

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS AND CIVIL FORMS
PROPOSAL 2022-024**

September 1, 2022

On December 14, 2021, the Supreme Court provisionally adopted new Rule 1-077.1 NMRA, new Forms 4-951, 4-952, 4-953, 4-954, 4-955, 4-956, 4-957, 4-958, 4-959, 4-960, 4-960.1, 4-960.2, and 4-960.3 NMRA, and provisionally approved amendments to Rules 1-004 and 1-079 NMRA as recommended by the Rules of Civil Procedure for New Mexico State Courts Committee. The new rules and forms, and amendments took effect on January 28, 2022.

If you would like to comment on the provisionally adopted and amended rules and forms 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:

Elizabeth A. Garcia, Clerk of Court
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 September 30, 2022, 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.

1-004. Process.

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

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

B. **Summons; execution; form.** The summons shall be signed by the clerk, issued under the seal of the court and be directed to the defendant. The summons shall 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 thirty (30) days after service of the summons and file a copy of the pleading or motion with the court as provided by Rule 1-005 NMRA;

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

(4) the name, address and telephone number of the plaintiff's attorney. If the plaintiff is not represented by an attorney, the name, address and telephone number of the plaintiff.

C. Service of process; return.

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

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

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

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

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

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

E. Process; how served; generally.

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

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

(3) Service may be made by mail or commercial courier service provided that 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 the defendant signs a receipt for the envelope or package containing the summons and 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.

F. Process; personal service upon an individual. ~~[Personal service of process shall be made upon an individual by delivering a copy of a summons and complaint or other process:]~~

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

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

service; or

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

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

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

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

(1) Service may be made upon:

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

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

(c) an unincorporated association which is subject to suit under a common name, by serving a copy of the process to an officer, a managing or general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. 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.

(2) If a person described in Subparagraph (a), (b) or (c) of this subparagraph refuses to accept the process, tendering service as provided in this paragraph 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.

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

H. Process; service upon state or political subdivisions.

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

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

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

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

(d) 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. A copy of the writ of garnishment shall be delivered or served on the defendant employee in the manner and priority provided in Paragraph F of this rule;

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

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

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

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

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

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

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

(1) Service shall be made:

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

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

(2) Service upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner and priority for service as provided in Paragraphs F, G or J of this rule as may be appropriate.

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

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

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

(2) The notice of pendency of action shall contain:

(a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;

(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;

(c) the name, address and telephone number of plaintiff's attorney; and

(d) a statement that a default judgment may be entered if a response is not filed.

(3) If the cause of action involves real property, the notice shall describe the property as follows:

(a) If the property has a street address, the name of the municipality or county address and the street address of the property.

(b) If the property is located in a Spanish or Mexican grant, the name of the grant.

(c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.

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

L. **Proof of service of process.** The party obtaining service of process or that party's agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New Mexico county, proof of service shall be made by affidavit. 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. Proof of service by publication shall be by affidavit of publication signed by an officer or agent of the newspaper in

which the notice of the pendency of the action was published. Failure to make proof of service shall not affect the validity of service.

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

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

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

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

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

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

(c) unless prohibited by the laws of the United States or the law of the foreign country, in the same manner and priority as provided for in Paragraph F, G or J of this rule as may be appropriate.

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

Committee commentary. —

Introduction

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

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

Generally, statutory provisions are inapplicable if those provisions purport to set procedural requirements that contradict the Rules of Civil Procedure. *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976). Rule 1-001(A) creates an exception to *Ammerman*, extending deference to the procedural requirements set by the legislature in special proceedings that would not exist but for creation by the legislature. The root of the Rule 1-001(A) exception for special statutory proceedings is the provision in the New Mexico Constitution giving the district courts “such jurisdiction of special cases and proceedings as may be conferred by law.” N.M. Const., art. VI, § 13. The Rule 1-001(A) exception for special statutory proceedings is a

prudential exception generally applied to statutory provisions that affect procedural rules even though the statutory provisions do not deal with jurisdictional matters. The Supreme Court, though, has ultimate authority over all procedural rules and thus can supersede by rule a non-jurisdictional statutory procedure in special statutory and summary proceedings. Rule 1-004(A)(1) is an exercise of that authority.

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

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

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

"Plaintiff" includes "Petitioner" and "Defendant" includes "Respondent". *See* Rule 1-001(B)(1) and (2). The "Complaint" referred to in Rule 1-004(A) includes "Petition". *See* Rule 1-001(B)(3).

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

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

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

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

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

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

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

"Process" is defined in Rule 1-001(B)(3) NMRA.

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

Rule 1-004(C)(2) is new. Unlike Federal Rule 4(m), which contains a specific time limit within which service of the summons and complaint ordinarily must be made, Rule 1-004(C)(2) provides only that service shall be made “with reasonable diligence”. This reflects the standard established in New Mexico case law. *E.g., Romero v. Bachicha*, 2001 NMCA-048 Par. 23-25, 130 N.M. 610, 616, 28 P.3d 1151, 1157.

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

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

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

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

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

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

Rule 1-004(E)(2) accepts the premise that matters of procedure are for the judiciary to determine but that legislation affecting procedure is valid unless and until contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-2 NMSA 1978. The section thus provides that service of process shall be made in accordance with Rule 1-004 NMRA, or in accordance with applicable statutes but shall not be accomplished by a means authorized by a statute that conflicts with Rule 1-004.

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

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

This section also provides the same mechanism for service of the summons and complaint when a “commercial courier service” is utilized instead of the mails. The phrase, though not entirely self-explanatory, has been used in this context by other states without apparent problems. *See, e.g.,* Kansas Rules of Civil Procedure, KSA 60-303 (c)(1); Utah Rules of Civil Procedure 4(d)(2)(A) and (B). The Advisory Committee Note to Utah Rule 4 provides that “[t]he term ‘commercial courier service’ refers to businesses that provide for the delivery of documents. Examples of ‘commercial courier service’ include Federal Express and United Parcel Service”. The committee endorses the definition provided in the Utah Advisory Committee Note.

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

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

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

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

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

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

This provision allows service to a person over the age of 15 who resides at the usual place of abode of the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before the 2004 amendment. The former rule, however, required only delivery of the summons and complaint to such a person for service to be valid. The 2004 amendment provides that service is not accomplished until, in addition, the person serving the summons and complaint mails a copy of the summons and complaint to the defendant at the defendant’s last known mailing address. This provision allows service to a person over the age of 15 who resides at the usual place of abode of the defendant. This is the same procedure as that formerly provided in Rule 1-004(F)(1) before the 2004 amendment. The former rule, however, required only delivery of the summons and complaint to such a person for service to be valid. The 2004 amendment provides that service is not accomplished until, in addition, the person serving the summons and complaint mails a copy of the summons and complaint to the defendant at the defendant’s last known mailing address. This mailing address will often, but not always, be the usual place of abode of the defendant. The cost of mailing is minimal and increases the likelihood that the defendant will get actual, timely notice of the institution of the action.

