

PROPOSED REVISIONS TO THE DOMESTIC RELATIONS RULES AND FORMS

The Domestic Relations Rules Committee has recommended proposed amendments to the Domestic Relations Rules and Forms and adoption of new Forms for the Supreme Court's consideration.

If you would like to comment on the proposed amendments and new material set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourtclerk@nmcourts.gov> or sending your written comments to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before April 6, 2016, 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.

1-120. Domestic relations [action] actions; scope; mandatory use of court-approved forms [in dissolution of marriage proceedings] by self-represented litigants.

A. **Scope.** Rules 1-120 to [~~1-127~~]1-128.13 NMRA provide additional rules for domestic relations actions.

B. **Mandatory use of court-approved forms by self-represented litigants.**

(1) **Dissolution of marriage forms.** Self-represented litigants must use Forms 4A-100 through 4A-315 NMRA in dissolution of marriage cases and in any case involving child custody or child support. Upon request, all district courts must provide self-represented litigants in dissolution of marriage proceedings with the Domestic Relations Forms approved by the New Mexico Supreme Court. No court shall distribute forms for use in dissolution of marriage proceedings other than those approved by the New Mexico Supreme Court. Courts must provide Domestic Relations Forms in dissolution of marriage proceedings as follows:

[~~(1)~~](a) Forms 4A-100 through 4A-105 NMRA must be used to file a dissolution of marriage case and to file a response;

[~~(2)~~](b) Forms 4A-200 through 4A-215 NMRA must be used to request temporary assistance from the court after the case has been filed and while it is pending;

[~~(3)~~](c) Forms 4A-300 through 4A-306 NMRA must be used to complete a dissolution of marriage by presenting proposed final orders for court approval; and

[~~(4)~~](d) Forms 4A-310 through 4A-315 NMRA must be used to request a dissolution of marriage by default as provided by Rule 1-055 NMRA and Form 4A-310.

(2) **Kinship guardianship 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 40-10B-15 NMSA 1978.

C. **Notarization.** The following forms must be notarized before a self-represented litigant may file them or submit them to the court for approval:

- (1) Form 4A-301 NMRA (Marital settlement agreement);
- (2) Form 4A-302 NMRA (Custody plan and order);
- (3) Form 4A-303 NMRA (Child support obligation and order);
- (4) Form 4A-314 NMRA (Default judgment and final decree of dissolution of marriage (without children));
- (5) Form 4A-315 NMRA (Default judgment and final decree of dissolution of marriage (with children)); [~~and~~]
- (6) Form 4A-505 NMRA (Parental consent to appointment of kinship guardian and waiver of service of process);
- (7) Form 4A-507 NMRA (Ex parte motion to appoint temporary kinship guardian); and
- ~~[(6)](8)~~ Form 4-968 NMRA (Application to modify, terminate, or extend the order of protection from domestic abuse).

D. Mandatory acceptance of filings in dissolution of marriage cases.

(1) District courts must accept the forms approved by the New Mexico Supreme Court in dissolution of marriage cases.

(2) The clerk of the court must accept a filing submitted by a party in a dissolution of marriage case. The clerk shall not make a determination of whether the filing complies with the Domestic Relations Rules and Forms.

[Approved, effective, November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 13-8500-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. —

General

This part of the Rules of Civil Procedure for the District Courts recognizes that domestic relations cases are frequently filed by pro se litigants and that supplemental statewide rules and forms are needed for the effective administration of justice.

These rules and the Domestic Relations Forms supersede local rules and forms currently required by many judicial districts. The primary goal of these rules and forms is to provide uniformity in the practice of law in this state.

The committee intends the dissolution of marriage forms to be used in contested and uncontested proceedings. To emphasize the order in which forms are filed in a typical contested proceeding, the committee has grouped the forms into three stages. The committee encourages judicial districts to guide self-represented litigants through the contested divorce process by distributing the forms in those stages. All forms may be made available as appropriate for uncontested cases or for cases that become uncontested during the proceedings.

