

1 **1-004. Process.**

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

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

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

13 (1) the name of the court in which the action is brought, the name of the county
14 in which the complaint is filed, the docket number of the case, the name of the first party on each
15 side, with an appropriate indication of the other parties, and the name of each party to whom the
16 summons is directed;

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

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

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

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

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

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

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

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

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

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

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

19 (1) Process shall be served in a manner reasonably calculated, under all the
20 circumstances, to apprise the defendant of the existence and pendency of the action and to afford
21 a reasonable opportunity to appear and defend.

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

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

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

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

14 (a) to the individual personally; or if the individual refuses to accept
15 service, by leaving the process at the location where the individual has been found; and if the
16 individual refuses to receive such copies or permit them to be left, such action shall constitute valid
17 service; or

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

20 (2) If, after the plaintiff attempts service of process by either of the methods of
21 service provided by Subparagraph (1) of this paragraph, the defendant has not signed for or
22 accepted service, service may be made by delivering a copy of the process to some person residing
23 at the usual place of abode of the defendant who is over the age of fifteen (15) years and mailing

1 by first class mail to the defendant at the defendant's last known mailing address a copy of the
2 process; or

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

8 (4) *Service by social media, e-mail and text message.*

9 (a) Upon motion, without notice, and showing by affidavit or other
10 sworn testimony that service cannot be reasonably be made under Subparagraphs (F)(1), (F)(2), or
11 (F)(3) of this rule, the court may authorize service of process by social media, e-mail, text message,
12 or a combination of these methods.

13 (b) The party who seeks leave to serve process under this paragraph
14 must demonstrate the following:

15 (i) that the plaintiff made a diligent attempt to accomplish
16 service under Subparagraphs (F)(1), (F)(2), and (F)(3) of this rule, or that service is impractical
17 under Subparagraphs (F)(1), (F)(2), or (F)(3) of this rule;

18 (ii) that the defendant has access to, and reasonable ability to
19 use, the necessary technology to receive and read the information required for service through the
20 proposed electronic service methods or method, including a showing that the defendant is an owner
21 of the specific social media account, e-mail address, or telephone number proposed for service and
22 the defendant, within thirty (30) days of the motion, has sent transmissions from that specific social
23 media account, e-mail address, or telephone number proposed for service; and

1 (iii) that the proposed electronic service methods or method
2 allows for the contents required under this subparagraph.

3 (c) Content of order authorizing service. The court may order service
4 by social media, e-mail, text message, or a combination of these methods, that is reasonably
5 calculated under the circumstances to apprise the defendant of the existence and pendency of the
6 action and afford a reasonable opportunity to appear and defend. The order shall also require the
7 plaintiff to mail by first class mail to the defendant at the defendant’s last known mailing address
8 a copy of the summons, pleadings, and any other required documents within ten (10) days of the
9 first service by social media, e-mail, or text message. The order shall also require the plaintiff to
10 serve electronically via the methods or method authorized in Subparagraphs (F)(4)(d), (F)(4)(e),
11 and/or (F)(4)(f) once each week for three consecutive weeks, and service is complete on the last
12 transmission.

13 (d) Service by social media. Service by social media shall be made by
14 sending a direct message through the social media platform on which the defendant has an active
15 account as demonstrated under Subparagraph (F)(4)(b)(ii). A direct message is a means of
16 communicating directly with the defendant in a method reasonably calculated under the
17 circumstances to reach the defendant directly. The direct message must include the following
18 information in the following order:

19 (i) the names of all parties to the case and the docket number of
20 the case;

21 (ii) the statement: “Important information—You have been
22 made a party to a court case. If you do not file a response in the case, the court may decide the case
23 without hearing from you, and you could lose the case.”;

1 (iii) all other information required for effective service by
2 publication under Paragraph K of this rule; and

3 (iv) the following statement: “You may verify this court case by
4 visiting the New Mexico Courts website, clicking on the Case Lookup link, and searching for your
5 name or for the docket number of the case.”

6 (e) Service by e-mail. Service by e-mail shall be made by:

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

9 (ii) stating in the subject line of the e-mail message the following
10 statement: “Important information—You have been made a party to a court case,” the names of all
11 parties to the case, and the docket number of the case;

12 (iii) including in the body of the e-mail, the following statement:
13 “You have been made a party to a court case. If you do not file a response in the case, the court
14 may decide the case without hearing from you, and you could lose the case.”;

15 (iv) including in the body of the e-mail all other information
16 required for effective service by publication under Paragraph K of this rule; and

17 (v) including in the body of the e-mail the following statement:
18 “You may verify this court case by visiting the New Mexico Courts website, clicking on the Case
19 Lookup link, and searching for your name or for the docket number of the case.”