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

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

Colorado, R.C.P. 4(e)(2), Oregon, R.C.P. 7(d)(2)(c) and New York, N.Y. CPLR Sec. 308(2), also provide for work place service of process. The Fair Debt and Collection Practices Act,

15 U.S.C. Sec. 1692 ff, contains a provision allowing service of process at the workplace of the defendant by “any person while serving or attempting to serve legal process in connection with judicial enforcement of any debt”. 15 U.S.C. Sec. 1692(a)(6)(D).

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

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

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

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

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

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

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

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

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

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

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

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

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

The provision requiring resort to the court to formulate a method of service where the incompetent person has no guardian or conservator is new. Former Rule 1-004(F)(8) provided that if no conservator or guardian had been appointed for an incapacitated person, service upon the incapacitated person would suffice. This provided inadequate assurance that the incapacitated person would have a meaningful opportunity to defend the action. To remedy this, this

subparagraph requires the court to fashion a constitutionally-adequate means of service upon the incapacitated person not represented by a guardian or conservator.

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

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

This provision is carried over, unchanged, from former Rule 1-004(L). The goal of service of process is to achieve actual notice by means that are reasonable under the circumstances. Rule 1-004(E)(1). The specific methods of service authorized in Rule 1-004 provide standard methods by which this can be accomplished, but there are myriad specific circumstances in which ad-hoc determination of the most appropriate means for serving process is called for. This rule provides broad authority for the court to fashion a constitutionally-adequate method of service under any circumstances.

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

Service by publication; Rule 1-004(K)

This paragraph requires that no service by publication take place without a prior court order authorizing service by publication. This is a significant modification of prior practice in situations where statutes authorized publication without prior court approval. *See, e.g.*, Section 42-2-7(B) NMSA 1978 (authorizing service by publication in condemnation proceeding “[i]f the name or residence of any owner be unknown”); Section 45-1-401 NMSA 1978 (authorizing service by publication in probate proceedings under some circumstances and providing that the court for good cause can provide a different manner of service). Publication notice is seldom likely to achieve actual notice and thus its use should be monitored carefully by the courts. The Supreme Court is authorized to modify statutes providing for notice by publication by requiring prior court approval for service by publication. Legislation affecting procedure is valid unless and until contradicted by a rule of procedure promulgated by the Supreme Court. Rule 1-091 NMRA; Section 38-1-2 NMSA 1978. This paragraph also provides the required content of the notice to be published, the frequency of publication and the place of publication. Omitted from the 2004 amendment is the former provision (Rule 1-004(H)(3)) requiring that publication be “in some newspaper published in the county where the cause is pending” and providing for publication in a newspaper of general circulation in the county only when “no newspaper [was] published in the county”. Publication now always will include publication in a paper of general circulation in the county where the action is pending whether or not the newspaper is published in that county. Where appropriate to the goal of achieving actual notice, the court is free to require, in addition, that publication also be in a newspaper not of general circulation that is published in the county where the cause is pending.

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

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

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

Proof of service; Rule 1-004(L)

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

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

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

This provision replaces former Rule 1-004(J) (Service of summons outside of state equivalent to publication). Where, as in the case of long arm jurisdiction pursuant to Section 38-1-16 NMSA 1978, service of process can be made outside of New Mexico, this rule requires that service be accomplished in the manner and priority provided in this rule. The Committee considered but rejected a proposal that the method of service need not meet the requirements of this rule so long as it met the requirements for service of process in the place where service occurred.

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

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

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

[NEW MATERIAL]

1-077.1. Expungement.

A. **Scope of Rule.** This rule governs proceedings for expungement of arrest and public records under the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978.

B. **Commencement of Action.** An expungement proceeding is commenced by filing a civil petition in the appropriate district court as follows:

(1) A petition seeking expungement of arrest records or public records wrongfully identifying a person therein as a result of identity theft under Section 29-3A-3 NMSA 1978 shall be filed in the district court of the county where the charges originated, or the arrest occurred, or where a conviction was entered.

(2) A petition seeking expungement of arrest records and public records where there is no conviction under Section 29-3A-4 NMSA 1978 shall be filed in the district court for the county where the charges originated or the arrest occurred.

(3) An action seeking expungement of records upon conviction under Section 29-3A-5 NMSA 1978 shall be filed in the district court in the county in which petitioner's conviction was entered.

(4) An action seeking expungement of an arrest, release without conviction, or conviction of a charge that the petitioner believes is legally invalid due to the passage of the Cannabis Regulation Act and is eligible for automatic expungement under Section 29-3A-8 NMSA 1978, which automatic expungement has not occurred, shall be filed in the district court in which the arrest occurred, the charges were originally filed, or the conviction was entered. There shall be no filing fee for an action commenced under the automatic expungement provisions of Section 29-3A-8.

(5) A petition to expunge may contain a request to expunge arrest records and public records pertaining to any number of arrests, criminal charges filed without arrest, and/or convictions in a single judicial district.

C. Sealing of Petition. A petition for expungement of records upon release without conviction shall be filed under seal and subject to the requirements of Rule 1-079 NMRA and the provisions of this rule. If the petition seeks both expungement of records upon conviction and expungement of records upon release without conviction, the district court shall treat the petition as one filed for expungement of records upon conviction and the petition shall not be subject to Rule 1-079 NMRA.

D. Contents of Petition. A petition for expungement shall conform with the requirements of Form 4-951 NMRA (expungement of arrest records and public records upon identity theft), Form 4-452 NMRA (expungement of arrest records and public records upon release without conviction), Form 4-953 NMRA (expungement of arrest records and public records upon conviction), or Form 4-954 NMRA (automatic expungement of arrest records and public records), the use of which are mandatory in expungement proceedings.

E. Service. Service of the petition and attachments thereto is only required in cases seeking expungement of records upon release without conviction and upon conviction.

(1) A petition for expungement of records upon release without conviction and all attachments thereto shall be served upon:

(a) the district attorney for the county in which the arrest was made or the criminal charge or proceeding filed; and

(b) the New Mexico Department of Public Safety.

(2) A petition for expungement of records upon conviction and all attachments thereto shall be served upon:

(a) the district attorney for the county in which the conviction was entered;

(b) the New Mexico Department of Public Safety; and

(c) the law enforcement agency that arrested petitioner.

(3) Service under this section is made by first-class United States mail. Petitioner shall file a certificate of service with the district court.

(4) Subsequent pleadings shall be served in accordance with Rules 1-005, 1-005.1, or 1-005.2 NMRA.

