

**GUARDIANSHIP RULES**  
**RULE 1-004.1**  
**[NEW MATERIAL]**

**Supreme Court Approved**  
**January 14, 2019**

1 **1-004.1. Guardianship and conservatorship proceedings; process.**

2 **A. Scope; notice of hearing and rights; issuance.**

3 **(1) *Scope.*** The provisions of this rule govern the issuance and service of  
4 process in proceedings to appoint a guardian or conservator under Chapter 45, Articles 3 and  
5 4 NMSA 1978. The provisions of this rule shall not apply to proceedings to appoint a  
6 temporary guardian or conservator under Sections 45-5-310 or 45-5-408 NMSA 1978.

7 **(2) *Notice of hearing and rights; issuance.*** Within five (5) days of the  
8 filing of a petition to appoint a guardian or conservator, the court shall set a hearing on the  
9 petition and issue a notice of hearing and rights of the alleged incapacitated person. The  
10 hearing on the petition shall be set for no sooner than sixty (60) days after the filing of the  
11 petition. The notice shall be in lieu of a summons. The court shall deliver the notice to the  
12 petitioner for service upon the alleged incapacitated person and interested persons entitled  
13 to notice of the proceeding under Chapter 45, Articles 3 and 4 NMSA 1978.

14 **B. Form of notice.** The notice issued under Subparagraph (A)(2) of this rule  
15 shall be substantially in the form approved by the Supreme Court as provided in Form 4-999  
16 NMRA.

17 **C. Service of process on alleged incapacitated person.** The notice shall be  
18 served together with the petition on the alleged incapacitated person as provided in this  
19 paragraph. The court shall not grant the petition if process is not served personally on the  
20 alleged incapacitated person as provided in Subparagraph 3 of this paragraph.

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1                   (1)     ***Timing of service.*** Process shall be served on the alleged incapacitated  
2 person within eleven (11) days of the issuance of the notice.

3                   (2)     ***By whom served.*** Service may be made by the guardian *ad litem* or  
4 by any person who is over the age of eighteen (18) years and not a party or interested person  
5 to the proceeding.

6                   (3)     ***How served; exclusive method of service.*** Process shall be served  
7 personally on the alleged incapacitated person by delivering a copy of the notice and petition  
8 to the alleged incapacitated person; or if the alleged incapacitated person refuses to accept  
9 service, by leaving the process at the location where the alleged incapacitated person has  
10 been found; and if the alleged incapacitated person refuses to receive such copies or permit  
11 them to be left, such action shall constitute valid service. No other method of service shall  
12 constitute effective service of process on an alleged incapacitated person.

13                   (4)     ***Proof of service of process on the alleged incapacitated person.*** The  
14 petitioner or the petitioner's agent shall promptly file with the court proof of service on the  
15 alleged incapacitated person. Proof of service shall be made by affidavit or written statement  
16 affirmed under penalty of perjury under the laws of the State of New Mexico as provided in  
17 Rule 1-011 NMRA.

18                   **D.     Service on interested persons.** The notice shall be served together with the  
19 petition on all interested persons named in the petition and entitled to notice under Chapter  
20 45, Articles 3 and 4 NMSA 1978.

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1                   (1)     **Timing.** Service of the notice and petition shall be made on interested  
2 persons within eleven (11) days of service on the alleged incapacitated person.

3                   (2)     **How served on interested persons.** Service and proof of service on  
4 interested persons shall be effective if made in accordance with Rule 1-005 NMRA.

5            **E.     Service of process on minor.** In a proceeding to appoint a conservator of a  
6 minor under Chapter 45, Article 4 NMSA 1978, service of process shall be made in  
7 accordance with Paragraph C of this rule, provided that such process shall be served  
8 personally on each person who has legal authority over the minor. If no person has legal  
9 authority over the minor, process may be served on a person designated by the court.

10 [Approved by Supreme Court Order No. 19-8300-001, effective for all cases filed on or after  
11 January 14, 2019.]