20 When supported by the plaintiff’s e-mail servers and applications, the e-
21 mail shall be sent with both delivery and read receipts requested, and through any substitute
22 function that provides verification of message delivery.

23 (f) Service by text message. Service by text message shall be made by:

1 (i) sending a text message to the defendant’s cellular telephone
2 number approved by the court as identified under Subparagraph (F)(4)(b)(ii) of this rule that
3 provides the defendant with the names of all parties to the case, the name and location of the court
4 in which suit has been filed, the docket number of the case, and the following statement: “Important
5 information—You have been made a party to a court case. If you do not file a response in the case,
6 the court may decide the case without hearing from you, and you could lose the case”;

7 (ii) including in the text message all other information required
8 for effective service by publication under Paragraph K of this rule; and

9 (iii) including in the text message the following statement: “You
10 may verify this court case by visiting the New Mexico Courts website, clicking on the Case Lookup
11 link, and searching for your name or for the docket number of the case.”

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

13 (1) Service may be made upon:

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

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

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

1 the agent is one authorized by law to receive service and the statute so requires, by also mailing a
2 copy to the unincorporated association.

3 (2) If a person described in Subparagraph (a), (b) or (c) of this subparagraph
4 refuses to accept the process, tendering service as provided in this paragraph shall constitute valid
5 service. If none of the persons mentioned is available, service may be made by delivering a copy
6 of the process or other papers to be served at the principal office or place of business during regular
7 business hours to the person in charge.

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

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

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

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

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

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

1 (d) in garnishment actions, service of writs of garnishment shall be
2 made on the department of finance and administration, on the attorney general and on the head of
3 the branch, agency, bureau, department, commission or institution. A copy of the writ of
4 garnishment shall be delivered or served on the defendant employee in the manner and priority
5 provided in Paragraph F of this rule;

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

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

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

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

16 (i) upon the board of trustees of any land grant referred to in NMSA
17 1978, Sections 49-1-1 through 49-10-6 [~~NMSA-1978~~], process shall be served upon the president
18 or in the president's absence upon the secretary of such board.

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

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

23 (1) Service shall be made:

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

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

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

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

19 K. **Process; service by publication.** Service by publication may be made only
20 pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in
21 the form approved by the Supreme Court. A copy of the proposed notice to be published shall be
22 attached to the motion. Service by publication shall be made once each week for three consecutive

1 weeks unless the court for good cause shown orders otherwise. Service by publication is complete
2 on the date of the last publication.

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

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

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

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

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

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

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

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

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

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

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

5 (4) In actions to quiet title or in other proceedings where unknown heirs are
6 parties, notice shall be given to the “unknown heirs of the following named deceased persons”
7 followed by the names of the deceased persons whose unknown heirs are sought to be served. As
8 to parties named in the alternative, the notice shall be given to “the following named defendants
9 by name, if living; if deceased, their unknown heirs” followed by the names of the defendants. As
10 to parties named as “unknown claimants”, notice shall be given to the “unknown persons who may
11 claim a lien, interest or title adverse to the plaintiff” followed by the names of the deceased persons
12 whose unknown claimants are sought to be served.

13 L. **Proof of service of process.** The party obtaining service of process or that party’s
14 agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff
15 of the county in New Mexico, proof of service, including, if applicable, the date of mailing, shall
16 be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New
17 Mexico county, proof of service shall be made by affidavit. Proof of service by mail or commercial
18 courier service shall be established by filing with the court a certificate of service which shall
19 include the date of delivery by the post office or commercial courier service and a copy of the
20 defendant’s signature receipt. Proof of service by social media, e-mail, or text message shall be
21 made by affidavit and shall include copies of the messages sent that demonstrate the manner of
22 service (e.g., e-mail, text, or social media), the e-mail address, social media user name, and/or
23 phone number to which the messages were sent, the dates of such service, and the date of mailing.

1 Proof of service by publication shall be by affidavit of publication signed by an officer or agent of
2 the newspaper in which the notice of the pendency of the action was published. Failure to make
3 proof of service shall not affect the validity of service.

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

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

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

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

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

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

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

1 [As amended, effective January 1, 1987; October 1, 1998; March 1, 2005; as amended by Supreme
2 Court Order No. 11-8300-050, effective for cases filed on or after February 6, 2012; as
3 provisionally amended by Supreme Court Order No. 21-8300-033, effective for all cases pending
4 or filed on or after January 28, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-
5 00009, effective for all cases filed on or after December 31, 2025.]

