

1 **5-208. Issuance of warrant for arrest and summons.**

2 A. **Time.** [~~Upon~~] On the docketing of any criminal action, the court may issue a  
3 summons or arrest warrant.

4 B. **Preference for summons.** The court shall issue a summons, unless in its  
5 discretion, the court finds that the interests of justice would be better served by the issuance of a  
6 warrant and if the requirements of Paragraph C of this rule are met.

7 C. **Basis for warrant.** The court may issue a warrant for arrest [~~upon~~] on an  
8 indictment or a sworn written statement of the facts showing probable cause for issuance of the  
9 warrant. The showing of probable cause shall be based [~~upon~~] on substantial evidence, which may  
10 be hearsay in whole or in part, provided there is a substantial basis for believing the source of the  
11 hearsay to be credible and for believing that there is a factual basis for the information furnished.  
12 Before ruling on a request for a warrant the court may require the affiant to appear personally and  
13 may examine under oath the affiant and any witnesses the affiant may produce, [~~provided that~~  
14 ~~such~~] but the additional evidence shall be reduced to writing and supported by oath or affirmation.  
15 The court may also permit a request for an arrest warrant by any method authorized by Rule 5-  
16 211(F) NMRA for search warrants and may issue an arrest warrant remotely [~~provided that~~] if the  
17 requirements of Rule 5-211(F) NMRA and this rule are met.

18 D. **Form.**

19 (1) **Warrant.** The warrant shall be signed by the court and shall contain the  
20 name of the defendant or, if the [~~defendant-s~~] defendant's name is unknown, any name or  
21 description by which the defendant can be identified with reasonable certainty. It shall describe  
22 the offense charged and shall command that the defendant be arrested and brought before the court.  
23 The warrant may set conditions of release for the defendant only for:

- 1                         (a) penalty assessment misdemeanor charges; or  
2                         (b) traffic code misdemeanor charges, except for:  
3                                 (i) driving under the influence of intoxicating liquor or drugs,  
4 contrary to Section 66-8-102 NMSA 1978; and  
5                                 (ii) operating a motorboat while under the influence of  
6 intoxicating liquor or drugs, contrary to Section 66-13-3 NMSA 1978.

7                         (2) **Summons.** The summons shall be in the same form as the warrant except  
8 that it shall summon the defendant to appear before the court at a stated time and place. A summons  
9 or arrest warrant shall be substantially in the form approved by the Supreme Court.

10 [As amended by Supreme Court Order No. 12 8300 016, effective for all cases pending or filed on  
11 or after June 29, 2012; as amended by Supreme Court Order No. 19-8300-018, effective for all  
12 cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No.  
13 S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]

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15 **Committee commentary.** — When a criminal action is docketed in a magistrate or metropolitan  
16 court by the filing of a complaint, either Rule 6-204 NMRA or Rule 7-204 NMRA, which are  
17 substantially identical to this rule, will govern the procedure.

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19 Paragraph C of this rule requires a written showing of probable cause before an arrest warrant may  
20 be issued. The constitutional basis for this requirement is Article II, Section 10 of the New Mexico  
21 Constitution, although that provision does not expressly mention arrest warrants. *Cf. State v.*  
22 *Gibby*, 1967-NMSC-219, 78 N.M. 414, 432 P.2d 258.

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1 Paragraph C of this rule codified case law allowing the issuance of a warrant on probable cause  
2 based on hearsay evidence. This provision was taken from Rule 4(b) of the Federal Rules of  
3 Criminal Procedure. *See* 48 F.R.D. 553, 55860 (1970); 62 F.R.D. 27172 (1974). Neither the  
4 proposed federal rule nor this rule attempts to establish what constitutes probable cause based on  
5 hearsay as that determination can only be made on a case by case basis, taking into account the  
6 unlimited variation and sources of information and the varying reliability of the information  
7 received by the affiant from others. 62 F.R.D. 271, 27374 (1974). The fact that the information  
8 may involve double hearsay does not mean that the affidavit fails to provide probable cause. *State*  
9 *v. Alderete*, 1975-NMCA-058, 88 N.M. 14, 536 P.2d 278.

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11 Paragraph C was amended in 2012 to permit alternate methods for requesting and issuing arrest  
12 warrants. *See* Rule 5 211(F) and the related committee commentary for more information.

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14 Paragraph D was amended in 2024 to prevent release of defendants arrested on warrants before  
15 the defendant's first appearance or other hearing, with exceptions for penalty assessment  
16 misdemeanor charges and certain traffic code misdemeanor charges.

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18 In 2019, this rule was amended to incorporate language from rules governing the courts of limited  
19 jurisdiction, which express a preference for the use of a summons when practicable. *See* Rule 6-  
20 204 NMRA; Rule 7-204 NMRA; Rule 8-203 NMRA.

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