Scope of rules

As used in this rule, “domestic relations actions” includes:

- (1) legal separations, Section 40-4-3 NMSA 1978;
- (2) dissolution of marriage, Section 40-4-5 NMSA 1978;
- (3) annulment, Section 40-1-9 NMSA 1978;
- (4) spousal support, Section 40-4-7 NMSA 1978;
- (5) child support, Sections 40-4-11 to 40-4-11.6 NMSA 1978;

(6) division or distribution of community or separate property or debts, Sections 40-2-1 to 40-2-9, 40-3-1 to 40-3-17 and 40-4-20 NMSA 1978;

(7) determination of paternity pursuant to the Uniform Parentage Act, Sections 40-11-1 to 40-11-23 NMSA 1978;

(8) actions brought pursuant to the Uniform Interstate Family Support Act, Sections 40-6A-101 to 40-6A-902 NMSA 1978;

(9) child custody actions pursuant to Sections 40-4-9 and 40-4-9.1 NMSA 1978 and actions brought pursuant to the Child Custody Jurisdiction Act, Sections 40-10-1 to 40-10-24 NMSA 1978 [repealed, now see Uniform Child-Custody Jurisdiction and Enforcement Act, 40-10A-101 to 40-10A-403 NMSA 1978.];

(10) actions brought pursuant to the Mandatory Medical Support Act, Sections 40-4C-1 to 40-4C-14 NMSA 1978;

(11) actions brought pursuant to the Support Enforcement Act, Sections 27-2-32, 37-1-29, 40-4-15 and 40-4A-1 to 40-4A-16 NMSA 1978; and

(12) proceedings brought pursuant to the Family Violence Protection Act, Sections 40-13-1 to 40-13-7 NMSA 1978.

As used in this rule “domestic relations actions” does not include:

(1) termination of parental rights actions brought in the children’s court;

(2) adoption of a child pursuant to Sections 32A-5-1 to 32A-5-45 NMSA 1978;

(3) adoption of an adult pursuant to the Adult Adoption Act, Sections 40-14-1 to 40-14-15 NMSA 1978;

(4) proceedings brought pursuant to the Grandparent Visitation Privileges Act, Sections 40-9-1 to 40-9-4 NMSA 1978 except mediation and attorney fee proceedings;

(5) actions arising out of enforcement of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978; or

(6) change of name proceedings brought pursuant to Sections 40-8-1 to 40-8-3 NMSA 1978.

[As amended by Supreme Court Order No. 13-8500-010, effective for all pleadings and papers filed on or after May 31, 2013, in cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]

[4-981]4A-501. Petition [for order appointing] to appoint kinship [guardian] guardian(s).

[Simplified petition, Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978][†]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____ No. _____

_____, Petitioner²

_____ and _____, Respondents³

IN THE MATTER OF THE KINSHIP GUARDIANSHIP
OF _____, born _____⁴

**PETITION FOR ORDER APPOINTING
KINSHIP GUARDIAN⁵**

~~1. INFORMATION ABOUT THE PETITIONERS (the persons filing this petition
requesting to be appointed to serve as a Kinship guardian.)~~

~~_____ A. The [petitioner is] [petitioners are] are the child's²:
_____ maternal [grandparents] [grandparent] (child's mother's parents);
_____ paternal [grandparents] [grandparent] (child's father's parents);
_____ aunt;
_____ uncle;
_____ brother;
_____ sister;
_____ a family member: _____ (describe the family
relationship);
_____ an adult with whom the child has a significant bond:
_____ (describe the relationship)~~

~~_____ B. The petitioner or petitioners reside at:
_____ (street address)
_____ (city, state, zip code)
_____ (telephone)
_____ (fax number, if any)~~

~~_____ C. Venue is proper because the child or children reside in this county or this county is
the legal residence of the child or children.~~

~~_____ (Check applicable alternative.)~~

~~_____ D. The above named child has lived with the petitioner or petitioners for ninety
(90) or more days immediately preceding the filing of this petition.
_____ Each respondent has consented to the appointment of kinship guardians. The
consent forms are attached to this petition.⁶~~

~~_____ E. The petitioner or petitioners accept the duties and responsibilities of guardianship,
including providing for the care, maintenance and supervision of the child.~~

~~_____ F. The above child is not an Indian child and is not subject to provisions of the federal
Indian Child Welfare Act.⁵~~

~~2. REQUEST FOR COURT TO NAME PETITIONERS AS
KINSHIP GUARDIANS OF A MINOR CHILD~~

~~_____ The petitioners request the court to enter an order appointing the [petitioner] [petitioners] as [guardian] [guardians] of the following child of _____⁷ (father) and _____⁷ (mother), who are the respondents in this case: (List the name and the date of birth of the child and each address of the child for the last five (5) years. Use a separate sheet if necessary.)⁸~~

~~_____ Name: _____ (last name, first and middle)~~

~~_____ Date of birth: _____~~

~~_____ Place of birth: _____~~

~~_____ Present address:~~

~~_____ (street)~~

~~_____ (city)~~

~~_____ (state and zip code)~~

~~_____ Next previous address:~~

~~_____ (street)~~

~~_____ (city)~~

~~_____ (state and zip code)~~

~~_____ Next previous address:~~

~~_____ (street)~~

~~_____ (city)~~

~~_____ (state and zip code)~~

~~3. INFORMATION ABOUT THE CHILD'S PARENTS~~

~~_____ A. Information about mother:~~

~~_____ (Check each applicable statement.)~~

~~_____ _____ (mother's name) is the mother of the child. Her current address is _____ (City, county and state and zip code).~~

