a consent to the guardianship and requests emergency custody through an ex-parte temporary order. At the same time, law enforcement may have issued a 48- hour hold on the children granting emergency custody to CYFD. In these situations, there are two competing custody orders, the 48- hour hold and the ex parte kinship guardianship order. Then there is a mess. If the rules committee can do anything to help clarify who can file when there is a CYFD investigation in process, that would be helpful.

The parental consent form references understanding that the purpose of the guardianship is to create a legal relationship between the guardian and the child. The consent form should also reference an understanding by the parent that his/her parental rights to the child will be suspended if the court enters an order appointing a guardianship.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Comments on proposed Rule - Kinship Guardianship proposal 2022-007

1 message

Chief Judge Marie Ward <albdmcw@nmcourts.gov>

Wed, Apr 6, 2022 at 5:17 PM

Reply-To: albdmcw@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Attached are correspondence regarding the above referenced proposed Rules on behalf of the Second Judicial District Court.

--

Marie C. Ward
Chief Judge
Second Judicial District Court
[5100 2nd Street NW](#)
[Albuquerque, NM 87107](#)
(505)841-7392

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Letter to Ms. Garcia KG Rules Proposal 2022-007.signed.pdf

395K



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

MARIE C. WARD
CHIEF JUDGE

505-841-7392
POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87103

April 6, 2022

Elizabeth Garcia, Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: Comments on Proposed Rule Changes regarding Kinship Guardianship Act
New Rules 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, and 1-156 NMRA; 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, and 4A-513 NMRA; and new Forms 4A-514, 4A-415,
4A-516, and 4A-517 NMRA (Proposal 2022-007)

Dear Ms. Garcia:

Thank you for the opportunity to provide commentary on the proposed changes to the above-referenced rules. I am the Chief Judge of the Second Judicial District Court ("SJDC") and the Presiding Judge of the Children's Court Division. The SJDC Children's Court Division consists of four (4) District Court Judges and three (3) hearing officers/special masters. The SJDC Family Court Division consists of four (4) District Court Judges and eight (8) hearing officers/special commissioners.

On behalf of the Second Judicial District Court ("the SJDC"), please accept the Domestic Relations Rules Committee's ("the committee") recommendation to modify rules for the Kinship Guardianship Act (NMSA 1978 §§ 40-10B-1 to 21 (2001, as amended through 2020))¹ and modify the following kinship guardianship forms: 4A-501 (Petition to Appoint Kinship Guardians), 4A-502 (Motion for Service by Publication), 4A-503 (Notice of Pendency of Action), 4A-504 (Order for Service of Process by Publication in a Newspaper), 4A-505 (Parental Consent to Appointment of Kinship Guardian and Waiver of Service of Process), 4A-507 (Ex Parte Motion to Appoint Temporary Kinship Guardian), 4A-508 (Ex Parte Order Appointing Temporary Kinship Guardian), 4A-509 (Motion to Appoint Temporary Kinship Guardian), 4A-510 (Order Appointing Temporary Kinship Guardian), 4A-511 (Order Appointing Kinship

¹ The proposed rules are numbered Rules 1-150 through 1-156.

Guardian), 4A-512 (Motion to Revoke Kinship Guardian), and 4A-513 (Order Revoking Kinship Guardianship).

The committee also recommended four new forms to be approved for use, which the SJDC supports in full. The first is a Department Consent to Appointment of Kinship Guardian and Waiver of Service of Process (4A-514), the second is an Order Appointing Guardian ad Litem for kinship guardianship cases (4A-515), the third is a Letter of Guardianship (4A-516), and the fourth is a Domestic Relations Intake Sheet for kinship guardianship cases (4A-517).

1. Changes to the Kinship Guardianship Act

The Kinship Guardianship Act (hereinafter “KGA”) was substantially modified in 2020.² The primary change to the KGA was the addition of a subsidized guardianship for families where the parent(s) have signed a Voluntary Placement Agreement with Children, Youth and Families Department (hereafter “CYFD”). When a Voluntary Placement Agreement is signed, allowing CYFD to take legal custody and voluntarily place a child with guardians, that guardian may enter into a Guardianship Assistance Agreement with CYFD and thus receive subsidies from the State. The KGA now includes how and when a guardianship assistance agreement may be entered into, when it must be terminated, and how to terminate it.

