

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE MAGISTRATE AND METROPOLITAN COURTS
AND THE CIVIL FORMS
PROPOSAL 2021-011**

March 17, 2021

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rules 2-202 and 3-202 NMRA and Forms 4-204 and 4-223 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 web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 16, 2021, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

2-202. Summons.

A. **Summons; issuance.** [~~Upon~~] On receipt of a complaint and payment of the docket fee, the clerk or the magistrate shall docket the [~~action and~~] 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. [~~Upon the~~] 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; how issued; 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~~[, if any,]~~ shall be shown on ~~[every]~~ 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 ~~[such]~~ the necessary copies ~~[as are necessary]~~.

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 ~~[and not a party to the action]~~, except for writs of attachment and writs of replevin, which shall be served by the sheriff or by any person ~~[not a party to the action]~~ over the age of eighteen (18) years who may be designated by the court to perform ~~[such]~~ 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.** A summons and complaint may be served ~~[upon]~~ on a defendant of any class referred to in ~~[Subparagraph (1) or (2) of Paragraph F]~~ Subparagraph (F)(1) or (F)(2) of this rule by mailing a copy of the summons and ~~[of]~~ the complaint (by first-class mail, postage prepaid) to the person to be served, together with two (2) copies of a notice and ~~[acknowledgement]~~ acknowledgment substantially conforming with the form approved by the Supreme Court, and a return envelope, postage prepaid, addressed to the sender. If no ~~[acknowledgement]~~ acknowledgment of service under this ~~[subdivision of this rule]~~ paragraph is received by the sender within twenty (20) days after the date of mailing, plus three (3) days as provided by Rule 2-104 NMRA, service of ~~[such]~~ 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 ~~[acknowledgement]~~ acknowledgment of service signed by the person being served is filed with the court. The court shall order the payment of the costs of personal service by the person served if ~~[such]~~ the person does not complete and return to the sender within twenty-three (23) days after mailing the notice and ~~[acknowledgement]~~ acknowledgment of receipt of summons, unless good cause is shown for not signing, filing, and serving a signed acknowledgment of service in the time required by this paragraph.

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

F. **Summons; ~~how served~~ personal service.** Personal service shall be made as provided by law as follows:

(1) ~~[upon]~~ on an individual other than a minor or an ~~[incapacitated]~~ incompetent person by delivering a copy of the summons and ~~[of]~~ the complaint to ~~[him]~~ the individual personally; or if the defendant refuses to receive ~~[such,]~~ a copy of the summons and the complaint by leaving the same at the location where ~~[he]~~ the individual has been found; and if the defendant refuses to receive ~~[such]~~ the copies or permit them to be left, ~~[such]~~ 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 ~~[of the defendant]~~ who is over the age of fifteen (15) years; and if ~~[there is no such]~~ no person is available or willing to accept delivery, then service may be made by posting ~~[such]~~ the copies in

the most public part of the defendant's premises, and by mailing to the defendant at ~~[his]~~ the defendant's last known mailing address copies of the process;

(2) ~~[upon]~~ on a domestic or foreign corporation by delivering a copy of the summons and ~~[of]~~ 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; ~~[upon]~~ on a partnership by delivering a copy of the summons and ~~[of]~~ the complaint to any general partner; and ~~[upon]~~ on other unincorporated association, which is subject to suit under a common name, by delivering a copy of the summons and ~~[of]~~ 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 ~~[such]~~ the copies, ~~[such]~~ 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 ~~[thereof]~~ of the business;

(3) ~~[upon]~~ 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 ~~[thereof]~~ of the institution may be made either by delivering a copy of the summons and ~~[of]~~ the complaint to the head or to ~~[his]~~ that individual's receptionist. ~~[Where]~~ If an executive secretary is employed, ~~[he]~~ this person shall be considered ~~[as]~~ the head;

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

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

(6) ~~[upon]~~ on the board of trustees of any land grant referred to in Sections 49-1-1 through ~~[49-10-6]~~ 49-9-12 NMSA 1978, process shall be served ~~[upon]~~ on the president, or in ~~[his]~~ the president's absence, ~~[upon]~~ on the secretary of ~~[such]~~ the board;

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

(8) ~~[upon an incapacitated person, whenever there shall be]~~ on a conservator of ~~[the]~~ an estate or the guardian of ~~[the person of such incapacitated]~~ an incompetent person, by

delivering a copy of the summons and ~~[of]~~ the complaint to the conservator or the guardian. Service of process so made shall be considered as service ~~[upon]~~ on the ward. In all other cases, process shall be served ~~[upon]~~ on the ward in the same manner as ~~[upon]~~ on competent persons; or

