

10-570. Notice of child's advisement of right to attend hearing.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

STATE OF NEW MEXICO *ex rel.*
CHILDREN, YOUTH AND FAMILIES DEPARTMENT

No. _____

In the Matter of

_____, (a) Child(ren), and Concerning
_____, Respondent(s).

**NOTICE OF CHILD'S ADVISEMENT OF RIGHT
TO ATTEND HEARING¹**

I, _____, the attorney for _____, the child in the above cause, give notice of the following:

1. I have advised the child that the child has a right to attend the _____
(*type of hearing*) hearing on _____ (*date*) because the child is a party to the case and
because the court may be making decisions regarding the child's placement, education, and case
plan.

2. (*Choose one of the following:*)

The child intends to attend the hearing and [will] [will not] request the
Department to arrange transportation.

[Or]

The child, being fully advised of the child's right to attend this hearing,
does not intend to attend this hearing. [The child requests leave to present the child's wishes to
the Court regarding _____ (*describe wishes*) and would like to present this
information by _____ (*describe method of alternative participation*). The
child requests leave to communicate with the court in this manner because _____
(*describe reason*).]²

3. I have talked to the child about what the child would like the court to know
regarding the child's position on issues related to the child's best interests or to the child's stated
position.

4. The child understands that the child has the right to attend any future hearings in
this cause regardless of the child's choice to attend the hearing on _____ (*date*).

I certify that I have explained to the child the child's right to attend the hearing, and I am satisfied that the child understands his or her right.³

Attorney for Child

USE NOTE

1. Under Rule 10-324(D) NMRA, a child fourteen (14) years of age or older may be excluded from a hearing “only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.” *See also* NMSA 1978, § 32A-4-20(E). This form and Rule 10-325 NMRA are intended to ensure that the child's lawyer (1) notifies the child in a timely manner of the child's right to attend each hearing; (2) notifies the court and the children's court attorney of a request to arrange transportation for the child to attend the hearing; and (3) considers whether an alternative form of participation may be warranted.

2. The bracketed language is intended to allow the child to request leave to submit information to the court that is unrelated to the substantive allegations of abuse and neglect in the petition. Such information may include updating the court about the child's well-being, including recreational, extracurricular, or school-related activities and interests, and may be presented via letter, video or audio recording, or any other manner that does not require the child's presence in the courtroom. If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 and Form 10-571 NMRA.

3. This form describes the minimum efforts necessary to effectively communicate with the child before a hearing and does not supplant the lawyer's continuing duty to communicate with the child. *See* Rule 16-104 NMRA (defining a lawyer's duty to communicate with a client); *see also* NMSA 1978, § 32A-1-7.1(A) (“The attorney [retained or appointed to represent a child] shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct.”). Additional communication may be necessary after this notice is filed to ensure that the child's rights are protected. For example, a lawyer should review with the child the predisposition study and report required under NMSA 1978, § 32A-4-21, which is not due to the court until five (5) days before a dispositional hearing, to determine whether the report affects the child's position about attending the hearing. If the child decides to attend a hearing after this notice is filed, the attorney should communicate the child's wish to the court and to the other parties as soon as practicable.

[Adopted by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]