6

7 **Committee commentary.**

8 **Introduction**

9 New Mexico Rule 1-004 has its origins in an act of the first Legislature of the State of New Mexico.
10 1912 N.M. Laws Ch. 26. When the New Mexico Supreme Court revamped the rules of civil
11 procedure in 1942, 46 N.M. xix-lxxxiv (1942), largely using the 1938 Federal Rules as a model,
12 the provisions of New Mexico Rule 4 continued to reflect some aspects of the service of process
13 provisions of the former New Mexico provisions. Since then piecemeal amendments have occurred
14 but there has been no previous attempt to restructure Rule 1-004 NMRA in light of evolving
15 principles of due process and modern means of communication. The 2004 amendment to Rule 1-
16 004 seeks to accomplish this goal.

17

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

19 Generally, statutory provisions are inapplicable if those provisions purport to set procedural
20 requirements that contradict the Rules of Civil Procedure. *Ammerman v. Hubbard Broadcasting,*
21 *Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976). Rule 1-001(A) creates an exception to *Ammerman,*
22 extending deference to the procedural requirements set by the legislature in special proceedings
23 that would not exist but for creation by the legislature. The root of the Rule 1-001(A) exception

1 for special statutory proceedings is the provision in the New Mexico Constitution giving the
2 district courts "such jurisdiction of special cases and proceedings as may be conferred by
3 law." N.M. Const., art. VI, § 13. The Rule 1-001(A) exception for special statutory proceedings is
4 a prudential exception generally applied to statutory provisions that affect procedural rules even
5 though the statutory provisions do not deal with jurisdictional matters. The Supreme Court, though,
6 has ultimate authority over all procedural rules and thus can supersede by rule a non-jurisdictional
7 statutory procedure in special statutory and summary proceedings. Rule 1-004(A)(1) is an exercise
8 of that authority.

9 Rule 1-004 was amended in 2005 to bring New Mexico's service of process procedure in line with
10 evolving principles of due process. Questions have arisen whether the 2005 amendments to Rule
11 1-004 apply in special statutory proceedings where the statute provides lesser notice requirements
12 than Rule 1-004. *See, e.g.*, NMSA 1978, § 45-1-401 (provision of the Probate Code permitting
13 notice by publication without court order and only requiring two weekly notices); and NMSA
14 1978, § 42A-1-14 (Eminent Domain Code provision providing for service by mail and by
15 publication in manners inconsistent with Rule 1-004).

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

20

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

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

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

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

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

11

12 **Summons; execution; form; Rule 1-004(B)**

13 Rule 1-011 NMRA requires that all "paper" shall contain the telephone number of the attorney or
14 the pro-se litigant. Except for the provision requiring that the summons include the telephone
15 number as well as the name and address of the plaintiff's attorney or the pro se plaintiff, only
16 technical changes have been made in this section.

17 A form summons approved by the New Mexico Supreme Court may be found at 4-206 NMRA.

18

19 **Service of Process; return; Rule 1-004(C)**

20 "Process" is defined in Rule 1-001(B)(3) NMRA.

21 Sometimes a summons is not served in conjunction with the pleading instituting an action. For
22 example, writs, warrants and mandates are not accompanied by a summons. *See* Rule 1-

1 001(B)(3)(c) and (d) NMRA. Rule 1-004(C)(1) acknowledges that service of process sometimes
2 does not include the service of a summons.

3 Rule 1-004(C)(2) is new. Unlike Federal Rule 4(m), which contains a specific time limit within
4 which service of the summons and complaint ordinarily must be made, Rule 1-004(C)(2) provides
5 only that service shall be made "with reasonable diligence". This reflects the standard established
6 in New Mexico case law. *E.g., Romero v. Bachicha*, 2001 NMCA-048 Par. 23-25, 130 N.M. 610,
7 616, 28 P.3d 1151, 1157.

8

9 **Process; by whom served; Rule 1-004(D)**

10 Rule 1-004(D) formerly provided that process could be served by a sheriff of the county where the
11 defendant could be found, or by any person over the age of eighteen and not a party to the action.
12 Because the latter category necessarily includes the sheriff of a county, the reference to service by
13 the sheriff has been omitted.

14 Rule 1-004(D)(2) carries over, unchanged, former Rule 1-004(D)(2).

15 Rule 1-004(D)(3) is new. It provides a means for determining who shall serve process when the
16 process is a writ other than those mentioned in Rule 1-004(D)(2).

