

1 **2-202. Summons.**

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

8 B. **Summons; how issued; form.** The summons shall be signed by the clerk,
9 be directed to the defendant, be substantially in the form approved by the Supreme Court,
10 and must contain:

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

15 (2) a direction that the defendant serve a responsive pleading or motion
16 within twenty (20) days after service of the summons, and file the same, all as provided by
17 law, and a notice that unless the defendant so serves and files a responsive pleading or
18 motion, the plaintiff will apply to the court for the relief demanded in the complaint; and

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

1 C. **Summons; service of copy.** A copy of the summons (with a copy of the
2 complaint attached) and a copy of the form for answer shall be served together. The
3 plaintiff shall furnish the person making service with [~~such~~] the necessary copies [~~as are~~
4 ~~necessary~~].

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

13 E. **Summons; service by mail.** A summons and complaint may be served
14 [~~upon~~] on a defendant of any class referred to in [~~Subparagraph (1) or (2) of Paragraph F~~]
15 Subparagraph (F)(1) or (F)(2) of this rule by mailing a copy of the summons and [~~of~~] the
16 complaint (by first-class mail, postage prepaid) to the person to be served, together with
17 two (2) copies of a notice and [~~acknowledgement~~] acknowledgment substantially
18 conforming with the form approved by the Supreme Court, and a return envelope, postage
19 prepaid, addressed to the sender. If no [~~acknowledgement~~] acknowledgment of service
20 under this [~~subdivision of this rule~~] paragraph is received by the sender within twenty (20)
21 days after the date of mailing, plus three (3) days as provided by Rule 2-104 NMRA,

1 service of [~~such~~] the summons and the complaint shall be made by a person authorized by
2 Paragraph D of this rule, in the manner prescribed by Paragraph F of this rule. Service of a
3 summons by mail is only effective if an [~~acknowledgement~~] acknowledgment of service
4 signed by the person being served is filed with the court. The court shall order the payment
5 of the costs of personal service by the person served if [~~such~~] the person does not complete
6 and return to the sender within twenty-three (23) days after mailing the notice and
7 [~~acknowledgement~~] acknowledgment of receipt of summons, unless good cause is shown
8 for not signing, filing, and serving a signed acknowledgment of service in the time required
9 by this paragraph.

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

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

15 (1) [~~upon~~] on an individual other than a minor or an [~~incapacitated~~]
16 incompetent person by delivering a copy of the summons and [~~of~~] the complaint to [~~him~~]
17 the individual personally; or if the defendant refuses to receive [~~such,~~] a copy of the
18 summons and the complaint by leaving the same at the location where [~~he~~] the individual
19 has been found; and if the defendant refuses to receive [~~such~~] the copies or permit them to
20 be left, [~~such~~] this action shall constitute valid service. If the defendant is absent, service
21 may be made by delivering a copy of the process or other papers to be served to some

1 person residing at the defendant's usual place of abode [~~of the defendant~~] who is over the
2 age of fifteen (15) years; and if [~~there is no such~~] no person is available or willing to accept
3 delivery, then service may be made by posting [~~such~~] the copies in the most public part of
4 the defendant's premises, and by mailing to the defendant at [~~his~~] the defendant's last
5 known mailing address copies of the process;

6 (2) [~~upon~~] on a domestic or foreign corporation by delivering a copy of
7 the summons and [~~of~~] the complaint to an officer, a managing or a general agent, or to any
8 other agent authorized by appointment or by law to receive service of process and, if the
9 agent is one authorized by statute to receive service and the statute so requires, by also
10 mailing a copy to the defendant; [~~upon~~] on a partnership by delivering a copy of the
11 summons and [~~of~~] the complaint to any general partner; and [~~upon~~] on other unincorporated
12 association, which is subject to suit under a common name, by delivering a copy of the
13 summons and [~~of~~] the complaint to an officer, a managing or general agent, or to any other
14 agent authorized by appointment or by law to receive service of process and, if the agent
15 is one authorized by law to receive service and the statute so requires, by also mailing a
16 copy to the unincorporated association. If the person refuses to receive [~~such~~] the copies,
17 [~~such~~] this action shall constitute valid service. If none of the persons mentioned is
18 available, service may be made by delivering a copy of the process or other papers to be
19 served at the principal office or place of business during regular business hours to the
20 person in charge [~~thereof~~] of the business;

