

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **March 27, 2020**

3 **NO. 20-8500-009**

4 **IN THE MATTER OF THE STAY OF**
5 **ALL COURT ORDERS REQUIRING IN-PERSON**
6 **VISITS BETWEEN CHILDREN IN CUSTODY**
7 **OF THE NEW MEXICO CHILDREN, YOUTH AND**
8 **FAMILIES DEPARTMENT AND RESPONDENTS**
9 **UNDER THE ABUSE AND NEGLECT ACT**

10
11 **ORDER**

12 WHEREAS, this matter having come before the Court upon
13 recommendations to suspend in-person visits between respondents under the
14 Abuse and Neglect Act and children who are in the custody of the New Mexico
15 Children, Youth and Families Department (CYFD) due to allegations of abuse and
16 neglect;

17 WHEREAS, respondents of children placed in CYFD custody while abuse
18 and neglect proceedings are pending retain a fundamental liberty interest in the
19 care, custody, and control of their children under the federal and state
20 constitutions, and the Court recognizes that separation from caregivers can be a
21 highly traumatic event in a child's life;

22 WHEREAS, this Court must exercise its power of superintending control
23 over pleading and practice in the New Mexico Judiciary under Article VI, Section
24 3, of the New Mexico Constitution to balance the need to protect the health and
25 well-being of children in CYFD custody with current directives from public health

1 authorities emphasizing the need for New Mexicans to avoid unnecessary contact
2 with one another and remain in their homes to the greatest extent possible during
3 the current public health emergency; and

4 WHEREAS, in light of the foregoing, and the Court being sufficiently
5 advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice
6 Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K. Thomson
7 concurring;

8 NOW, THEREFORE, IT IS ORDERED that all orders allowing for
9 visitation between children and respondents in pending cases under the Abuse and
10 Neglect Act, NMSA 1978, § 32A-4-1 through -35 (2019), shall be amended to
11 provide the following:

12 1. All in-person visits shall be temporarily suspended for thirty (30) days
13 unless the period of the temporary suspension is extended or shortened by further
14 order of this Court;

15 2. CYFD shall make diligent efforts to provide visits between
16 respondents and children through remote means such as by audio-video
17 conferencing, such as FaceTime or a similar service (first preference), or telephone
18 (second preference);

19 3. CYFD shall provide a report to the district court and all parties on a
20 bi-weekly basis setting forth efforts it has undertaken to maintain contact between
21 respondents and children. The bi-weekly report shall address the following:

22 a. CYFD's efforts to screen the parties for risk of exposure to the
23 novel coronavirus (COVID-19);

24 b. If applicable, verification from public health officials that the
25 children were exposed to COVID-19 and the number of days remaining in any
26 quarantine or self-isolation;

1 c. All efforts made by CYFD to ensure audio-video or telephonic
2 visits have occurred since the suspension of in-person visits, and the frequency of
3 those audio-video or telephonic visits;

4 d. If audio-video or telephonic visits were not feasible due to
5 available technology between foster parents and respondents, all efforts made by
6 CYFD to arrange for such visitation;

7 e. Where audio-video or telephonic visits have not been
8 implemented, CYFD shall demonstrate its efforts at providing the respondents with
9 digital photos of the children doing various activities each week; and

10 f. If a child may have been exposed to a person with a positive
11 test for COVID-19, CYFD shall demonstrate all efforts it undertook to ensure the
12 safety and health of the child, including any and all of the following:

13 i. Removal from the foster home;

14 ii. COVID-19 testing for child and household members;

15 iii. Safety planning if foster parent or caregivers are
16 hospitalized; and

17 iv. Efforts to identify and place the children with family if
18 the child is removed from the foster parent;

19 4. The temporary suspension of visitation as a result of the current
20 public health emergency shall not be used against any party in the ultimate
21 determination of parental rights;

22 5. The district court may exercise its discretion to allow in-person
23 visitation between children and respondents upon the recommendation of CYFD
24 and a showing by a clear and convincing evidence that measures are taken with
25 respect to the in-person visitation to ensure the safety and well-being of the
26 children during the current public health emergency;

27 6. Before CYFD makes any recommendation to the court regarding
28 reinstatement of in-person visitation during the current public health emergency,
29 CYFD shall at a minimum screen respondents, foster parents, and children to
30 determine if any of them or members of their households have been exposed to
31 COVID-19;

32 a. In administering such a screening, CYFD shall at a minimum
33 ask and receive responses to the following questions:

1 i. Have they travelled internationally or to another state
2 within the last fourteen (14) days where COVID-19 cases have been confirmed;

3 ii. Have they had contact with anyone who has been
4 diagnosed with COVID-19;

5 iii. Have they worked in a health care facility that treats
6 COVID-19 cases; and

7 iv. Have they experienced the following symptoms within
8 the last fourteen (14) days: fever and dry cough or shortness of breath;

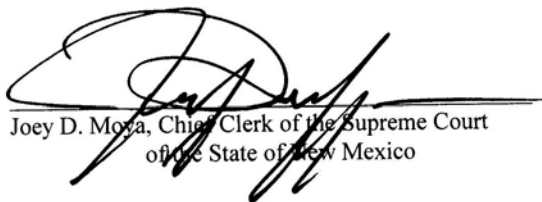
9 b. If the answer to any of the foregoing questions is yes, CYFD
10 shall not seek reinstatement of in-person visitation until the person has been in
11 self-isolation for no less than fourteen (14) days or has been otherwise cleared by
12 the New Mexico Department of Health; and

13 IT IS FURTHER ORDERED that this order shall remain in effect until
14 April 26, 2020, unless extended, amended, or withdrawn by future order of this
15 Court.

16 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 27th day of March, 2020.


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico