

STATE OF NEW MEXICO
COUNTY OF
FOURTH JUDICIAL DISTRICT COURT

No.

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

In the matter of

**CASE MANAGEMENT ORDER
REGARDING THE IN-PERSON HEARING ON
PETITIONER'S MOTION FOR TERMINATION OF PARENTAL RIGHTS**

The parties shall comply with the following:

1. PRE-TPR MERITS HEARING MOTIONS.

A. **Time for Filing.** The parties shall file any pre-hearing motions regarding the Termination of Parental Rights Petition pursuant to the following schedule:

- i. Motions shall be filed on or before ;
- ii. Responses shall be filed on or before ; and
- iii. Replies shall be filed on or before , 2020.

B. **Motions Shall Be Written.** Pursuant to NMRA, Rule 10-111, all pre-TPR hearing motions filed by any party herein shall be in writing, shall state with particularity the grounds therefor and the relief sought, shall state whether such motion is opposed or unopposed, and shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. If the motion is not opposed, an order initialed by opposing counsel shall accompany the motion.

C. **Evidentiary Hearings on Pre-TPR Hearing Motions.** If an evidentiary hearing is requested on any pre-TPR motion, the motion shall be accompanied by a separate written request for an evidentiary hearing, including a statement of the ultimate facts intended to be proven at such an evidentiary hearing. Unless a shorter period of time is ordered by the court, at least five (5) days before the hearing on the motion, each party shall submit to the other party's attorney the names and addresses of the witnesses the party intends to call at the evidentiary hearing, together with any statement subject to discovery made by the witness which has not been previously disclosed.

2. **OPENING STATEMENTS.** The parties shall each have ten (10) minutes to complete their opening statement. If additional time is needed, then the party requesting additional time shall file a motion requesting additional time stating with specificity good cause why additional time is

warranted. This motion shall be filed no later than ten (10) days before the start of the TPR hearing.

3. **CLOSING STATEMENTS.** The parties shall each have thirty (30) minutes to complete their closing statement. The Petitioner may divide this time between the first closing and rebuttal closing in any manner they choose. If additional time is needed, then the party requesting additional time shall file a motion requesting additional time stating with specificity good cause why additional time is warranted. This motion shall be filed no later than ten (10) days before the start of the TPR hearing.

4. **LOCATION OF WITNESSES DURING THE TPR HEARING.** The parties shall make arrangements for their witnesses to be located near the courthouse if they cannot be safely located within the courthouse due to safety protocols. For example, a witness who isn't able to remain in the courthouse until the witness is called shall either wait at the sponsoring attorney's office provided the witness can be available and seated in the witness box within two (2) minutes or the witness can wait to be called in the witness' car that is parked in the courthouse parking lot.

5. **WITNESSES LOCATED OUTSIDE OF COURTHOUSE.** If the witness is located outside of the courthouse at the time the witness is called to testify, the party calling the witness shall notify the witness, by whatever method that party chooses, that the witness is to proceed to the courtroom where the hearing is being held to testify. Court staff shall not be utilized to retrieve any witness that is not located inside of the courthouse at the time the witness is called to testify.

6. **PRE-SCREENING OF WITNESS BY PARTY CALLING THE WITNESS.** Not less than 24 hours before the start of the hearing and again not less than 24 hours prior to the scheduled time for a witness to appear to testify at the hearing, the party calling the witness shall pre-screen the witness by asking the witness the screening questions that are currently being asked of any person who is seeking entry into any courthouse in the State of New Mexico. These screening questions are posted on the internet at nmcourts.gov. If the witness fails this screening, the party calling the witness shall immediately inform the judge presiding over the hearing and the manager of the court at which the hearing is being held. The party calling the witness who has failed the screening shall, upon completion of the screening, inform the witness that the witness is not to report to the courthouse at which the hearing is being held and that the witness is to await further direction from the Court. The court shall hold a hearing at which the parties and their attorneys shall be present to determine how to proceed with respect to the presentation of the testimony of this witness.

7. **HEARING EXHIBITS-ADMISSION, STIPULATION, OBJECTIONS, PUBLICATION, AND USE.**

A. **Meet and Confer.** The parties shall meet and confer not less than ten (10) days before the start of the TPR hearing to discuss stipulations to exhibits. Within 24 hours of the meet and confer, the parties shall file a pleading indicating the exhibits to which they have stipulated admission and the exhibits to which they object and setting forth therein the basis for the objection. The parties shall then be prepared to discuss the objections at a hearing set by the Court to attempt resolution of the objections so that less time is taken up dealing with these issues during the TPR hearing.

