

1 **1-004. Process.**

2 A. (1) **Scope of rule.** The provisions of this rule govern the issuance and
3 service of process in all civil actions including special statutory proceedings except the
4 provisions for service of process in Rule 1-077.1(E) shall apply in proceedings brought
5 under the Criminal Records Expungement Act, Sections 29-3A-1 to -9 NMSA 1978.

6 (2) **Summons; issuance.** Upon the filing of the complaint, the clerk
7 shall issue a summons and deliver it to the plaintiff for service. Upon the request of the
8 plaintiff, the clerk shall issue separate or additional summons. Any defendant may waive
9 the issuance or service of summons.

10 B. **Summons; execution; form.** The summons shall be signed by the clerk,
11 issued under the seal of the court and be directed to the defendant. The summons shall be
12 substantially in the form approved by the Supreme Court and must contain:

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

17 (2) a direction that the defendant serve a responsive pleading or
18 motion within thirty (30) days after service of the summons and file a copy of the
19 pleading or motion with the court as provided by Rule 1-005 NMRA;

20 (3) a notice that unless the defendant serves and files a responsive
21 pleading or motion, the plaintiff may apply to the court for the relief demanded in the

1 complaint; and

2 (4) the name, address and telephone number of the plaintiff's attorney.

3 If the plaintiff is not represented by an attorney, the name, address and telephone number
4 of the plaintiff.

5 **C. Service of process; return.**

6 (1) If a summons is to be served, it shall be served together with any
7 other pleading or paper required to be served by this rule. The plaintiff shall furnish the
8 person making service with such copies as are necessary.

9 (2) Service of process shall be made with reasonable diligence, and the
10 original summons with proof of service shall be filed with the court in accordance with
11 the provisions of Paragraph L of this rule.

12 **D. Process; by whom served.** Process shall be served as follows:

13 (1) if the process to be served is a summons and complaint, petition or
14 other paper, service may be made by any person who is over the age of eighteen (18)
15 years and not a party to the action;

16 (2) if the process to be served is a writ of attachment, writ of replevin
17 or writ of habeas corpus, service may be made by any person not a party to the action
18 over the age of eighteen (18) years designated by the court to perform such service or by
19 the sheriff of the county where the property or person may be found;

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1 (3) if the process to be served is a writ other than a writ specified in
2 Subparagraph (2) of this paragraph, service shall be made as provided by law or order of
3 the court.

4 E. **Process; how served; generally.**

5 (1) Process shall be served in a manner reasonably calculated, under
6 all the circumstances, to apprise the defendant of the existence and pendency of the
7 action and to afford a reasonable opportunity to appear and defend.

8 (2) Service may be made, subject to the restrictions and requirements
9 of this rule, by the methods authorized by this rule or in the manner provided for by any
10 applicable statute, to the extent that the statute does not conflict with this rule.

11 (3) Service may be made by mail or commercial courier service
12 provided that the envelope is addressed to the named defendant and further provided that
13 the defendant or a person authorized by appointment, by law or by this rule to accept
14 service of process upon the defendant signs a receipt for the envelope or package
15 containing the summons and complaint, writ or other process. Service by mail or
16 commercial courier service shall be complete on the date the receipt is signed as provided
17 by this subparagraph. For purposes of this rule “signs” includes the electronic
18 representation of a signature.

19 F. **Process; personal service upon an individual.** ~~[Personal service of~~
20 ~~process shall be made upon an individual by delivering a copy of a summons and~~

1 ~~complaint or other process:]~~

2 (1) Personal service of process shall be made upon an individual by
3 delivering a copy of a summons and complaint or other process:

4 (a) to the individual personally; or if the individual refuses to
5 accept service, by leaving the process at the location where the individual has been
6 found; and if the individual refuses to receive such copies or permit them to be left, such
7 action shall constitute valid service; or

8 (b) by mail or commercial courier service as provided in
9 Subparagraph (3) of Paragraph E of this rule.