(9) ~~[upon]~~ on a personal representative, guardian, conservator, trustee, or other fiduciary in the same manner as provided in ~~[Subparagraph (1) or (2) of this paragraph]~~ 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 ~~[pursuant to]~~ under Paragraph E of this rule, return shall be made by the sender's filing with the court the acknowledgment received ~~[pursuant to such paragraph. Where]~~ under Paragraph E. If service within the state includes mailing, the return shall state the date and place of mailing. If service is by personal service ~~[pursuant to]~~ under Paragraph F of this rule, the person serving the process shall make proof of service ~~[thereof]~~ to the court promptly and, in any event, within the time during which the person served must respond to the process. ~~[When]~~ If service is made by the sheriff (or deputy), proof ~~[thereof]~~ of service shall be by certificate; and ~~[when]~~ if made by a person other than a sheriff (or deputy), proof ~~[thereof]~~ of service shall be made by affidavit. ~~[Where]~~ 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, ~~[except as]~~ unless provided by law in cases of attachment or replevin.

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

J. **Service; applicable statute.** ~~[Where no provision is made in these]~~ 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.** ~~[Wherever]~~ If the terms "summons," "process," "service of process," or similar terms are used, ~~[such]~~ 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; as amended by Supreme Court Order No. 18-8300-015, effective December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

3-202. Summons.

A. **Summons; issuance.** ~~[Upon]~~ 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. ~~[Upon the]~~ 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;

(3) the name and address of the plaintiff's attorney~~[, which, if any,]~~ shall be shown on ~~[every]~~ the summons, otherwise the plaintiff's address; and

(4) a notice that the defendant may request ~~[prior to]~~ before any proceeding that the proceeding be recorded. The notice shall advise the defendant if a tape recording is not made of the proceedings, it may effectively preclude the defendant from appealing to the district court.

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 ~~[such]~~ the necessary copies ~~[as are necessary]~~.

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 ~~[and not a party to the action]~~, except for writs of attachment and writs of replevin, which shall be served by the sheriff or by any person ~~[not a party to the action]~~ over the age of eighteen (18) years who may be designated by the court to perform ~~[such]~~ 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.** A summons and complaint may be served ~~[upon]~~ on a defendant of any class referred to in ~~[Subparagraph (1) or (2) of Paragraph F]~~ Subparagraph (F)(1) or (F)(2) of this rule by mailing a copy of the summons and ~~[of]~~ 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. If no acknowledgment of service under this ~~[subdivision of this rule]~~ 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 ~~[such]~~ 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. The court shall order the payment of the costs of personal service by the person served if ~~[such]~~ 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, unless good cause is shown for not signing, filing, and serving a signed acknowledgment of service in the time required by this paragraph.

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; ~~how served~~ personal service.** Personal service may be made as provided by law as follows:

(1) ~~[upon]~~ on an individual other than a minor or an ~~[incapacitated]~~ incompetent person by delivering a copy of the summons and ~~[of]~~ the complaint to ~~[him]~~ the individual personally; or if the defendant refuses to receive ~~[such,]~~ a copy of the summons and the complaint

by leaving the same at the location where ~~[he]~~ the individual has been found; and if the defendant refuses to receive ~~[such]~~ the copies or permit them to be left, ~~[such]~~ 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 ~~[of the defendant]~~ who is over the age of fifteen (15) years; and if ~~[there is no such]~~ no person is available or willing to accept delivery, then service may be made by posting ~~[such]~~ the copies in the most public part of the defendant's premises, and by mailing to the defendant at ~~[his]~~ the defendant's last known mailing address copies of the process. Service may also be made by mail or commercial courier service ~~[provided that]~~ if 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]~~ 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) ~~[upon]~~ on a domestic or foreign corporation by delivering a copy of the summons and ~~[of]~~ 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; ~~[upon]~~ on a partnership by delivering a copy of the summons and ~~[of]~~ the complaint to any general partner; and ~~[upon]~~ on other unincorporated association, which is subject to suit under a common name, by delivering a copy of the summons and ~~[of]~~ 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 ~~[such]~~ the copies, ~~[such]~~ 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 ~~[thereof]~~ of the business;

(3) ~~[upon]~~ 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 ~~[thereof]~~ of the institution may be made either by delivering a copy of the summons and ~~[of]~~ the complaint to the head or to ~~[his]~~ that individual's receptionist. ~~[Where]~~ If an executive secretary is employed, ~~[he]~~ this person shall be considered ~~[as]~~ the head;

