PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS
PROPOSAL 2025-003

March 6, 2025

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rule 1-004 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/ or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
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505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

1-004. Process.

A. (1) **Scope of rule.** The provisions of this rule govern the issuance and service of process in all civil actions including special statutory proceedings except the provisions for service of process in Rule 1-077.1(E) shall apply in proceedings brought under the Criminal Records Expungement Act, Sections 29-3A-1 to -9 NMSA 1978.

(2) **Summons; issuance.** Upon the filing of the complaint, the clerk shall issue a summons and deliver it to the plaintiff for service. Upon the request of the plaintiff, the clerk shall issue separate or additional summons. Any defendant may waive the issuance or service of summons.

B. **Summons; execution; form.** The summons shall be signed by the clerk, issued under the seal of the court and be directed to the defendant. The summons shall be substantially in the form approved by the Supreme Court and must contain:

(1) 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;

(2) a direction that the defendant serve a responsive pleading or motion within thirty (30) days after service of the summons and file a copy of the pleading or motion with the court as provided by Rule 1-005 NMRA;

(3) a notice that unless the defendant serves and files a responsive pleading or motion, the plaintiff may apply to the court for the relief demanded in the complaint; and

(4) the name, address and telephone number of the plaintiff's attorney. If the plaintiff is not represented by an attorney, the name, address and telephone number of the plaintiff.

C. **Service of process; return.**

(1) If a summons is to be served, it shall be served together with any other pleading or paper required to be served by this rule. The plaintiff shall furnish the person making service with such copies as are necessary.

(2) Service of process shall be made with reasonable diligence, and the original summons with proof of service shall be filed with the court in accordance with the provisions of Paragraph L of this rule.

D. **Process; by whom served.** Process shall be served as follows:

(1) if the process to be served is a summons and complaint, petition or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action;

(2) if the process to be served is a writ of attachment, writ of replevin or writ of habeas corpus, service may be made by any person not a party to the action over the age of eighteen (18) years designated by the court to perform such service or by the sheriff of the county where the property or person may be found;

(3) if the process to be served is a writ other than a writ specified in Subparagraph (2) of this paragraph, service shall be made as provided by law or order of the court.

E. **Process; how served; generally.**

(1) Process shall be served in a manner 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.

(2) Service may be made, subject to the restrictions and requirements of this rule, by the methods authorized by this rule or in the manner provided for by any applicable statute, to the extent that the statute does not conflict with this rule.

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule "signs" includes the electronic representation of a signature.

F. **Process; personal service upon an individual.**

(1) Personal service of process shall be made upon an individual by delivering a copy of a summons and complaint or other process:

(a) to the individual personally; or if the individual refuses to accept service, by leaving the process 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; or

(b) by mail or commercial courier service as provided in Subparagraph (3) of Paragraph E of this rule.

(2) If, after the plaintiff attempts service of process by either of the methods of service provided by Subparagraph (1) of this paragraph, the defendant has not signed for or accepted service, service may be made by delivering a copy of the process to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process; or

(3) If service is not accomplished in accordance with Subparagraphs (1) and (2), then service of process may be made by delivering a copy of the process at the actual place of business or employment of the defendant to the person apparently in charge thereof and by mailing a copy of the summons and complaint by first class mail to the defendant at the defendant's last known mailing address and at the defendant's actual place of business or employment.

(4) ***Service By Social Media, E-Mail and Text Message.***

(a) Upon motion, without notice, and showing by affidavit that service cannot be reasonably be made under Subparagraphs (F)(1), (F)(2), or (F)(3), the court may authorize service of process by social media, e-mail, or text message. The party who seeks leave to serve process pursuant to this paragraph must demonstrate the following by affidavit or other sworn testimony:

(i) that the plaintiff made a diligent attempt to accomplish service under Subparagraphs (F)(1), (F)(2), and (F)(3);

(ii) that service is otherwise impractical under Subparagraphs (F)(1), (F)(2), or (F)(3);

(iii) that the defendant has access to, and reasonable ability to use, the necessary technology to receive and read the summons and other required documents through the proposed electronic service method, including a showing that the defendant is the sole owner of the specific social media account, e-mail address, or telephone number proposed for service and the defendant, within thirty (30) days of the motion, has sent or received transmissions from that specific social media account, e-mail address, or telephone number proposed for service; and

(iv) that the proposed electronic service method allows for the contents required under this subparagraph.

(b) *Content of order authorizing service*. The court may order service by social media, e-mail, text message, or a combination of these methods, that is reasonably calculated under the circumstances to apprise the defendant of the existence and pendency of the action and afford a reasonable opportunity to appear and defend. The order also shall require the plaintiff to mail a copy of the summons, pleadings, and any other required documents to the address of the defendant's last known residence within 10 days of the service by social media, e-mail or text message.

(c) *Service by social media*. Service by social media must be made by:

(i) sending a direct message through the social media platform on which the defendant has an active account as demonstrated under Subparagraph (F)(4)(a)(iii). A direct message is a means of communicating directly with the defendant in a method reasonably calculated under the circumstances to reach the defendant directly and not anyone else. The direct message must include the following statement: "Important information-- You have been sued. If you do not file a response to the lawsuit, the court may decide the case without hearing from you, and you could lose the case."; and

(ii) including in the direct message all information required for effective service by publication under Paragraph K.

(d) *Service by e-mail*. Service by e-mail must be made by:

(i) sending an e-mail to the defendant's current e-mail address approved by the court;

(ii) stating in the subject line of the e-mail message: "Important information-- You are being sued"; and

(iii) the following statement: "You have been sued. If you do not file a response to the lawsuit, the court may decide the case without hearing from you, and you could lose the case."; and

(iv) including in the e-mail all information required for effective service by publication under Paragraph K.

Where supported by the plaintiff's e-mail servers and applications, the e-mail should be sent with both delivery and read receipts requested, and through any substitute function that provides verification of message delivery.

(e) *Service by text message*. Service by text message must be made by:

(i) sending a text message to the defendant's cellular telephone number approved by the court that provides the defendant with the names of all parties to the litigation, the name and location of the court in which suit has been filed, the docket number of the suit, and the following statement: "Important information-- You have been sued. If you do not file a response to the lawsuit, the court may decide the case without hearing from you, and you could lose the case"; and

(ii) including in the text message all information required for effective service by publication under Paragraph K.

G. **Process; service on corporation or other business entity.**

(1) Service may be made upon:

(a) a domestic or foreign corporation, a limited liability company or an equivalent business entity by serving a copy of the process to an officer, a managing or a general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. If the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

(b) a partnership by serving a copy of the process to any general partner;

(c) an unincorporated association which is subject to suit under a common name, by serving a copy of the process to an officer, a managing or general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. 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.

(2) If a person described in Subparagraph (a), (b) or (c) of this subparagraph refuses to accept the process, tendering service as provided in this paragraph 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.

(3) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

H. **Process; service upon state or political subdivisions.**

(1) Service may be made upon the State of New Mexico or a political subdivision of the state:

(a) in any action in which the state is named a party defendant, by delivering a copy of the process to the governor and to the attorney general;

(b) in any action in which a branch, agency, bureau, department, commission or institution of the state is named a party defendant, by delivering a copy of the process to the head of the branch, agency, bureau, department, commission or institution and to the attorney general;

(c) in any action in which an officer, official, or employee of the state or one of its branches, agencies, bureaus, departments, commissions or institutions is named a party defendant, by delivering a copy of the process to the officer, official or employee and to the attorney general;

(d) 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 served on the defendant employee in the manner and priority provided in Paragraph F of this rule;

(e) service of process on the governor, attorney general, agency, bureau, department, commission or institution may be made either by serving a copy of the process to the governor, attorney general or the chief operating officer of an entity listed in this subparagraph or to the receptionist of the state officer. A cabinet secretary, a department, bureau, agency or commission director or an executive secretary shall be considered as the chief operating officer;

(f) upon any county by serving a copy of the process to the county clerk;

(g) upon a municipal corporation by serving a copy of the process to the city clerk, town clerk or village clerk;

(h) upon a school district or school board by serving a copy of the process to the superintendent of the district;

(i) 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.