F. Court action upon insufficient petition. If the court concludes that the initial petition does not comply with the provisions of this rule and the applicable form, the court may enter an order granting the petitioner leave to file a proper amended petition within sixty (60) days from entry of the order. If the petition fails to comply with the order or this rule, the court may dismiss the petition without prejudice.

G. Response.

(1) Within sixty (60) days from service of the petition, the parties entitled to notice of the proceeding by way of service of the petition, as identified in Paragraph E of this rule, shall file and serve specific objections (Form 4-957 NMRA) or shall file a Notice of Non-Objection (Form 4-958 NMRA). A responding party filing and serving a Notice of Non-Objection shall be excused from further participation in the proceeding.

(2) If a party objects to a petition for expungement of arrest records or public records without conviction on the basis of the contents of petitioner's Federal Bureau of Investigation's record of arrests and prosecutions, the objecting party shall provide petitioner with a copy of the FBI Rap sheet, at no charge, at the time of filing the objection.

H. Notice of Completion of Briefing. For petitions seeking expungement of records upon release without conviction and upon conviction, petitioner must file a notice of completion of briefing (Form 4-959 NMRA (upon release without conviction) or Form 4-960 NMRA (upon conviction)) after expiration of the objection period set forth in Paragraph G of this rule. Petitioner shall serve the notice of completion of briefing on all parties that have filed an objection.

Petitioner shall attach completed Form 4-960.2 NMRA (affirmation in support of expungement of records, upon release without conviction) or Form 4-960.3 NMRA (affirmation in support of expungement of records, upon conviction) to the notice of completion of briefing. If Form 4-960.2 or Form 4-960.3 contains information regarding arrests, charges without arrest, and/or convictions that occurred subsequent to the filing of the petition, the parties shall have twenty (20) days after service of the notice of completion of briefing and attachments thereto to file additional objections to the petition for expungement.

I. Burden of Proof. Petitioner bears the burden of proving the requirements for statutory expungement.

J. Hearings. No hearing on the merits will be set in an expungement action prior to the filing and service of the notice of completion of briefing as set forth in Paragraph H of this rule.

If the petition is filed under Section 29-3A-3 NMSA 1978 (expungement of records upon identity theft) or Section 29-3A-4 NMSA 1978 (expungement of records upon release without conviction) and no objections to the petition are filed, the court may decide the petition on the pleadings and affirmation (if applicable) without a hearing.

If the petition is filed under Section 29-3A-8 NMSA 1978, the court may decide the petition on the pleadings without a hearing.

If the petition is filed under Section 29-3A-5 NMSA 1978 (expungement of records upon conviction), the court shall hold a hearing to determine whether petitioner has established that the requirements of Section 29-3A-5(C) NMSA 1978 have been met.

Any party wishing to participate in any hearing by telephonic or other electronic means, may do so by giving notice to the court and the other parties as provided for in the petition and objection forms. A motion and order for telephonic or electronic appearance shall not be required. The court may order any party to attend a hearing in-person.

K. Orders. When there is a hearing on a petition for expungement, the court shall issue an order within sixty (60) days of the hearing. Any order requiring the expungement of arrest and public records shall allow a minimum of sixty (60) days to complete the expungement. Any order granting a petition shall require that the civil expungement proceeding be expunged. The court shall not expunge court records earlier than 30-days from entry of its order of expungement.

L. Service of Orders on the Merits. On granting a petition for expungement, the court shall cause a copy of an order on a petition for expungement to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of the records to any persons, except as authorized by the Criminal Records Expungement Act, or on order of the court.

M. Mandatory Forms. The use of Forms 4-951 to -960.3 NMRA, as appropriate, is mandatory in expungement proceedings.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

Committee Commentary.—

2021 Amendment to Rule 1-004 NMRA

The Supreme Court has concluded that in the context of proceedings under the Criminal Record Expungement Act, NMSA 1978, Sections 29-3A-1 to -9 (2019, as amended 2021), if the petitioner serves notice of the petition as required by Paragraph F of Rule 1-077.1 NMRA and subsequently affirms that service was made in accordance with this rule, *see* Form 4-955 NMRA (certificate of service, expungement of records upon release without conviction) or Form 4-956 NMRA (certificate of service, expungement of records upon conviction), such service satisfies the requirements of due process because the recipients of the notice must either file objections or file a “Notice of Non-Objection” before the district court holds a hearing pursuant to Section 29-3A-4(E) or Section 29-3A-5(C).

Section 29-3A-3(D) (expungement of records upon identity theft); due process issue

Section 29-3A-3(D) provides that “After notice to and a hearing for all interested parties and in compliance with all applicable law, the court shall insert in the records the correct name and other identifying information of the offender, if known or ascertainable, in lieu of the name of the person wrongly identified.” Identity theft is a crime. *See, e.g.*, NMSA 1978, § 30-16-24.1 (2009) (theft of identity; obtaining identity by electronic fraud). It would be a violation of due process for the court in a civil proceeding to publicly declare that it found a person guilty of the crime of identity theft and to identify in public records the name and identifying information of the offender, particularly when the statute does not require notice of the proceeding be given to the alleged wrongdoer. For this reason, Rule 1-077.1 omits requirements related to the statutory provision quoted above.

Rule 1-077.1(G)

Rule 1-077.1(G) provides that parties entitled to notice of these proceedings must file and serve specific objections or a Notice of Non-Objection within sixty days of service of the petition. This time limit is contrary to Section 29-3A-4(B), which provides for a thirty-day response time for filing objections to a petition seeking expungement of records upon release without conviction. Rule 1-077.1(G) controls because the Supreme Court can modify a procedural provision in a statute by adopting a contrary rule. *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 15, 111 N.M. 336, 805 P.2d 603 (“[L]egislative rules relating to pleading, practice and procedure in the courts, particularly where those rules relate to court management or housekeeping functions, may be modified by a subsequent rule promulgated by the Supreme Court.”); *see also id.* ¶ 10 (“[T]here are good reasons for construing [statutory time limits] simply as the legislative adoption of a housekeeping rule to assist the courts with the management of their cases, [which] have effect

unless and until waived by a court in a particular case or modified by a rule of this Court on the same subject.”).

Rule 1-077.1(J)

Rule 1-077.1(J) provides that if no objections are filed, the district court may decide a petition for expungement of records upon identity theft, § 29-3A-3, or for expungement of records upon release without conviction, § 29-3A-4, without a hearing. This conflicts with Section 29-3A-3(B), which provides that the district court shall issue an order “after a hearing” on a petition for expungement of records upon identity theft and with Section 29-3A-4(E), which provides likewise in the context of a petition for expungement of records upon release without conviction. Rule 1-077.1(J) controls because the Supreme Court can modify a procedural provision in a statute by adopting a contrary rule. *Lovelace Med. Ctr.*, 1991-NMSC-002, ¶ 15 (“[L]egislative rules relating to pleading, practice and procedure in the courts, particularly where those rules relate to court management or housekeeping functions, may be modified by a subsequent rule promulgated by the Supreme Court.”).