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

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

(6) ~~[upon]~~ on the board of trustees of any land grant referred to in Sections 49-1-1 through ~~[49-10-6]~~ 49-9-12 NMSA 1978, process shall be served ~~[upon]~~ on the president, or in ~~[his]~~ the president's absence, ~~[upon]~~ on the secretary of ~~[such]~~ the board;

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

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

(9) ~~[upon]~~ on a personal representative, guardian, conservator, trustee, or other fiduciary in the same manner as provided in ~~[Subparagraph (1) or (2) of Paragraph F of this rule]~~ 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 ~~[pursuant to]~~ under Paragraph E of this rule, return shall be made by the sender's filing with the court the acknowledgment received ~~[pursuant to such paragraph. Where]~~ 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 ~~[pursuant to]~~ 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 ~~[pursuant to]~~ under Paragraph F of this rule, the person serving the process shall make proof of service ~~[thereof]~~ to the court promptly and, in any event, within the time during which the person served must respond to the process. ~~[When]~~ If service is made by the sheriff (or deputy), proof ~~[thereof]~~ of service shall be by certificate; and ~~[when]~~ if made by a person other than a sheriff (or deputy), proof ~~[thereof]~~ of service shall be made by affidavit. ~~[Where]~~ 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, ~~[except as]~~ unless provided by law in cases of attachment and replevin.

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

J. **Service; applicable statute.** ~~[Where no provision is made in these]~~ 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.** [Wherever] If the terms “summons,” “process,” “service of process,” or similar terms are used, [such] 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. _____, effective _____.]

4-204. Civil summons.

[For use with Rules 2-202 and 3-202 NMRA]

STATE OF NEW MEXICO

COURT

COUNTY

_____, Plaintiff,

v. No. _____
Judge assigned: _____

_____, Defendant.

CIVIL SUMMONS

TO: _____, Defendant¹

ADDRESS: _____

GREETINGS: THIS IS A COURT ISSUED SUMMONS.

A LAWSUIT HAS BEEN FILED AGAINST YOU. A copy of the lawsuit (complaint) and a response form (answer form)² are attached.

YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file (in person or by mail) your written response with the court. When you file your response, you must give or mail a copy to the person who signed the complaint.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THE TWENTY (20) DAY PERIOD, NO COURT DATE WILL BE SET, AND THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU FOR THE MONEY OR OTHER RELIEF REQUESTED IN THE COMPLAINT. A DEFAULT JUDGMENT MEANS **YOU LOSE THE CASE AND YOU OWE THE PLAINTIFF.**

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT, YOU MAY BE GIVING UP ANY DEFENSES YOU MAY HAVE, FOR EXAMPLE, THAT YOU DO NOT OWE THE PLAINTIFF OR THAT TOO MUCH TIME HAS PASSED.

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; [1-800-876-6657] 1-800-876-6227; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written response, and you must pay a jury fee when you file your response.

If you need an interpreter, you must ask the court for one in writing.

(The following paragraph is for use only if summons issued by the Metropolitan Court.)

IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT ~~[PRIOR TO]~~ BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.

Your answer must be filed with the court, which is located at:
_____ (street address of court).

A copy of your answer or responsive pleading must be mailed to: (name and address of plaintiff or plaintiff's attorney)

Name: _____

Address: _____

Clerk

RETURN

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

(complete the following, unless service by sheriff or deputy)³

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, a copy of the complaint, and an answer (indicate below how served):

_____.

(complete if service by sheriff or deputy)³

I certify that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, a copy of the complaint, and an answer form in the following manner:

_____.

(person serving summons must check one box and fill in appropriate blanks)

- by delivering a copy of this summons, a copy of the complaint, and an answer form to the defendant, _____ (used when defendant receives copy of summons or refuses to receive summons).
- by delivering a copy of this summons, a copy of the complaint, and an answer form to _____, a person over fifteen (15) years of age and residing at the usual home of the defendant, _____, located at _____ (address)[-] (used when defendant is not presently at the [~~home~~] home).
- by posting a copy of the summons, complaint, and an answer form in the most public part of the usual home of _____ (name of defendant) located at _____ (address) (used if no person found at home or usual place of residence).

(If service is by posting, a copy of the summons, complaint, and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

- by delivering a copy of this summons, a copy of the complaint, and an answer form to _____, an agent authorized to receive service of process for defendant.
- by delivering a copy of this summons, a copy of the complaint, and an answer form to _____, (parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).
- by delivering a copy of this summons, a copy of the complaint, and an answer form to _____ (name of person), _____, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico, or any political subdivision).