(2) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

I. **Process; service upon minor, incompetent person, guardian or fiduciary.**

(1) Service shall be made:

(a) upon a minor, if there is a conservator of the estate or guardian of the minor, by serving a copy of the process to the conservator or guardian in the manner and priority provided in Paragraph F, G or J of this rule as may be appropriate. If no conservator or guardian has been appointed for the minor, service shall be made on the minor by serving a copy of the process on each person who has legal authority over the minor. If no person has legal authority over the minor, process may be served on a person designated by the court.

(b) upon an incompetent person, if there is a conservator of the estate or guardian of the incompetent person, by serving a copy of the process to the conservator or guardian in the manner and priority provided by Paragraph F of this rule. If the incompetent person does not have a conservator or guardian, process may be served on a person designated by the court.

(2) Service upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner and priority for service as provided in Paragraphs F, G or J of this rule as may be appropriate.

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

K. **Process; service by publication.** Service by publication may be made only pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.

(1) Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.

(2) The notice of pendency of action shall contain:

(a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;

(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;

(c) the name, address and telephone number of plaintiff's attorney;[~~and~~]

(d) the name and address of the court in which the case is filed; and

[~~(d)~~] (e) a statement that a default judgment may be entered if a response is not filed.

(3) If the cause of action involves real property, the notice shall describe the property as follows:

(a) If the property has a street address, the name of the municipality or county address and the street address of the property.

(b) If the property is located in a Spanish or Mexican grant, the name of the grant.

(c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.

(4) In actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons"

followed by the names of the deceased persons whose unknown heirs are sought to be served. As to parties named in the alternative, the notice shall be given to "the following named defendants by name, if living; if deceased, their unknown heirs" followed by the names of the defendants. As to parties named as "unknown claimants", notice shall be given to the "unknown persons who may claim a lien, interest or title adverse to the plaintiff" followed by the names of the deceased persons whose unknown claimants are sought to be served.

L. **Proof of service of process.** The party obtaining service of process or that party's agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New Mexico county, proof of service shall be made by affidavit. Proof of service by mail or commercial courier service shall be established by filing with the court a certificate of service which shall include the date of delivery by the post office or commercial courier service and a copy of the defendant's signature receipt. Proof of service by publication shall be by affidavit of publication signed by an officer or agent of the newspaper in which the notice of the pendency of the action was published. Failure to make proof of service shall not affect the validity of service.

M. **Service of process in the United States, but outside of state.** Whenever the jurisdiction of the court over the defendant is not dependent upon service of the process within the State of New Mexico, service may be made outside the State as provided by this rule.

N. **Service of process in a foreign country.** Service upon an individual, corporation, limited liability company, partnership, unincorporated association that is subject to suit under a common name, or equivalent legal entities may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the laws of the United States or the law of the foreign country, in the same manner and priority as provided for in Paragraph F, G or J of this rule as may be appropriate.

[As amended, effective January 1, 1987; October 1, 1998; March 1, 2005; as amended by Supreme Court Order No. 11-8300-050, effective for cases filed on or after February 6, 2012; as provisionally amended by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary.

Introduction

New Mexico Rule 1-004 has its origins in an act of the first Legislature of the State of New Mexico. 1912 N.M. Laws Ch. 26. When the New Mexico Supreme Court revamped the rules of civil

procedure in 1942, 46 N.M. xix-lxxxiv (1942), largely using the 1938 Federal Rules as a model, the provisions of New Mexico Rule 4 continued to reflect some aspects of the service of process provisions of the former New Mexico provisions. Since then piecemeal amendments have occurred but there has been no previous attempt to restructure Rule 1-004 NMRA in light of evolving principles of due process and modern means of communication. The 2004 amendment to Rule 1-004 seeks to accomplish this goal.

Scope of Rule; Rule 1-004(A)(1)

Generally, statutory provisions are inapplicable if those provisions purport to set procedural requirements that contradict the Rules of Civil Procedure. *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976). Rule 1-001(A) creates an exception to *Ammerman*, extending deference to the procedural requirements set by the legislature in special proceedings that would not exist but for creation by the legislature. The root of the Rule 1-001(A) exception for special statutory proceedings is the provision in the New Mexico Constitution giving the district courts "such jurisdiction of special cases and proceedings as may be conferred by law." N.M. Const., art. VI, § 13. The Rule 1-001(A) exception for special statutory proceedings is a prudential exception generally applied to statutory provisions that affect procedural rules even though the statutory provisions do not deal with jurisdictional matters. The Supreme Court, though, has ultimate authority over all procedural rules and thus can supersede by rule a non-jurisdictional statutory procedure in special statutory and summary proceedings. Rule 1-004(A)(1) is an exercise of that authority.

Rule 1-004 was amended in 2005 to bring New Mexico's service of process procedure in line with evolving principles of due process. Questions have arisen whether the 2005 amendments to Rule 1-004 apply in special statutory proceedings where the statute provides lesser notice requirements than Rule 1-004. *See, e.g.*, NMSA 1978, § 45-1-401 (provision of the Probate Code permitting notice by publication without court order and only requiring two weekly notices); and NMSA 1978, § 42A-1-14 (Eminent Domain Code provision providing for service by mail and by publication in manners inconsistent with Rule 1-004).

The committee is of the view that, since Rule 1-004 requirements derive from constitutional due process requirements, new subparagraph (A)(1) clarifies that the requirements of Rule 1-004 must be satisfied to validly serve a person or give them notice of the pendency of special statutory proceedings as well as civil actions.

Summons; issuance; Rule 1-004(A)(2)

"Plaintiff" includes "Petitioner" and "Defendant" includes "Respondent". *See* Rule 1-001(B)(1) and (2). The "Complaint" referred to in Rule 1-004(A) includes "Petition". *See* Rule 1-001(B)(3).

Rule 1-004(A) previously provided that the clerk shall "forthwith" issue a summons upon filing of the complaint. The word is omitted from the 2004 Amendment because it was redundant; the rule already provides that the clerk "shall" issue a summons "[u]pon the filing of the complaint".

Rule 1-004(A) previously provided that separate or additional summons may be issued "against any defendants". Because it may be necessary to serve a summons on persons not formally denominated as a defendant, for example, upon a third-party defendant under Rule 1-014 NMRA, the rule has been modified to eliminate the implication that additional summonses may issue only against defendants.

The committee considered but did not provide that a person other than the plaintiff or petitioner could request issuance of a summons.

Summons; execution; form; Rule 1-004(B)
Rule 1-011 NMRA requires that all "paper" shall contain the telephone number of the attorney or the pro-se litigant. Except for the provision requiring that the summons include the telephone number as well as the name and address of the plaintiff's attorney or the pro se plaintiff, only technical changes have been made in this section.
A form summons approved by the New Mexico Supreme Court may be found at 4-206 NMRA.

Service of Process; return; Rule 1-004(C)
"Process" is defined in Rule 1-001(B)(3) NMRA.
Sometimes a summons is not served in conjunction with the pleading instituting an action. For example, writs, warrants and mandates are not accompanied by a summons. *See* Rule 1-001(B)(3)(c) and (d) NMRA. Rule 1-004(C)(1) acknowledges that service of process sometimes does not include the service of a summons.
Rule 1-004(C)(2) is new. Unlike Federal Rule 4(m), which contains a specific time limit within which service of the summons and complaint ordinarily must be made, Rule 1-004(C)(2) provides only that service shall be made "with reasonable diligence". This reflects the standard established in New Mexico case law. *E.g., Romero v. Bachicha*, 2001 NMCA-048 Par. 23-25, 130 N.M. 610, 616, 28 P.3d 1151, 1157.