~~_____ The mother is living and has consented in writing⁹ to [my] [our] appointment as kinship guardian. (Attach consent form signed by child's mother.)~~

~~_____ The mother is deceased. (Attach death certificate to this Petition.)~~

~~_____ The mother is living but her parental rights have been terminated by an earlier court order. (Attach a copy of the court order to this Petition.)~~

~~_____ B. Information about father:~~

~~_____ (Check each applicable statement.)~~

~~_____ _____ (father's name) is the father of the child. His current address is _____ (City, county and state and zip code).~~

~~_____ [] _____ The father is living and has consented in writing⁶ to [my][our] appointment as kinship guardian. (Attach consent form signed by child's father.)~~

~~_____ [] _____ The father is deceased. (Attach death certificate to this petition.)~~

~~_____ [] _____ The father is living but his parental rights have been terminated by an earlier court order. (Attach a copy of the court order to this petition.)~~

~~_____ [] _____ Although the petitioner believes _____ (name of alleged father) of the child, he has not acknowledged that he is child's father.~~

~~_____ [] _____ The name of the father of the child is not known by the petitioners because: (explain) _____.~~

~~4. **INFORMATION ABOUT OTHER CASES** (complete if applicable)~~

~~_____ A. _____ The following divorce, separation, order of protection, child support, paternity, abuse or neglect¹⁰ cases have been previously filed involving the above parents:~~

~~_____ (complete if known)~~

~~_____ Type of Case Year Filed Case Number Where Filed~~

~~_____~~
~~_____~~
~~_____~~

~~_____ B. _____ (Complete if applicable.) The following persons, other than the petitioner or petitioners or the parents of the [child] [children], have or claim to have custody of the [child] [children] or visitation rights to the [child] [children]:~~

~~_____ (List names of each guardian, custodian or person with visitation rights and circle applicable claim.)~~

~~_____ (name) [guardian] [custody] [visitation]~~

~~_____ (name) [guardian] [custody] [visitation]~~

~~_____ (name) [custody] [visitation]~~

~~5. **CHILD OVER FOURTEEN (14) YEARS OF AGE OR MARRIED**~~

~~_____ (complete if applicable)~~

~~_____ (name of child) was born on _____ (date of birth) and at the time of the hearing on this petition will be at least fourteen (14) years of age.~~

~~_____ (name of child):~~

~~_____ (check if applicable)~~

~~_____ [] _____ has signed an affidavit nominating _____ (name of person nominated) to be appointed as guardian. A copy of the signed nomination is attached and made a part of this petition.¹¹~~

~~_____ [] _____ has been served with a copy of this petition and a copy of the nominating petition, but has failed or refused to sign the nomination form.~~

~~_____ [] _____ is married.~~

~~_____ [] _____ is not married.~~

~~6. **CHILD SUPPORT**~~

~~_____ (check applicable alternative)~~

~~_____ [] _____ [I] [We] request that the court enter a child support order ordering _____ (name of parent or parents) to pay child support¹².~~

~~_____ [] _____ [I] [We] do not request child support.~~

~~STATE OF NEW MEXICO _____ }~~

~~_____ }ss~~

~~COUNTY OF _____ }~~

~~The [petitioner was sworn and states] [petitioners were sworn and state]: [I] [We] have read this petitioner and it is true to the best of [my] [our] knowledge and belief. [I] [We] understand that [I] [We] can be punished both civilly and criminally if any information in this petition is false.~~

~~_____

Date~~

~~_____

Signature of Petitioner~~

~~_____
_____~~

~~Signed and sworn before me on this ____ day of _____, _____.~~

~~Notary public~~

~~_____
_____~~

~~My commission expires: _____.~~

~~**USE NOTES**~~

~~1. Civil Forms 4-981 to 4-991 NMRA may be used in the district courts of this State by persons who are representing themselves in uncontested kinship guardianship proceedings. Civil Forms 4-981 to 4-991 NMRA are not required to be used. Parties represented by an attorney may use other forms that serve the same purpose.~~

~~2. The petitioner must be a spouse, parent, stepparent, godparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", the spouse or former spouse of the child or an adult with whom the~~

~~child has a significant bond. See Section 40-10B-5 NMSA 1978 for persons who may file as a petitioner pursuant to the Kinship Guardianship Act.~~

~~3. Unless the child's parent is deceased or the parent's parental rights have been terminated, the parent must be joined as a respondent. This petition must be served on each parent of the child in the manner provided by Rule 1-004 NMRA for personal service to Rule 1-004 NMRA, unless:~~