21 (3) [~~upon~~] on the State of New Mexico:

1 (a) in garnishment actions, service of writs of garnishment shall
2 be made on the department of finance and administration, on the attorney general, and on
3 the head of the branch, agency, bureau, department, commission, or institution; and

4 (b) service of process on the governor, attorney general, agency,
5 bureau, department, commission, or institution or head ~~[thereof]~~ of the institution may be
6 made either by delivering a copy of the summons and ~~[of]~~ the complaint to the head or to
7 ~~[his]~~ that individual's receptionist. ~~[Where]~~ If an executive secretary is employed, ~~[he]~~ this
8 person shall be considered ~~[as]~~ the head;

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

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

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

19 (7) ~~[upon a minor, whenever there shall be]~~ on a conservator of ~~[the]~~ an
20 estate or the guardian of ~~[the person of such]~~ a minor, by delivering a copy of the summons
21 and ~~[of]~~ the complaint to the conservator or the guardian. Service of process so made shall

1 be considered as service ~~[upon]~~ on the minor. In all other cases, process shall be served by
2 delivering a copy of the summons and ~~[of]~~ the complaint to the minor, and if the minor is
3 living with an adult, a copy of the summons and ~~[of]~~ the complaint shall also be delivered
4 to the adult residing in the same household. ~~[In all cases where]~~ If a guardian ad litem has
5 been appointed, a copy of the summons and ~~[of]~~ the complaint shall be delivered to ~~[such]~~
6 the representative, in addition to serving the minor ~~[as herein provided]~~;

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

13 (9) ~~[upon]~~ on a personal representative, guardian, conservator, trustee,
14 or other fiduciary in the same manner as provided in ~~[Subparagraph (1) or (2) of this~~
15 ~~paragraph]~~ Subparagraph (F)(1) or (F)(2) as may be appropriate.

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

18 G. **Return.** If service is made by mail ~~[pursuant to]~~ under Paragraph E of this
19 rule, return shall be made by the sender's filing with the court the acknowledgment
20 received ~~[pursuant to such paragraph. Where]~~ under Paragraph E. If service within the state
21 includes mailing, the return shall state the date and place of mailing. If service is by

1 personal service [~~pursuant to~~] under Paragraph F of this rule, the person serving the process
2 shall make proof of service [~~thereof~~] to the court promptly and, in any event, within the
3 time during which the person served must respond to the process. [~~When~~] If service is made
4 by the sheriff (or deputy), proof [~~thereof~~] of service shall be by certificate; and [~~when~~] if
5 made by a person other than a sheriff (or deputy), proof [~~thereof~~] of service shall be made
6 by affidavit. [~~Where~~] If service within the state includes mailing, the return shall state the
7 date and place of mailing. Failure to make proof of service shall not affect the validity of
8 service.

9 H. **Service by publication.** Service by publication may not be made, [~~except~~
10 ~~as~~] unless provided by law in cases of attachment or replevin.

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

15 J. **Service; applicable statute.** [~~Where no provision is made in these~~] If the
16 rules make no provision for service of process, process shall be served as provided for by
17 any applicable statute.

18 K. **Construction of terms.** [~~Wherever~~] If the terms “summons,” “process,”
19 “service of process,” or similar terms are used, [~~such~~] the terms shall include the summons,
20 complaint, and any other papers required to be served.

**MAGISTRATE COURT CIVIL
RULE 2-202**

**Supreme Court Approved
November 1, 2021**

1 [As amended, effective January 1, 1990; July 1, 1990; January 1, 1993; May 1, 1994;
2 October 15, 2002; as amended by Supreme Court Order No. 18-8300-015, effective
3 December 31, 2018; as amended by Supreme Court Order No. 21-8300-012, effective for
4 all cases pending or filed on or after December 31, 2021.]