B. **Exhibit Binders.**

i. **Petitioner and Respondent Binders.** Each party shall have a three-ring binder in

which each of their exhibits shall be kept. The binder for the Petitioner shall be labeled “Petitioner’s Exhibits” and each exhibit shall be pre-marked by number. The Respondent’s binder shall be labeled “Respondent’s [name of respondent] Exhibits” and each exhibit shall be pre-marked with letters. The individual exhibits shall be separated by tabs with the corresponding exhibit number or letter on the tab. On the first day of the TPR hearing prior to the presentation of evidence, each party shall furnish the Court and opposing party a binder containing their exhibits. These binders shall be labeled “Petitioner’s Exhibits-Court’s Copy,” “Respondent’s [name of respondent] Exhibits-Court Copy,” “Petitioner’s Exhibits-Opposing Party Copy,” and “Respondent’s [name of respondent] Exhibits-Opposing Party Copy.” As well, each party shall furnish a second binder containing their exhibits to the Court for use by the witnesses as they testify. The binders shall be labeled “Petitioner’s Exhibits-Witness Copy,” and “Respondent’s [name of respondent] Exhibits-Witness Copy.”

ii. If an exhibit is not contained within the binders and has not been admitted into evidence and a party seeks to introduce it through the witness that is currently on the witness stand, the attorney seeking introduction of the exhibit shall hand a copy of the exhibit to the bailiff who shall hand it to the witness for use during this process. **NO ONE OTHER THAN THE BAILIFF SHALL APPROACH THE WITNESS STAND FOR ANY REASON.**

C. Publication of Exhibits. If a party wishes to publish an exhibit, that party may do so by use of an ELMO or other projector. If the exhibit is such that it can be placed into the exhibit binders, the party shall make sufficient copies of the exhibit with exhibit label attached such that the court and opposing counsel can place the exhibit into the sponsoring parties’ exhibit binder.

8. **LOCATION OF COUNSEL DURING EXAMINATION OF WITNESSES.** Counsel for the parties shall be seated at counsel table in the seat designated for them. Counsel shall not move the chair from that location. Counsel shall question the witnesses from counsel table and shall not move from the area immediately adjacent to their seat at counsel table for any reason without first obtaining the permission of the Court.

9. **LOCATION OF COUNSEL DURING OPENING STATEMENT AND CLOSING ARGUMENTS.** Counsel for the parties shall make their opening statements and closing arguments from counsel table where they are seated. Counsel shall not move from the area immediately adjacent to their seat at counsel table.

10. **BENCH CONFERENCES. DUE TO DISTANCING REQUIREMENTS DURING THIS PUBLIC HEALTH EMERGENCY, NO ONE SHALL APPROACH THE JUDGE’S BENCH FOR ANY REASON.** Bench conferences or “sidebars” cannot occur as they usually did before the Public Health Emergency. If an attorney for a party believes that a bench conference is necessary, that attorney shall bring this to the attention of the court by standing at counsel table and requesting a bench conference. A request for a bench conference shall be made sparingly and only when the issue cannot be resolved in any other manner. Once the request is made, the Court will recess the proceedings to hold the bench conference. At that time, the Court, counsel, and the parties shall leave the courtroom where the hearing is being held and reconvene on the record in another courtroom to take up the issues that necessitated the bench conference. In courthouses without multiple courtrooms, any bench conferences must be held on the record in a jury or conference room

outside the presence of the jury.

11. **USE OF ELECTRONIC EQUIPMENT DURING THE TPR HEARING.** If an attorney for any party intends to use electronic or other equipment for the presentation of evidence, that attorney shall make arrangements with the Court to test the equipment that the attorney intends to use at the TPR hearing not later than two (2) business days before the start of the TPR hearing. Failure to comply with this requirement may result in the attorney being prohibited from presenting that evidence by the use of that equipment. As well, the attorney(s) who intend to use any electronic or other equipment during the TPR hearing, shall set up such equipment during any recess of the TPR hearing and shall not request time be taken from the TPR hearing to set up the equipment. No unscheduled recess from the TPR hearing shall be taken to allow the attorney to set up the equipment. The purpose of this requirement is to eliminate delay in the TPR hearing due to any the equipment not working as anticipated during the TPR hearing or because the setting up of such equipment took longer than anticipated.

12. **FINAL PRE-TPR HEARING CONFERENCE.** A Final Pre-TPR Hearing Conference shall be held before the start of the hearing on the TPR motion. All parties and counsel shall attend the Final Pre-TPR Hearing Conference and shall be ready to address any motions that have not been previously resolved in the matter. As well, the parties shall be prepared to present any settlements to the court at this time. The Court reserves the right to set other Pre-TPR Hearing conferences as the Court deems necessary.

13. **CONTINUANCES.** Continuances shall not be liberally granted. A request for a continuance of the TPR Hearing or any hearings set in connection with the TPR Hearing shall state with particularity the good cause in support thereof. Copies of all requests for continuances shall be provided to all counsel of record. Continuances sought because of a pre-existing court setting or other legitimate prior business commitment shall be submitted with exhibits concerning the prior engagement attached showing that the prior matter was both set and noticed to counsel prior to receipt of the notice of setting in this case. Continuances sought for scheduling conflicts lacking this information shall be denied. No *ex parte* continuance requests will be reviewed or decided by the Court. Every continuance request must be submitted to opposing counsel before it is submitted to the Court.