- by service by mail.

Fees: _____

Signature of person making service

Title [(if any)]

Subscribed and sworn to
before me this _____
day of _____, _____

Judge, notary, or other officer
authorized to administer oaths³

Official title

*(To be completed if service is made by posting)*⁴

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit,
and that I served a copy of this summons on the _____ day of _____,
_____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the
complaint, and an answer form to:

_____ *(name of person served)*

_____ *(address where mailed)*

_____ *(county)*

_____ *(city, state, and zip code)*

Signature of person making service

Title [(if any)]

Place of mailing

Date

Subscribed and sworn to
before me this _____
day of _____, _____

Judge, notary, or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by [~~mail~~] mail)⁵

I, being sworn, state that I am over the age of eighteen (18) years [~~and not a party to this lawsuit~~], and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form, and two (2) copies of the notice and acknowledgment and a return envelope, postage prepaid, addressed to:

_____ *(name of person served)*

_____ *(address where mailed)*

_____ *(county)*

_____ *(city, state, and zip code)*

Signature of person making service

Title [~~if any~~]

Place of mailing

Date

Subscribed and sworn to
before me this _____
day of _____, _____ [-]

Judge, notary, or other officer
authorized to administer oaths³

Official title^[3]

USE NOTES

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, *see* Rules 4-301 and 4-302 NMRA.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. For use [~~when~~] if service is by posting.
5. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

4-223. Order for free process.

[For use with Supreme Court General Rule 23-114 NMRA]

STATE OF NEW MEXICO
 COUNTY OF _____
 _____ COURT

_____, Petitioner,

v. No. _____

_____, Respondent.

ORDER ON APPLICATION FOR FREE PROCESS

THIS MATTER having come before the court on Petitioner’s application for free process and affidavit of indigency, or [~~upon~~] on Petitioner’s attorney’s certificate supporting indigency and free process [~~pursuant to~~] under Rule 23-114(B)(2) NMRA, and the court being otherwise advised in the premises, **FINDS** that:

- [] the applicant is entitled to free process in accordance with Rule 23-114(B)(2) NMRA.
- [] the applicant receives public assistance and is, therefore, entitled to free process.
- [] the applicant’s annual gross income does not exceed _____ of the federal poverty guidelines, and the applicant is, therefore, entitled to free process.

the applicant's annual gross income exceeds _____ of the federal poverty guidelines, but the applicant is not reasonably able to pay fees or costs and is, therefore, entitled to free process.

~~[on the basis of]~~ based on the applicant's available funds or annual gross income, the applicant is not entitled to free process.

THE COURT ORDERS that:

the filing fee is waived.

the filing fee is waived except for the \$ _____ alternative dispute resolution (ADR) fee.

the applicant is granted free service of process by the Sheriff in _____ County, New Mexico for 1 2 3 4 5 or _____ summons(es), ~~[provided that]~~ if the applicant first attempts ~~[service by certified mail pursuant to]~~ service: (1) in district court in accordance with Rule 1-004(E)(3) NMRA; (2) by first class mail in magistrate court under Rule 2-202(E) NMRA; or (3) by first class mail in metropolitan court under Rule 3-202(E) NMRA.

the applicant is granted free service by the Sheriff in _____ County, New Mexico, of a temporary restraining order or _____.

the applicant is to pay the filing fee on _____, 20____.

interpretation services shall be provided to the applicant.

free process is denied.

Other:

Unless specifically granted above, this order of free process does not include ~~[the]~~ the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this ~~[law-suit]~~ lawsuit and collects money by judgment or settlement, the court may order reimbursement for any waived costs. If the applicant is represented by an attorney who is paid an attorney fee, any fees or costs waived by this order must be deducted from ~~[any such]~~ the attorney fee and paid to the court clerk. **This order is subject to revision, modification, or rescission by the judge assigned to your case.**

JUDGE

[Adopted by Supreme Court Order No. 07-8300-043, effective February 25, 2008; as amended by Supreme Court Order No. 08-8300-031, effective November 17, 2008; by Supreme Court Order No. 10-8300-044, effective February 9, 2011; as amended by Supreme Court Order No. 17-8300-022, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. _____, effective _____.]



