



Adjudication and Disposition

April 1, 2015

Pre-Adjudicatory Meeting

- The parties must participate in a **pre-adjudicatory meeting** (usually there will be a trained mediator present) to try and resolve the issues prior to the adjudication.
- Often the Respondents agree not to contest certain counts of the Petition and to participate in a treatment plan.

Adjudication¹

- **Purpose:** Trial to determine whether the allegations in the Abuse and Neglect Petition are true and whether the children are abused or neglected as defined in NMSA §32A-4-2(B) and (E).
- **Timing:** Must **commence** within **sixty days of service**.
 - If not commenced within sixty days and there is no order extending time, the Petition *must* be dismissed with prejudice.²
- **Previously ordered evaluations:** Must be provided to the parties—but not the Court—at least 5 days before the adjudication.³
- **Rules of Evidence:** Apply.
- **Standard of Proof:** Clear and convincing evidence.
- If Respondent does not appear, the Court should consider whether there was appropriate **notice**. If the Respondent does not appear and the adjudication cannot be postponed, the Court should hear evidence. There **should not** be a default judgment.
- **Aggravated Circumstances:** Sometimes CYFD will allege aggravated circumstances. Aggravated circumstances include: sexual abuse; a parent causing or attempting to cause the death of a sibling or another parent; chronic abuse, great bodily harm, and torture; or prior involuntary termination of respondent's parental rights to a sibling.⁴
 - **Consequences of an Aggravated Circumstances finding:** If the Court finds that aggravated circumstances exist, CYFD is not required to make reasonable efforts to reunify the child and parents.⁵

¹ NMSA § 32A-4-19.

² NMRA 10-343.

³ NMRA 10-335.

⁴ NMSA §32A-4-2(C).

⁵ NMSA §32A-4-22(C).

- **Important Exception:** There is no exception in ICWA for aggravated circumstances. Even if the State is relieved from proving reasonable efforts under ASFA, active efforts must still be proved.
 - If no reasonable efforts are required, the Court must hold a permanency hearing within 30 days.⁶
 - **ICWA Considerations:**
 - **In contested adjudications where ICWA applies,** the Court must make factual findings that 1) active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that these efforts have proved unsuccessful and 2) that based on the testimony of a qualified expert witnesses, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. See *Marlene C.*, 2011-NMSC-005, ¶136; 25 U.S.C. §1913(d)-(e).
 - **In uncontested adjudications,** the New Mexico Supreme Court made clear in *Marlene C.* that the Court must find a factual basis for these ICWA findings when the parent makes an admission at adjudication. *Marlene C.* further says that a parent’s admission is valid only if 1) the court ensures that the terms and consequences were fully explained in detail and were fully understood by the parent or Indian custodian pursuant to 25 U.S.C. § 1913(a) and 2) that the parent understands they are waiving the right to contest the ICWA findings. *Marlene C.* ¶¶ 46-47.
 - **Appeals:** The court’s decision at the adjudicatory hearing is appealable.⁷
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Predisposition Report¹¹

- CYFD prepares and submits to all parties and the Court 5 days before the dispositional hearing.
- The Court should make sure that all parties have an opportunity to review the report, object if necessary, and provide input so that the Court’s findings accurately reflect the circumstances of the parties.

Disposition¹²

- **Purpose:** To determine what will happen with the child while the case is pending (who will have custody) and what the treatment plan will be.
- **Timing:** Usually occurs immediately after the adjudication; may occur up to 30 days after adjudication.
- **Rules of Evidence:** Do not apply.
- **Custody Determinations:** The Court can:
 - permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations;
 - place the child under protective supervision of the department; or
 - transfer legal custody of the child to the noncustodial parent; or
 - transfer legal custody of the child to CYFD.

⁶ NMSA §32A-4-22(J).

⁷ *State ex rel. CYFD v. Frank G.*, 2005-NMCA-026, 137 N.M. 137, affirmed on other grounds in *Pamela A.G.*

¹¹ NMSA 32A-4-21.

¹² NMSA §32A-4-22.

- **Required Findings:**
 - The Court should make case-specific findings about the allegations and the family’s situation to ensure that there is full and accurate information on which to base the treatment plan. Required findings are enumerated in NMSA §32A-4-22.
 - **Reasonable Efforts Findings:**
 - *Removal and Reunification:* At disposition, the Court must make findings about whether the department made reasonable efforts to:
 - prevent removal of the child from the home prior to placement in substitute care, and
 - attempt reunification of the child with the natural parent.¹³
 - *Siblings:* The Court must also make findings about whether reasonable efforts:
 - were made by the department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and
 - whether siblings who are not placed together have been provided with reasonable visitation unless this visitation would be contrary to the safety or well-being of any of the siblings.¹⁴
- **Treatment Plans:**¹⁵ The Court will order a treatment plan for the family and order CYFD to make reasonable efforts to implement the plan and assist the Respondents and the children. Services in the treatment plan should be reasonably calculated to reunify the family in a timely fashion. In other words, the services should directly address the issues that brought the children into custody:
 - Services should reflect the reasonable needs of the child (including parent and sibling contact, education, cultural connections, mental health, etc.).
 - Services for parents should reflect the Court’s factual findings, build on Respondent’s strengths, and address those parenting deficits related directly to the abuse or neglect of the child. For example, if the concern was about domestic violence and there were no concerns or evidence about substance abuse, then the treatment plan should not require drug testing.
- **Education Decisionmakers:**¹⁶ At adjudication and disposition, the Court should review the appointment of (or appoint) an education decisionmaker for each child in custody. Respondents should be appointed as the education decisionmaker unless there is a good reason to do otherwise.

¹³ NMSA §32A-4-22(A)(9).

¹⁴ NMSA §32A-4-22(A)(10).

¹⁵ NMSA §32A-4-22 (C).

¹⁶ Children’s Court Forms 10-522A-D and 10-564.