

**PROPOSED REVISIONS TO THE CHILDREN’S COURT RULES AND FORMS
PROPOSAL 2020-002**

March 3, 2020

The Children’s Court Rules and Forms Committee has recommended the adoption of new Form 10-541 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:

Joey D. Moya, Clerk
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 2, 2020, 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]

10-541. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND CONSENT TO ADOPTION.

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

No. _____

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

In the Matter of _____, a Child, and Concerning
_____, Respondent(s).

**VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND
CONSENT TO ADOPTION ^{1,2}**

Under Sections 32A-5-17 and 32A-5-21 NMSA 1978, _____ (*name of Respondent*) states:

1. This document is being executed on _____ (*date*), at the _____ (*indicate judicial district*) Judicial District Court, State of New Mexico, before the Honorable _____ (*name of judge*).

2. I, _____ (*full name of individual relinquishing parental rights*), born _____ (*date of birth*), state that I am the _____ (*indicate relationship to the child, including whether the relationship is biological*) of _____ (*name of child, including any names by which the child has been known*), a minor child born on _____ (*date of birth of child*) in _____ (*place of birth*).³

3. This child is not an Indian child as defined by 25 U.S.C. § 1903(4), and this case is not subject to the Indian Child Welfare Act (ICWA). [Or, if ICWA applies to the child: This child is an Indian child as defined by 25 U.S.C. § 1903(4) and is a member of the following tribe(s): _____ (*list tribal membership(s)*).]

4. I understand that the child is in the legal custody of the New Mexico Children, Youth and Families Department, which has responsibility for caring for the child and will retain legal custody until the adoption is final.

5. I do hereby relinquish all my parental rights to the child so that the child may be placed for adoption.⁴

6. I understand that my child's right to inherit from me under state law continues until the adoption is final.

7. I have been counseled by _____ (*name of person providing relinquishment counseling, include agency name and licensure*), a certified counselor. This counselor meets the requirements as set forth in Section 32A-5-22 NMSA 1978 and 8.26.3.25 B(1) NMAC. [Or, if the individual relinquishing parental rights has requested waiver of the counseling requirement: I request that the relinquishment counseling requirement be waived because _____ (*include reasons supporting the request for waiver*).]

8. I understand that any informal agreement allowing contact between the child and me will not be enforced by the court. I further understand that a post-adoption contact agreement that has been included in the final adoption decree will be enforced.

9. I understand that this voluntary relinquishment of parental rights and consent to adoption is final and cannot be withdrawn. [Or, if ICWA applies to the child: Under 25 U.S.C. § 1913(c) and 25 C.F.R. § 23.128, I understand that this voluntary relinquishment of parental rights and consent to adoption is final, but may be withdrawn for any reason at any time prior to the entry of a final decree of termination of parental rights or adoption. I understand that to withdraw consent before entry of a final decree of adoption, I must file a written document with the court, testify before the court, or use another method authorized under State law.]

10. I have received or been offered a copy of this relinquishment and consent form.

11. The counseling narrative has been prepared pursuant to the New Mexico Children, Youth and Families Department's regulations and is attached to this relinquishment as Exhibit A.

12. I understand that I am not entitled to further notice of the adoption proceedings.

13. The New Mexico Children, Youth and Families Department consents to the relinquishment of parental rights of _____ (*name of individual relinquishing*

parental rights).

(*name of individual relinquishing parental rights*)

Date

Time

**ORDER ACCEPTING RELINQUISHMENT OF PARENTAL RIGHTS
AND CONSENT TO ADOPTION**

THIS MATTER, having come before the Court on _____ (*insert date*) before the Honorable _____ (*name of Judge*), at the _____ (*indicate judicial district*) Judicial District Court, State of New Mexico, _____ (*name of individual relinquishing parental rights*) did personally appear with counsel. This Court makes the following findings:

1. I am an official authorized to accept this “Voluntary Relinquishment of Parental Rights and Consent to Adoption” under Section 32A-5-23 NMSA 1978 [and 25 U.S.C. § 1913(a)].⁵

2. This relinquishment is made in contemplation of the child’s adoption. [*Or: This relinquishment is not made in contemplation of adoption, and this Court has found that good cause exists, the New Mexico Children, Youth and Families Department has made reasonable efforts to preserve the family, and that relinquishment of parental rights is in the child’s best interests.*]

3. _____ (*name of individual relinquishing parental rights*) was advised that he/she remains financially responsible for the child until the adoption is finalized, and this Court may order this Respondent to pay the reasonable costs of support and maintenance for the child.