[nmsupremecourtclerk-grp] Comments to 2021 Proposed Rule Amendments

1 message

Chief Judge Jennifer DeLaney <demdjed@nmcourts.gov>

Fri, Apr 16, 2021 at 10:04 AM

Reply-To: demdjed@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Cc: "Hofacket, Jarod" <demdjkh@nmcourts.gov>, Tom Stewart <sildtfs@nmcourts.gov>, Jim Foy <sildjbf@nmcourts.gov>

Mr. Moya,

Attached are the comments from the District Judges of the Sixth Judicial District concerning the 2021 proposed rule amendments. Please let me know if I need to submit each one separately or if the attached document is sufficient to distribute to each of the rule committees. Thank you,

Chief Judge DeLaney

--

Jennifer E. DeLaney

Chief Judge, Division II

Sixth Judicial District Court

[855 S. Platinum Avenue](#)

[Deming, New Mexico 88030](#)

(575) 543-1546

(575) 543-1606 facsimile



2021 Proposed Rule Amendment Comments.docx

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Code of Professional Conduct Committee

Proposal 2021-006 – Lawyer communications and solicitation of clients

[Rules 16-701, 16-702, and 16-703 NMRA; and Withdrawn Rules 16-704 and 16-705 NMRA]

The Code of Professional Conduct Committee proposes to amend Rules 16-701, 16-702, and 16-703 NMRA to incorporate certain of the 2018 amendments to the ABA Model Rules of Professional Conduct. Because the proposed amendments to Rules 16-701, 16-702, and 16-703 also incorporate some provisions and commentary from Rules 16-704 and 16-705 NMRA, the Committee proposes to withdraw Rules 16-704 and 16-705.

No issues regarding this proposed change.

Rules of Civil Procedure for State Courts Committee

Proposal 2021-007 – Production of documents and things

[Rule 1-034 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-034 NMRA to: (1) clarify that in answering a request for production, the responding party shall permit inspection in its entirety unless the responding party files a proper objection; (2) require the responding party to state the specific reasons for an objection to a request for production; (3) require the responding party to state whether the response includes all responsive materials; and (4) if the responding party withholds any responsive materials based on an objection, the objection must clearly describe with reasonable particularity the materials withheld for each objection. The Committee also added committee commentary to further explain the amendments.

No issues regarding this proposed change.

Proposal 2021-008 – Electronic filing and service fees as recoverable costs

[Rules 1-054, 2-701, and 3-701 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 1-054, 2-701, and 3-701 NMRA to clarify that electronic filing and service fees are recoverable costs.

This rule change helps to clarify what is included in fees and that is helpful to the Court.

Proposal 2021-009 – Court trust account requirements

[Rule 1-102 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-102 NMRA to clarify that district courts must deposit litigant funds within two (2) business days of receipt in a bank that is a member of the Federal Deposit Insurance Corporation and in an account that is distinct from the court's accounts for general funds. The Committee additionally proposes to amend Rule 1-102 NMRA to specify that funds deposited in a court trust fund checking account

must be invested and maintained in a financial institution located within the court's judicial district and in accordance with governing statutes and any regulation prescribed by the Director of the Administrative Office of the Courts. The Committee also replaced the references to "social security number" and "employer identification number" with the more-inclusive term "taxpayer identification number," and also cited Form W-9 (Request for Taxpayer Identification Number and Certification) by name.

No comment.

[Proposal 2021-010](#) – *Tribal court personal representative*
[Rule 1B-102 NMRA; and Forms 4B-801 and 4B-802 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1B-102 NMRA, and Forms 4B-801 and 4B-802 NMRA, to clarify that a domiciliary foreign personal representative includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs. The Committee further proposes to amend Forms 4B-801 and 4B-802 NMRA to recognize tribal court appointments. Finally, the Committee proposes to amend Form 4B-801 NMRA to allow "equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs" to serve as a substitute for Letters of Administration or Letters Testamentary, recognizing that tribal courts may title documents differently than probate courts.

No comment.

[Proposal 2021-011](#) – *Summons and order for free process*
[Rules 2-202 and 3-202 NMRA; and Forms 4-204 and 4-223 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 2-202 and 3-202 NMRA by replacing "incapacitated" with "incompetent" for consistency with Rules 1-004(I) and 1-017(D) NMRA applicable to the district courts.

The Committee also proposes to amend Rules 2-202 and 3-202 NMRA, as well as Form 4-204 NMRA, to permit *pro se* parties to serve a summons by mail.

Finally, the Committee proposes to amend Form 4-223 NMRA to specify the methods of service a person seeking free service of process must first attempt in the district, magistrate, and metropolitan courts.

The revisions are helpful in making the rule more clear.

[Proposal 2021-012](#) – *Title page of transcript of civil proceedings*
[Form 4-708 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Form 4-708 NMRA for consistency with the comparable criminal form, Form 9-608 NMRA, to reflect that the court clerk, rather than the judge, issues the title page of a transcript of civil proceedings.