Before the 2020 legislation, the KGA was used to provide children with a legal guardian when the child’s parents were unwilling or unable to care for the child. Often these cases had little or no CYFD involvement. Instead, the KGA was used by people like grandparents or aunts and uncles, to obtain legal custody of children that had been left with them by parents for an extended period of time. The KGA is still used primarily for this function, as the 2020 legislation did not substantially modify the portion of the KGA that allows for private use without CYFD involvement. Essentially, the modified law created two different tracks for a KGA case: the new CYFD track and the original private track.

The SDJC finds that the new rules and forms will provide guidance for the parties, whichever track they are on. The SJDC finds that new rules will reduce difficulty, and will help clarify and guide parties through this new and more complex version of the KGA.

2. Proposed KGA Rules

The proposed rules are intended to help parties filing for KGA. If a voluntary placement agreement has been signed, CYFD may have legal custody of the child. Therefore, CYFD, pursuant to these rules, must be served with a petition if there is a voluntary placement agreement in place. The rules also allow local district court rules to be promulgated to assign cases wherein CYFD has legal custody to the children’s court division or the judge that hears those types of cases, while keeping the family court judges in charge of the private kinship guardianship cases. The committee’s version of the rules recognize that children’s court judges have a familiarity and expertise in matters with CYFD as a party, which makes this proposed rule change more workable for all involved in these cases. This is an important distinction that will benefit the Court and the parties involved.

² See, 2020 New Mexico Laws Ch. 51 (S.B. 146).

The proposed rules also allow CYFD-track cases to be sealed as they are likely to involve protected information.

The proposed rules set out the factors that need to be proven at a hearing on the petition for kinship guardianship as well as the evidentiary standard. Again, giving parties the ability to navigate the KGA in a meaningful way. SDJC believes this new information provides more clear instructions for all parties and the Court.

Further, the role of the Guardian ad litem in a KGA is also clarified and the duties of a guardian ad litem in KGA are delineated. Currently, a guardian ad litem in a KGA follows the duties and requirements of Rule 1-053.3 NMRA (2017). However, Rule 1-053.3 is designed to help a guardian ad litem ascertain the best interests of a child in a custody case between parents. A guardian ad litem in a KGA case has to determine if a parent is willing and able to act as a parent; and whether there should be a transition plan if that parent is willing and able, but does not have custody. The guardian ad litem is also charged with investigating the allegations in the petition for kinship guardianship. Thus, it is important to clarify the role of a guardian ad litem in a KGA and put parties and guardians ad litem on notice as to what the guardian ad litem is charged with doing in his/her role.

The proposed rules also provide an advisement of rights for respondents in KGA cases. Currently, respondents may hear very different statements or no statement from the court as to what their rights are. Therefore, the rules set out that all judicial officers explain the same information to respondents at their first court appearance. While a kinship guardianship is not a termination of parental rights, it does suspend their parental rights. Thus, it is important to inform parents that they have a right to trial and what it may mean if the petition is granted.

In order to qualify for federal funds³, the KGA requires a successor guardian be named in the guardianship assistance agreement. The guardianship assistance agreement is between CYFD and the guardian and there is no court involvement in the formation or entry of that agreement. In this instance, the parents are not necessarily involved in the selection of the successor guardian. The proposed rules clarify that the court is not bound by the named successor guardian in a guardianship assistance agreement when it comes to the appointment of that person as a kinship guardian. This is outlined as the KGA generally requires parents to participate if a new kinship guardian is going to be appointed.

The rules also instruct the courts to issue letters of guardianship, which will be a new element to the process. SJDC agrees that these proposed rule changes are important, particularly in light of the changes to the statute.

3. Requested Modification to Current Forms

The existing forms have been modified to allow all parties to use them whether they are on the CYFD track or the private track. Thus, forms like 4A-501 (Petition to Appoint Kinship Guardians), ask if the parents have signed a voluntary placement agreement and if there is a

³ Social Security Act, 42 U.S.C. Sections 473(d)(1) and 473(d)(3)(C) (2018).

general assistance agreement. It also asks that the general assistance agreement be attached to the petition (guardians are not likely to have a copy of the voluntary placement agreement as that is provided to the parents by CYFD and not necessarily to the guardians). The petition has also been modified to require that the petitioner serve CYFD with the petition if CYFD has legal custody of the child. Many of these steps can and will be missed by parties if the forms are not entered and approved. Without the changes as proposed, the Court and parties are likely to miss important details and/or facts in order to properly address the safety and well-being of the children in this matters.

The ex parte order appointing temporary kinship guardian (Form 4A-508) and the order appointing temporary kinship guardian (Form 4A-510) were both amended to add a check box in the title for a notice of hearing and language allowing the court to set a hearing in that order. Many judges automatically set hearings on the petition for kinship guardianship. The ex parte order must be served upon the respondents and CYFD. This will provide the notice of hearing within the temporary orders in order to do a better job of notifying all parties about the hearing (it is also less paperwork of which to keep track).

