

10-517. Respondent's first appearance rights and ICWA advisement.

[For use with Children's Court Rule 10-314 NMRA]

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

In the Matter of _____, a Child,
And Concerning _____ and
_____, Respondents. No. _____

**RESPONDENT'S FIRST APPEARANCE RIGHTS AND
INDIAN CHILD WELFARE ACT ADVISEMENT (IF APPLICABLE)**

_____ 1. Do you understand that you have a right to have the court hearings interpreted into the language that you understand? What is your primary language? _____ (insert primary language here). Do you wish to have an interpreter? YES or NO. (*Choose one.*)¹

_____ 2. Now that I have read the allegations against you in the abuse or neglect petition (or termination of parental rights motion), do you understand the allegations?²

_____ 3. Do you understand that you have the right to [an adjudicatory hearing on the allegations in the petition] [the right to a trial on the allegations in the termination of parental rights motion]?

_____ 4. Do you understand you have the right to an attorney, and that one will be appointed to represent you free of charge if you cannot afford an attorney?³

_____ 5. Do you understand the possible consequences if the allegations of the [petition] [termination of parental rights motion] are found to be true?⁴

IF THE CHILD IS AN INDIAN CHILD OR THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD, THE COURT SHALL MAKE THE FOLLOWING INQUIRIES:

_____ 1. Do you understand that either parent, the Indian Custodian, or the tribe may request that the case be transferred to tribal court?

_____ 2. Do you understand that either parent may object to the transfer if transfer is requested?

_____ 3. Do you understand that the Children, Youth and Families Department

is required to place your child according to the placement preferences set forth in the Indian Child Welfare Act, unless the court finds good cause not to follow these placement preferences?

_____ 4. Do you understand that the Children, Youth and Families Department is required to make active efforts to provide services and programs designed to prevent the breakup of your Indian family?

_____ 5. Do you understand that if a motion to terminate parental rights is filed, the Children, Youth and Families Department is required to prove the allegations beyond a reasonable doubt.

I hereby certify that I advised Respondent _____ (insert name here) of the foregoing rights and determined that Respondent understands these rights on this _____ day of _____ 20____.

Children's Court Judge

USE NOTES

1. If there are multiple Respondents, include answer for each Respondent.
2. Prior to completing this form, the Judge should read each allegation in the Petition or Motion aloud to the Respondent and ensure that the Respondent understands each allegation. Similarly, the Judge should read each right aloud and ensure that the Respondent understands each right. After determining that the Respondent understands the allegations or rights in each paragraph, the Judge should initial the paragraph. Knowing that Respondents in abuse, neglect, and termination of parental rights cases are often overwhelmed by the information being provided in court, and that they may indicate understanding even when they do not fully understand what is happening, the Committee encourages the court to allow Respondents an opportunity to consult with counsel whenever it is not readily apparent that the Respondent truly understands each allegation and right. Furthermore, for this advisement to be meaningful, Respondent attorneys are encouraged to review this form with their clients before the hearing and should be prepared to explain the meaning of terms like "legal custody," "placement," "reunification," and "termination."
3. The Judge may appoint an attorney "in the interest of justice" even if the Respondent is not indigent. NMSA 1978, § 32A-4-10.
4. Respondent attorneys are encouraged to discuss fully the possible consequences of an abuse or neglect petition or termination of parental rights motion with their clients before the hearing. During the hearing, the judge may use the following language to inform the Respondent of possible consequences: *These consequences may include the child(ren) remaining in the State's legal custody, the child(ren) living with someone else, and you being ordered to work a case plan that requires you to complete services or other conditions. If ordered, the goal of the case plan would be to reunify your family. Additionally, if you are not successful in your attempts at reunification, then this*

1 *could turn into a termination of parental rights case. The possible consequences of a*
2 *motion to terminate parental rights are having all rights to your child(ren) severed*
3 *permanently and the child(ren) being placed for adoption. The consequences may not be*
4 *an inclusive list.*

5 5. The completed and signed form should be filed with the court and
6 distributed to the Respondents during the hearing.

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8 [Adopted by Supreme Court Order No. 19-8300-020, effective for all cases filed, or
9 pending in which respondent has not made a first appearance, on or after December 31,
10 2019.]