7-204. Issuance of warrant for arrest and summons.

A. **Issuance.** On the docketing of any criminal action, the court may issue a summons or an arrest warrant.

B. **Basis for warrant.** The court may issue an arrest warrant only on a sworn statement of the facts showing probable cause that an offense has been committed. The showing of probable cause shall be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished. Before ruling on a request for a warrant, the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses produced by the affiant, but the additional evidence shall be reduced to writing and supported by oath or affirmation. The court also may permit a request for an arrest warrant by any method authorized by Paragraph F of Rule 7-208 NMRA for search warrants and may issue an arrest warrant remotely if the requirements of Paragraph G of Rule 7-208[~~ NMRA~~] and this rule are met.

C. **Preference for summons.** The court shall issue a summons, unless in its discretion, the court finds that the interests of justice may be better served by the issuance of an arrest warrant.

D. **Form.**

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

(a) penalty assessment misdemeanor charges; or

(b) traffic code misdemeanor charges, except for:

(i) driving under the influence of intoxicating liquor or drugs, contrary to NMSA 1978, Section 66-8-102[~~NMSA 1978~~]; and

(ii) operating a motorboat while under the influence of intoxicating liquor or drugs, contrary to NMSA 1978, Section 66-13-3[~~NMSA 1978~~].

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

[As amended by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; amended by Supreme Court Order No. 15-8300-008, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as amended by Supreme Court Order No. S-1-RCR-2023-00007, effective for all cases pending or filed on or after December 31, 2026.]

Committee commentary. — Paragraph A was amended in 2013 to permit alternate methods for requesting and issuing arrest warrants. *See* Rule 7-208 NMRA and the related committee commentary for more information.

Paragraph C was amended in 2019 to be consistent with Rule 5-208 NMRA, which was amended at the same time.

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

[Adopted by Supreme Court Order No. 13-8300-011, effective for all cases pending or filed on or after July 15, 2013; as amended by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024.]