10 (2) If, after the plaintiff attempts service of process by either of the
11 methods of service provided by Subparagraph (1) of this paragraph, the defendant has not
12 signed for or accepted service, service may be made by delivering a copy of the process
13 to some person residing at the usual place of abode of the defendant who is over the age
14 of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last
15 known mailing address a copy of the process; or

16 (3) If service is not accomplished in accordance with Subparagraphs
17 (1) and (2), then service of process may be made by delivering a copy of the process at
18 the actual place of business or employment of the defendant to the person apparently in
19 charge thereof and by mailing a copy of the summons and complaint by first class mail to

1 the defendant at the defendant's last known mailing address and at the defendant's actual
2 place of business or employment.

3 **G. Process; service on corporation or other business entity.**

4 (1) Service may be made upon:

5 (a) a domestic or foreign corporation, a limited liability
6 company or an equivalent business entity by serving a copy of the process to an officer, a
7 managing or a general agent or to any other agent authorized by appointment, by law or
8 by this rule to receive service of process. If the agent is one authorized by statute to
9 receive service and the statute so requires, by also mailing a copy to the defendant;

10 (b) a partnership by serving a copy of the process to any
11 general partner;

12 (c) an unincorporated association which is subject to suit under
13 a common name, by serving a copy of the process to an officer, a managing or general
14 agent or to any other agent authorized by appointment, by law or by this rule to receive
15 service of process. If the agent is one authorized by law to receive service and the statute
16 so requires, by also mailing a copy to the unincorporated association.

17 (2) If a person described in Subparagraph (a), (b) or (c) of this
18 subparagraph refuses to accept the process, tendering service as provided in this
19 paragraph shall constitute valid service. If none of the persons mentioned is available,
20 service may be made by delivering a copy of the process or other papers to be served at

1 the principal office or place of business during regular business hours to the person in
2 charge.

3 (3) Service may be made on a person or entity described in
4 Subparagraph (1) of this paragraph by mail or commercial courier service in the manner
5 provided in Subparagraph (3) of Paragraph E of this rule.

6 **H. Process; service upon state or political subdivisions.**

7 (1) Service may be made upon the State of New Mexico or a political
8 subdivision of the state:

9 (a) in any action in which the state is named a party defendant,
10 by delivering a copy of the process to the governor and to the attorney general;

11 (b) in any action in which a branch, agency, bureau,
12 department, commission or institution of the state is named a party defendant, by
13 delivering a copy of the process to the head of the branch, agency, bureau, department,
14 commission or institution and to the attorney general;

15 (c) in any action in which an officer, official, or employee of
16 the state or one of its branches, agencies, bureaus, departments, commissions or
17 institutions is named a party defendant, by delivering a copy of the process to the officer,
18 official or employee and to the attorney general;

19 (d) in garnishment actions, service of writs of garnishment

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1 shall be made on the department of finance and administration, on the attorney general
2 and on the head of the branch, agency, bureau, department, commission or institution. A
3 copy of the writ of garnishment shall be delivered or served on the defendant employee in
4 the manner and priority provided in Paragraph F of this rule;

5 (e) service of process on the governor, attorney general,
6 agency, bureau, department, commission or institution may be made either by serving a
7 copy of the process to the governor, attorney general or the chief operating officer of an
8 entity listed in this subparagraph or to the receptionist of the state officer. A cabinet
9 secretary, a department, bureau, agency or commission director or an executive secretary
10 shall be considered as the chief operating officer;

11 (f) upon any county by serving a copy of the process to the
12 county clerk;

13 (g) upon a municipal corporation by serving a copy of the
14 process to the city clerk, town clerk or village clerk;

15 (h) upon a school district or school board by serving a copy of
16 the process to the superintendent of the district;

17 (i) upon the board of trustees of any land grant referred to in
18 Sections 49-1-1 through 49-10-6 NMSA 1978, process shall be served upon the president
19 or in the president's absence upon the secretary of such board.

20 (2) Service may be made on a person or entity described in

1 Subparagraph (1) of this paragraph by mail or commercial courier service in the manner
2 provided in Subparagraph (3) of Paragraph E of this rule.

3 I. **Process; service upon minor, incompetent person, guardian or**
4 **fiduciary.**

5 (1) Service shall be made:

6 (a) upon a minor, if there is a conservator of the estate or
7 guardian of the minor, by serving a copy of the process to the conservator or guardian in
8 the manner and priority provided in Paragraph F, G or J of this rule as may be
9 appropriate. If no conservator or guardian has been appointed for the minor, service shall
10 be made on the minor by serving a copy of the process on each person who has legal
11 authority over the minor. If no person has legal authority over the minor, process may be
12 served on a person designated by the court.