No objections to the new forms as proposed.

Rules of Criminal Procedure for State Courts Committee

Proposal 2021-013 – Order of trial

[Rule 5-607 NMRA; and New Rules 6-603.1 and 7-603.1 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 5-607 NMRA to clarify and make housekeeping changes to its text and committee commentary, and to adopt new Rules 6-603.1 and 7-603.1 NMRA that import Rule 5-607's sequence of trial events into jury trial practice in the magistrate and metropolitan courts.

No objections to the new rules as proposed.

Proposal 2021-014 – Time limits for filing citations

[Rules 6-201, 7-201, and 8-201 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-201, 7-201, and 8-201 NMRA to incorporate an express time limitation for the filing of a citation and an explicit remedy—the potential dismissal of the citation with prejudice—for a late-filed citation.

This is a necessary amendment to each of the above listed rules.

Proposal 2021-015 – Interview subpoenas

[Rule 6-606 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 6-606 NMRA to provide that a judge-issued subpoena in magistrate court will lie “only after good faith efforts to secure an interview . . . have been unsuccessful[,]” the same criterion that governs the issuance of interview subpoenas in metropolitan court under Rule 7-606 NMRA

The changes help to clarify and will reduce the procedure where litigants come straight to the court to obtain an interview subpoena.

Proposal 2021-016 – Time limits for probation violation hearings

[Rules 6-802, 7-802, and 8-802 NMRA]

6-802 (C)(2), 7-802 (C)(2), and 8-802(C)(2) With our current use of technology, there is no reason that a hearing should take two days longer to set if the person is in custody in an out of district detention center. It should be 3 days regardless if the defendant is in detention.

8-802 (D). Municipal ordinances are generally very low-level offenses and allowing someone to remain in custody for 18 days (3 before initial hearing and 15 from that date) seems extremely severe. There should be limited reasons why this kind of case could not be adjudicated with seven days from the initial appearance. The time should be reduced.

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-802, 7-802, and 8-802 NMRA to provide explicit time limits for the holding of a probation violation hearing in the limited jurisdiction criminal courts.

[Proposal 2021-017](#) – Waiver of counsel and other public defender forms
[Forms 9-401, 9-403, 9-403A, and 9-403B NMRA; and Withdrawn Form 9-401A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Forms 9-401, 9-403, 9-403A, and 9-403B NMRA, and to withdraw Form 9-401A NMRA, to adopt a single, detailed “Waiver of Counsel Advisement” for use in all courts of criminal jurisdiction, align the form provisions governing the appointment of defense counsel with the current policies of the Law Offices of the Public Defender, and clarify the form provisions governing appeals of indigency determinations.

In the Waiver of Counsel form, the language is definitely much clearer than the previous form; however, there is still a lot of legalese especially in paragraphs six and seven. Additionally, there should be added language that the prosecutor has not duty to assist a self-represented criminal defendant and has no duty of loyalty to him/her.

[Proposal 2021-018](#) – Dismissal of criminal charges on completion of deferred sentence
[Form 9-603A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Form 9-603A NMRA to make clear the mandatory nature of the dismissal remedy available to a defendant upon the defendant’s completion of the terms of a deferred sentence without revocation.

No comment.

UJI-Civil Committee

[Proposal 2021-019](#) – Insurance has no bearing
[UJI 13-208 NMRA]

The UJI-Civil Committee proposes to amend UJI 13-208 NMRA to align the instruction with jurors’ current understanding of the role played by insurance and to provide for possible use of the instruction prior to the commencement of a trial.

The amendments appear to clarify the UJI, which is helpful.

[Proposal 2021-020](#) – Request for admission
[New UJI 13-215 NMRA]

The UJI-Civil Committee proposes to adopt new UJI 13-215 NMRA to address the introduction of admitted facts at trial. The proposed instruction provides jurors with the definition of a request for admission and informs them of the effect of an admitted fact at trial.

These amendments help to streamline the UJI and increase clarity.

Proposal 2021-021 – Unfair Practices Act claims

[New UJI 13-25 Introduction NMRA; New UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and New UJI 13-25 Appendix NMRA]

The UJI-Civil Committee proposes to adopt a new Chapter 25 to the Civil Uniform Jury Instructions to use with Unfair Practices Act (UPA) claims. Proposed Chapter 25 includes new UJI 13-25 Introduction NMRA; new UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and new UJI 13-25 Appendix NMRA. The proposed Introduction orients practitioners and judges to Chapter 25 and explains how the instructions in the chapter may be used with other UJI chapters. Proposed UJI 13-2501 sets out the elements that a plaintiff alleging a UPA violation must prove and is intended for use in all cases alleging a UPA violation. Proposed UJI 13-2502 instructs the jury on the proof required to establish that a defendant engaged in an unconscionable trade practice under the UPA. Proposed UJI 13-2503, -2504, and -2505 are definitional instructions to be used as appropriate in a given case. Proposed UJI 13-2506 provides a damages framework for UPA claims. The proposed Appendix provides a sample set of jury instructions for a hypothetical case containing UPA violations.

