3-202. Summons.

A. **Summons; issuance.** On receipt of a complaint and payment of the docket fee, the clerk shall docket the action, issue a summons, and deliver it to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. On request of the plaintiff, separate, additional, or amended summons shall issue against any defendant. A defendant waives the service of summons by filing an answer in the proceedings.

B. **Summons; execution; form.** The summons shall be signed by the clerk, be directed to the defendant, 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 twenty (20) days after service of the summons, and file the same, all as provided by law, and a notice that unless the defendant so serves and files a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint; and

(3) the name and address of the plaintiff's attorney shall be shown on the summons, otherwise the plaintiff's address.

C. **Summons; service of copy.** A copy of the summons (with a copy of the complaint attached) and a copy of the form for answer shall be served together. The plaintiff shall furnish the person making service with the necessary copies.

D. **Summons; by whom served.** In civil actions, any process may be served by the sheriff of the county where the defendant may be found or by any other person who is over the age of eighteen (18) years, except for writs of attachment and writs of replevin, which shall be served by the sheriff or by any person over the age of eighteen (18) years who may be designated by the court to perform the service, or by the sheriff of the county where the property or person may be found. With the exception of service under Paragraph E, process must be served by a person who is not a party to the action.

E. **Summons; service by mail.**

(1) A summons and complaint may be served on a defendant of any class referred to in Subparagraph (F)(1) or (F)(2) of this rule by mailing a copy of the summons and the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and acknowledgment conforming with the form approved by the Supreme Court, and a return envelope, postage prepaid, addressed to the sender.

(2) If no acknowledgment of service under this paragraph is received by the sender within twenty (20) days after the date of mailing, plus three (3) days as provided by Rule 3-104 NMRA, service of the summons and the complaint shall be made by a person authorized by Paragraph D of this rule, in the manner prescribed by Paragraph F of this rule. Service of a summons by mail is only effective if an acknowledgment of service signed by the person being served is filed with the court.

(3) The court shall order the payment of the costs of personal service by the person served if [~~the person does not complete and return to the sender within twenty-three (23) days after mailing the notice and acknowledgment of receipt of summons~~] personal service authorized by Paragraph D of this rule was made under Subparagraph E(2) of this Rule, unless good cause is

shown for not signing, filing, and serving a signed acknowledgment of service in the time required by [~~this paragraph~~] Subparagraph E(2).

The form of the notice and acknowledgment of receipt of the summons and the complaint shall be substantially in the form approved by the Supreme Court.

F. **Summons; personal service.** Personal service may be made as provided by law as follows:

(1) on an individual other than a minor or an incompetent person by delivering a copy of the summons and the complaint to the individual personally; or if the defendant refuses to receive a copy of the summons and the complaint by leaving the same at the location where the individual has been found; and if the defendant refuses to receive the copies or permit them to be left, this action shall constitute valid service. If the defendant is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the defendant's usual place of abode who is over the age of fifteen (15) years; and if no person is available or willing to accept delivery, then service may be made by posting the copies in the most public part of the defendant's premises, and by mailing to the defendant at the defendant's last known mailing address copies of the process. Service may also be made by mail or commercial courier service if the envelope is addressed to the named defendant and the defendant or a person authorized by appointment, by law, or by this rule to accept service of process on the defendant signs a receipt for the envelope or package containing the summons and the 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;

(2) on a domestic or foreign corporation by delivering a copy of the summons

and the complaint to an officer, a managing or a general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant; on a partnership by delivering a copy of the summons and the complaint to any general partner; and on other unincorporated association, which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association. If the person refuses to receive the copies, this action shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge of the business;

(3) on the State of New Mexico:

(a) 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; and

(b) service of process on the governor, attorney general, agency, bureau, department, commission, or institution or head of the institution may be made either by delivering a copy of the summons and the complaint to the head or to that individual's receptionist. If an executive secretary is employed, this person shall be considered the head;

(4) on any county by delivering a copy of the summons and the complaint to the county clerk, who shall notify the district attorney of the judicial district in which the county sued is situated;

(5) on a municipal corporation by delivering a copy of the summons and the complaint to the city clerk, town clerk, or village clerk, who in turn shall notify the head of the commission or other form of governing body;

(6) on the board of trustees of any land grant referred to in NMSA 1978, Sections 49-1-1 through 49-9-12, process shall be served on the president, or in the president's absence, on the secretary of the board;

(7) on a conservator of an estate or the guardian of a minor, by delivering a copy of the summons and the complaint to the conservator or the guardian. Service of process so made shall be considered as service on the minor. In all other cases, process shall be served by delivering a copy of the summons and the complaint to the minor, and if the minor is living with an adult, a copy of the summons and the complaint shall also be delivered to the adult residing in the same household. If a guardian ad litem has been appointed, a copy of the summons and the complaint shall be delivered to the representative, in addition to serving the minor;

(8) on a conservator of an estate or the guardian of an incompetent person, by delivering a copy of the summons and the complaint to the conservator or the guardian. Service of process so made shall be considered as service on the ward. In all other cases, process shall be served on the ward in the same manner as on competent persons; or

(9) on a personal representative, guardian, conservator, trustee, or other fiduciary in the same manner as provided in Subparagraph (F)(1) or (F)(2) as may be appropriate.

Service shall be made with reasonable diligence, and the original summons with proof of service shall be returned to the clerk of the court from which it was issued.

G. **Return.** If service is made by mail under Paragraph E of this rule, return shall be made by the sender's filing with the court the acknowledgment received under Paragraph E. If

service within the state includes mailing, the return shall state the date and place of mailing. If service is made by mail under Paragraph F of this rule, 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. If service is by personal service under Paragraph F of this rule, the person serving the process shall make proof of service to the court promptly and, in any event, within the time during which the person served must respond to the process. If service is made by the sheriff (or deputy), proof of service shall be by certificate; and if made by a person other than a sheriff (or deputy), proof of service shall be made by affidavit. If service within the state includes mailing, the return shall state the date and place of mailing. Failure to make proof of service shall not affect the validity of service.

H. **Service by publication.** Service by publication may not be made, unless provided by law in cases of attachment and replevin.

I. **Alias process.** If the process has not been returned, or has been returned without service, or has been improperly served, the clerk, on application of any party to the suit, shall issue other process as the party applying may direct.

J. **Service; applicable statute.** If the rules make no provision for service of process, process shall be served as provided for by any applicable statute.

K. **Construction of terms.** If the terms "summons," "process," "service of process," or similar terms are used, the terms shall include the summons, complaint, and any other papers required to be served.

[As amended, effective January 1, 1990; July 1, 1990; January 1, 1993; May 1, 1994; October 15, 2002; by Supreme Court Order No. 09-8300-035, effective November 16, 2009; as amended by

Supreme Court Order No. 21-8300-012, effective for all cases filed or pending on or after December 31, 2021; as amended by Supreme Court Order No. S-1-RCR-2025-00175, effective for all cases pending or filed on or after December 31, 2025; as amended by Supreme Court Order No. S-1-RCR-2026-00233, effective for all cases pending or filed on or after December 31, 2026.]