~~_____ (a) a consent form has been signed by the parent;~~

~~_____ (b) the parent is deceased and a death certificate is attached to this petition at the time it is filed;~~

~~_____ (c) the parent's rights as a parent have been terminated by a court order and a copy of the order is attached to this petition at the time it is filed.~~

~~_____ Civil Form 4-982 NMRA, "Kinship Guardianship Summons" has been provided for use with this petition.~~

~~4. Insert the name or the initials of the minor child and the child's birthdate. This form may be modified to include additional minor children. The name of a child shall not be made available to the public on the internet.~~

~~5. This form cannot be used without revision if the child is an Indian child. In these cases, the form of the petition and the manner of notice must comply with federal law. The Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., defines "Indian child" as follows:~~

~~_____ "Indian child" means 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.~~

~~_____ (25 U.S.C. Section 1903(4)). If the child is enrolled or is eligible for enrollment in an Indian tribe, the form of the petition and the manner of the notice must comply with federal law. The parent or Indian custodian of an Indian child may have the right to have the child returned upon demand as may be determined by tribal law or custom.~~

~~6. See Forms 4-985 or Form 4-986 NMRA for parental consent forms.~~

~~7. If the parent is deceased, insert "deceased" instead of address and check the "deceased" box. A copy of the death certificate must be attached to this petition.~~

~~8. Section 40-10A-209 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information under oath as to the child's present address, the places where the child has lived within the last (five) 5 years and the names and present addresses of the persons with whom the child has lived during that period.~~

~~9. Attach a copy of each parent's Verified Parental Consent to Appointment of Guardian and Waiver of Service of Process to this petition. See Civil Forms 4-985 and 4-986 NMRA.~~

~~10. If an abuse or neglect or other proceeding has been filed by the Children, Youth and Families Department, that department must file a consent to the appointment of petitioners as Kinship~~

~~Guardians. Attach a copy of such consent to this petition.~~

~~11. If the child is fourteen (14) years of age or older, the child must be served with a copy of this Petition or a copy of the Nomination of Guardian Form, Civil Form 4-983 NMRA, must be attached to this Petition at the time it is filed.~~

~~12. The child's mother may be ordered to pay child support. The respondent named as the child's father may be ordered to pay child support if the respondent father has admitted paternity or paternity has been established by another proceeding. See Civil Forms 4A-331 and 4A-332 NMRA for a petition to establish paternity and a final decree of paternity.]~~

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).

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)).

B. INFORMATION ABOUT THE CHILD(REN)⁴

1. Child's Name

a. Address

b. Place and year of birth
City
State
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 _____

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*) 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):

_____.

2. Respondent #2

a. _____ (name of Respondent-parent) 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):

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.

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?

b. If yes, does CYFD consent to this guardianship?

Yes No Don't know (please explain):

3. Is there a CYFD court case filed? 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) 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) 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

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

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. 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 October 14, 2005; recompiled as amended from Form 4-981 NMRA by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

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), 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): _____;
- 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): _____;

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.

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

[NEW MATERIAL]

4A-503. Notice of pendency of action.

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).

NOTICE OF PENDENCY OF ACTION

STATE OF NEW MEXICO to _____,² Respondent(s).

Greetings:

You are hereby notified that _____,³ Petitioner(s), filed a Petition To Appoint Kinship Guardian(s) for _____⁴ against you in the above entitled Court and cause.

Unless you enter your appearance and written response in said cause on or before _____ (date),⁵ a judgment by default will be entered against you.

Name and Address of Petitioner or Petitioner's Attorney: _____

WITNESS the Honorable _____, District Judge of the _____ Judicial District Court of the State of New Mexico, and the seal of the District Court of _____ County, this _____ day of _____, 20 ____.

CLERK OF THE DISTRICT COURT

(COURT SEAL)

By: _____

Deputy Clerk

USE NOTES

1. Enter initials of each child listed in the Petition To Appoint Kinship Guardian.
2. 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.
3. Enter names of all petitioners.
4. Enter name and year of birth for each minor child that is named in the petition.
5. Enter the date that is thirty (30) days from the first date the notice will be published in the newspaper.

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

[NEW MATERIAL]

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), 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 two consecutive weeks in the (*name of newspaper*) _____

and once a week for two 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 NOTE

1. Enter initials of each child listed in the Petition To Appoint Kinship Guardian.

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

[4-985]4A-505. Parental consent to appointment of guardian and waiver of service of process [(paternity admitted)].

~~[Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978]~~

~~STATE OF NEW MEXICO~~

COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

_____, Petitioner

v.