4. _____ (*name of individual relinquishing parental rights*) was advised that the child is in the legal custody of the New Mexico Children, Youth and Families Department, which has responsibility for caring for the child and will retain legal custody until the adoption is final.

5. _____ (*name of individual relinquishing parental rights*) was advised of his/her right to be counseled, and was counseled by _____ (*name of person providing relinquishment counseling, include agency name and licensure*), a certified counselor. This counselor meets the requirements set forth in Section 32A-5-22 NMSA 1978 and 8.26.3.25 B(1) NMAC. [*Or: There is good cause to waive the relinquishment counseling requirement.*]

6. _____ (*name of individual relinquishing parental rights*) was advised of the rights and responsibilities of a parent to a child, and was advised of the legal

consequences of voluntary relinquishment and consent to adoption by _____
(attorney for individual relinquishing parental rights or judge).

7. _____ (name of individual relinquishing parental rights) was advised that no informal agreements will be enforced by the Court, but where a post-adoption contact agreement has been included in the final decree of adoption, the court will enforce the post-adoption contact agreement.

8. _____ (name of individual relinquishing parental rights) was advised that this voluntary relinquishment of parental rights and consent to adoption is final. [Or, if ICWA applies to the child: Pursuant to 25 U.S.C. § 1913(c) (1978) and 25 C.F.R. § 23.128 (2016), _____ (name of individual relinquishing parental rights) was advised that this voluntary relinquishment of parental rights and consent to adoption is final, but may be withdrawn for any reason at any time before the entry of a final decree of termination of parental rights or adoption.]⁶

9. [In cases where the consent or relinquishment is in English and English is not the first language of the individual relinquishing parental rights: Under Section 32A-5-21(c) NMS 1978, I certify that the relinquishment form has been read and explained to _____ (name of individual relinquishing parental rights) in that person's first language by _____ (name of individual who read the form in the first language of the individual relinquishing parental rights) and that the meaning and implications of the document are fully understood by the person giving the relinquishment.]

10. [If ICWA applies: Under the Indian Child Welfare Act, 25 U.S.C. § 1913(a), I certify that the terms and consequences of the relinquishment of parental rights and consent to adoption were fully explained in detail and were fully understood by the parent or Indian custodian. I further certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.]⁷

11. The Voluntary Relinquishment of Parental Rights and Consent to Adoption by _____ (name of individual relinquishing parental rights) to _____ (name of child) was executed voluntarily and with knowledge of its content and legal effect, and not the result of force, threats, promises, fraud, or duress.

ON THE BASIS OF THESE FINDINGS, THE COURT concludes that _____ (name of individual relinquishing parental rights) knowingly, voluntarily, and intelligently relinquishes his/her rights to _____ (name of child), and accepts the relinquishment of parental rights and consent to adoption.

Children's Court Judge

USE NOTES

1. To be used for relinquishment of parental rights to the Children, Youth and Families Department.

2. No relinquishment of parental rights is valid if executed within forty-eight (48) hours after a child's birth. NMSA 1978, § 32A-5-21(G) (2005). In cases in which the Indian Child Welfare Act (ICWA) applies, no relinquishment given prior to or within ten days after the birth of the Indian child shall be valid. 25 U.S.C. § 1913(a) (1978).

3. The Committee recommends that the best practice is to have a parent relinquish his or her rights to each child in a separate document, especially when the children will be adopted separately or when the ICWA, 25 U.S.C. §§ 1901, et seq. (1978), applies to some, but not all of the children.

4. NMSA 1978, § 32A-5-3(R) (2012) defines parental rights.

5. This bracketed language should be used when the child is an Indian child as defined in the ICWA, 25 U.S.C. §§ 1901, et seq. (1978).

6. In all cases, the relinquishment may be withdrawn before entry of the adoption decree with a court finding, after notice and opportunity to be heard, that the relinquishment was obtained by fraud. NMSA 1978, § 32A-5-21(I) (2005). No relinquishment may be withdrawn after the entry of an adoption decree. *Id.* However, in cases in which the ICWA applies, the Court may invalidate an adoption decree upon a finding that the parent's relinquishment of an Indian child was obtained through fraud or duress. "No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law." 25 U.S.C. § 1913(d) (1978).

7. Certification by the Judge is required for ICWA cases under 25 U.S.C. § 1913(a) (1978). This language can be modified to explicitly clarify whether an interpreter was used and in what language.

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

Proposed Rule Change Question

LISA OLEWINE <adoptionlaw@msn.com>

Mar 3, 2020 3:48 PM

Posted in group: **nmsupremecourtclerk**

1. RE: the below. Would a voluntary relinquishment of parental rights NOT made in contemplation of adoption (see # 2 of order) relieve the relinquishing parent of obligations (i.e., child support)?

Proposal 2020-002 - Voluntary relinquishment of parental rights and consent to adoption

[New Form 10-541 NMRA]

#2 of the Order

This relinquishment is made in contemplation of the child's adoption. [*Or*: This relinquishment is not made in contemplation of adoption, and this Court has found that good cause exists, the New Mexico Children, Youth and Families Department has made reasonable efforts to preserve the family, and that relinquishment of parental rights is in the child's best interests.]

Thank you.

Lisa H. Olewine, MSW, JD

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SUPREME COURT OF NEW MEXICO
FILED

MAR - 3 2020



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Comment re Proposed Rule 2020-002, Voluntary Relinquishment of Parental Rights.

Terence Cady <terencecady@comcast.net>

Mar 30, 2020 4:51 PM

Posted in group: **nmsupremecourtclerk**

I do not see in the proposed rule any language about conditional relinquishments, i.e., whether the relinquishment is conditional or unconditional. If conditional, whether, e.g., the relinquishing parent/s make their relinquishment conditioned upon particular person or persons being the adoptive parent/s. Usually, conditional relinquishments involve a qualified person or persons already approve by CYFD for adoption.

Further, there is nothing to indicate whether the relinquishing parent has been advised in relinquishment counseling about the possibility of a conditional relinquishment.

I acknowledge that CYFD, for whom I used to work as its General Counsel, for seven years as a children's court attorney, and for ten years as a court appointed attorney for Respondents, disfavors conditional relinquishments.

And, when conditional relinquishments do occur, which is legally possible, CYFD insists on including language in the formal relinquishment documents presented to the court, that in the event that the conditions of the relinquishment cannot be effectuated (for example, the prospective adoptive parent designated by the condition backs out), the department will make good faith efforts to encourage the successor adoptive parent to honor the terms of conditional relinquishment, to the extent the some or all of the conditions can be met, consistent with the child's best interests.

Respectfully submitted,

Terence G Cady, J.D., CWLS

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Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Mon, Mar 30, 2020 at 12:19 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name

william Parnall

Phone Number

5052880665

Email

albdwpx@nmcourts.gov

Proposal Number

[New Form 10-541 NMRA]

Comment

This proposed rule is fine but I just wonder whether the choices should be set up as they are which would require a computer to delete the unused language, or set up with a check box in bullet style so the correct language should be checked off so that the form could be filled out by hand if no computer is available and a party receives the unfinished form in the jail

Upload



Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Tue, Mar 31, 2020 at 9:44 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name

Thomas F Stewart

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5755385840

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Proposal Number

2020 02

Comment

Paragraph 8 regarding the enforcement of informal agreements and attachments to the final order of adoption appears unclear and is not self-contained. Since the voluntary relinquishments that we see in southwest NM are generally in connection with an abuse & neglect case, the relinquishment is almost always unconditional and the final decree of adoption often may come significantly later. The way the present form is presented suggests that there is a possibility of a deal that could be made later. Again, most of the time, that is not the case.

Upload