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1-004. Process.

Summons; issuance.

Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service. Upon the request of the plaintiff separate or additional summons shall issue against any defendants. Any defendant may waive the issuance or service of summons.

Summons; execution; form.

The summons shall be signed by the clerk, issued under the seal of the court, be directed to the defendant, and must contain:

- the name of the court in which the action is brought, the name of the county in which the complaint is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed;
- a direction that the defendant serve a responsive pleading or motion within thirty (30) days after service of the summons, and file the same, all as provided by law, and a notice that unless the defendant so serves and files a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint;
- the name and address of the plaintiff's attorney, if any, shall be shown on every summons, otherwise the plaintiff's address;
- the summons may be in the following form:

SUMMONS (name of court) (caption of case) THE STATE OF NEW MEXICO TO: __, defendant.
GREETINGS: You are hereby directed to serve a pleading or motion in response to the complaint within thirty (30) days after service of this summons, and file the same, all as provided by law.

WITNESS, the Honorable __, district judge of the __ judicial district court of the State of New Mexico, and the seal of the district court of

A.D., 20. __ Clerk By __, Deputy (The summons may also include appropriate forms for return of service.)



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Summons; service of copy.

A copy of the summons with copy of complaint attached shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary.

Summons; by whom served.

In civil actions any process may be served by the sheriff of the county where the defendant may be found, or by any other person who is over the age of eighteen (18) years and not a party to the action, except for writs of attachment, writs of replevin, and writs of habeas corpus, which shall be served by any person not a party to the action over the age of eighteen (18) years who may be especially designated by the court to perform such service, or by the sheriff of the county where the property or person may be found.

Summons; service by mail.

A summons and complaint may be served upon a defendant of any class referred to in Subparagraph (1) or (2) of Paragraph F of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and acknowledgement conforming with the form set out below and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service under this subdivision of this rule is received by the sender within twenty (20) days after the date of mailing, service of such summons and complaint shall be made by a person authorized by Paragraph D of this rule, in the manner prescribed by Subparagraph (1) or (2) of Paragraph F of this rule. Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within twenty (20) days after mailing the notice and acknowledgement of receipt of summons. The form of the notice and acknowledgement of receipt of summons and complaint shall be substantially as follows:

NOTICE AND RECEIPT OF SUMMONS AND COMPLAINT (name of court) (caption of case)
NOTICE

(insert the name and address of the person to be served) The enclosed summons and complaint are served pursuant to Paragraph E of Rule 1-004 of the New Mexico Rules of Civil Procedure. You must sign and date the receipt. If you are served on behalf of a



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corporation, unincorporated association (including a partnership) or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your position or title. If you do not complete and return the form to the sender within twenty (20) days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law. If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within thirty (30) days of the date upon which this notice was mailed, which appears below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. I declare, under penalty of perjury, that this Notice and Receipt of Summons and Complaint was mailed on (insert date).

Signature

Date of Signature RECEIPT OF SUMMONS AND COMPLAINT I received a copy of the summons and complaint in the above-captioned matter at (insert address).

Signature

Relationship to entity/authority to receive service of process

Date of Signature



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Summons; how served.

Service shall be made as follows:

- upon an individual other than a minor or an incapacitated person by delivering a copy of the summons and of the complaint to the individual personally; or if the individual refuses to receive such, by leaving same at the location where the individual has been found; and if the individual refuses to receive such copies or permit them to be left, such action shall constitute valid service. If the individual is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years; and if there is no such person available or willing to accept delivery, then service may be made by posting such copies in the most public part of the defendant's premises, and by mailing to the defendant at defendant's last known mailing address copies of the process;
- upon domestic or foreign corporation by delivering a copy of the summons and of the complaint to an officer, a managing or a general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant; upon a partnership by delivering a copy of the summons and of the complaint to any general partner; and upon other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association. If the person refuses to receive such copies, such action shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge thereof;
 1. in garnishment actions, service of writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau, department, commission or institution. A copy of the writ of garnishment shall be delivered or mailed by registered or certified mail to the defendant employee;
 2. service of process on the governor, attorney general, agency, bureau, department, commission or institution or head thereof may be made either by delivering a copy of the summons and of the complaint to the head or to the head's receptionist. Where an executive secretary is employed, the executive secretary shall be considered as the head;



