

**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-3 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 Children, Youth and Families Department (“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 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, if applicable, 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. §§ 1901-1963;

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(iii) notice when a written voluntary placement agreement or a guardianship assistance agreement has been revoked by any party; and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

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**Supreme Court Approved**  
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(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, if applicable, 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 Supreme 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 December 31, 2022.]

**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 (2020).

[Adopted by Supreme Court Order No. 22-8300-020, effective for all cases pending or filed on or after December 31, 2022.]