



Judicial Reviews

May 6, 2015

Initial Judicial Review

- **Purpose:** To make sure that the parties are engaged in the treatment plan and that barriers to implementing the plan are identified and addressed. This hearing is an opportunity to encourage and praise parents who are making good progress and attempt to re-engage parents who may not be participating adequately in their treatment plans.
- **Timing:** Must occur within 60 days of the date of the disposition. NMSA §32A-5-25(A).
- **Rules of Evidence:** do not apply. NMSA §32A-4-25(E).
 - All parties can present evidence and cross-examine witnesses. NMSA §32A-4-25(D).
- CYFD must report the child's immigration status to the court at this first review. §32A-4-23.1(A). If the child is an undocumented immigrant, CYFD may request an order with findings needed to seek Special Immigrant Juvenile Status for the child.
- The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. NMSA §32A-4-25(A).
- **Required Findings:**
 - **Reasonable and Active Efforts**
 - The Court should ensure that CYFD is making reasonable efforts to implement the treatment plan approved by the Court in its dispositional order. NMSA §32A-4-25.
 - Futility Findings: The Court may determine at this stage that reasonable efforts to reunify are not necessary if the efforts would be futile. NMSA §32A-4-25(H)(5). Futility findings should be made only in rare circumstances and should be made with caution in hearings where the rules of evidence do not apply. *State ex rel. CYFD v. Vanessa C., 2000-NMCA-025.*
 - In **ICWA cases**, the Court must determine whether the state has made **active efforts to provide remedial services and rehabilitative programs to prevent the break-up of the Indian family**. Although there is no clear definition of active efforts, it is understood that they are more significant than reasonable efforts.
- **Placement**
 - Is continued out-of-home placement necessary?
 - Has the situation changed enough so that the child can return home while parents continue to work on services?
- **Treatment plan**
 - Is the plan still appropriate?

- Are the services assisting the parents?
- Are any services on the plan no longer needed?
- Should any additional services be added?
- **Visitation**
 - Is visitation happening?
 - Is the current visitation plan appropriate?
 - Can unsupervised visits begin?
 - Are the location and duration of the visits appropriate given the parents' and the child's needs?
 - Are sibling visits taking place if siblings are not placed together?
- **Child Specific Considerations**
 - How is the child doing in his or her placement? Is the placement appropriate?
 - Are the child's educational needs being met?
 - **ICWA considerations:** If ICWA applies, the court must:
 - determine whether the ICWA placement preferences have been followed, and if not, whether there is good cause for not following the preferences; and
 - consider whether there is a plan for preserving the child's cultural ties. NMSA §32A-4-25 (G).

Subsequent Periodic Reviews

- **Purpose:** To ensure that progress is being made toward finding the child a stable and permanent home and to address any impediments to permanency. Subsequent Judicial Reviews are an important opportunity to ensure that CYFD is making reasonable efforts to finalize the permanency plan and to review the plan and determine whether it remains appropriate.
- **Timing:** Subsequent periodic reviews of dispositional orders must be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. NMSA §32A-4-25(B).
 - Although not mandated, the Court may hold review hearings more frequently. Some judges hold an additional judicial review between the IJR and the permanency hearing to ensure that parents are receiving appropriate services and are engaged.
- **Rules of Evidence:** do not apply. NMSA§32A-4-25(E).
 - All parties can present evidence and cross-examine witnesses. NMSA §32A-4-25(D).
- The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. NMSA §32A-4-25(A).
- Should address the same considerations as the Initial Judicial Review, but should focus on the permanency plan for the child. The Court should review, and if necessary, amend the permanency plan.