14. **COMPLIANCE WITH SAFETY PROTOCOLS.** All witnesses, attorney staff, and attorneys shall comply with all safety protocols currently in place to be able to gain entry into the courthouse where the TPR Hearing is being held. This includes any witness who is traveling from out of state. If any party, witness, or attorney or a member of their staff does not pass the screening to gain entry into the courthouse, they shall not enter the courthouse. Witnesses, whether from within or without New Mexico, who do not pass the screening protocol, will be denied entry into the courthouse and either alternative arrangements will have to be made by the party calling that witness for that witness to testify via remote access at the TPR Hearing or the witness may be excluded from the TPR Hearing at the discretion of the court.

A. **Use of Face Coverings, Exceptions.** During TPR Hearings and other hearings all parties, witnesses, attorney staff, and any other hearing participant or attendee shall wear a protective face covering at all times, including while testifying, except that a face covering may be removed for a very brief moment to allow for the identification of a party or witness provided that the party or witness does not speak while the face covering is removed. *See also* Supreme Court Order No. 20-

B. Testimony without a Face Covering. Any party may request that a witness be allowed to testify without a face covering, which may be granted in the discretion of the judge subject to the following requirements: (a) the witness shall be required to appear by two-way audio-visual connection outside of the courtroom; (b) the audio-visual connection must enable simultaneous audio visual communication between the witness and the judge and attorneys in the courtroom for direct examination, cross-examination, and other necessary communications during the testimony of the witness; (c) no other person shall be present in the room with the witness while the witness is unmasked; (d) the judge, court monitor or court reporter, the litigants and their counsel who are present in the courtroom, and all jurors shall be able to see, hear, and observe the demeanor of the witness while testifying; (e) if the witness is a party to the case, the ability for confidential communication between the testifying party and the party's attorney shall be made available; and (f) the judge shall make a factual finding on the record of the necessity for allowing audio-visual testimony to further an important public policy, which may include finding that the witness is unavailable for testimony in the courtroom because of the need to protect public health during the current public health emergency.

15. **CLEANING PROTOCOLS.** Consistent with the protocols instituted by the New Mexico Supreme Court to protect the health and safety of all participants in the TPR Hearing, the public and the media, the courtroom and any other high contact surfaces used during the TPR Hearing shall be cleaned by court staff during any recess of the TPR Hearing and in any event not less than every two (2) hours. This may necessitate that a recess in the TPR Hearing be taken to have the courtroom and other adjacent areas cleaned. This recess should last no more than 15-30 minutes after which the TPR Hearing can be resumed. During this recess, the attorneys, the parties, the public, and any media will be asked to leave the courtroom that is being cleaned and to wait in an area inside of the courthouse that has been designated as a waiting area and that can accommodate this group of people and still maintain the physical distancing requirements. If this is not available or if the waiting area's capacity is exceeded, these people shall leave the courthouse and wait outside the courthouse in their car or other location so long as the physical distancing requirements are not violated. In any case, the attorneys, the parties, and any other TPR Hearing participants shall be ready to resume the TPR Hearing as soon as the courtroom has been sanitized.

16. **MOVING OF FURNITURE.** Moving of furniture in the Courtroom from where it has been placed by the Fourth Judicial District Court's Emergency Response Team is strictly prohibited by anyone, including judicial officers, attorneys, court managers or other persons without first obtaining permission from the Court Executive Officer of the Fourth Judicial District and the Chief Judge of the Fourth Judicial District Court. The furniture is located at that specific location to maintain distancing requirements and the placement of the furniture in those locations is included in the Resumption Plan for the Fourth Judicial District Court which has been reviewed and approved by the Supreme Court's Emergency Response Team. Moving any furniture or changing the seating will violate distancing requirements, will be contrary to the Resumption Plan submitted to the Supreme Court and has not been approved by the ERT.

17. **COMMUNICATION BETWEEN COUNSEL AND THEIR CLIENT.** Counsel and his/her client may communicate with each other by the use of notes being passed back and forth between them or by the use of instant messages on an electronic device or any other means whereby safety protocols, including physical distancing, are not violated. If necessary, counsel can request a

recess to confer with his/her client. During this recess and while counsel and his/her client are conferring, they shall maintain all safety protocols, including the use of face coverings and the physical distancing requirement. If necessary, the Court can arrange for counsel and his/her client to meet in a private area.

18. The procedures set forth in Supreme Court Order No. 20-8500-25 and any prior or subsequent order of the Supreme Court setting out any policies or procedures to be followed by the Courts of the State of New Mexico during the ongoing Covid-19 pandemic as well as the Resumption Plan for the Fourth Judicial District Court, any Memoranda and Administrative Orders issued by the Chief Judge of the Fourth Judicial District shall be followed and those Orders, Resumption Plan, Memoranda, and Administrative Orders are incorporated herein by reference.

19. **FAILURE TO COMPLY WITH THIS ORDER:** Failure to comply with any provision of this order may result in a finding of contempt of court and may be punished by fine or imprisonment or other sanctions as provided by the Rules of Criminal Procedure.

20. All Pre-TPR Hearing motions filed herein shall be heard on at a.m./p.m.

21. A Final Pre-TPR Conference will be held for this case on at a.m./p.m.

22. This matter is set for merits hearing on the Petitioner's Motion for Termination of Parental Rights on **at a.m./p.m.**

IT IS SO ORDERED.

Date

District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing order was served upon all counsel of record on _____.

Clerk