

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

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

4           ~~[B. — **Form for warrant.** The warrant shall be signed by the court and shall contain  
5 the name of the defendant or, if the defendant's name is unknown, any name or description  
6 by which the defendant can be identified with reasonable certainty. It shall describe the  
7 offense charged. It shall command that the defendant be arrested and brought before the  
8 court.~~

9           ~~C. — **Form for summons.** The summons shall be in the same form as the warrant  
10 except that it shall summon the defendant to appear before the court at a stated time and  
11 place. A summons or arrest warrant shall be substantially in the form approved by the court  
12 administrator.~~

13           ~~D. — **Basis for warrant.** The court may issue a warrant for arrest upon an  
14 indictment or a sworn written statement of the facts showing probable cause for issuance of  
15 a warrant. The showing of probable cause shall be based upon substantial evidence, which  
16 may be hearsay in whole or in part, provided there is a substantial basis for believing the  
17 source of the hearsay to be credible and for believing that there is a factual basis for the  
18 information furnished. Before ruling on a request for a warrant the court may require the  
19 affiant to appear personally and may examine under oath the affiant and any witnesses he  
20 may produce, provided that such additional evidence shall be reduced to writing and~~

1 ~~supported by oath or affirmation. The court also may permit a request for an arrest warrant~~  
2 ~~by any method authorized by Paragraph F of Rule 5-211 NMRA for search warrants and may~~  
3 ~~issue an arrest warrant remotely provided that the requirements of Paragraph F of Rule 5-211~~  
4 ~~NMRA and this rule are met.]~~

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

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

20 D. Form.

1           (1)     Warrant. The warrant shall be signed by the court and shall contain  
2     the name of the defendant or, if the defendant's name is unknown, any name or description  
3     by which the defendant can be identified with reasonable certainty. It shall describe the  
4     offense charged and shall command that the defendant be arrested and brought before the  
5     court.

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

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

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

16     ~~[Paragraph A of Rule 6-204 adds to Paragraph A of this rule by indicating a preference for~~  
17     ~~the use of summons when practicable. See also, Section 31-1-6 NMSA 1978.]~~

18           ~~[Paragraphs B and C of this rule were derived from Rule 4(c) of the Federal Rules~~  
19     ~~of Criminal Procedure. See 62 F.R.D. 27172 (1974).]~~

1 Paragraph [D] C of this rule requires a written showing of probable cause before an  
2 arrest warrant may be issued. The constitutional basis for this requirement is Article II,  
3 Section 10 of the New Mexico Constitution, although that provision does not expressly  
4 mention arrest warrants. *Cf. State v. Gibby*, 1967-NMSC-219, 78 N.M. 414, 432 P.2d 258  
5 [(1967). *See also*, ~~commentary to Rule 5-209 NMRA~~].

6 Paragraph [D] C of this rule codified case law allowing the issuance of a warrant on  
7 probable cause based on hearsay evidence. This provision was taken from Rule 4(b) of the  
8 Federal Rules of Criminal Procedure. *See* 48 F.R.D. 553, 55860 (1970); ~~and~~ 62 F.R.D. 27172  
9 (1974). Neither the proposed federal rule nor this rule attempts to establish what constitutes  
10 probable cause based on hearsay as that determination can only be made on a case by case  
11 basis, taking into account the unlimited variation and sources of information and the varying  
12 reliability of the information received by the affiant from others. 62 F.R.D. 271, 27374  
13 (1974). The fact that the information may involve double hearsay does not mean that the  
14 affidavit fails to provide probable cause. *State v. Alderete*, 1975-NMCA-058, 88 N.M. 14,  
15 536 P.2d 278 [(~~Ct. App. 1975~~)].

16 Paragraph [D] C was amended in 2012 to permit alternate methods for requesting and  
17 issuing arrest warrants. *See* Rule 5-211(F) and the related committee commentary for more  
18 information.

**DISTRICT COURT CRIMINAL  
RULE 5-208**

**Supreme Court Approved  
November 1, 2019**

1           In 2019, this rule was amended to incorporate language from rules governing the  
2 courts of limited jurisdiction, which express a preference for the use of a summons when  
3 practicable. See Rule 6-204 NMRA; Rule 7-204 NMRA; Rule 8-203 NMRA.  
4 [As amended by Supreme Court Order No. 12-8300-016, effective for all cases pending or  
5 filed on or after June 29, 2012; as amended by Supreme Court Order No. 19-8300-018,  
6 effective for all cases filed on or after December 31, 2019.]