Rule 1-077.1(K)

Rule 1-077.1(K) provides that the district court shall issue an order within sixty (60) days of an expungement hearing. This time limit is contrary to Section 29-3A-4(E) and Section 29-3A-5(C), which require the district court to issue an order within thirty (30) days of certain expungement hearings. For the reasons stated above in the committee commentary to Rule 1-077.1(G), the time limits in Rule 1-077.1(K) control.

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2021.]

1-079. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule, the following definitions apply:

(1) “court record” means all or any [portion] part of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the court or as required by Paragraphs C or D of this rule.

C. ~~[Limitations]~~ **Limits on public access.** In addition to court records protected ~~[pursuant to]~~ under Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

(1) proceedings commenced under the Adoption Act, Chapter 32A, Article 5 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in ~~[Subsection A of]~~ Section 32A-5-8(A) NMSA 1978;

(2) proceedings to detain a person commenced under Section 24-1-15 NMSA 1978;

(3) proceedings for testing commenced under Section 24-2B-5.1 NMSA 1978;

(4) proceedings commenced under the Adult Protective Services Act, Sections 27-7-14 to 27-7-31 NMSA 1978, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA 1978;

(5) proceedings commenced under the Mental Health and Developmental Disabilities Code, Chapter 43, Article 1 NMSA 1978, subject to the disclosure requirements in Section 43-1-19 NMSA 1978 and the firearm-related reporting requirements in Section 34-9-19 NMSA 1978;

(6) wills deposited with the court ~~[pursuant to]~~ under Section 45-2-515 NMSA 1978 that have not been submitted to informal or formal probate proceedings. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Section 45-2-515 NMSA 1978;

(7) proceedings commenced for the appointment of a person to serve as guardian for an alleged incapacitated person under Chapter 45, Article 5, Part 3 NMSA 1978, as provided in Rule 1-079.1 NMRA;

(8) proceedings commenced for the appointment of a conservator under Chapter 45, Article 5, Part 4 NMSA 1978, as provided in Rule 1-079.1 NMRA;

(9) proceedings commenced to remove a firearm-related disability under Section 34-9-19(D) NMSA 1978, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA 1978; ~~[and]~~

(10) proceedings commenced under the Assisted Outpatient Treatment Act, Chapter 43, Article 1B NMSA 1978, subject to the disclosure requirements in Section 43-1B-14 NMSA 1978 and the firearm-related reporting requirements in Section 34-9-19 NMSA 1978~~[-];~~ and

(11) proceedings commenced under Section 29-3A-4 (Expungement of records upon release without conviction) of the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

D. **Protection of personal identifier information.**

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court ~~[web sites]~~ websites. The court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal

identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person's name, address, and telephone number, along with a government-issued form of identification or other acceptable form of identification.

E. **Motion to seal court records required.** [~~Except as~~] Unless provided in Paragraphs C and D of this rule, no [~~portion~~] part of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. [~~When~~] If applicable, the motion should identify any statute, regulation, rule, or other source of law that addresses access to court records in the particular type of proceeding. Any party or member of the public may file a response to the motion to seal. The movant shall lodge the court record with the court [~~pursuant to~~] under Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record [~~pursuant to~~] under Paragraph F. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

F. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court, or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL," and affix to the envelope or container a cover sheet that contains the information required under Rules 1-008.1 and 1-010 NMRA, and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain, but not file, the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)," and shall attach a file-stamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

G. **Requirements for order to seal court records.**

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

(a) the existence of an overriding interest that overcomes the right of

public access to the court record;

- (b) the overriding interest supports sealing the court record;
- (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;
- (d) the proposed sealing is narrowly tailored; and
- (e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or ~~[portions]~~ parts of a court record that contain the material that needs to be sealed. All other ~~[portions]~~ parts of each document or page shall be filed without ~~[limitation]~~ limit on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event ~~[upon]~~ on which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

H. **Sealed court records as part of record on appeal.**

(1) Court records sealed in the magistrate, metropolitan, or municipal court, or records sealed in an agency proceeding in accordance with the law, that are filed in an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal ~~[such]~~ the records or modify a sealing order entered in the magistrate, metropolitan, or municipal court shall be filed in the district court ~~[pursuant to]~~ under Paragraph I of this rule if the case is pending on appeal.

(2) Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

I. **Motion to unseal court records.**

(1) A sealed court record shall not be unsealed except by court order or ~~[pursuant to]~~ under the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. ~~[When]~~ If applicable, the motion should identify any statute, regulation, rule, or other source of law that addresses access to court records in the particular type of proceeding. A copy of the motion to unseal shall be served on all persons and entities who were identified in the sealing order ~~[pursuant to]~~ under Subparagraph ~~[(6) of Paragraph G]~~ (G)(6) for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph ~~[(1) of Paragraph G]~~ (G)(1). If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court record, or unseals the court record for only ~~[as to]~~ certain persons or entities, the order shall specify the particular court records that are unsealed,

the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

J. Failure to comply with sealing order. Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged [~~pursuant to~~] under this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Adopted by Supreme Court Order No. 10-8300-004, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 10-8300-023 temporarily suspending Paragraph D for ~~[90]~~ ninety (90) days effective August 11, 2010; as amended by Supreme Court Order No. 10-8300-037, extending the temporary suspension of Paragraph D for an additional ~~[90]~~ ninety (90) days, effective November 10, 2010; as amended by Supreme Court Order No. 11-8300-006, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court [~~web sites~~] websites on or after February 7, 2011; as amended by Supreme Court Order No. 13-8300-017, effective for all cases pending or filed on or after December 31, 2013; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017; as amended by Supreme Court Order No. 18-8300-005, effective for all cases filed, or pending, but not adjudicated, on or after July 1, 2018, and for motions to seal or unseal filed in all cases on or after July 1, 2018; as provisionally amended by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2021.]

Committee commentary. — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, [~~such as~~] including personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances, public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. [~~And except as~~] Unless otherwise provided in this rule, public access to a court record may not be limited without a written court order entered [~~in accordance with the provisions of~~] under this rule. Unless otherwise ordered by the court, any [~~limitations~~] limits on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that all court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases [~~identified~~] set forth in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the [~~legislature~~] Legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless,

a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule.