The forms were also updated to provide more instructions to the parties filling out the form. For instance, the child's name is supposed to use initials only in the caption. That requirement is almost universally ignored, so the additional instruction to use initials next to the blank where the child's name is listed in the case caption on all of the forms is helpful. The current petition for kinship guardianship asks if there are extraordinary circumstances but there is no guidance as to what that might mean. There is now a use note to provide some direction. This too, gives parties more information as to what is necessary in order for the Court to enter the ex parte order.

The forms are also modified to allow a party to email a copy of a motion instead of faxing it. The committee agreed that referring to "email" versus "electronic mail" would be preferable given the ordinary use of the term "email".

4. Proposed New Forms

Letter of Guardianship Form

Letters of guardianship have never been issued in kinship guardianship cases. However, they would provide a short and easily-understood notice to all third-parties (be it schools, doctors, or the Social Security Administration) that a child has a kinship guardian and the guardian is the legal custodian of that child. Many orders appointing kinship guardians include sensitive information about parents and have information that is not necessary for a third party to know (such as the amount of child support or whether the parents must test negative for drugs before visiting).

The form letter of guardianship is designed to exclude private information while clearly communicating the authority the kinship guardian has regarding the child. This has also been a constant problem wherein a third party will require the guardian to get a specific order from the court clarifying, for instance, that they do indeed have authority to make educational decisions.

The letter is designed to provide the children and parties in these cases the necessary information, while also attempting to keep as much private as possible.

Order Appointing Guardian Ad Litem Form

The Guardian ad litem form is designed to allow a court to appoint a Guardian ad litem pursuant to the KGA and in accordance with the KGA rules submitted herein. The proposed rules explain the specific duties for the Guardian ad litem in a KGA case and this form restates those requirements. It also has language tailored to KGA cases about payment of the Guardian ad litem's fees as there are more than two possible parties who could be ordered to share the cost of the guardian ad litem and an increased likelihood that the parties cannot afford a guardian ad litem and therefore need to use a subsidized guardian ad litem or a pro bono attorney.⁴ Currently, the only form approved when appointing a guardian ad litem is that of a regular, domestic relations matter. This distinction will make it much clearer for the parties and the appointed guardian ad litem.

Department Consent to Appointment of Kinship Guardian Form

Due to the changes in the KGA, the committee's recommendation to have a form for a consent that can be signed by CYFD in CYFD-track cases should also be adopted. Since the voluntary placement agreement provides CYFD with legal custody, the proposed department consent to appointment of kinship guardian and waiver of service of process, ensures that CYFD is notified and involved in the KGA case.

Domestic Relations Intake Sheet for Kinship Guardianship Cases

Currently, all domestic relations cases, except kinship guardianship cases, have an information sheet. The information sheet allows the clerk to fill in information about the parties and the minor children. It also helps the clerk and the judge identify if there are other cases involving the same parties and/or the minor children. This avoids courts issuing conflicting orders about the same children and notifies the court if there are other related cases. This is especially important for kinship guardianship cases. I have had several cases wherein the petitioner claimed that the father was unknown. However, in some of those cases not only is there an adjudicated father for the child, but he has been paying child support and having visitation.

Conclusion

The SJDC requests that the proposed modified forms, rules, and new forms be adopted in full. The requested rules, new forms, and modification to forms are expansive but also necessary

⁴ The KGA requires the appointment of a guardian ad litem when a parent objects to the appointment of a kinship guardian or when a parent is seeking to revoke a kinship guardianship and the guardian objects. NMSA 1978 § 40-10B-9 (2001). The KGA also allows indigent parties to use court funds to pay for the guardian ad item, however, this requirement is an unfunded mandate. *Id.* Sometimes AOC funds are available for the guardian ad litem but often the court must use a pro bono attorney. There is at least one district that has a contract for guardians ad litem in KGA cases.

to help guide self-represented parties and everyone else involved in KGA cases. Even before the 2020 modification to the KGA, the kinship guardianship process could be confusing for all involved. The addition of the subsidized guardianships to the KGA added more complication. However, with the requested new rules and new/modified forms, the process should be much easier to understand, making it so all parties should be better informed as to what the KGA is and how to access justice using it.

Thank you for your time and consideration in this matter.

Respectfully,

A handwritten signature in black ink that reads "Marie C Ward". The signature is written in a cursive, flowing style.

Marie C. Ward, Chief Judge
Second Judicial District Court