13 (b) upon an incompetent person, if there is a conservator of the
14 estate or guardian of the incompetent person, by serving a copy of the process to the
15 conservator or guardian in the manner and priority provided by Paragraph F of this rule.
16 If the incompetent person does not have a conservator or guardian, process may be served
17 on a person designated by the court.

18 (2) Service upon a personal representative, guardian, conservator,
19 trustee or other fiduciary in the same manner and priority for service as provided in

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1 Paragraphs F, G or J of this rule as may be appropriate.

2 J. **Process; service in manner approved by court.** Upon motion, without
3 notice, and showing by affidavit that service cannot reasonably be made as provided by
4 this rule, the court may order service by any method or combination of methods,
5 including publication, that is reasonably calculated under all of the circumstances to
6 apprise the defendant of the existence and pendency of the action and afford a reasonable
7 opportunity to appear and defend.

8 K. **Process; service by publication.** Service by publication may be made
9 only pursuant to Paragraph J of this rule. A motion for service by publication shall be
10 substantially in the form approved by the Supreme Court. A copy of the proposed notice
11 to be published shall be attached to the motion. Service by publication shall be made once
12 each week for three consecutive weeks unless the court for good cause shown orders
13 otherwise. Service by publication is complete on the date of the last publication.

14 (1) Service by publication pursuant to this rule shall be by giving a
15 notice of the pendency of the action in a newspaper of general circulation in the county
16 where the action is pending. Unless a newspaper of general circulation in the county
17 where the action is pending is the newspaper most likely to give the defendant notice of
18 the pendency of the action, the court shall also order that a notice of pendency of the
19 action be published in a newspaper of general circulation in the county which reasonably
20 appears is most likely to give the defendant notice of the action.

- 1 (2) The notice of pendency of action shall contain:
- 2 (a) the caption of the case, as provided in Rule 1-008.1
- 3 NMRA, including a statement which describes the action or relief requested;
- 4 (b) the name of the defendant or, if there is more than one
- 5 defendant, the name of each of the defendants against whom service by publication is
- 6 sought;
- 7 (c) the name, address and telephone number of plaintiff's
- 8 attorney; and
- 9 (d) a statement that a default judgment may be entered if a
- 10 response is not filed.
- 11 (3) If the cause of action involves real property, the notice shall
- 12 describe the property as follows:
- 13 (a) If the property has a street address, the name of the
- 14 municipality or county address and the street address of the property.
- 15 (b) If the property is located in a Spanish or Mexican grant, the
- 16 name of the grant.
- 17 (c) If the property has been subdivided, the subdivision
- 18 description or if the property has not been subdivided the metes and bounds of the
- 19 property.

1 (4) In actions to quiet title or in other proceedings where unknown
2 heirs are parties, notice shall be given to the “unknown heirs of the following named
3 deceased persons” followed by the names of the deceased persons whose unknown heirs
4 are sought to be served. As to parties named in the alternative, the notice shall be given to
5 “the following named defendants by name, if living; if deceased, their unknown heirs”
6 followed by the names of the defendants. As to parties named as “unknown claimants”,
7 notice shall be given to the “unknown persons who may claim a lien, interest or title
8 adverse to the plaintiff” followed by the names of the deceased persons whose unknown
9 claimants are sought to be served.

10 L. **Proof of service of process.** The party obtaining service of process or
11 that party’s agent shall promptly file proof of service. When service is made by the
12 sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by
13 certificate; and when made by a person other than a sheriff or a deputy sheriff of a New
14 Mexico county, proof of service shall be made by affidavit. Proof of service by mail or
15 commercial courier service shall be established by filing with the court a certificate of
16 service which shall include the date of delivery by the post office or commercial courier
17 service and a copy of the defendant’s signature receipt. Proof of service by publication
18 shall be by affidavit of publication signed by an officer or agent of the newspaper in
19 which the notice of the pendency of the action was published. Failure to make proof of
20 service shall not affect the validity of service.

1 M. **Service of process in the United States, but outside of state.** Whenever
2 the jurisdiction of the court over the defendant is not dependent upon service of the
3 process within the State of New Mexico, service may be made outside the State as
4 provided by this rule.