The new UJI will help to give the parties a better framework for proceeding in these cases and assisting jurors in their role as fact finders.

UJI-Criminal Committee

Proposal 2021-022 – Explanation of trial procedure

[UJI 14-101 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-101 NMRA to simplify instructions on outside communications and internet use and to clarify that jurors ordinarily will not receive transcripts of witness testimony.

This seems like an excellent rule change. This has always been a challenging part of the jury script.

Proposal 2021-023 – Procedure for instructing on uncharged offenses

[UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA]

The UJI-Criminal Committee proposes to amend the Use Notes to UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378,

14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA to reference the procedure for instruction on uncharged offenses outlined in UJI 14-140 NMRA.

This seems like a helpful correction to make the use of 14-140 mandatory instead of referencing it. I think the old rule was adequate. This is more clear.

Proposal 2021-024 – Stalking and aggravated stalking
[UJI 14-331 and 14-333 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-331 and 14-333 NMRA to conform more closely to the language of NMSA 1978, Section 30-3A-3 (2009), defining the crime of stalking, and NMSA 1978, Section 30-3A-3.1 (1997), defining the crime of aggravated stalking.

I think this change is a reach. The statute changed in 2009. No case has interpreted the statute the way the committee is attempting to, namely that proving that the Defendant was acting without lawful authority is an element for the State to prove. I do not believe the rules committee should be making this fundamental change to the law so long after the statute they are referencing changed.

Proposal 2021-025 - Reliance in fraud
[UJI 14-1640 NMRA]

The UJI-Criminal Committee proposes to amend the committee commentary to UJI 14-1640 NMRA to reference the definition of reliance provided in *State v. Garcia*, 2016-NMSC-034, 384 P.3d 1076, and to remove outdated citations.

No problem with this change. Nice update.

Proposal 2021-026 – Securities offenses
[UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA to update statutory references and style conventions.

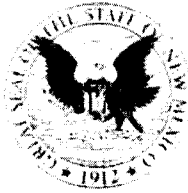
No problem with this change. Nice update.

Proposal 2021-027 – Life without possibility of release or parole
[UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029, 14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA]

Good clarity to provide the Court and practitioners guidance on these cases. No issues.

The UJI-Criminal Committee proposes to amend UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029,

14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA to provide instructions for sentencing proceedings for life imprisonment without possibility of release or parole in response to the repeal of the death penalty and in conformity with *State v. Chadwick-McNally*, 2018-NMSC-018, 414 P.3d 326, Rule 5-705 NMRA, and proposed changes to Rule 14-101 NMRA.



Chambers of
Judge Maria I. Dominguez
Chief Judge
Metropolitan Court
Division VI

State of New Mexico
Bernalillo County
Metropolitan Court

401 Lomas Blvd NW
Albuquerque, New Mexico 87102
Telephone (505) 841-8289
Fax (505) 222-4806

April 16, 2021

SUPREME COURT OF NEW MEXICO
FILED

APR 16 2021

VIA EMAIL
Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

Re: Proposal 2021-011: Proposed revisions to Rule 3-202 NMRA; Proposal 2021-014: Proposed revisions to Rule 7-201 NMRA; Proposal 2021-018: Proposed Revisions to Form 9-603A NMRA

Dear Mr. Moya:

On behalf of the Metropolitan Court, we appreciate the opportunity to comment on the proposed changes to the Metropolitan Court's Rules and forms used in the Court. We anticipate that certain concerns may arise if the proposed amendments to Rules 3-202 NMRA; Rule 7-201 NMRA; and Form 9-603 NMRA are adopted:

1. Proposal 2021-011: Proposed revisions to Rule 3-202 NMRA

The Court has concerns about the proposed changes to Rule 3-202(D) NMRA. Bernalillo County Metropolitan Court has many self-represented litigants, and there is a high likelihood that self-represented litigants will not be able to follow precisely the rule of procedure for service of process by mail if parties are allowed to complete their own substitute service of process, which could result in cases being unnecessarily delayed and/or ultimately dismissed for lack of prosecution. The Court recommends that none of the proposed changes be made to Rule 3-202 (D) NMRA.