_____, Respondent

IN THE MATTER OF THE GUARDIANSHIP
OF _____

PARENTAL CONSENT TO APPOINTMENT OF GUARDIAN
AND WAIVER OF SERVICE OF PROCESS
(Paternity admitted)

I, _____ (name of parent) upon my oath or affirmation state:

1. PARENTS OF THE CHILD

I, _____ (list name), am the [mother] [father][†] of (circle one) of:
Name: _____ (last name, first and middle)

Date of birth: _____

Present address:

_____ (street)

_____ (city)

_____ (state and zip code)

2. MY AGREEMENT TO GIVE THE KINSHIP GUARDIANS MY LEGAL RIGHTS AND DUTIES AS A PARENT

I understand that by signing this paper:

A. I am giving _____ (name of petitioner or petitioners)

(1) my legal rights and duties as a parent, except for the right to consent to adoption and the duty to pay child support; and

(2) unless we have agreed upon visitation, the authority to make all decisions when and if I may visit with my [child] [children].

B. If I want to terminate the kinship guardianship of the above child, I will have to prove that the circumstances surrounding the signing of this paper have changed and that it is in the best interest of my [child] [children] that the guardianship be terminated.

~~_____ C. I agree that it is in the best interest of the above child that the above named petitioners be named as kinship guardians for the above child.~~

~~3. CHILD SUPPORT OBLIGATION~~

~~_____ [] I understand that the petitioners are not requesting child support in this proceeding.~~

~~_____ [] I agree to pay child support as follows: _____.~~

~~_____ I understand that the court may require me to pay child support and understand that the amount ordered can be changed by the court at any time in the future.~~

~~4. CONSENT TO APPOINTMENT OF GUARDIAN~~

~~_____ I consent to the appointment of _____ (list guardian's or guardians' names) as [guardian] [guardians] of the above [child] [children].~~

~~5. WAIVER OF RIGHT TO SERVICE OF SUMMONS AND PETITION~~

~~_____ I have copies of the Petition for Order Appointing Kinship Guardian filed in this case and waive service of the summons and additional pleadings.~~

~~_____ I have not been given anything in exchange for signing this consent form.~~

~~6. RIGHT NOT TO SIGN~~

~~_____ I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS CONSENT FORM AND THAT I HAVE THE RIGHT TO CONTEST THIS ACTION. I AM KNOWINGLY AND VOLUNTARILY SIGNING THIS FORM.~~

~~_____ When I sign below, I am telling the judge that I have read this document and agree with everything in it. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.~~

~~7. RIGHT TO WITHDRAW CONSENT~~

~~_____ I understand that I may withdraw this consent at any time before the court enters an order granting the petition for kinship guardianship by filing with the court a motion notifying the court of my withdrawal of consent.²~~

Respondent's (parent's) signature

Printed name

Address: _____

Telephone: _____

STATE OF NEW MEXICO _____)
_____) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____ by _____, the petitioner.

My commission expires: _____
_____) Notary Public

USE NOTES

1. This form should be used only if both respondents admit that that they are the parents of the child. If paternity has not been established, Civil Forms 4A-331 and 4A-332 NMRA may be used to establish paternity. It is not necessary to establish paternity for the court to enter a kinship guardianship order, however, child support may not be ordered to be paid by a respondent who has been named as the father of the child unless paternity has been established.

2. If a respondent wishes to withdraw consent prior to the final court order appointing the petitioner as kinship guardian, Form 4-991 NMRA may be used.]

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)*), and I do hereby knowingly and voluntarily consent to the Petition To Appoint Kinship Guardian(s) filed by _____ (*name(s) of Petitioner(s)*).

_____, effective _____.]

[4-983]4A-506. Nomination of kinship [guardian] guardian(s).

[Section 40-10B-8 NMSA 1978]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

[Petitioner] [Petitioners]

v. _____ No. _____

[Respondent] [Respondents]

~~IN THE MATTER OF THE GUARDIANSHIP
OF _____~~

~~**NOMINATION OF KINSHIP GUARDIAN**~~

~~I, _____ (*list child's name*), was born on
_____ and I am fourteen (14) years old or older.~~

~~I request the court to appoint _____ (*name of guardian*) [and
_____ (*name of guardian*)] as my kinship [guardian] [guardians].~~

~~I state upon my oath or affirmation that this document and the statements in it are true and
correct to the best of my information and belief.~~

Child's signature

Address: _____

Telephone: _____

STATE OF NEW MEXICO _____)
_____) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____ by

_____, the above-named child.

My commission expires: _____
_____. Notary Public

USE NOTE

1. Section 40-10B-11 NMSA 1978 of the Kinship Guardianship Act provides that “the court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child”. If a child is fourteen (14) years of age or older, this form is to be signed by the child prior to the filing of the petition and shall be attached to and served with the petition.]