5 N. **Service of process in a foreign country.** Service upon an individual,
6 corporation, limited liability company, partnership, unincorporated association that is
7 subject to suit under a common name, or equivalent legal entities may be effected in a
8 place not within the United States:

9 (1) by any internationally agreed means reasonably calculated to give
10 notice, such as those means authorized by the Hague convention on the Service Abroad
11 of Judicial and Extrajudicial Documents; or

12 (2) if there is no internationally agreed means of service or the
13 applicable international agreement allows other means of service, provided that service is
14 reasonably calculated to give notice:

15 (a) in the manner prescribed by the law of the foreign country
16 for service in that country in an action in any of its courts of general jurisdiction;

17 (b) as directed by the foreign authority in response to a letter
18 rogatory or letter of request; or

19 (c) unless prohibited by the laws of the United States or the

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1 law of the foreign country, in the same manner and priority as provided for in Paragraph
2 F, G or J of this rule as may be appropriate.

3 [As amended, effective January 1, 1987; October 1, 1998; March 1, 2005; as amended by
4 Supreme Court Order No. 11-8300-050, effective for cases filed on or after February 6,
5 2012; as provisionally amended by Supreme Court Order No. 21-8300-033, effective for
6 all cases pending or filed on or after January 28, 2022.]

7 **Committee commentary.** —

8 **Introduction**

9 New Mexico Rule 1-004 has its origins in an act of the first Legislature of the
10 State of New Mexico. 1912 N.M. Laws Ch. 26. When the New Mexico Supreme Court
11 revamped the rules of civil procedure in 1942, 46 N.M. xix-lxxxiv (1942), largely using
12 the 1938 Federal Rules as a model, the provisions of New Mexico Rule 4 continued to
13 reflect some aspects of the service of process provisions of the former New Mexico
14 provisions. Since then piecemeal amendments have occurred but there has been no
15 previous attempt to restructure Rule 1-004 NMRA in light of evolving principles of due
16 process and modern means of communication. The 2004 amendment to Rule 1-004 seeks
17 to accomplish this goal.

18 **Scope of Rule; Rule 1-004(A)(1)**

19 Generally, statutory provisions are inapplicable if those provisions purport to set
20 procedural requirements that contradict the Rules of Civil Procedure. *Ammerman v.*

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1 *Hubbard Broadcasting, Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976). Rule 1-001(A) creates
2 an exception to *Ammerman*, extending deference to the procedural requirements set by
3 the legislature in special proceedings that would not exist but for creation by the
4 legislature. The root of the Rule 1-001(A) exception for special statutory proceedings is
5 the provision in the New Mexico Constitution giving the district courts “such jurisdiction
6 of special cases and proceedings as may be conferred by law.” N.M. Const., art. VI, § 13.
7 The Rule 1-001(A) exception for special statutory proceedings is a prudential exception
8 generally applied to statutory provisions that affect procedural rules even though the
9 statutory provisions do not deal with jurisdictional matters. The Supreme Court, though,
10 has ultimate authority over all procedural rules and thus can supersede by rule a non-
11 jurisdictional statutory procedure in special statutory and summary proceedings. Rule 1-
12 004(A)(1) is an exercise of that authority.

13 Rule 1-004 was amended in 2005 to bring New Mexico’s service of process
14 procedure in line with evolving principles of due process. Questions have arisen whether
15 the 2005 amendments to Rule 1-004 apply in special statutory proceedings where the
16 statute provides lesser notice requirements than Rule 1-004. *See, e.g.*, NMSA 1978, § 45-
17 1-401 (provision of the Probate Code permitting notice by publication without court order
18 and only requiring two weekly notices); and NMSA 1978, § 42A-1-14 (Eminent Domain

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1 Code provision providing for service by mail and by publication in manners inconsistent
2 with Rule 1-004).

3 The committee is of the view that, since Rule 1-004 requirements derive from
4 constitutional due process requirements, new subparagraph (A)(1) clarifies that the
5 requirements of Rule 1-004 must be satisfied to validly serve a person or give them
6 notice of the pendency of special statutory proceedings as well as civil actions.

7 **Summons; issuance; Rule 1-004(A)(2)**

8 “Plaintiff” includes “Petitioner” and “Defendant” includes “Respondent”.
9 See Rule 1-001(B)(1) and (2). The “Complaint” referred to in Rule 1-004(A) includes
10 “Petition”. See Rule 1-001(B)(3).