17

18 **Process; how served; generally; Rule 1-004(E)**

19 Rule 1-004(E)(1) makes explicit in the rule the general test for constitutionally-adequate service
20 of process established in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)
21 ("An elementary and fundamental requirement of due process in any proceeding which is to be
22 accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested
23 parties of the pendency of the action and afford them an opportunity to present their objections").

1 Rule 1-004(E)(2) accepts the premise that matters of procedure are for the judiciary to determine
2 but that legislation affecting procedure is valid unless and until contradicted by a rule of procedure
3 promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-2 NMSA 1978. The section
4 thus provides that service of process shall be made in accordance with Rule 1-004 NMRA, or in
5 accordance with applicable statutes but shall not be accomplished by a means authorized by a
6 statute that conflicts with Rule 1-004.

7 Rule 1-004(E)(3) provides a much-simplified method of service by mail. It is no longer necessary
8 that the defendant open the mailed packet containing the summons and complaint and then
9 voluntarily choose to accept service by returning a signed Receipt of Service of Summons and
10 Complaint as formerly was required. Instead, service is accomplished when the summons and
11 complaint are mailed to the named defendant in a manner that calls for the recipient to sign a
12 receipt upon receiving the envelope containing the summons and complaint and the defendant-
13 recipient or a person authorized by appointment or by law to accept service of process on behalf
14 of the defendant signs the receipt upon receiving the mailed envelope or package.

15 Service by mail need not be at the home address or usual place of abode of the defendant. Service
16 is complete when the receipt is signed.

17 This section also provides the same mechanism for service of the summons and complaint when a
18 "commercial courier service" is utilized instead of the mails. The phrase, though not entirely self-
19 explanatory, has been used in this context by other states without apparent problems. *See, e.g.*,
20 Kansas Rules of Civil Procedure, KSA 60-303 (c)(1); Utah Rules of Civil Procedure 4(d)(2)(A) and
21 (B). The Advisory Committee Note to Utah Rule 4 provides that "[t]he term 'commercial courier
22 service' refers to businesses that provide for the delivery of documents. Examples of 'commercial

1 courier service' include Federal Express and United Parcel Service". The committee endorses the
2 definition provided in the Utah Advisory Committee Note.

3 In this context, "signs" and "signed" is equivalent to "signature" which "means an original
4 signature, a copy of an original signature, a computer generated signature or any other signature
5 otherwise authorized by law". Rule 1-011 NMRA.

6

7 **Process; personal service upon an individual; Rule 1-004(F)**

8 In General. The 2004 Amendment makes substantial changes in Rule 1-004(F). The "post and
9 mail" method found in the former rule has been eliminated. A provision for service at the place of
10 work of the defendant has been added. The provision for mail service has been simplified and the
11 rule now authorizes the use of commercial courier services as well as mail for service of process.
12 A hierarchy of methods of service has been established. In some cases, a listed method of service
13 cannot be used until other methods of service are attempted unsuccessfully.

14 Rule 1-004(F)(1)(a). This subparagraph remains the same as in the former Rule.

15 Rule 1-004(F)(1)(b). This subparagraph authorizes service by mail or commercial courier service
16 as provided in Rule 1-004(E)(3).

17 Rule 1-004(F)(2). The means of service provided in this section may only be used if there first was
18 an attempt to serve process "by either of the methods of service provided by Subparagraph (1) of
19 this paragraph". This means that the person serving process need only attempt one of the two
20 methods-personal service or mail/commercial courier service before using the alternative provided
21 in this subparagraph.

22 This provision allows service to a person over the age of 15 who resides at the usual place of abode
23 of the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before

1 the 2004 amendment. The former rule, however, required only delivery of the summons and
2 complaint to such a person for service to be valid. The 2004 amendment provides that service is
3 not accomplished until, in addition, the person serving the summons and complaint mails a copy
4 of the summons and complaint to the defendant at the defendant's last known mailing address. This
5 provision allows service to a person over the age of 15 who resides at the usual place of abode of
6 the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before the
7 2004 amendment. The former rule, however, required only delivery of the summons and complaint
8 to such a person for service to be valid. The 2004 amendment provides that service is not
9 accomplished until, in addition, the person serving the summons and complaint mails a copy of
10 the summons and complaint to the defendant at the defendant's last known mailing address. This
11 mailing address will often, but not always, be the usual place of abode of the defendant. The cost
12 of mailing is minimal and increases the likelihood that the defendant will get actual, timely notice
13 of the institution of the action.

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

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

1 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
2 provide for work place service of process. The Fair Debt and Collection Practices Act, 15 U.S.C.
3 Sec. 1692 ff, contains a provision allowing service of process at the workplace of the defendant by
4 "any person while serving or attempting to serve legal process in connection with judicial
5 enforcement of any debt". 15 U.S.C. Sec. 1692(a)(6)(D).

6

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

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

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

16

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

18 Subparagraphs (a), (b), (c), (d) and (e) or Rule 1-004(H)(1) are substantively the same as former
19 Rule 1-004(F) (3) and (4). They are derived from and do not vary materially from Section 38-1-
20 7 NMSA 1978.

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

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

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

3

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

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

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

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

18 The provision for service on a guardian or conservator is carried over from former Rule 1-
19 004(F)(7) except that such service now may be in any manner provided in Paragraph F, G or L as
20 appropriate, rather than, as formerly, only "by delivering a copy . . . to the conservator or guardian".

21 The provision requiring resort to the court to formulate a method of service where the incompetent
22 person has no guardian or conservator is new. Former Rule 1-004(F)(8) provided that if no
23 conservator or guardian had been appointed for an incapacitated person, service upon the

1 incapacitated person would suffice. This provided inadequate assurance that the incapacitated
2 person would have a meaningful opportunity to defend the action. To remedy this, this
3 subparagraph requires the court to fashion a constitutionally-adequate means of service upon the
4 incapacitated person not represented by a guardian or conservator.

5 Subparagraph 3; Service on fiduciaries. This provision is carried over from former Rule 1-
6 004(F)(9). Fiduciaries may be served in the same manner as individuals and business entities who
7 are defendants.

8

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

10 This provision is carried over, unchanged, from former Rule 1-004(L). The goal of service of
11 process is to achieve actual notice by means that are reasonable under the circumstances. Rule 1-
12 004(E)(1). The specific methods of service authorized in Rule 1-004 provide standard methods by
13 which this can be accomplished, but there are myriad specific circumstances in which ad-hoc
14 determination of the most appropriate means for serving process is called for. This rule provides
15 broad authority for the court to fashion a constitutionally-adequate method of service under any
16 circumstances.

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

23

1 Service by publication; Rule 1-004(K)

2 This paragraph requires that no service by publication take place without a prior court order
3 authorizing service by publication. This is a significant modification of prior practice in situations
4 where statutes authorized publication without prior court approval. *See, e.g.*, Section 42-2-7(B)
5 NMSA 1978 (authorizing service by publication in condemnation proceeding "[i]f the name or
6 residence of any owner be unknown"); Section 45-1-401 NMSA 1978 (authorizing service by
7 publication in probate proceedings under some circumstances and providing that the court for good
8 cause can provide a different manner of service). Publication notice is seldom likely to achieve
9 actual notice and thus its use should be monitored carefully by the courts. The Supreme Court is
10 authorized to modify statutes providing for notice by publication by requiring prior court approval
11 for service by publication. Legislation affecting procedure is valid unless and until contradicted by
12 a rule of procedure promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-
13 2 NMSA 1978. This paragraph also provides the required content of the notice to be published,
14 the frequency of publication and the place of publication. Omitted from the 2004 amendment is
15 the former provision (Rule 1-004(H)(3)) requiring that publication be "in some newspaper
16 published in the county where the cause is pending" and providing for publication in a newspaper
17 of general circulation in the county only when "no newspaper [was] published in the county".
18 Publication now always will include publication in a paper of general circulation in the county
19 where the action is pending whether or not the newspaper is published in that county. Where
20 appropriate to the goal of achieving actual notice, the court is free to require, in addition, that
21 publication also be in a newspaper not of general circulation that is published in the county where
22 the cause is pending.

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

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

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

13

14 **Proof of service; Rule 1-004(L)**

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

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

20

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

22 This provision replaces former Rule 1-004(J) (Service of summons outside of state equivalent to
23 publication). Where, as in the case of long arm jurisdiction pursuant to Section 38-1-16 NMSA

1 1978, service of process can be made outside of New Mexico, this rule requires that service be
2 accomplished in the manner and priority provided in this rule. The Committee considered but
3 rejected a proposal that the method of service need not meet the requirements of this rule so long
4 as it met the requirements for service of process in the place where service occurred.

5

6 **Service in a foreign country; Rule 1-004(N)**

7 Service in foreign countries is sometimes subject to treaties or other international agreements. This
8 rule, adopted from Federal Rule 4(f) and Rule 4(h)(2) takes into account the special considerations
9 required by international law.

10 [Approved, March 1, 2005; as amended by Supreme Court Order No. 11-8300-050, effective for
11 cases filed on or after February 6, 2012.]

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