For some of the classes of cases identified in Paragraph C, automatic sealing is subject to other statutory disclosure or reporting requirements. For example, under NMSA 1978, ~~[Section] § 34-9-19 (2016)~~, the ~~[administrative office of the courts]~~ Administrative Office of the Courts (AOC) is required to ~~[transmit]~~ send to the ~~[federal bureau of investigation's national instant criminal background check system]~~ Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS) information about a court order, judgment, or verdict ~~[regarding]~~ about each person who has been “adjudicated as a mental defective” or “committed to a mental institution” under federal law. Automatic sealing under Paragraph C, therefore, does not prevent the AOC from ~~[transmitting such]~~ sending the information to the NICS in the proceedings described in Subparagraphs (C)(4), (5), ~~[(7) and (8)]~~ (9), and (10). A person who is the subject of the information compiled and reported by the AOC to NICS has a right to obtain and inspect that information. *See* NMSA 1978, § 34-9-19(K) (2016). Another example includes records sealed under Section 29-3A-4 (Expungement of records upon release without conviction) of the Criminal Record Expungement Act, NMSA 1978, §§ 29-3A-1 to -9 (2019, as amended through 2021), which will be available to law enforcement and courts if a person is charged with a future crime. See NMSA 1978, § 29-3A-2(C)(2) (2019). These records will also be released in connection with any application for or query regarding qualification for employment or association with any financial institution regulated by the Financial Industry Regulatory Authority or the Securities and Exchange Commission. See NMSA 1978, § 29-3A-7 (2019).

Aside from entire categories of cases that may warrant ~~[limitations]~~ limits on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to ~~[limitations]~~ limits on disclosure. *See, e.g.*, ~~[Section 7-1-4.2(H)]~~ NMSA 1978, § 7-1-4.2(H) (2017) (providing for confidentiality of taxpayer information); ~~[Section 14-6-1(A)]~~ NMSA 1978, § 14-6-1(A) (1977) (providing for confidentiality of patient health information); ~~[Section 24-1-9.5 NMSA 1978 (limiting disclosure of test results for sexually transmitted diseases); Section 29-10-4]~~ NMSA 1978, § 29-10-4 (1993) (providing for confidentiality of certain arrest record information); ~~[Section 29-12A-4]~~ NMSA 1978, § 29-12A-4 (2003) (limiting disclosure of local crime stoppers program information); ~~[Section 29-16-8]~~ NMSA 1978, § 29-16-8 (2006) (providing for confidentiality of DNA information); ~~[Section 31-25-3]~~ NMSA 1978, § 31-25-3 (1987) (providing for confidentiality of certain communications between victim and victim counselor); ~~[Section 40-8-2]~~ NMSA 1978, § 40-8-2 (2001) (providing for sealing of certain name change records); ~~[Section 40-6A-312]~~ NMSA 1978, § 40-6A-312 (2005) (providing for ~~[limitations]~~ limits on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); ~~[Section 40-10A-209]~~ NMSA 1978, § 40-10A-209 (2001) (providing for ~~[limitations]~~ limits on disclosure of certain information during proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act); ~~[Section 40-13-7.1]~~ NMSA 1978, § 40-13-7.1 (2005) (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); ~~[Section 40-13-12]~~ NMSA 1978, § 40-13-12 (2008) (providing for limits on internet disclosure of certain information in domestic violence cases); ~~[Section 44-7A-18]~~ NMSA 1978, § 44-7A-18 (2001) (providing for ~~[limitations]~~ limits on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of ~~[such]~~ these items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal

under Paragraph E of this rule. ~~[And any]~~ Any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph ~~[(1) of Paragraph G]~~ (G)(1) of this rule before deciding whether to seal any particular court record. When determining whether a motion to seal should be granted, the court should consider any statute, regulation, rule, or other source of law that addresses access to court records in the particular type of proceeding. *See, e.g.*, NMSA 1978, §§ 45-5-303(J), 45-5-407(M) (2019) (providing that a court may seal the record in a guardianship or conservatorship proceeding ~~[upon]~~ on motion of the alleged incapacitated person, individual subject to guardianship or conservatorship, or parent or guardian of a minor subject to conservatorship after the petition has been dismissed or the guardianship or conservatorship has been terminated).

Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court ~~[web sites]~~ websites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which ~~[would include]~~ includes docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number, along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time ~~[that]~~ the motion is filed. A lodged court record is only temporarily deposited with the court, pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure, pending the court's ruling on the motion, the movant ~~[is required to]~~ must enclose the lodged court record in an envelope or other appropriate container, and must attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled "conditionally under seal." If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well, or filed in

redacted and unredacted versions, so ~~that~~ the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court, unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions, and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records ~~[provided that]~~ if the court's register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name, such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party~~;~~; it will not become part of the case file, and will, therefore, not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record, but it then will be subject to public access. If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest, but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions ~~[whenever]~~ if possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (~~such as~~ including the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may, and may not, have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event ~~[upon]~~ on which the order expires, or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by

the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. When determining whether a motion to unseal should be granted, the court should consider any statute, regulation, rule, or other source of law that addresses access to court records in the particular type of proceeding. *See, e.g.*, NMSA 1978, §§ 45-5-303(K), 45-5-407(N) (2019) (“A person not otherwise entitled to access court records . . . for good cause may petition the court for access to court records of the [guardianship or conservatorship]. The court shall grant access if access is in the best interest of the alleged incapacitated person or [the protected person or protected person subject to conservatorship] or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or [the protected person or individual].”).

A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, [~~when~~] if a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. [~~That said~~] Nonetheless, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But, in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court. [Adopted by Supreme Court Order No. 10-8300-004, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 11-8300-006, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court [~~web sites~~] websites on or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016; as amended by Supreme Court Order No. 17-8300-002, effective for all cases pending or filed on or after March 31, 2017; as amended by Supreme Court Order No. 18-8300-005, effective for all cases filed, or pending, but not adjudicated, on or after July 1, 2018, and for motions to seal or unseal filed in all cases on or after July 1, 2018; as provisionally amended by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on after January 28, 2022.]

[NEW MATERIAL]

4-951. Petition to expunge arrest records and public records; identity theft.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

**PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER
SECTION 29-3A-3 NMSA 1978**
(Identity Theft)

Petitioner, unrepresented by counsel/ represented by counsel (*select one*), under Section 29-3A-3 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the cases/charges below.

1. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known (*include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

2. Petitioner has no pending expungement cases in the _____ Judicial District.

Petitioner has the following pending expungement cases in the _____ Judicial District Court (*provide expungement case numbers for any expungement cases that may be currently pending before the _____ Judicial District Court*):

3. Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

4. As the result of identity theft, Petitioner has been improperly named in the following criminal case or cases:

Case name: _____

Case number: _____

Date of filing: _____

Please attach copies of any records in your possession associated with this case.

5. Petitioner asks this Court for an Order to Expunge Arrest and Criminal Records for information in the custody of the following agencies:

- District Court in the _____ Judicial District;
- _____ County Sheriff's Department;
- District Attorney for the _____ Judicial District;
- New Mexico Department of Public Safety;
- Law Enforcement Agency (*name of agency*) _____;
- Metropolitan/Magistrate/Municipal Court in _____ (*location*);
- New Mexico State Police Investigations Bureau;
- Other _____.