11 Rule 1-004(A) previously provided that the clerk shall “forthwith” issue a
12 summons upon filing of the complaint. The word is omitted from the 2004 Amendment
13 because it was redundant; the rule already provides that the clerk “shall” issue a summons
14 “[u]pon the filing of the complaint”.

15 Rule 1-004(A) previously provided that separate or additional summons may be
16 issued “against any defendants”. Because it may be necessary to serve a summons on
17 persons not formally denominated as a defendant, for example, upon a third-party
18 defendant under Rule 1-014 NMRA, the rule has been modified to eliminate the
19 implication that additional summonses may issue only against defendants.

1 The committee considered but did not provide that a person other than the
2 plaintiff or petitioner could request issuance of a summons.

3 **Summons; execution; form; Rule 1-004(B)**

4 Rule 1-011 NMRA requires that all “paper” shall contain the telephone number of
5 the attorney or the pro-se litigant. Except for the provision requiring that the summons
6 include the telephone number as well as the name and address of the plaintiff’s attorney
7 or the pro se plaintiff, only technical changes have been made in this section.

8 A form summons approved by the New Mexico Supreme Court may be found at
9 4-206 NMRA.

10 **Service of Process; return; Rule 1-004(C)**

11 “Process” is defined in Rule 1-001(B)(3) NMRA.

12 Sometimes a summons is not served in conjunction with the pleading instituting
13 an action. For example, writs, warrants and mandates are not accompanied by a
14 summons. *See* Rule 1-001(B)(3)(c) and (d) NMRA. Rule 1-004(C)(1) acknowledges that
15 service of process sometimes does not include the service of a summons.

16 Rule 1-004(C)(2) is new. Unlike Federal Rule 4(m), which contains a specific
17 time limit within which service of the summons and complaint ordinarily must be made,
18 Rule 1-004(C)(2) provides only that service shall be made “with reasonable diligence”.

1 This reflects the standard established in New Mexico case law. *E.g., Romero v. Bachicha*,
2 2001 NMCA-048 Par. 23-25, 130 N.M. 610, 616, 28 P.3d 1151, 1157.

3 **Process; by whom served; Rule 1-004(D)**

4 Rule 1-004(D) formerly provided that process could be served by a sheriff of the
5 county where the defendant could be found, or by any person over the age of eighteen
6 and not a party to the action. Because the latter category necessarily includes the sheriff
7 of a county, the reference to service by the sheriff has been omitted.

8 Rule 1-004(D)(2) carries over, unchanged, former Rule 1-004(D)(2).

9 Rule 1-004(D)(3) is new. It provides a means for determining who shall serve
10 process when the process is a writ other than those mentioned in Rule 1-004(D)(2).

11 **Process; how served; generally; Rule 1-004(E)**

12 Rule 1-004(E)(1) makes explicit in the rule the general test for constitutionally-
13 adequate service of process established in *Mullane v. Central Hanover Bank & Trust Co.*,
14 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process
15 in any proceeding which is to be accorded finality is notice reasonably calculated, under
16 all the circumstances, to apprise interested parties of the pendency of the action and
17 afford them an opportunity to present their objections”).

18 Rule 1-004(E)(2) accepts the premise that matters of procedure are for the
19 judiciary to determine but that legislation affecting procedure is valid unless and until
20 contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-

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1 091 NMRA; Section 38-1-2 NMSA 1978. The section thus provides that service of
2 process shall be made in accordance with Rule 1-004 NMRA, or in accordance with
3 applicable statutes but shall not be accomplished by a means authorized by a statute that
4 conflicts with Rule 1-004.

5 Rule 1-004(E)(3) provides a much-simplified method of service by mail. It is no
6 longer necessary that the defendant open the mailed packet containing the summons and
7 complaint and then voluntarily choose to accept service by returning a signed Receipt of
8 Service of Summons and Complaint as formerly was required. Instead, service is
9 accomplished when the summons and complaint are mailed to the named defendant in a
10 manner that calls for the recipient to sign a receipt upon receiving the envelope
11 containing the summons and complaint and the defendant-recipient or a person
12 authorized by appointment or by law to accept service of process on behalf of the
13 defendant signs the receipt upon receiving the mailed envelope or package.