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- upon any county by delivering a copy of the summons and of the complaint to the county clerk, who shall forthwith notify the district attorney of the judicial district in which the county sued is situated;
- upon a municipal corporation by delivering a copy of the summons and of the complaint to the city clerk, town clerk or village clerk, who in turn shall forthwith notify the head of the commission or other form of governing body;
- upon the board of trustees of any land grant referred to in Sections 49-1-1 through 49-10-6 NMSA 1978, process shall be served upon the president or in the president's absence upon the secretary of such board;
- upon a minor, whenever there shall be a conservator of the estate or guardian of the person of such minor, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of process so made shall be considered as service upon the minor. In all other cases process shall be served by delivering a copy of the summons and of the complaint to the minor, and if the minor is living with an adult a copy of the summons and of the complaint shall also be delivered to the adult residing in the same household. In all cases where a guardian ad litem has been appointed, a copy of the summons and of the complaint shall be delivered to such representative, in addition to serving the minor as herein provided;
- upon an incapacitated person, whenever there shall be a conservator of the estate or guardian of the person of such incapacitated person, by delivering a copy of the summons and of the complaint to the conservator or guardian. Service of process so made shall be considered as service upon the ward. In all other cases process shall be served upon the ward in the same manner as upon competent persons;
- upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner as provided in Subparagraph (1) or (2) of this paragraph as may be appropriate. Service shall be made with reasonable diligence, and the original summons with proof of service shall be returned to the clerk of the court from which it was issued.

Return.

The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. When service is made by the sheriff (or a deputy) of the county in New Mexico, proof thereof shall be by certificate; and when made by a person other than a sheriff (or a deputy) of a New Mexico county, proof thereof shall be made by affidavit. If service is made under Paragraph E of this rule, return shall be made by the sender's filing with the court the acknowledgement received pursuant to such paragraph. Where service within



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the state includes mailing, the return shall state the date and place of mailing. Failure to make proof of service shall not affect the validity of service.

Service by publication.

In actions where the relief sought does not require personal service and the party to be served is so situated that process cannot be personally served upon the party within the state, or in situations where the party to be served is a New Mexico resident who, by deliberate concealment to avoid service of process, has effectively prevented service on the party in the manner provided in Paragraph F of this rule, service by publication shall be as follows:

- In any such action or proceeding, the clerk of the court shall cause to be issued a notice of the pendency of the action or proceeding upon the filing by plaintiff, the plaintiff's agent or attorney, of a sworn pleading or affidavit stating that any defendant (whether an individual, corporation, partnership or association): resides or has gone out of the state; or is concealed within the state; or, in appropriate cases, is deliberately concealed to avoid service of process and thereby has effectively prevented service on the party; or the party's whereabouts cannot be discovered after due inquiry and search has been made; or is in any manner situated so that the process cannot be served upon the party in the State of New Mexico.
- The notice of pendency of action shall contain the names of the plaintiff and the defendant to the cause, or if there is more than one defendant to the cause, the notice shall contain the name of the plaintiff and the names of the defendants against whom constructive service is sought to be obtained; except as hereinafter provided, the notice shall contain also the name of the court in which the cause is pending and a statement of the general objects of the action; shall show the name of plaintiff's attorney, with the plaintiff's attorney's office or post office address; and shall notify each defendant that unless the defendant files a responsive pleading or motion within the time required, judgment or other appropriate relief will be rendered in the cause against the defendant by default. The notice shall be signed by the clerk under the seal of the court.
- The notice shall be published in some newspaper published in the county where the cause is pending; or, if there be no newspaper published in the county, then in some newspaper in general circulation in said county.
- The publication of said notice shall be proved by the affidavit of the publisher, manager or agent of the newspaper, and the same shall be taken and considered as sufficient service of process and valid in law, and the plaintiff thereupon may prosecute the cause to a final judgment.



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- It shall not be necessary in stating the general object of the action in any such notice specifically to describe any real property which may be involved in such action, but in all such notices it shall be sufficient to refer to such property merely as “the property described in the complaint in the cause”, and to specify the county in which the land is situate and the sections, township and range in which it is situate, if it is on land which has been officially surveyed by section, or the land granted in which it is located if in a Spanish or Mexican grant, or the name of the city, town or village in which it is located, if it is in a municipality.
- In suits to quiet title or in other proceedings where unknown heirs are parties, or where the defendants are designated by name, if living, or if deceased, are designated as the unknown heirs of such named party, it shall be sufficient to use the following form in the complaint and in the notice of pendency of action: “Unknown heirs of the following named deceased persons”; then following with the names of the various deceased persons whose unknown heirs are sought to be served; and as to parties named in the alternative: “The following named defendants by name, if living; if deceased, their unknown heirs”. Then name such persons.
- In case it may be necessary to make a further publication by reason of omission or misnaming of parties, such further publication shall conform to the first publication, except that in addition to the first named defendant to the cause only such omitted or misnamed parties need be named against whom substituted service is sought to be obtained.