6. The charges sought to be expunged were originally disposed of or originated in (*select one*)

- District Court in the _____ Judicial District
- Metropolitan Court in _____ (*location*)
- Magistrate Court in _____ (*location*)
- Municipal Court in _____ (*location*)

7. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (*if applicable*)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-952. Petition to expunge arrest records and public records; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER
SECTION 29-3A-4 NMSA 1978
(Upon Release without Conviction)

Petitioner, unrepresented by counsel/ represented by counsel (*select one*), under Section 29-3A-4 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the case and charge(s) below.

8. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known (*include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

9. Petitioner has no pending expungement cases in the _____ Judicial District.

Petitioner has the following pending expungement case or cases in the _____ Judicial District (*provide expungement case numbers for any expungement cases that may be currently pending before the _____ Judicial District Court*):

10. Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

11. The following case(s) and record(s) are the subject of Petitioner's Petition to Expunge (*Include additional pages, if necessary*):

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Law Enforcement Agency case number(s): _____

Arrest number(s): _____

12. Petitioner was released without conviction for the following charges: (*Complete for each charge sought to be expunged. Include additional pages if necessary.*)

(1) Date of arrest: _____

Name of offense and statute/ordinance number: _____

Final disposition of offense: (*check one*) acquittal or finding of not guilty nolle prosequi
 no bill referral to pre-prosecution diversion program Order of Conditional Discharge under Section 31-20-13 (1994) NMSA 1978 other dismissal/discharge (*explain*):

Degree of offense, if known (*e.g., misdemeanor, petty misdemeanor, etc.*): _____

Date of final disposition: _____

Check if additional pages attached.

13. Petitioner has no cases related to the charges sought to be expunged.

The following cases are related to the charges sought to be expunged: (*Include case names and numbers for any cases that were joined either with a co-defendant or joined as the result of a plea.*)

14. It has been one (1) year or more since the date of the final disposition of the charge(s) Petitioner seeks to expunge.

15. There is no other charge or proceeding pending against Petitioner.

16. Petitioner asks this Court for an Order to Expunge arrest records and public records in the custody of the following agencies:

District Court in the _____ Judicial District;

_____ County Sheriff's Department;

- District Attorney for the _____ Judicial District;
- New Mexico Department of Public Safety
- Law Enforcement Agency (*name of agency that arrested Petitioner*); _____

- Metropolitan/Magistrate/Municipal Court in _____ (*location*);
- New Mexico State Police Investigations Bureau
- Other _____

17. A copy of this Petition, when filed with the Court, will be mailed by first class United States mail to:

- (1) The District Attorney in the _____ Judicial District
(The District Attorney in the Judicial District where Petitioner's charge originated)

(Address)

- (2) The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628

18. The charges sought to be expunged were originally disposed of or originated in (*select one*)

- District Court in the _____ Judicial District
- Metropolitan Court in _____ (*location*)
- Magistrate Court in _____ (*location*)
- Municipal Court in _____ (*location*)

19. Petitioner has included Petitioner's State of New Mexico, Department of Public Safety Record of Arrest and Prosecution (RAP) sheet, dated no later than ninety (90) days prior to the filing of the petition.

20. Petitioner has also included the following documentation related to Petitioner's criminal history:

- a. Docket sheet, arrest sheet, or other record detailing the offenses Petitioner is seeking to expunge;
- b. Documentation showing final disposition of the charges Petitioner is seeking to expunge;
- c. Other: _____
(*list any other documentation provided with the petition*).

21. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name *(if applicable)*

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-953. Petition to expunge arrest records and public records; upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS UNDER

SECTION 29-3A-5 NMSA 1978

(Upon Conviction)

Petitioner, unrepresented by counsel/ represented by counsel (*select one*), under Section 29-3A-5 NMSA 1978, respectfully moves the Court to expunge the arrest records and public records related to the case and charge(s) below.

22. Information about Petitioner:

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known

(*Include prior names, nicknames, or aliases, especially if your arrest records may reflect a different name*):

23. Petitioner has no pending expungement cases in the _____ Judicial District.

Petitioner has the following pending expungement case or cases in the _____ Judicial District (*provide expungement case numbers for any expungement cases that may be currently pending before the _____ Judicial District Court*): _____

24. Petitioner has never applied for expungement and been denied.

Petitioner has applied for expungement and been denied in the following expungement cases (*provide the expungement case numbers*): _____

25. The following case(s) and records are the subject of Petitioner's Petition to Expunge:

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Law Enforcement Agency case number(s): _____

Arrest number(s): _____

26. Petitioner was convicted of the following charges: (*Complete for each offense that you are seeking to expunge. Include additional pages if necessary.*)

(1) Date of offense/arrest: _____

Name and statute/ordinance number of offense: _____

Date sentence completed: _____

Date fines and fees paid: _____

Check if additional pages attached.

27. Petitioner has no cases related to the charges sought to be expunged.

The following cases are related to the charges sought to be expunged:
(Include case names and numbers for any cases that were joined either with a co-defendant or joined as the result of a plea.)

28. There is currently no other charge(s) or proceeding(s) pending against Petitioner.
29. Petitioner has had no other criminal convictions (measured from the date of completion of a sentence for a conviction in *any jurisdiction*) for a period of:

- Two years
- Four years
- Six years
- Eight Years
- Ten or more years

30. Petitioner has paid all fines and fees and has fulfilled all victim restitution ordered for the charges Petitioner seeks to expunge.

31. Petitioner is not seeking to expunge convictions pertaining to any of the following:
- An offense committed against a child;
 - An offense causing great bodily harm or death;
 - A sex offense as defined in Section 29-11A-3 NMSA 1978;
 - An offense for embezzlement under Section 30-16-8 NMSA 1978; or
 - An offense involving driving while under the influence of intoxicating liquor or drugs.

32. Petitioner believes justice will be served by the Court granting the Petition and states the following in support: (*Explain why expungement is being sought, e.g., employment, licensure, housing, and any adverse consequences that have been suffered by Petitioner or will be suffered if the Petition is not granted. Attach additional pages if necessary.*)

Check if additional pages attached.

33. Petitioner asks this Court for an Order to Expunge arrest records and court records in the custody of the following below:

- District Court in the _____ Judicial District;
- _____ County Sheriff's Department;
- District Attorney for the _____ Judicial District;
- New Mexico Department of Public Safety;

- Law Enforcement Agency (*name of agency that arrested Petitioner*) _____;
- Metropolitan/Magistrate/Municipal Court in _____ (*location*);
- New Mexico State Police Investigations Bureau;
- Other: _____

34. The charges sought to be expunged were originally disposed of or originated in (*select one*)
- District Court in the _____ Judicial District
 - Metropolitan Court in _____ (*location*)
 - Magistrate Court in _____ (*location*)
 - Municipal Court in _____ (*location*)

35. A copy of this Petition, when filed with the Court, will be mailed by first class United States mail to:

- (2) The District Attorney in the _____ Judicial District
(The District Attorney in the Judicial District where Petitioner's charge originated)

(Address)

- (2) The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628

- (3) _____
(The law enforcement agency that arrested Petitioner)

(Address)

36. Petitioner has included copies of Petitioner's FBI and DPS Record of Arrest and Prosecution (RAP) sheets, dated no later than ninety (90) days prior to the filing of the petition.