14 Service by mail need not be at the home address or usual place of abode of the
15 defendant. Service is complete when the receipt is signed.

16 This section also provides the same mechanism for service of the summons and
17 complaint when a “commercial courier service” is utilized instead of the mails. The
18 phrase, though not entirely self-explanatory, has been used in this context by other states
19 without apparent problems. *See, e.g.*, Kansas Rules of Civil Procedure, KSA 60-303

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1 (c)(1); Utah Rules of Civil Procedure 4(d)(2)(A)and (B). The Advisory Committee Note
2 to Utah Rule 4 provides that “[t]he term ‘commercial courier service’ refers to businesses
3 that provide for the delivery of documents. Examples of ‘commercial courier service’
4 include Federal Express and United Parcel Service”. The committee endorses the
5 definition provided in the Utah Advisory Committee Note.

6 In this context, “signs” and “signed” is equivalent to “signature” which “means an
7 original signature, a copy of an original signature, a computer generated signature or any
8 other signature otherwise authorized by law”. Rule 1-011 NMRA.

9 **Process; personal service upon an individual; Rule 1-004(F)**

10 In General. The 2004 Amendment makes substantial changes in Rule 1-004(F).
11 The “post and mail” method found in the former rule has been eliminated. A provision
12 for service at the place of work of the defendant has been added. The provision for mail
13 service has been simplified and the rule now authorizes the use of commercial courier
14 services as well as mail for service of process. A hierarchy of methods of service has
15 been established. In some cases, a listed method of service cannot be used until other
16 methods of service are attempted unsuccessfully.

17 Rule 1-004(F)(1)(a). This subparagraph remains the same as in the former Rule.

18 Rule 1-004(F)(1)(b). This subparagraph authorizes service by mail or commercial
19 courier service as provided in Rule 1-004(E)(3).

1 Rule 1-004(F)(2). The means of service provided in this section may only be used
2 if there first was an attempt to serve process “by either of the methods of service provided
3 by Subparagraph (1) of this paragraph”. This means that the person serving process need
4 only attempt one of the two methods-personal service or mail/commercial courier service
5 before using the alternative provided in this subparagraph.

6 This provision allows service to a person over the age of 15 who resides at the
7 usual place of abode of the defendant. This is the same procedure as that formerly
8 provided in Rule 1-004(F)(1) before the 2004 amendment. The former rule, however,
9 required only delivery of the summons and complaint to such a person for service to be
10 valid. The 2004 amendment provides that service is not accomplished until, in addition,
11 the person serving the summons and complaint mails a copy of the summons and
12 complaint to the defendant at the defendant’s last known mailing address. This provision
13 allows service to a person over the age of 15 who resides at the usual place of abode of
14 the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1)
15 before the 2004 amendment. The former rule, however, required only delivery of the
16 summons and complaint to such a person for service to be valid. The 2004 amendment
17 provides that service is not accomplished until, in addition, the person serving the
18 summons and complaint mails a copy of the summons and complaint to the defendant at
19 the defendant’s last known mailing address. This mailing address will often, but not

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1 always, be the usual place of abode of the defendant. The cost of mailing is minimal and
2 increases the likelihood that the defendant will get actual, timely notice of the institution
3 of the action.

4 Rule 1-004(F)(1) formerly provided that if no qualified person was at the usual
5 place of abode to accept service of process, service could be made by posting process at
6 the abode and then mailing a copy of the process to the last known mailing address. This
7 alternative method of service has been omitted in the 2004 amendment.

8 Rule 1-004(F)(3) is new. It may be used only when service of process has been
9 attempted, unsuccessfully, in accordance with Rule 1-004(F)(1) and Rule 1-004(F)(2).
10 Rule 1-004(F)(3) provides that service may be made by delivering a copy of the
11 summons and complaint to the person apparently in charge of the actual place of business
12 of the defendant and mailing a copy of the summons and complaint to the defendant both
13 at the defendant's last known mailing address and also the defendant's actual place of
14 business.

15 Colorado, R.C.P. 4(e)(2), Oregon, R.C.P. 7(d)(2)(c) and New York, N.Y. CPLR
16 Sec. 308(2), also provide for work place service of process. The Fair Debt and Collection
17 Practices Act, 15 U.S.C. Sec. 1692 ff, contains a provision allowing service of process at
18 the workplace of the defendant by "any person while serving or attempting to serve legal
19 process in connection with judicial enforcement of any debt". 15 U.S.C. Sec.
20 1692(a)(6)(D).

1 **Process; Service on corporation or other business entity; Rule 1-004(G)**

2 In addition to providing for service of process on corporations, Rule 1-004(G)(1)
3 now includes limited liability companies as well as any “equivalent business entity” to a
4 corporation or limited liability company. Courts should construe that phrase to assure that
5 Rule 1-004 provides appropriate guidance about proper service of process upon
6 legislatively-created variations on the traditional corporation.

7 The substance of the former provisions concerning service of process on
8 partnerships and unincorporated associations have been carried over unchanged in Rule
9 1-004(G)(1)(b) and (c) of the 2004 amendment.

10 **Process; Service upon state and political subdivisions; Rule 1-004(H)**

11 Subparagraphs (a), (b), (c), (d) and (e) of Rule 1-004(H)(1) are substantively the
12 same as former Rule 1-004(F) (3) and (4). They are derived from and do not vary
13 materially from Section 38-1-7 NMSA 1978.

14 Subparagraphs (f), (g) and (i) are substantively the same as former Rule 1-
15 004(F)(4), (5) and (6).

16 Subparagraph (h), dealing with service of process on a school district or school
17 board is new. Former Rule 1-004 provided no guidance on the proper manner of service
18 to such entities.

1 Rule 1-004(H)(2) allows service of process to the persons designated in Rule 1-
2 004(H)(1) by means of mail or commercial courier service as provided in Rule 1-
3 004(E)(3).

4 **Process; Service upon minor, incapacitated person or conservator; Rule 1-004(I)**

5 Subparagraph 1; Service on minors. The provision for service on a guardian or
6 conservator is carried over from former Rule 1-004(F)(7) except that such service now
7 may be in any manner provided in Paragraph F, G, or L as appropriate, rather than, as
8 formerly, only “by delivering a copy – to the conservator or guardian”.

9 The provision for service upon person or persons having legal authority over a
10 minor who does not have a guardian or conservator is new as is the provision requiring
11 resort to the court to formulate a method of service where the minor has no guardian,
12 conservator or person with legal authority over the minor.

13 Subparagraph 2; Service on incompetent persons. Rule 1-004(F)(7) formerly used
14 the phrase “incapacitated person” to describe the party for whom a special means of
15 service of process was appropriate. Rule 1-017(C) uses the phrase “incompetent persons”
16 and this subparagraph adopts the language of Rule 1-017 NMRA for
17 consistency. *See* Rule 10-104(L) NMRA (defining an “incompetent” person).

18 The provision for service on a guardian or conservator is carried over from former
19 Rule 1-004(F)(7) except that such service now may be in any manner provided in

1 Paragraph F, G or L as appropriate, rather than, as formerly, only “by delivering a copy . .
2 . to the conservator or guardian”.

3 The provision requiring resort to the court to formulate a method of service where
4 the incompetent person has no guardian or conservator is new. Former Rule 1-004(F)(8)
5 provided that if no conservator or guardian had been appointed for an incapacitated
6 person, service upon the incapacitated person would suffice. This provided inadequate
7 assurance that the incapacitated person would have a meaningful opportunity to defend
8 the action. To remedy this, this subparagraph requires the court to fashion a
9 constitutionally-adequate means of service upon the incapacitated person not represented
10 by a guardian or conservator.

11 Subparagraph 3; Service on fiduciaries. This provision is carried over from former
12 Rule 1-004(F)(9). Fiduciaries may be served in the same manner as individuals and
13 business entities who are defendants.

14 **Service in manner approved by court; Rule 1-004(J)**

15 This provision is carried over, unchanged, from former Rule 1-004(L). The goal
16 of service of process is to achieve actual notice by means that are reasonable under the
17 circumstances. Rule 1-004(E)(1). The specific methods of service authorized in Rule 1-
18 004 provide standard methods by which this can be accomplished, but there are myriad
19 specific circumstances in which ad-hoc determination of the most appropriate means for

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1 serving process is called for. This rule provides broad authority for the court to fashion a
2 constitutionally-adequate method of service under any circumstances.

3 Where service can be accomplished pursuant to Rule 1-004(F)(G)(H) or (I), there
4 will seldom be need for resort to Rule 1-004(K). Where the court orders service by
5 publication, the court should consider, pursuant to this Paragraph, whether supplemental
6 means of service should accompany notice by publication. Where no method of service
7 specifically provided for by Rule 1-004 is likely to satisfy or achieve the goal of actual
8 notice, this Paragraph authorizes the court to create a method of service suited to the
9 circumstances of the particular facts presented.

10 **Service by publication; Rule 1-004(K)**

11 This paragraph requires that no service by publication take place without a prior
12 court order authorizing service by publication. This is a significant modification of prior
13 practice in situations where statutes authorized publication without prior court
14 approval. *See, e.g.*, Section 42-2-7(B) NMSA 1978 (authorizing service by publication in
15 condemnation proceeding “[i]f the name or residence of any owner be unknown”);
16 Section 45-1-401 NMSA 1978 (authorizing service by publication in probate proceedings
17 under some circumstances and providing that the court for good cause can provide a
18 different manner of service). Publication notice is seldom likely to achieve actual notice
19 and thus its use should be monitored carefully by the courts. The Supreme Court is
20 authorized to modify statutes providing for notice by publication by requiring prior court

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1 approval for service by publication. Legislation affecting procedure is valid unless and
2 until contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-091
3 NMRA; Section 38-1-2 NMSA 1978. This paragraph also provides the required content
4 of the notice to be published, the frequency of publication and the place of publication.
5 Omitted from the 2004 amendment is the former provision (Rule 1-004(H)(3)) requiring
6 that publication be “in some newspaper published in the county where the cause is
7 pending” and providing for publication in a newspaper of general circulation in the
8 county only when “no newspaper [was] published in the county”. Publication now always
9 will include publication in a paper of general circulation in the county where the action is
10 pending whether or not the newspaper is published in that county. Where appropriate to
11 the goal of achieving actual notice, the court is free to require, in addition, that
12 publication also be in a newspaper not of general circulation that is published in the
13 county where the cause is pending.

14 Where the court determines that actual notice by publication is more likely to be
15 achieved by publishing the notice elsewhere, the court must provide for additional
16 published notice in the county that the court deems such notice is most likely to achieve
17 the goal of actual notice to the defendant.

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1 Former Rule 1-004(H)(7), dealing with the required content of repeated
2 publications due to misnomers in the initial publication, has been omitted. The court that
3 orders additional publication will craft an appropriate order concerning its content.

4 Former Rule 1-004(I) calling for publication to be accompanied by mail notice to
5 persons whose residence is known has been omitted. The court that orders publication has
6 the obligation to fashion means of service reasonably calculated to provide actual notice,
7 Rule 1-004(E)(1), and thus can provide for mailed notice to accompany service of
8 process by publication where reasonable. *See* Rule 1-004(J).

9 **Proof of service; Rule 1-004(L)**

10 The person obtaining service of process rather than the person serving process is
11 now responsible for filing proof of service.

12 The means of proof of service when service is accomplished by mail or
13 commercial courier service pursuant to Rule 1-004(F)(1)(b) and when service is made by
14 publication pursuant to Rule 1-004(J) or (K) are provided in those paragraphs.

15 **Service outside the state but in the United States; Rule 1-004(M)**

16 This provision replaces former Rule 1-004(J) (Service of summons outside of
17 state equivalent to publication). Where, as in the case of long arm jurisdiction pursuant to
18 Section 38-1-16 NMSA 1978, service of process can be made outside of New Mexico,
19 this rule requires that service be accomplished in the manner and priority provided in this
20 rule. The Committee considered but rejected a proposal that the method of service need

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1 not meet the requirements of this rule so long as it met the requirements for service of
2 process in the place where service occurred.

3 **Service in a foreign country; Rule 1-004(N)**

4 Service in foreign countries is sometimes subject to treaties or other international
5 agreements. This rule, adopted from Federal Rule 4(f) and Rule 4(h)(2) takes into
6 account the special considerations required by international law.

7 [Approved, March 1, 2005; as amended by Supreme Court Order No. 11-8300-050,
8 effective for cases filed on or after February 6, 2012.]