

CHILD PROTECTION PRACTICE GUIDE

Tools To Achieve Safety, Permanence, and Well-Being

FILING APPEALS: RULE 10-352

Purpose: to provide guidelines on complying with Rule 10-352 that was designed to ensure that appeals filed in child abuse and neglect cases have merit and reflect the wishes of the client.

Audience: Attorneys for parties considering an appeal from the judgment and disposition on a petition alleging abuse or neglect, or an appeal from the judgment on a motion to terminate parental rights.

Application: Filing a notice of appeal without the appellant's signature by certifying that signature is not required, or the appeal is not frivolous, or that the appellant expressed intent to appeal but cannot be located for signature.

Rule 10-352. Judgments and appeals.

A. Entry of judgment. The judge shall enter a written judgment on petitions alleging abuse or neglect and a written judgment on motions to terminate parental rights. The clerk shall give notice of entry of the judgment and disposition and any judgment on a motion to terminate parental rights.

B. Appeals. Appeals from judgments and dispositions on petitions alleging abuse or neglect and appeals from judgments on motions to terminate parental rights shall be governed by the Rules of Appellate Procedure and the following procedures:

(1) the notice of appeal shall be signed by both the appellant and the appellant's counsel, unless the appellant is a minor child or state agency or unless counsel complies with the requirements of Subparagraph (2) of this paragraph.

(2) A notice of appeal shall not be filed without the appellant's signature unless counsel certifies that the appeal is not frivolous or certifies the following:

i. the appellant contested the proceedings and expressed an intention to appeal the judgment or disposition; and

ii. the appellant has failed to maintain contact with counsel, and despite diligent efforts counsel has been unable to locate the appellant to sign the notice of appeal. Counsel shall specify the last date on which the appellant contacted counsel and the efforts counsel has made to locate the appellant.

GUIDELINES

Include in your Notice of Appeal:

- Signature of appellant or a statement certifying that 10-352(2) applies
- If 10-352(2) applies, the reason(s) for lack of appellant signature:
 - The client is a minor and therefore not required to sign the notice of appeal pursuant to NMRA 10-352(1)
 - The client is a state agency
 - The client expressed intention to appeal but cannot be located
- A statement certifying that the appeal is not frivolous
- A statement certifying how and when the appellant contested the proceedings and expressed intention to appeal
- A statement certifying that the appellant has failed to maintain contact if applicable
- A statement certifying that diligent efforts have been made to contact the client if applicable
- A statement regarding counseling a youth 14 and older on the issue of an appeal if applicable

In addition, consider creating a standard list of diligent efforts and a record of attempts to contact client during the course of the case. This should include dates of mail, email, phone, in-person, and other attempts to contact the client. You should also document your independent attempts to locate a client who the Department has been unable to locate.