37. Petitioner has included the following additional documentation related to Petitioner's criminal history: (*Petitioner should attach the documentation detailing the sentences for the charges Petitioner is seeking to expunge. If there have been additional convictions, additional paperwork may be required.*)

- a. Documentation showing completion of Petitioner's sentences for the convictions Petitioner is seeking to expunge;
- b. Documentation showing completion of sentences for any other convictions that Petitioner has served;
- c. Documentation showing final payment of any fines and fees owed related to the convictions Petitioner is seeking to expunge;
- d. Documentation showing completion of any victim restitution ordered as a result of the convictions Petitioner is seeking to expunge;
- e. Other: _____
(*list any other documentation provided with the petition.*)

38. Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (*if applicable*)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-954. Petition to expunge arrest records and public records; automatic.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

**PETITION FOR REQUEST FOR AUTOMATIC EXPUNGEMENT UNDER SECTION
29-3A-8 NMSA 1978**

***(Automatic Expungement of Arrest and Conviction Records;
Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978)***

Name: _____
 First Middle Last

Date of Birth: _____

Current Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone #: _____ Work Phone #: _____ Cell #: _____

Other names or aliases by which Petitioner has been known
*(Include prior names, nicknames, or aliases, especially if your arrest records may reflect a
different name):*

Petitioner claims an entitlement to automatic expungement of the following offense(s) involving cannabis that is(are) no longer a crime as of the effective date of the Cannabis Regulation Act, Sections 26-2C-1 to -42 NMSA 1978, or would have resulted in a lesser offense if the Cannabis Regulation Act had been in effect at the time of the offense(s).

You may include more than one case if there are multiple cases with eligible offenses. (Include additional pages if necessary)

District Court case number: _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

District Court case number(s): _____

Metropolitan/Magistrate/Municipal Court case number(s): _____

Arrest number(s): _____

Law enforcement agency numbers(s): _____

Eligible charge(s) related to the above case: _____

Petitioner is not seeking to reopen the underlying criminal matter

Petitioner wishes to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

SIGNATURE SECTION

I, Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Printed name of Petitioner

Date

Signature of Petitioner

Mailing Address

Telephone Number

Email

Attorney Name (*if applicable*)

Date

Attorney Signature

Mailing Address

Telephone Number

Email

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-955. Certificate of service; expungement of records upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

CERTIFICATE OF SERVICE

(Required for Petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

I hereby certify that on the _____ (day) of _____ (month) _____ (year), an endorsed copy of the Petition to Expunge New Mexico Arrest Records and Public Records under Section 29-3A-4 NMSA 1978, filed on _____ (date), and this Certificate of Service were mailed via first-class United States mail to:

- The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628
- The district attorney in the _____ Judicial District

(Address)

Petitioner is pro se

OR

Petitioner is represented
by counsel

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Petitioner Printed Name

Petitioner Address

Petitioner Telephone Number

Petitioner Signature

Attorney Printed Name

Attorney Address

Attorney Telephone Number

Attorney Signature

Date of Signature

USE NOTES

This certificate of service must be filed with the district court.
[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-956. Certificate of service; expungement of records upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

CERTIFICATE OF SERVICE

(Required for Petitions filed under Section 29-3A-5 NMSA 1978 (Expungement of Records upon Conviction))

I hereby certify that on the _____ (day) of _____ (month) _____ (year), an endorsed copy of the Petition to Expunge New Mexico Arrest Records and Public Records under Section 29-3A-5 NMSA 1978, filed on _____ (date), and this Certificate of Service were mailed via first-class United States mail to:

- The New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico 87504-1628
- The district attorney in the _____ Judicial District

(Address)
- The law enforcement agency that arrested Petitioner

(Address)

Petitioner is pro se

OR

Petitioner is represented by counsel

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

Petitioner Printed Name

Petitioner Address

Attorney Printed Name

Attorney Address

Attorney Telephone Number

Petitioner Telephone Number

Petitioner Signature

Date of Signature

Attorney Signature

Date of Signature

USE NOTES

This certificate of service must be filed with the district court.
[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]
4-957. Objection to petition to expunge records.
[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

OBJECTION TO PETITION TO EXPUNGE ARREST RECORDS AND PUBLIC RECORDS

*(Applicable to Petitions filed under Section 29-3A-4 NMSA 1978
(Upon Release without Conviction) and Section 29-3A-5 NMSA 1978 (Upon Conviction))*

_____ (*name and agency*), under Sections 29-3A-4 to -5 NMSA 1978, having received notice of the Petition by first class mail, objects to Petitioner's Petition to Expunge Arrest Records and Public Records, which was filed on _____, and respectfully asks this Court to deny the Petition on the following grounds:

Check if additional pages attached

If this Objection relates to a petition filed under Section 29-3A-4 NMSA 1978 (upon release without conviction) and is based on the contents of Petitioner's FBI Record of Arrest and Prosecution (RAP) sheet, a copy of the FBI RAP sheet will be provided along with this Objection to Petitioner at no cost to Petitioner.

I, _____ (name), on behalf of _____ (insert agency name) wish to attend any hearings in this matter by telephonic or other electronic means as provided for in Rule 1-077.1(J) NMRA.

Date

Printed Name

Signature

Agency (*if applicable*)

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ (day) of _____ (month) _____ (year), I caused a copy of the foregoing to be served on Petitioner and all Parties entitled to notice of the Petition via first-class United States mail.

Printed Name

Agency (if applicable)

Address

Telephone Number

Signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-958. Notice of non-objection to petition to expunge records.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, No.
Petitioner.

NOTICE OF NON-OBJECTION TO PETITION TO EXPUNGE ARREST RECORDS
AND PUBLIC RECORDS

(Applicable to Petitions filed under Section 29-3A-4 NMSA 1978 (Upon Release without Conviction) and Section 29-3A-5 NMSA 1978 (Upon Conviction))

_____ (name and agency), under Sections 29-3A-4 to -5 NMSA 1978, having received notice of the Petition by first class United States mail, gives this notice that it has no objection to the relief requested in the Petitioner's Petition to Expunge Arrest Records and Public Records, which was filed on _____.

Date

Printed Name

Signature

Agency

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ (day) of _____ (month) _____ (year), I caused a copy of the foregoing to be served on Petitioner and all Parties entitled to notice of the Petition via first-class United States mail.