Process; by whom served; Rule 1-004(D)
Rule 1-004(D) formerly provided that process could be served by a sheriff of the county where the defendant could be found, or by any person over the age of eighteen and not a party to the action. Because the latter category necessarily includes the sheriff of a county, the reference to service by the sheriff has been omitted.
Rule 1-004(D)(2) carries over, unchanged, former Rule 1-004(D)(2).
Rule 1-004(D)(3) is new. It provides a means for determining who shall serve process when the process is a writ other than those mentioned in Rule 1-004(D)(2).

Process; how served; generally; Rule 1-004(E)
Rule 1-004(E)(1) makes explicit in the rule the general test for constitutionally-adequate service of process established in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections".).
Rule 1-004(E)(2) accepts the premise that matters of procedure are for the judiciary to determine but that legislation affecting procedure is valid unless and until contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-2 NMSA 1978. The section thus provides that service of process shall be made in accordance with Rule 1-004 NMRA, or in accordance with applicable statutes but shall not be accomplished by a means authorized by a statute that conflicts with Rule 1-004.
Rule 1-004(E)(3) provides a much-simplified method of service by mail. It is no longer necessary that the defendant open the mailed packet containing the summons and complaint and then

voluntarily choose to accept service by returning a signed Receipt of Service of Summons and Complaint as formerly was required. Instead, service is accomplished when the summons and complaint are mailed to the named defendant in a manner that calls for the recipient to sign a receipt upon receiving the envelope containing the summons and complaint and the defendant-recipient or a person authorized by appointment or by law to accept service of process on behalf of the defendant signs the receipt upon receiving the mailed envelope or package.
Service by mail need not be at the home address or usual place of abode of the defendant. Service is complete when the receipt is signed.
This section also provides the same mechanism for service of the summons and complaint when a "commercial courier service" is utilized instead of the mails. The phrase, though not entirely self-explanatory, has been used in this context by other states without apparent problems. *See, e.g.*, Kansas Rules of Civil Procedure, KSA 60-303 (c)(1); Utah Rules of Civil Procedure 4(d)(2)(A)and (B). The Advisory Committee Note to Utah Rule 4 provides that "[t]he term 'commercial courier service' refers to businesses that provide for the delivery of documents. Examples of 'commercial courier service' include Federal Express and United Parcel Service". The committee endorses the definition provided in the Utah Advisory Committee Note.
In this context, "signs" and "signed" is equivalent to "signature" which "means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law". Rule 1-011 NMRA.

Process; personal service upon an individual; Rule 1-004(F)
In General. The 2004 Amendment makes substantial changes in Rule 1-004(F). The "post and mail" method found in the former rule has been eliminated. A provision for service at the place of work of the defendant has been added. The provision for mail service has been simplified and the rule now authorizes the use of commercial courier services as well as mail for service of process. A hierarchy of methods of service has been established. In some cases, a listed method of service cannot be used until other methods of service are attempted unsuccessfully.
Rule 1-004(F)(1)(a). This subparagraph remains the same as in the former Rule.
Rule 1-004(F)(1)(b). This subparagraph authorizes service by mail or commercial courier service as provided in Rule 1-004(E)(3).
Rule 1-004(F)(2). The means of service provided in this section may only be used if there first was an attempt to serve process "by either of the methods of service provided by Subparagraph (1) of this paragraph". This means that the person serving process need only attempt one of the two methods-personal service or mail/commercial courier service before using the alternative provided in this subparagraph.
This provision allows service to a person over the age of 15 who resides at the usual place of abode of the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before the 2004 amendment. The former rule, however, required only delivery of the summons and complaint to such a person for service to be valid. The 2004 amendment provides that service is not accomplished until, in addition, the person serving the summons and complaint mails a copy of the summons and complaint to the defendant at the defendant's last known mailing address. This provision allows service to a person over the age of 15 who resides at the usual place of abode of the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before the 2004 amendment. The former rule, however, required only delivery of the summons and complaint to such a person for service to be valid. The 2004 amendment provides that service is not

accomplished until, in addition, the person serving the summons and complaint mails a copy of the summons and complaint to the defendant at the defendant's last known mailing address. This mailing address will often, but not always, be the usual place of abode of the defendant. The cost of mailing is minimal and increases the likelihood that the defendant will get actual, timely notice of the institution of the action.

Rule 1-004(F)(1) formerly provided that if no qualified person was at the usual place of abode to accept service of process, service could be made by posting process at the abode and then mailing a copy of the process to the last known mailing address. This alternative method of service has been omitted in the 2004 amendment.

Rule 1-004(F)(3) [~~is new. It~~] may be used only when service of process has been attempted, unsuccessfully, in accordance with Rule 1-004(F)(1) and Rule 1-004(F)(2). Rule 1-004(F)(3) provides that service may be made by delivering a copy of the summons and complaint to the person apparently in charge of the actual place of business of the defendant and mailing a copy of the summons and complaint to the defendant both at the defendant's last known mailing address and also the defendant's actual place of business.

Colorado, R.C.P. 4(e)(2), Oregon, R.C.P. 7(d)(2)(c) and New York, N.Y. CPLR Sec. 308(2), also provide for work place service of process. The Fair Debt and Collection Practices Act, 15 U.S.C. Sec. 1692 ff, contains a provision allowing service of process at the workplace of the defendant by "any person while serving or attempting to serve legal process in connection with judicial enforcement of any debt". 15 U.S.C. Sec. 1692(a)(6)(D).

Process; Service on corporation or other business entity; Rule 1-004(G)

In addition to providing for service of process on corporations, Rule 1-004(G)(1) now includes limited liability companies as well as any "equivalent business entity" to a corporation or limited liability company. Courts should construe that phrase to assure that Rule 1-004 provides appropriate guidance about proper service of process upon legislatively-created variations on the traditional corporation.

The substance of the former provisions concerning service of process on partnerships and unincorporated associations have been carried over unchanged in Rule 1-004(G)(1)(b) and (c) of the 2004 amendment.

Process; Service upon state and political subdivisions; Rule 1-004(H)

Subparagraphs (a), (b), (c), (d) and (e) or Rule 1-004(H)(1) are substantively the same as former Rule 1-004(F) (3) and (4). They are derived from and do not vary materially from Section 38-1-7 NMSA 1978.

Subparagraphs (f), (g) and (i) are substantively the same as former Rule 1-004(F)(4), (5) and (6).

Subparagraph (h), dealing with service of process on a school district or school board is new. Former Rule 1-004 provided no guidance on the proper manner of service to such entities.

Rule 1-004(H)(2) allows service of process to the persons designated in Rule 1-004(H)(1) by means of mail or commercial courier service as provided in Rule 1-004(E)(3).

Process; Service upon minor, incapacitated person or conservator; Rule 1-004(I)

Subparagraph 1; Service on minors. The provision for service on a guardian or conservator is carried over from former Rule 1-004(F)(7) except that such service now may be in any manner

provided in Paragraph F, G, or L as appropriate, rather than, as formerly, only "by delivering a copy -- to the conservator or guardian".

The provision for service upon person or persons having legal authority over a minor who does not have a guardian or conservator is new as is the provision requiring resort to the court to formulate a method of service where the minor has no guardian, conservator or person with legal authority over the minor.

Subparagraph 2; Service on incompetent persons. Rule 1-004(F)(7) formerly used the phrase "incapacitated person" to describe the party for whom a special means of service of process was appropriate. Rule 1-017(C) uses the phrase "incompetent persons" and this subparagraph adopts the language of Rule 1-017 NMRA for consistency. *See* Rule 10-104(L) NMRA (defining an "incompetent" person).

The provision for service on a guardian or conservator is carried over from former Rule 1-004(F)(7) except that such service now may be in any manner provided in Paragraph F, G or L as appropriate, rather than, as formerly, only "by delivering a copy . . . to the conservator or guardian".

The provision requiring resort to the court to formulate a method of service where the incompetent person has no guardian or conservator is new. Former Rule 1-004(F)(8) provided that if no conservator or guardian had been appointed for an incapacitated person, service upon the incapacitated person would suffice. This provided inadequate assurance that the incapacitated person would have a meaningful opportunity to defend the action. To remedy this, this subparagraph requires the court to fashion a constitutionally-adequate means of service upon the incapacitated person not represented by a guardian or conservator.