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004.]

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 NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004; recompiled as amended from Form 4-983 NMRA by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

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), 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	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*):

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).

**EX PARTE ORDER APPOINTING
TEMPORARY KINSHIP GUARDIAN(S)**

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	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	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 this order personally served on the named Respondents .

7. Other orders: _____

District Court Judge

USE NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian.

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

~~[4-984]~~**4A-509. Motion [for appointment of] to appoint temporary [guardian] kinship guardian(s).**

~~[Section 40-10B-7 NMSA 1978]~~

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

[Petitioner] [Petitioners]

v.

Respondent

IN THE MATTER OF THE GUARDIANSHIP
OF _____

~~MOTION FOR APPOINTMENT OF TEMPORARY GUARDIAN~~

~~The [petitioner requests] [petitioners request] the court to enter an order appointing them as kinship guardians pending a final hearing on the Petition for Order Appointment Kinship Guardian.~~

~~A temporary guardianship is necessary because:~~

_____ (state reasons):

~~We have attempted to notify the respondent by the following methods:~~

Signature of person filing motion

Printed Name: _____

Address: _____

Telephone: _____]

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).

**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):

<u>Child's name</u>	<u>Age</u>
_____	_____
_____	_____
_____	_____

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

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 Motion To Appoint Temporary Kinship Guardian(s); and that the contents of the motion 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 Motion To Appoint Temporary Kinship Guardian(s); and that the contents of the motion 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

faxed a copy of this motion to _____ (the other party or the other party's attorney) using the following fax number: _____. 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.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, October 14, 2004; recompiled as amended from Form 4-984 NMRA by Supreme Court Order No. _____, effective _____.]

~~[4-987]~~**4A-510. Order appointing temporary kinship [guardian] guardian(s).**

~~[Section 40-10B-7 NMSA 1978]~~

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____ No. _____

[Petitioner] [Petitioners]

v.

Respondent

IN THE MATTER OF THE GUARDIANSHIP

OF _____

_____ **ORDER APPOINTING TEMPORARY
KINSHIP GUARDIAN[†]** _____

_____ The court has reviewed the sworn petition for appointment of _____ [and
_____] as kinship [guardian] [guardians] of the above minor child and the
[petitioner's] [petitioners'] motion to appoint a temporary kinship guardian.

_____ The court having considered the petition and motion, FINDS that the court has jurisdiction
and that:

_____ 1. The [petitioner is] [petitioners are] _____ (state the relationship) of
the above named child;

_____ 2. The following extraordinary circumstances exist:

_____.

_____ 3. Appointment of the [petitioner] [petitioners] as temporary kinship [guardian]
[guardians] is necessary.

_____ 4. Other: _____

_____.

This order shall automatically terminate one hundred eighty (180) days after the date set forth below
or upon entry of an order on the Petition for Order Appointing Kinship Guardian, whichever date
is earlier.

~~IT IS SO ORDERED:~~

Date _____ District court judge

USE NOTE

1. This form may be used with Civil Forms 4-981 and 4-984 NMRA.]

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).

ORDER APPOINTING
TEMPORARY KINSHIP GUARDIAN(S)

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).

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).

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. _____ is hereby appointed and shall serve as the guardian ad litem.²

8. Other: _____

District Court Judge

USE NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian(s).
2. 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, October 14, 2004; recompiled as amended from Form 4-987 NMRA by Supreme Court Order No. _____, effective _____.]

[4-988]4A-511. Order appointing kinship [~~guardian by consent~~ (*paternity admitted*)] guardian(s).

{Section 40-10B-8 NMSA 1978}

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

No. _____

[Petitioner] [Petitioners]

v.

Respondent

~~IN THE MATTER OF THE GUARDIANSHIP
OF _____~~

~~ORDER APPOINTING KINSHIP GUARDIAN
BY CONSENT¹
(paternity admitted)~~

~~The court has reviewed the sworn petition for appointment of _____ [and
_____] as kinship [guardian] [guardians] of above minor child and the consent of
the respondents.~~

~~The court having considered the petition, FINDS that the court has jurisdiction and that:~~

~~1. The [petitioner is]² [petitioners are] _____ (state the relationship)
of the above named child.~~

~~(check applicable alternative)~~

- ~~2. The child's mother has consented to the appointment of [a guardian] [guardians] for
her child and the consent is filed with the court.²
 The child's mother is deceased.
 The child's mother's parental rights have been terminated by a prior court order.~~