2. Proposal 2021-014: Proposed revisions to Rules 7-201

The Court has concerns about the sanction for the proposed deadline to file a citation as impeding on the statute of limitations prescribed by the Legislature in Section 30-1-8(D), NMSA 1978. The purpose behind the criminal statute of limitations is "to ensure the timely *initiation of a prosecution.*" *State v. Collier*, 2013-NMSC-015, ¶ 33. A petty misdemeanor offense currently has a one year statute of limitations from the time the crime was committed. See §30-1-8(D),

Joey D. Moya, Chief Clerk
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NMSA 1978 (2009). A misdemeanor offense currently has a two year statute of limitations from the time the crime was committed. *See* §30-1-8(C), NMSA 1978 (2009).

The practice in Bernalillo County with regards to traffic stops where the traffic citation is contested, the law enforcement officer is able to issue a motorist a citation with a date to appear to answer for the charges. A deadline to file a traffic citation “prior to the date cited for the defendant to appear” makes sense in traffic cases as the motorist has been given a date to appear in court, however unless the citation is actually filed, there is no case/charge to dismiss. With regard to non-traffic citations that are issued by law enforcement, unlike the traffic citation, these individuals are summonsed into court to answer for the charges.

While the Metropolitan Court understands requesting law enforcement in a rule to file citations promptly with the Court, the Court does not recommend adopting the language, “If the citation is not timely filed, the metropolitan court may dismiss the citation with prejudice.” The State has prosecutorial discretion on whether or not to charge a person with a crime, which charges to bring, and when the charge(s) will be brought so long as it is within the applicable statute of limitations. One of the biggest advantages of allowing prosecutorial discretion is that it promotes judicial economy. Requiring any citation be filed “within five days of the issuance of the citation or, in any event, no later than one day prior to the date cited for the defendant to appear,” removes the discretion from the State whether or not to charge a person with a crime and when the charges will be brought. Everyone, including the defendant, benefits when the State exercises due diligence and ensures a thorough investigation of the charges before they are brought. Of further concern is the risk of an inevitable increase of motions to dismiss being filed as well as an increase of motion hearings which will require additional court time. The proposed amendment provides the Court the remedy of an extreme sanction of dismissal with prejudice for violation of initiating a case by filing a citation after the deadline proposed by this rule amendment. The Court currently has discretion to impose sanctions for the violation of a discovery order that results in prejudice to the opposing party. However, “[e]xtreme sanctions are ‘to be only used in exceptional cases.’” *State v. Harper*, 2011-NMSC-044, ¶ 16, *citing State v. Bartlett*, 109 N.M. at 680, 789 P.2d at 628. Even so, “[T]he mere showing of violation of a discovery order, without a showing of prejudice, is not grounds for sanctioning a party.” *Id.*

3. Proposal 2021-018: Proposed Revisions Criminal Form 9-603A NMRA


With one exception, the Court concurs with the proposed changes to Form 9-603A NMRA, the Order of Dismissal of Criminal Charges Upon Completion of Deferred Sentence. Section 31-20-9, 1978 NMSA provides, “Whenever the *period of deferment* expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges” (emphasis added). The proposed amendment to Form 9-603A NMRA proposes, “it [~~now appearing to the court~~] being shown that [~~the defendant~~] Defendant has [~~fulfilled all of the terms and conditions of the deferred sentence~~] completed the terms of the deferred sentence without revocation so as to satisfy all criminal liability for the crime[s], dismissal of the charges is required under Section 31-20-9 NMSA 1978” (emphasis added). By using “terms” rather than “term” in the proposed

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amendment, implies a completion of the terms and conditions ordered as part of the deferment rather than the completion of the period of time or term of the deferment. Consistent with the language in Section 31-20-9, the language in the order should instead read, "It [~~now appearing to the court~~] being shown that [~~the defendant~~] Defendant has [~~fulfilled all of the terms and conditions of the deferred sentence~~] completed the term[s] of the deferred sentence without revocation so as to satisfy all criminal liability for the crime[s], dismissal of the charges is required under Section 31-20-9 NMSA 1978."

We appreciate the opportunity to share these concerns and our suggestions for changes. As always, please feel free to contact us if you wish to discuss these matters further or if we can provide any additional information.

Very truly yours,


Judge Maria I. Dominguez
Chief Judge

cc: Judges of the Metropolitan Court
Robert Padilla, Court Executive Officer
Arthur W. Pepin, Director, Administrative Office of the Court