Subparagraph 3; Service on fiduciaries. This provision is carried over from former Rule 1-004(F)(9). Fiduciaries may be served in the same manner as individuals and business entities who are defendants.

Service in manner approved by court; Rule 1-004(J)

This provision is carried over, unchanged, from former Rule 1-004(L). The goal of service of process is to achieve actual notice by means that are reasonable under the circumstances. Rule 1-004(E)(1). The specific methods of service authorized in Rule 1-004 provide standard methods by which this can be accomplished, but there are myriad specific circumstances in which ad-hoc determination of the most appropriate means for serving process is called for. This rule provides broad authority for the court to fashion a constitutionally-adequate method of service under any circumstances.

Where service can be accomplished pursuant to Rule 1-004(F)(G)(H) or (I), there will seldom be need for resort to Rule 1-004(K). Where the court orders service by publication, the court should consider, pursuant to this Paragraph, whether supplemental means of service should accompany notice by publication. Where no method of service specifically provided for by Rule 1-004 is likely to satisfy or achieve the goal of actual notice, this Paragraph authorizes the court to create a method of service suited to the circumstances of the particular facts presented.

Service by publication; Rule 1-004(K)

This paragraph requires that no service by publication take place without a prior court order authorizing service by publication. This is a significant modification of prior practice in situations where statutes authorized publication without prior court approval. *See, e.g.*, Section 42-2-7(B) NMSA 1978 (authorizing service by publication in condemnation proceeding "[i]f the name or

residence of any owner be unknown"); Section 45-1-401 NMSA 1978 (authorizing service by publication in probate proceedings under some circumstances and providing that the court for good cause can provide a different manner of service). Publication notice is seldom likely to achieve actual notice and thus its use should be monitored carefully by the courts. The Supreme Court is authorized to modify statutes providing for notice by publication by requiring prior court approval for service by publication. Legislation affecting procedure is valid unless and until contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-2 NMSA 1978. This paragraph also provides the required content of the notice to be published, the frequency of publication and the place of publication. Omitted from the 2004 amendment is the former provision (Rule 1-004(H)(3)) requiring that publication be "in some newspaper published in the county where the cause is pending" and providing for publication in a newspaper of general circulation in the county only when "no newspaper [was] published in the county". Publication now always will include publication in a paper of general circulation in the county where the action is pending whether or not the newspaper is published in that county. Where appropriate to the goal of achieving actual notice, the court is free to require, in addition, that publication also be in a newspaper not of general circulation that is published in the county where the cause is pending.

Where the court determines that actual notice by publication is more likely to be achieved by publishing the notice elsewhere, the court must provide for additional published notice in the county that the court deems such notice is most likely to achieve the goal of actual notice to the defendant.

Former Rule 1-004(H)(7), dealing with the required content of repeated publications due to misnomers in the initial publication, has been omitted. The court that orders additional publication will craft an appropriate order concerning its content.

Former Rule 1-004(I) calling for publication to be accompanied by mail notice to persons whose residence is known has been omitted. The court that orders publication has the obligation to fashion means of service reasonably calculated to provide actual notice, Rule 1-004(E)(1), and thus can provide for mailed notice to accompany service of process by publication where reasonable. *See* Rule 1-004(J).

Proof of service; Rule 1-004(L)

The person obtaining service of process rather than the person serving process is now responsible for filing proof of service.

The means of proof of service when service is accomplished by mail or commercial courier service pursuant to Rule 1-004(F)(1)(b) and when service is made by publication pursuant to Rule 1-004(J) or (K) are provided in those paragraphs.

Service outside the state but in the United States; Rule 1-004(M)

This provision replaces former Rule 1-004(J) (Service of summons outside of state equivalent to publication). Where, as in the case of long arm jurisdiction pursuant to Section 38-1-16 NMSA 1978, service of process can be made outside of New Mexico, this rule requires that service be accomplished in the manner and priority provided in this rule. The Committee considered but rejected a proposal that the method of service need not meet the requirements of this rule so long as it met the requirements for service of process in the place where service occurred.

Service in a foreign country; Rule 1-004(N)
Service in foreign countries is sometimes subject to treaties or other international agreements. This rule, adopted from Federal Rule 4(f) and Rule 4(h)(2) takes into account the special considerations required by international law.
[Approved, March 1, 2005; as amended by Supreme Court Order No. 11-8300-050, effective for cases filed on or after February 6, 2012.]

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

1 message

Supreme Court <noreply@nmcourts.gov> Thu, Mar 6, 2025 at 3:51 PM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Mike
	Lash
Phone Number	505-843-7071
Email	mikelashlaw@yahoo.com
Proposal Number	2025-003 – Service by Social Media
Comment	Comment on Proposal 2025-003 – Service by Social Media Rule 1-004. Process. F. Process; personal service upon an individual. (4) Service By Social Media, E-Mail and Text Message. (c) Service by social media. (d) Service by e-mail (e) Service by text message. This a horrible idea. I deal with fraudulent issues with email and text messages in multiple cases. Allowing plaintiffs to use these methods will never be verifiable as safe and sufficient for constitutional notice to a defendant. IT IS NOT POSSIBLE TO VERIFY ACTUAL NOTICE TO THE DEFENDANT BY THESE METHODS. Social media was not designed for service of process. As with email and phone numbers, social media can be hacked, started and then abandoned by consumers, and taken over by others. Older individuals have a tenuous facility with these technologies, and would be likely victims of abuse of this rule. There is NO EXPECTATION that legal notices would be used in this way. The response to this by the advocates of media service, that “the news would get out” about such service of process, ignores the more obvious question: Is this what we want NM to be known for? We would become the headquarters for hackers, thieves, and old-debt accumulators. Why is publication not sufficient if other methods fail? This is a terrible idea that I hope the court seriously reconsiders. Mike Lash 3003 Louisiana Blvd. NE Albuquerque, NM 87110

Name Mike Lash

Phone Number 505-843-7071

Email mikelashlaw@yahoo.com

Proposal Number 2025-003 – Service by Social Media

Comment

Comment on Proposal 2025-003 – Service by Social Media
Rule 1-004. Process.
F. Process; personal service upon an individual.
(4) Service By Social Media, E-Mail and Text Message.
(c) Service by social media.
(d) Service by e-mail
(e) Service by text message.

This a horrible idea. I deal with fraudulent issues with email and text messages in multiple cases. Allowing plaintiffs to use these methods will never be verifiable as safe and sufficient for constitutional notice to a defendant. IT IS NOT POSSIBLE TO VERIFY ACTUAL NOTICE TO THE DEFENDANT BY THESE METHODS.

Social media was not designed for service of process. As with email and phone numbers, social media can be hacked, started and then abandoned by consumers, and taken over by others. Older individuals have a tenuous facility with these technologies, and would be likely victims of abuse of this rule. There is NO EXPECTATION that legal notices would be used in this way. The response to this by the advocates of media service, that “the news would get out” about such service of process, ignores the more obvious question: Is this what we want NM to be known for? We would become the headquarters for hackers, thieves, and old-debt accumulators.

Why is publication not sufficient if other methods fail?

This is a terrible idea that I hope the court seriously reconsiders.

Mike Lash
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New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

1 message

Supreme Court <noreply@nmcourts.gov> Sat, Mar 8, 2025 at 7:31 PM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Yosef
	Abraham
Phone Number	915-236-1113
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Proposal Number	2025-003
Comment	"The Committee recommends amendments to Rule 1-004 NMRA that would allow for service of process via social media, e-mail, and text message if service of process cannot be accomplished under other methods of service." I respectfully disagree with this proposal, urging that it be rejected. Such a rule will lend itself to abuse and unfair default motion proactice. A social media post to a Walmart or other business Instagram account as constitutional service of process of a complaint and summons does not comport with traditional notions of justice. Text message—to whom? What does it mean that service "cannot be accomplished"? What is wrong with going to the judge for an order for alternate service? Proper service of process is a Due Process requirement. Abarca v. Henry L. Hanson, Inc., 1987-NMCA-068, ¶ 9, 106 N.M. 25 ("fundamental due process requires service 'reasonably calculated' to give parties notice"). Accordingly, Rule 1-004 should be strictly construed. See, e.g., Lewellen v. Morley, 909 F.2d 1073, 1077 (7th Cir. 1990) (stating that with regard to "proper service of process upon the defendants," "[s]uch service requirements are strictly upheld."); Shotzman v. Buermen, 363 Ark. 215, 225 (Ark. 2005) ("service of valid process is necessary to give a court jurisdiction over a defendant. . . . [S]tatutory service requirements . . . must be strictly construed and compliance with them must be exact. This court has held that the same reasoning applies to service requirements where imposed by court rules. Thus, the technical requirements of a summons . . . must be also construed strictly and compliance with those requirements must be exact." (citation omitted)); Shaver v. Cooleemee Volunteer Fire Dep't, No. 1:07cv00175, 2008 U.S. Dist. LEXIS 28921 *6-*7 (M.D.N.C. Apr. 7, 2008) ("The Adams court, adhering to North Carolina's state law requirement that service rules be strictly construed, rejected that argument and found that service was deficient despite actual notice. For the same reasons, service here was deficient. This court therefore lacks personal jurisdiction over the Defendant, and the Motion to Dismiss must be GRANTED.").

Name Yosef Abraham

Phone Number 915-236-1113

Email yabraham@rinconlawgroup.com

Proposal Number 2025-003

Comment

“The Committee recommends amendments to Rule 1-004 NMRA that would allow for service of process via social media, e-mail, and text message if service of process cannot be accomplished under other methods of service.”

I respectfully disagree with this proposal, urging that it be rejected. Such a rule will lend itself to abuse and unfair default motion proactice. A social media post to a Walmart or other business Instagram account as constitutional service of process of a complaint and summons does not comport with traditional notions of justice. Text message—to whom? What does it mean that service “cannot be accomplished”? What is wrong with going to the judge for an order for alternate service?

Proper service of process is a Due Process requirement. Abarca v. Henry L. Hanson, Inc., 1987-NMCA-068, ¶ 9, 106 N.M. 25 (“fundamental due process requires service ‘reasonably calculated’ to give parties notice”). Accordingly, Rule 1-004 should be strictly construed. See, e.g., Lewellen v. Morley, 909 F.2d 1073, 1077 (7th Cir. 1990) (stating that with regard to “proper service of process upon the defendants,” “[s]uch service requirements are strictly upheld.”); Shotzman v. Buermen, 363 Ark. 215, 225 (Ark. 2005) (“service of valid process is necessary to give a court jurisdiction over a defendant. . . . [S]tatutory service requirements . . . must be strictly construed and compliance with them must be exact. This court has held that the same reasoning applies to service requirements where imposed by court rules. Thus, the technical requirements of a summons . . . must be also construed strictly and compliance with those requirements must be exact.” (citation omitted)); Shaver v. Cooleemee Volunteer Fire Dep’t, No. 1:07cv00175, 2008 U.S. Dist. LEXIS 28921 *6-*7 (M.D.N.C. Apr. 7, 2008) (“The Adams court, adhering to North Carolina’s state law requirement that service rules be strictly construed, rejected that argument and found that service was deficient despite actual notice. For the same reasons, service here was deficient. This court therefore lacks personal jurisdiction over the Defendant, and the Motion to Dismiss must be GRANTED.”).

New Mexico Courts

Amy Feagans <supajf@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

1 message

Supreme Court <noreply@nmcourts.gov> Thu, Mar 27, 2025 at 4:59 PM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Ashlee
	Wright
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Email	awright17@gmail.com
Proposal Number	2025-003
Comment	I strongly oppose the proposed rule allowing service of legal documents via social media, email, or text message. This proposal represents an egregious departure from fundamental due process protections and could lead to significant injustice, particularly for defendants. There are several key issues with this approach: 1. Verification of Identity: There is no way to reliably confirm that the person who owns the social media account, email address, or phone number is indeed the person being served. Social media accounts and email addresses can be easily created or altered by others, making it impossible to ensure that the right individual is being served with critical legal notices. 2. Lack of Guarantee of Access or Use: Even if an individual owns the account, there is no certainty that they still actively use it. They may have abandoned the account, changed their contact information, or stopped checking the account regularly. In the case of email, individuals could have forgotten the password or no longer have access to it. A message sent to an inactive or forgotten account undermines the integrity of the service process. 3. Risk of Messages Being Missed or Ignored: Even if a message is sent to an active account, there is no guarantee that the individual will see it. Emails from unknown senders often end up in spam folders, and social media or text messages could be ignored, lost in a flood of notifications, or simply never seen. This creates a significant risk that a defendant will not be properly notified of a lawsuit or legal proceedings, undermining the fairness of the legal process. 4. Prejudice Against Defendants: This approach is inherently prejudicial against defendants, particularly those who may not be as digitally connected, or who do not use social media or email in the same way as others. This rule disproportionately affects vulnerable populations, such as older adults, those without consistent internet access, or individuals who are less familiar with technology.

5. Vulnerability of Defendants in Debt Collection Cases: The proposed rule makes defendants in cases involving monetary debts—such as credit card debt, medical bills, or other financial obligations—especially vulnerable. Many of these defendants are already in financially precarious situations and may not be as closely connected to digital communication channels. They may have limited or no access to the internet or social media, or may be experiencing financial hardship that prevents them from maintaining email or phone accounts. These individuals are at greater risk of missing critical legal notices if served through social media or email, which could lead to default judgments or other severe legal consequences. In cases involving debts, where the stakes are high and the consequences of being unaware of legal proceedings are particularly severe, it is essential that defendants are afforded fair and reliable means of service.

In sum, while the goal of streamlining service of process is understandable, the proposed rule introduces far too many risks to the fairness and reliability of the legal system. Service via social media, email, and text message cannot ensure that the intended recipient receives the notice, and it raises serious concerns about the integrity of the legal process. I urge the Committee to reconsider this proposal and prioritize methods of service that ensure due process and the protection of all parties' rights.

Name Ashlee Wright

Phone Number 505-720-7413

Email awright17@gmail.com

Proposal Number 2025-003

Comment

I strongly oppose the proposed rule allowing service of legal documents via social media, email, or text message. This proposal represents an egregious departure from fundamental due process protections and could lead to significant injustice, particularly for defendants.

There are several key issues with this approach:

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New Mexico Courts

Amy Feagans <supajf@nmcourts.gov>

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1 message

Supreme Court <noreply@nmcourts.gov> Fri, Mar 28, 2025 at 10:32 AM
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Name	Mallory
	Harwood
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Proposal Number	2025-003
Comment	Service isn't just a formality; it's intended to provide actual notice, not just to tick off a box saying that the party tried. However, sending something through text, social media, or email provides almost no safeguards that will ensure the intended recipient actually received or saw it. Most email clients, for example, have built-in spam and junk filters that are imprecise and unpredictable. Many social media accounts also have these sorts of filters in their direct messaging software. And most people do not regularly check their spam/junk folders. Many email (especially personal, as opposed to business, accounts) and social media apps don't even inform people when they receive junk/spam; it is just shunted into a difficult-to-access folder they may never or rarely check. I once missed an important direct message on Facebook for three months because Facebook had deemed it spam and put it in a folder I didn't know existed until I stumbled upon it one day. People miss job offers and other important correspondence that goes to their spam folder all the time. Beyond that, the proof required to show that service by these methods is appropriate (i.e., (F)(4)(a)(iii)) seems impossible to acquire in difficult cases without the party seeking to serve the papers having already obtained social media, email, or cell phone records through a subpoena. This would appear to encourage digging around in people's private communications in order to prove an account belongs to them, has been recently used by them, etc. If that is not already a part of the litigation process, it seems like an infringement on privacy and, in some cases, protections against unreasonable searches and seizures. Finally, the fact that the rule contemplates ALSO having to mail the document to a last-known address would seem to indicate how unreliable this method of electronic service would be. If it were reliable, why do we send a physical copy to an address the party would already have proven to be "impractical"? This rule appears to dilute the importance and purpose of service and is likely to lead to procedural defaults that will harm the subjects of the subpoenas without their even having advance notice of the harm that will befall them. Imagine cleaning out your spam folder once a quarter and finding you got an

email saying you had been sued--three months prior. Or imagine never finding such an email or text at all and instead simply learning one day that there's a judgment against you for not appearing/responding. Of course this problem happens also with more traditional versions of service, but this feels like an "opening the floodgates" approach, given that social media, email, and text messaging are so prevalent and work fundamentally differently from handing someone an envelope, taping it to their door, or sending it by certified mail.

Name Mallory Harwood

Phone Number 5053952890

Email mallory.harwood@lopdnm.us

Proposal Number 2025-003

Comment

Service isn't just a formality; it's intended to provide actual notice, not just to tick off a box saying that the party tried. However, sending something through text, social media, or email provides almost no safeguards that will ensure the intended recipient actually received or saw it. Most email clients, for example, have built-in spam and junk filters that are imprecise and unpredictable. Many social media accounts also have these sorts of filters in their direct messaging software. And most people do not regularly check their spam/junk folders. Many email (especially personal, as opposed to business, accounts) and social media apps don't even inform people when they receive junk/spam; it is just shunted into a difficult-to-access folder they may never or rarely check. I once missed an important direct message on Facebook for three months because Facebook had deemed it spam and put it in a folder I didn't know existed until I stumbled upon it one day. People miss job offers and other important correspondence that goes to their spam folder all the time.

Beyond that, the proof required to show that service by these methods is appropriate (i.e., (F)(4)(a)(iii)) seems impossible to acquire in difficult cases without the party seeking to serve the papers having already obtained social media, email, or cell phone records through a subpoena. This would appear to encourage digging around in people's private communications in order to prove an account belongs to them, has been recently used by them, etc. If that is not already a part of the litigation process, it seems like an infringement on privacy and, in some cases, protections against unreasonable searches and seizures.

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This rule appears to dilute the importance and purpose of service and is likely to lead to procedural defaults that will harm the subjects of the subpoenas without their even having advance notice of the harm that will befall them. Imagine cleaning out your spam folder once a quarter and finding you got an email saying you had been sued--three months prior. Or imagine never finding such an email or text at all and instead simply learning one day that there's a judgment against you for not appearing/responding. Of course this problem happens also with more traditional versions of service, but this feels like an "opening the floodgates" approach, given that social media, email, and text messaging are so prevalent and work fundamentally differently from handing someone an envelope, taping it to their door, or sending it by certified mail.

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Comments to Proposal 2025-003 - Service by Social Media

Joshua Allison <albdjya@nmcourts.gov> Fri, Apr 4, 2025 at 2:36 PM
Reply-To: albdjya@nmcourts.gov
To: rules.supremecourt@nmcourts.gov
Cc: Jane Levy <albdjcl@nmcourts.gov>, Alison Orona <albdayg@nmcourts.gov>

Please find attached a letter with comments on Proposal 2025-003 - Service by Social Media. Thank you.

--
Joshua A. Allison
District Court Judge
Second Judicial District Court

20250404 LTR - Comments Rulemaking Proposal 2025-003 - Service by Social Media.pdf
652K

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

JOSHUA A. ALLISON
DISTRICT JUDGE

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April 4, 2025

Elizabeth A. Garcia, Chief Clerk of the Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Via email only to nmsupremecourtclerk@nmcourts.gov

Re: Comments on New Mexico Supreme Court 2025 Rulemaking Proposal 2025-003 – Service by Social Media

Dear Ms. Garcia,

I am a civil judge in the Second Judicial District Court. I am writing today with comments concerning ***Proposal 2025-003 – Service by Social Media***. My comments are solely my own, and I offer them in the hopes that the proposed additions to Rule 1-004 NMRA can be enhanced to ensure that service by electronic means is actually effective.

Before turning to my specific comments, I want to acknowledge the comments submitted on this proposal by Second Judicial District Court Acting Chief Judge Jane Levy, with which I agree. Judge Levy has my thanks for coordinating our Court's response. I write only to offer some more specific, and practical, suggestions.

I start with the assumption that the proposed changes to Rule 1-004 to allow service of process by social media, email, and text message are designed to make it more likely that a defendant in a civil lawsuit receives actual notice of the proceedings. This is, of course, the purpose of the Rule. *See, e.g.*, Rule 1-004(E)(1) (requiring service of process to be made "in a manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonably opportunity to appear and defend."). In other words, I am assuming that the proposal to allow service by the specified electronic means is ***not*** designed to simply allow a plaintiff another manner of service as a last resort, such as when plaintiffs seek to serve defendants by publication. *Compare* Rule 1-004 comm. cmt. ("Service by

publication; Rule 1-004(K) . . . Publication notice is seldom likely to achieve actual notice and thus its use should be monitored carefully by the courts."). To achieve actual notice, I believe that the Rule should require more that what the proposal sets out.

Those of us who live and work in the electronic world receive dozens, if not hundreds, of electronic communications each day. Some of those messages are important; a big chunk of them are spam; and still others are scams and phishing expeditions. In contrast to the electronic communications we receive, we rarely receive papers by certified mail, and we receive documents by hand-delivery even less. As a result, when we do receive papers by hand-delivery or certified mail, we pay attention. Or at least we should.

I worry that communications by email, text, and social media are just not of the same quality and substance as those provided by hand-delivery or certified mail. I also worry that we have fewer assurances that any electronic message sent was actually received. For example, how do we know if an email went to a person's spam folder or was blocked by a firewall? How do we know if a text message actually went through? How do we know if the Facebook, Snapchat, X, or Instagram message was actually seen before it was deleted and gone forever?

More importantly perhaps, is whether (and how) the Rule allowing service by electronic means will keep up with the constantly-evolving changes in which electronic communications are actually made. This is especially true when the platforms making those communications possible are regularly inventing new and more clever ways to engage one another. My concern is whether the Rule does enough to ensure that the electronic message that constitutes service of process is actually received by the defendant who is being summoned to court.

I therefore offer the following suggestions – in addition to those provided by Judge Levy – in order to improve the chances that service of process by electronic means is actually effective.

1. **Service of process by email, text message, or social media should be made multiple times over a period of weeks and should be effective as of the last date of such service.** Like service of process by publication, which requires publication once each week for three consecutive weeks, I suggest that service by electronic means be made multiple times over the course of three or four weeks in order to be effective. Emails are lost at the bottom of an inbox; text messages from strange and unknown numbers go ignored; and social media messages are similarly buried beneath dozens of other more important and flashy posts. I therefore suggest that service of process by these electronic methods should be repeated over a period of four weeks to be effective and that service be effective as of the date of the last communication sent. The cost of additional service attempts by electronic means would be minimal, if anything.

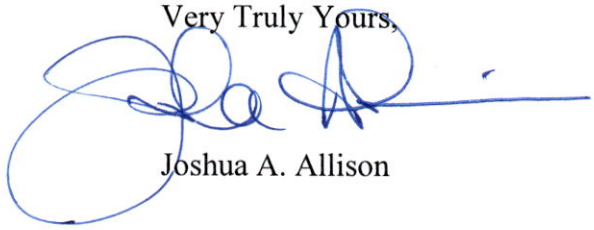
2. **The plaintiff seeking service by electronic means should be required to exhaust all available electronic service options, not just one.** The proposal seems to suggest that service by one electronic means is enough. A single text message, for example, would suffice. That seems insufficient to me. I suggest that the Rule require the plaintiff/affiant to set out all of the various electronic means by which service of process could be effectuated (based upon the affiant's personal knowledge as set out in

the proposal) and that the Rule require service by all of those available electronic means identified in the affidavit.

3. **Evidence of proof of service by electronic means should be specified in Rule 1-004(L).** If I understand the proposal, a defendant would need to make a hefty evidentiary showing in order to be granted leave to serve process by social media, e-mail, or text message. To complete this required showing, I suggest that the actual manner in which service was effectuated be set out in the affidavit demonstrating proof of service of process. To achieve this, I suggest including the following language in Rule 1-004(L): "Proof of service of process by social media, e-mail, or text message shall be by affidavit and shall include copies of the messages sent that demonstrate the manner of service (e.g., email, text, or social media,) the email address, social media user name, and/or phone number to whom the messages were sent, and the dates of such service." Requiring detailed proof of service will provide a record for the parties and the court, a review of which is necessary in default judgment proceedings and in proceedings seeking to challenge the manner of service of process.

I offer these comments in the hopes that their inclusion will improve the likelihood that service of process by electronic means is actually effective. Thank you for the opportunity to submit them.

Very Truly Yours,



Joshua A. Allison

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[nmsupremecourtclerk-grp] Second Judicial District Court's Comments on 2025 Rulemaking Proposals

Alison Orona <albdayg@nmcourts.gov> Fri, Apr 4, 2025 at 3:15 PM
Reply-To: albdayg@nmcourts.gov
To: nmsupremecourtclerk@nmcourts.gov

Good afternoon Ms. Garcia,

Please see attached letter from Acting Chief Judge Levy regarding the Supreme Court's 2025 Rulemaking Proposals.

The letter comments on the following proposals:

- Proposal 2025-001 – CASA Duties
- Proposal 2025-002 – Improving Outcomes for Crossover Youth
- Proposal 2025-003 – Service by Social Media
- Proposal 2025-006 – Residential Foreclosures
- Proposal 2025-028 – Pronouns in UJIs
- Proposal 2025-030 – Orders of Expungement
- Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

Thank you for the opportunity to comment, and please let me know if you have any questions. Thank you. Respectfully,

Alison K. Orona (she/her)
Second Judicial District Court
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Second Judicial District Court Comments on 2025 Rulemaking.pdf
292K

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

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April 4, 2025

Elizabeth A. Garcia, Chief Clerk of the Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Via email only to nmsupremecourtclerk@nmcourts.gov

Re: Comments on New Mexico Supreme Court 2025 Rulemaking:
Proposal 2025-001 – CASA Duties
Proposal 2025-002 – Improving Outcomes for Crossover Youth
Proposal 2025-003 – Service by Social Media
Proposal 2025-006 – Residential Foreclosures
Proposal 2025-028 – Pronouns in UJIs
Proposal 2025-030 – Orders of Expungement
Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

Dear Ms. Garcia,

As Acting Chief Judge of the Second Judicial District Court (the Court), I write to submit public comment to the 2025 proposed amendments to the Supreme Court's Rules of Practice and Procedure. My comments are on behalf of the Court as a whole, although individual judges and staff may submit their own additional comments, as well. My comments are as follows:

I. Proposal 2025-001 – CASA Duties

Proposal 2025-001 seeks to clarify CASA duties, including that "[a]ny report prepared by a CASA shall be served on the parties and the court at least five (5) days prior to the hearing at which it will be considered." However, Rule 10-164.1(F) and 10-164.2(G) do not include whether the CASA report is also intended to be filed into the case.

If the intention is to have the court file the report, I recommend clarifying language for the clerks, such as (addition in yellow):

> . . . Any report prepared by the CASA shall be served on the parties and the court at least five (5) days prior to the hearing at which it will be considered. Upon receipt, the court shall file into the case. . . .

II. *Proposal 2025-002 – Improving Outcomes for Crossover Youth*

The Court appreciates the Committee's work on providing a mechanism for parties in crossover youth matters to have notice of the other case(s). The Court understands the importance of this facilitation. However, the Court has concerns about (1) the Court's responsibility to complete and send the notices, and (2) the proposed rules do not account for whether the filings would be sealed or the hearings would be sequestered.

(1) The Court's Responsibility to Create and File the Notice is Contrary to a Court Clerk's Responsibilities and Overly Burdens the Court.

Proposed Rule 10-172(A) requires the Court to complete and file a notice of crossover youth. This poses practical and logistical issues. First, the Court's Clerk's Office does not typically *create* filings. *See e.g.,* Rule 23-113(C)(3) (prohibiting court staff from "creating documents" when communicating with self-represented litigants). This proposed rule would require the Clerk's Office to do independent research, complete a document, and then file and serve the document. This is contrary to the Clerk's Office's role, which is predominantly to be the record keeper. *See* NMSA 1978, § 34-1-6 ("The clerks of the . . . inferior courts, . . . shall seasonably record the judgments, rules, orders and other proceedings of the respective courts and make a complete alphabetical index thereto, issue and attest all processes issuing from their respective offices, and affix the seal of office thereto; they shall preserve the seal and other property belonging to their respective offices."); *see e.g., Ennis v. KMART Corp*., 2001-NMCA-068, ¶ 10, 131 N.M. 32, 33 P.3d 32*,* (holding that a court clerk lacks the discretion to reject pleadings for technical violations).

Instead, the Clerk's Office accepts filings, *see* Rule 1-005 NMRA, Rule 5-103 NMRA, issues subpoenas, *see* Rule 1-045(A) NMRA, Rule 5-511(A) NMRA, issues writs, *see* Rule 1-065, and issues summons, *see* Rule 1004(A) and (B) that the *parties* or *attorneys* provide to the Clerk's Office. In these scenarios, the *parties* or *attorneys* create the document, not the court clerk. The Clerk's Office does not do independent research on a case, create a document, and then file it.

In Indian Family Protection Act (IFPA) cases, the Child, Youth, and Families Department (CFYD) notifies the Clerk's Office when a child custody proceeding involves an Indian child, and the Clerk's Office will create and file the notice. *See* NMSA 1978, § 32A-28-5 (A) ("In a child custody proceeding when the court knows or has reason to know that an Indian child is involved, the department shall notify the parent, guardian or Indian custodian and the Indian child's tribe[. . .]") (emphasis added). Similarly, in adoption cases, the party or attorney presents a completed application for a birth certificate and the clerk will certify it. *See* NMSA 1978, § 32A-5-38; Rule LR2-501 NMRA.

Additionally, the Court is concerned that the turnaround time under 10-172(B) is very quick – "within one (1) day of the filing of the petition or criminal information or indictment." Requiring this on the Court would be a huge influx of work, with timelines that may not be feasible.

Furthermore, the proposed rule does not include any district-wide jurisdiction limitations. This would further increase the Court's work load and create a new requirement for the Clerk's Office to search across jurisdictions.

Putting this requirement on the Court – which in turn, will put it on court clerks – is impractical, contrary to Section 34-1-6, and improper. The Court and court clerks can only respond with the information parties to present to them; the Court is not an independent fact gatherer. The responsibility to determine if a child is involved in both a child welfare case and a delinquency case should be to the parties in the case, not to the Court, an independent and neutral arbitrator.

The Court appreciates the work of the Committee on this important issue. The Court respectfully recommends the Committee explore collaboration with other stakeholders, including CYFD. While this Court cannot speak on behalf of the judiciary as a whole, this Court would happy to discuss facilitation of getting CYFD the relevant information, such as daily or weekly reports if needed and if legally appropriate.

(2) The Proposal Does Not Account for When Filings Would be Sealed and When Hearings Would be Sequestered.

Since delinquency proceedings are open hearings and delinquency filings are not sealed, yet child welfare proceedings are sequestered and child welfare filings are sealed, I recommend adding language clarifying when filings are sealed pursuant to NMSA 1978, § 32A-4-33 (2022) and hearings are sequestered pursuant to NMSA 1978, § 32A-4-20 (B) (2014), such as:

> **E. Notice upon filing of petition for abuse and neglect or families in need of court-ordered services cases.** If the child has a pending delinquency or criminal case, is under the supervision of juvenile probation, or is serving a commitment, and is subsequently placed in the CYFD's legal custody in an abuse and neglect case or a family in need of court-ordered services case, the court shall notify juvenile probation and all parties to both the delinquency or criminal case and the child welfare case that the child is a crossover youth within ten (10) days of the entry of the order granting legal custody of the child in CYFD. <u>The notice shall be automatically sealed.</u>
>
> **<u>F. Sequestered proceedings.</u>** <u>Proceedings that discuss the crossover youth's child welfare case shall be closed to the general public.</u>

III. Proposal 2025-003 – Service by Social Media

The Court appreciates the Committee's work on the proposed amendments to Rule 1-004 allowing service via email, social media, and text messages. The proposed rule change reflects the evolving nature of communication and the need for more effective, practical means of ensuring notice to parties. The goal of service is to ensure actual notice of a pending case. Service through alternative means, such as email, text message, and social media direct messaging is more likely to lead to actual notice than would publication of notice in a newspaper of general circulation. Many individuals use digital communication on a daily (or more frequently) basis. They are unlikely to see a legal notice in a newspaper but are likely to check their email or direct messages. By expanding acceptable service methods, the rule will be acknowledging this reality and making it more likely that people will have actual notice of cases wherein they are a named party.

The cost of publication is also prohibitive for many parties. For example, any of the cases filed in the Family Court division are grandparents or other family members seeking kinship guardianship of children. The parents are often impossible to locate and are certainly not providing child support to the parties filing for kinship guardianship. Requiring temporary guardians to pay almost $300 (the cost of a legal notice in the Albuquerque Journal) would devastate their finances. The ability to serve parents through electronic means will hugely benefit the guardians, and therefore the children, in these cases. Instead of spending rent money on publishing, they can provide actual notice through an email or the equivalent.

Further, judges will still be required to determine if service was properly effectuated and the proposed rule changes still require judges to exercise discretion in determining whether electronic service is appropriate in a given case.

This rule change would modernize the service process, improve access to justice, and uphold due process by embracing the communication tools people already use daily.

However, with this said, the Court has concerns with the implementation of the rule.

1. First, the proposal requires the movant to submit admissible evidence (affidavit or other sworn testimony) that "the defendant is the sole owner of the specific social media account, e-mail address, or telephone number proposed for service and [that] the defendant, within thirty (30) days of the motion, has sent or received transmissions from that specific social media account, e-mail address, or telephone number proposed for service." This standard seems impossible, as how will a party seeking to serve the party would have personal knowledge and/or a sufficient foundation to actually provide evidence of "sole ownership"? This standard appears to invite parties to be forced to attest to something that cannot possibly know.
2. Second, the Court recommends that the Committee change the requirement that the defendant have received the electronic service within 30 days *of the motion* to be within 30 days <u>of entry of the order allowing such service of process</u>.

3. Third, the language to be included in the email, text, social media message, etc. that "You have been sued" (etc.) is potentially harmful. It reads like a scam, and it may deter people from reading the message. This is especially true because the person making the service is not someone the recipient will likely know. Furthermore, the rule should also include a prohibition on serving the documents by hyperlink, e.g., "You have been sued. Click on this link to get your summons and complaint." The actual documents must be served, and I think the rule should prohibit service by hyperlink.
4. Finally, the proposal does not appear to account for Domestic matters or Children's Court matters for which the Rules of Civil Procedure apply. Rule 1-004 applies to all domestic matters, emancipations, adoptions, and expungements. However, the proposed language for the substance of the message to the party under new Subparagraph Rule 1-004(F)(4) assumes service only in the context of a civil lawsuit. That required language is "'Important information—You have been sued. If you do not file a response to the lawsuit, the court may decide the case without hearing from you, and you could lose the case." This language would be required for service by social media (Rule 1-004(F)(4)(c)(i)), email (Rule 1-004(F)(4)(d)(ii)-(iii)), and text message (Rule 1-004(F)(4)(e)(i)).

   I would recommend a change to that standard required language to contemplate civil cases where "being sued" is not what is commonly understood to occur in those cases. For example, while perhaps technically accurate, a parent likely would not think of "being sued" for emancipation or adoption. Instead, the required language should read something like, "'Important information—You [~~have been sued~~] are part of a court case. If you do not file a response [~~to the lawsuit~~], the court may decide the case without hearing from you, and you could lose the case.'" I would further suggest a corresponding change to the email subject line under Rule 1-004(F)(4)(d)(ii) as such: "'Important information—You are [~~being sued~~] are part of a court case.'"

   A smaller recommendation is to fix the errant "be" in Subparagraph (4)(a). "…service cannot [~~be~~] reasonably be made under Subparagraphs (F)(1), (F)(2), or (F)(3)."

IV. Proposal 2025-006 – Residential Foreclosures

The Court recommends adding the word "residential" in the last sentence within the body of Rule 1-003.3, as follows (addition in yellow):

> **1-003.3. Commencement of residential foreclosure action; certification of pre-filing notice required.**
> A certification of pre-filing notice, substantially in the form approved by the Supreme Court as Form 4-227 NMRA, shall be submitted with any complaint initiating a residential foreclosure action. Notwithstanding the provisions of Rule 1-005(F) NMRA, the clerk shall not accept for filing any residential foreclosure complaint that is not submitted with the certification form required under this rule.

V. Proposal 2025-028 – Pronouns in UJIs

The Court supports this proposal and has not further comments.

VI. Proposal 2025-030 – Orders of Expungement

This proposal includes a requirement that any appellate court with related records be served the order. The Court suggests that, in order for the Court to be able to find all related appellate case, the Committee also updates the form petition to include an additional paragraph for appellate cases. We recommend the following:

> 5. The following appellate court case(s) are related to Petitioner's Petition to Expunge:
> New Mexico Court of Appeals case number(s): _____
> New Mexico Supreme Court case number(s): _____

VII. Proposal 2025-031 – Use of Personal Pronouns and Designated Salutations in Court Pleadings

The Court supports this proposal and has not further comments.

Respectfully,

Jane C. Levy
Acting Chief Judge
Second Judicial District Court

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Comment in support of Proposal 2025-003

Serge Martinez <serge.martinez@law.unm.edu> Sat, Apr 5, 2025 at 1:31 PM
Reply-To: serge.martinez@law.unm.edu
To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Attached is a joint comment in support of Proposal 2025-003. I can be reached at 505-277-5265 if you have any questions or need additional information. Thank you.

Serge Martinez

Comment in support of Proposal 2025-003.pdf
75K

April 5, 2025

We write in support of Proposal 2025-003 to revise Rules related to service by social media, e-mail and text message.

As lawyers who teach in the UNM School of Law Clinical Law Program, we regularly represent clients in matters that require service of process on parties without known current addresses or who are otherwise extremely difficult to serve via traditional methods; in these cases, our only remedy under current Rules is to ask for an order allowing service through publication. Service by publication is cost-prohibitive for our clients, most of whom are already eligible for free process due to their limited incomes. It is also a complex method of service for *pro se* litigants to navigate and unlikely to provide actual notice to those same litigants that their rights are at risk. Further, it is inefficient and limited in its ability to ensure notice in a modern setting where reading an online or physical newspaper is increasingly rare and unknown to many who represent themselves and are unfamiliar with notice by publication.

This proposal follows the national trend toward expanded methods of service. By requiring a party to first exhaust traditional methods of service before turning to social media and other electronic means, this proposal is crafted to promote traditional service when possible, while allowing parties to incorporate modern modes of communication to make service more likely to be successful in cases where traditional service is not possible. Providing an alternative to print publication is not just accepting the technological reality of this moment, it is likely to increase effective service, remove an access to justice barrier, and decrease rates of default judgments.

Publication in a newspaper is expensive. Service by text, email or social media is virtually free. This makes a difference for parties with limited resources, and reducing this barrier can mean the difference between maintaining a meritorious action and being forced to abandon it due to the cost. The proposed changes to the Rules will increase access to justice for parties who cannot afford the prohibitive cost of service through publication, while increasing the likelihood of actual notice to those whose rights are at issue.

Allison Freedman
Felipe Guevara
Serge Martinez
Aliza Organick
Sarah Steadman