Affidavit of residence; copy of process to be mailed.

When the residence of the defendant in the cases mentioned in Paragraph H of this rule is known to the affiant, it shall be stated in the affidavit, and if the residence is not known, that fact shall be stated. When the residence of any defendant is known, the plaintiff, the plaintiff's agent or attorney, shall, not less than thirty-five (35) days before rendition of final judgment or decree in the cause, deposit a copy of the summons and complaint in the post office, postage prepaid, directed to the defendant at the defendant's place of residence as stated in the affidavit or pleading. Proof of mailing shall be made by affidavit of the person mailing such copies, filed in the cause.

Service of summons outside of state equivalent to publication.

Personal service of a copy of the summons and of the complaint out of the state shall be equivalent to service by publication and mailing as provided for by Paragraphs H and I of this rule. The defendant so served shall be required to respond as required by law on or before thirty (30) days from the date of service. Return of such service shall be made by affidavit of the person making same.

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Alias process.

When any process has not been returned, or has been returned without service, or has been improperly served, it shall be the duty of the clerk, upon the application of any party to the suit, to issue other process as the party applying may direct.

Service in manner approved by court.

Upon motion, without notice, and showing by affidavit that service cannot reasonably be made as otherwise provided by this rule, the court may order service by any method or combination of methods, including publication, that is reasonably calculated under all the circumstances to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

Service; applicable statute.

Where no provision is made in these rules for service of process, process shall be served as provided for by any applicable statute.

Definitions.

Wherever the terms "summons", "process", "service of process" or similar terms are used, such shall include the summons, complaint and any other papers required to be served. [As amended, effective January 1, 1987; October 1, 1998.]

1-045. Subpoena.

Form; issuance.

- Every subpoena shall:
 - state the name of the court from which it is issued;
 - state the title of the action and its civil action number;
 - command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and



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- be substantially in the form approved by the Supreme Court. A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.
- All subpoenas shall issue from the court for the district in which the matter is pending.
- The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney authorized to practice law in New Mexico and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court.

Service; place of examination.

- A subpoena may be served any place within the state;
- A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if that person's attendance is commanded:
 - if the witness is to be paid from funds appropriated by the legislature to the administrative office of the courts for payment of state witnesses or for the payment of witnesses in indigency cases, by processing for payment to such witness the fee and mileage prescribed by regulation of the administrative office of the courts;
 - for all persons not described in Subparagraph (2) (a) of this paragraph, by tendering to that person the full fee for one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The fee for per diem expenses shall not be prorated. If attendance is required for more than one day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior to or at the same time as service of any subpoena commanding production of documents and things or inspection of premises before trial, notice shall be served on each party in the manner prescribed by Rule 1-005;
- A person may be required to attend a deposition within one hundred (100) miles of where that person resides, is employed or transacts business in person, or at such other place as is fixed by an order of the court.
- A person may be required to attend a hearing or trial at any place within the state.
- Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Supreme Court.



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- A subpoena may be issued for taking of a deposition within this state in an action pending outside the state pursuant to Section 38-8-1 NMSA 1978 upon the filing of a miscellaneous proceeding in the judicial district in which the subpoena is to be served. Upon the docketing of the miscellaneous proceeding, the subpoena may be issued and shall be served as provided by this rule.
- A subpoena may be served in an action pending in this state on a person in another state or country in the manner provided by law or rule of the other state or country.

Protection of persons subject to subpoenas.

- A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (a) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. (b) Subject to Subparagraph (2) of Paragraph D of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon all parties written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
 - fails to allow reasonable time for compliance,
 - requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of Subparagraph (3) (b) (iii) of this paragraph, such



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- a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
 - requires disclosure of privileged or other protected matter and no exception or waiver applies, or
 - subjects a person to undue burden.
- If a subpoena:
 - requires disclosure of a trade secret or other confidential research, development or commercial information,
 - requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
 - requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

Duties in responding to subpoena.

- A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided in Subparagraph (3) (a) (ii) of Paragraph C of this rule. [As amended, effective January 1, 1987; August 1, 1989; January 1, 1998.]

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