~~(check applicable alternative)~~

- ~~3. The child's father has consented to the appointment of [a guardian] [guardians] for
his child and the consent is filed with the court.²
 The child's father is deceased.
 The child's father's parental rights have been terminated by a prior court order.~~

~~4. The [petitioner] [petitioners] shall be appointed as the kinship [guardian] [guardians] of the
child.~~

~~(check and complete applicable alternative)~~

- ~~5. The [petitioner has] [petitioners have] not requested child support.
 The parties have agreed to child support as follows: _____~~

~~The parties have agreed to the following visitation:
_____~~

~~IT IS SO ORDERED.~~

Date _____ District court judge

~~USE NOTES~~

1. ~~This form order may be used if both parents have signed a Parental Consent to Appointment of Guardian and Waiver of Service of Process. It may also be used if one of the parents of the child is deceased or if the parent's parental rights have been terminated. If a parent is deceased, a copy of the death certificate must be filed in the kinship guardianship proceeding. If a parent's rights as a parent have been terminated by a court order, a copy of the order must be filed in the kinship guardianship proceeding. See Use Note 3 of Form 4-981 NMRA. See Forms 4-985 and 4-986 NMRA for parental consent forms.~~
2. ~~Use only applicable alternative.]~~

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).

ORDER APPOINTING
KINSHIP GUARDIAN(S)

THIS MATTER came before the Court on 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:

<u>Child's name</u>	<u>Age</u>
_____	_____
_____	_____
_____	_____

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).

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 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:

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. Other: _____

District Court Judge

Signature of Petitioner 1

Printed Name

Address

Telephone Number

Signature of Petitioner 2

Printed Name

Address

Telephone Number

USE NOTE

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, October 14, 2004; recompiled as amended from Form 4-988 NMRA by Supreme Court Order No. _____, effective _____.]

[~~4-991~~4A-512. Motion [~~for revocation of~~] to revoke kinship guardianship.

[~~Kinship Guardianship Act, Sections 40-10B-1 to 40-10B-14 NMSA 1978.~~]

~~STATE OF NEW MEXICO~~

~~COUNTY OF _____~~

~~_____ JUDICIAL DISTRICT~~

~~_____ No. _____†~~

Petitioner (kinship guardian or guardians)

v.

_____ and _____

Respondents (parent or parents of child)

IN THE MATTER OF THE GUARDIANSHIP
OF _____²

**MOTION FOR REVOCATION OF
KINSHIP GUARDIANSHIP**

1. INFORMATION ABOUT THE PARENTS

_____ A. _____ (mother's name) is the mother of the above named child.
Her current address is _____ (city, county and state and zip code).

_____ B. _____ (father's name) is the father of the child. His current
address is _____ (city, county and state and zip code).

_____ C. The [respondent is] [respondents are] the child's:
_____ parents
_____ father
_____ mother

_____ D. The kinship guardianship should be revoked because of the following change of
circumstances: _____

_____ (describe
change of circumstances).

2. INFORMATION RELATING TO CHILD

_____ A. The [respondent requests] [respondents request] the court to enter an order
terminating the kinship guardianship and to return the following child to _____
[and _____]:

3. TRANSITION PLAN.

_____ A transition plan that demonstrates how the child will be reintegrated into our home is
attached to this motion.³

STATE OF NEW MEXICO _____ } ss
COUNTY OF _____ }

The ~~[respondent was sworn and states]~~ ~~[respondents were sworn and state]:~~ ~~[I]~~ ~~[We]~~ have read this motion and it is true to the best of ~~[my]~~ ~~[our]~~ knowledge and belief. ~~[I]~~ ~~[We]~~ understand that ~~[I]~~ ~~[We]~~ can be punished both civilly and criminally if any information in this motion is false.

Date _____ Signature of Respondent _____

Date _____ Signature of Respondent _____

Signed and sworn before me on this ____ day of _____, _____.

Notary public

My commission expires: _____.

USE NOTES

- ~~1. This form is to be filed in the same court as the court appointing the kinship guardians. The clerk will use the same docket number.~~
- ~~2. This form may be modified if there is more than one child who was subject to a kinship guardianship.~~
- ~~3. Service of this request shall also be made on the child if the child is fourteen (14) years of age or older.~~
- ~~4. A transition plan is required to be filed with this motion. A transition plan should include, but not be limited to, information about the child's health, doctors, dentists, special medical needs, school, extra-curricular activities, religious worship, all visitation rights of the parties and other persons and any other matters relevant to the best interests of the child and how the needs of the child will be met after the termination of the kinship guardianship. Domestic Relations Form 4A-313 NMRA, Parenting Plan and Child Support Obligation, may be modified and used as a "transition plan".]~~

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).

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 and age of the minor child(ren) are as follows:

<u>Child's name</u>	<u>Age</u>
_____	_____
_____	_____
_____	_____

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.²

6. It is in the child(ren)'s best interests to revoke the guardianship.

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

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
- faxed a copy of this motion to _____ (the other party or the other party's attorney) using the following fax number: _____ . 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(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, October 14, 2004; recompiled as amended from Form 4-991 NMRA by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

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), and concerning
_____, Respondent(s).

ORDER REVOKING KINSHIP GUARDIANSHIP

THIS MATTER having come before the Court on _____'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 and age of the minor child(ren) are as follows:

Child's name	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: _____

District Court Judge

Submitted by:

USE NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian(s).

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

Proposed Rule Changes Comment Form.

SUPREME COURT OF NEW MEXICO
FILED

Name: Marjorie C. Jones

Phone: 505-334-6151

Email: aztdmcj@nmcourt.gov

APR 04 2016



Rule No: 4A-503 (Proposal 2016-45)

Comments:

RE: 4A-503, Notice of Pendency of Action

I would like to suggest that pursuant to Rule 1-004 (K), the district court clerk (or deputy clerk) need not certify the "Notice of Pendency of Action." I would therefore suggest that the certifying language be deleted from proposed new form 4A-503.

Rule 1-004 was substantially rewritten in 2005 and conspicuously omitted the former provisions that "the clerk of the court shall cause to be issued a notice of the pendency of the action . . ." and "[t]he notice shall be signed by the clerk under the seal of the court." (Rule 1-004 (H)(1) and (2)) (NMRA 2004)) Now that service by publication is accomplished by motion and order and Rule 1-004 (K) requires that the proposed notice to be published be submitted to the Judge as part of the motion, presumably for the Judge's review and approval, certification of the notice by the district court clerk is unnecessary and even contrary to Rule 1-004. It appears to me that with the changes in 2005 to Rule 1-004, the Supreme Court deliberately removed the district court clerk's involvement, and that extra step of obtaining the clerk certification, in service by publication. The Supreme Court substituted, instead, a strictly judicial decisional process. If the district court Judge enters

an order for service by publication, having also considered the attached proposed notice of pendency of action, then the proposed notice has also been adjudged adequate and can be submitted for legal publishing. Service by publication outlined in Rule 1-004 simply does not call for any action by the court clerk as proposed form 4A-503 would suggest.

Thank you for your consideration of these comments.

Zimbra

suptls@nmcourts.gov

Proposed Change 2016-45 Kinship Guardianship Cases

From : Sylvia F Lamar <sfedsfl@nmcourts.gov>

Wed, Apr 06, 2016 05:03 PM

Subject : Proposed Change 2016-45 Kinship Guardianship Cases**To :** NM Supreme Court Clerk <nmsupremecourtclerk@nmcourts.gov>

To Whom It May Concern:

I am very pleased with the majority of the changes to the Kinship Guardianship forms. I have concerns, however, regarding the Parental Consent to Appointment of Kinship Guardian and Waiver of Service of Process.

1. Consent should be for Temporary Kinship Guardianship.

I hold several hearings each week in kinship guardianship cases and I frequently hear from a parent that when they signed the consent, they believed they were signing an agreement for the child to be placed temporarily with the Petitioner. Very often, as occurred this afternoon, the birth mother becomes distraught and almost uncontrollable, asserting that she had never signed a form giving kinship guardianship to the Petitioner and that the form she had signed was for a temporary placement only.

I respectfully request that the Parental Consent be modified so that it is a Consent to Appointment of Temporary Kinship Guardian.

2. Consent Language. Additional Language for Temporary Orders.

My second concern regards the language stating that the parent "knowingly and voluntarily consents to the Petition to Appoint Kinship Guardian(s) filed by _____." It has been my experience that the Parental Consent to Appointment to the Kinship Guardian and Waiver of Service of Process is signed days and sometimes weeks prior to the filing of the Petition for Kinship Guardianship and therefore, I do not believe that the parent knowingly waived service of process or was knowledgeable about what he or she was consenting to. In cases assigned to me, I add language to the Temporary Order requiring the Petitioner(s) to personally serve each Respondent with the Petition, Summons and the Temporary Order of Appointment. I suggest that this language be added to the Ex Parte Order Appointing Temporary Kinship Guardian(s) as well as to the Order Appointing Temporary Kinship Guardian(s).

Thank you again for all of the work and effort put into these revisions.

**SUPREME COURT OF NEW MEXICO
FILED**

Sincerely,

Sylvia LaMar
Chief Family Law Judge
First Judicial District Court, Div. IV
P.O. Box 2268
Santa Fe, NM 87504
(505) 455-8150

APR 06 2016