Printed Name

Agency

Address

Telephone Number

Signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-959. Notice of completion of briefing; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

NOTICE OF COMPLETION OF BRIEFING

(for use with petitions filed under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction))

Petitioner hereby notifies the Court, in accordance with Rule 1-077.1(H) NMRA, that briefing is complete as to Petitioner's Petition to Expungement Arrest Records and Public Records and that the Petition is ready for decision. Petitioner further states:

- Notice of the Petition has been provided via first-class United States mail to:
 - The District Attorney in the _____ Judicial District;
 - The New Mexico Department of Public Safety.

- At least sixty-three (63) days have passed since Petitioner mailed the Petition to the parties entitled to notice.

- The District Attorney:
 - Has filed a Notice of Non-Objection; or
 - Has filed an objection.

- The New Mexico Department of Public Safety:
 - Has filed a Notice of Non-Objection; or
 - Has filed an objection.

- Petitioner has included an Affirmation in Support of Expungement (Form 4-960.2 NMRA) with this Notice of Completion of Briefing.

Printed name of Petitioner

Signature of Petitioner

Mailing Address

Telephone Number

Date

Attorney Name *(if applicable)*

Attorney Signature

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this Notice of Completion of Briefing was served by United States first class mail on the following:

(The District Attorney in the _____ Judicial District)

(Address)

(Telephone)

AND

New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico, 87504-1628
(505) _____

Signature of person sending paper

Date of signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]
4-960. Notice of completion of briefing; upon conviction.
[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

NOTICE OF COMPLETION OF BRIEFING

(for use with petitions filed under Section 29-3A-5 NMSA 1978 (Expungement of Records upon Conviction))

Petitioner hereby notifies the Court, in accordance with Rule 1-077.1(H) NMRA, that briefing is complete as to Petitioner's Petition to Expunge Arrest Records and Public Records and the Petition is ready for decision. Petitioner further states:

- Notice of the Petition has been provided via first-class United States mail to:
 - The District Attorney in the _____ Judicial District;
 - The New Mexico Department of Public Safety;
 - The law enforcement agency that arrested Petitioner.

- At least sixty-three (63) days have passed since Petitioner mailed the Petition to the parties entitled to notice.

- The District Attorney:
 - Has filed a Notice of Non-Objection; or
 - Has filed an objection.

- The New Mexico Department of Public Safety:
 - Has filed a Notice of Non-Objection; or
 - Has filed an objection.

- The law enforcement agency that arrested Petitioner:
 - Has filed a Notice of Non-Objection; or
 - Has filed an objection.

- Petitioner has included an Affirmation in Support of Expungement (Form 4-960.3 NMRA) with this Notice of Completion of Briefing.

Printed name of Petitioner

Signature of Petitioner

Mailing Address

Telephone Number

Date

Attorney Name (*if applicable*)

Attorney Signature

Mailing Address

Telephone Number

Email

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____ this Notice of Completion of Briefing was mailed by United States first class mail and addressed to:

(The District Attorney in the _____ Judicial District)

(Address)

(Telephone)

AND

New Mexico Department of Public Safety
P.O. Box 1628, Santa Fe, New Mexico, 87504-1628
(505) _____

AND

(The law enforcement agency that arrested Petitioner)

(Address)

(Telephone)

Signature of person sending paper

Date of signature

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-960.1. Notice of hearing.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

NOTICE OF HEARING

Petitioner may be entitled to expungement of arrest records or public records under the Criminal Record Expungement Act, Sections 29-3A-1 to -9 NMSA 1978. A hearing in this matter is set before the Honorable _____ as follows:

1. Date of Hearing: _____
2. Time of Hearing: _____
3. Length of Hearing: _____

4. Place of Hearing: _____

5. Matter(s) to be heard: _____

HONORABLE _____

By _____
TCAA

PARTIES ENTITLED TO NOTICE:

Petitioner Name

Petitioner Address

Petitioner Telephone Number

Petitioner Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

Name

Agency (if applicable)

Address

Telephone Number

Email Address

USE NOTES

For the purpose of this form, the parties entitled to notice include the petitioner and any party that filed and served objections to the petition for expungement pursuant to Rule 1-077.1(G)(1) NMRA no later than sixty-three (63) days from the date of service. *See* Rule 1-077.1(G)(1) (providing sixty (60) days for a party entitled to notice to file an objection); Rule 1-077.1(E)(3) NMRA (providing for service by mail for actions filed pursuant to Rule 1-077.1); Rule 1-006(C) (providing for three (3) additional days where service is made by mail).

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-960.2. Affirmation in support of expungement; upon release without conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____, No.
Petitioner.

AFFIRMATION IN SUPPORT OF EXPUNGEMENT
(Upon Release without Conviction)

I, _____, (*Petitioner name*), am requesting the expungement of records under Section 29-3A-4 NMSA 1978 (Expungement of Records upon Release without Conviction), and hereby affirm the following:

No charge or criminal proceeding is pending against me in any state or federal court in the United States.

OR

The following charge(s) or criminal proceeding(s) are pending against me in New Mexico state _____ court:

The following charge(s) or criminal proceeding(s) are pending against me in another state court:

The following charge(s) or criminal proceeding(s) are pending against me in federal court:

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

(*Petitioner Signature*)

(*Print Name*)

Street Address

City

State

Zip Code

(*Telephone*)

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]

[NEW MATERIAL]

4-960.3. Affirmation in support of expungement; upon conviction.

[For use with District Court Rule 1-077.1 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In re _____,

No.

Petitioner.

AFFIRMATION IN SUPPORT OF EXPUNGEMENT

(Upon Conviction)

I, _____, (*Petitioner name*), am requesting the expungement of records under Section 29-3A-5 (2019) NMSA 1978 (Expungement of Records upon Release upon Conviction), and hereby affirm the following:

- 1. No charge or criminal proceeding is pending against me in any state or federal court in the United States.

OR

The following charge(s) or criminal proceeding(s) are pending against me in New Mexico state court:

The following charge(s) or criminal proceeding(s) are pending against me in another state court:

The following charge(s) or criminal proceeding(s) are pending against me in federal court:

AND

2. I have had no criminal convictions against me in the last ten (10) years.

OR

- The most recent criminal conviction against me was: (Provide date of conviction, jurisdiction, case number, offense of conviction, and the date you finished serving your sentence for the conviction)

I, Petitioner, declare under penalty of perjury under the laws of the State of New Mexico that the statements herein are true and correct.

(Petitioner Signature)

(Print Name)

Street Address

City

State

Zip Code

(Telephone)

[Provisionally adopted by Supreme Court Order No. 21-8300-033, effective for all cases pending or filed on or after January 28, 2022.]



**New Mexico
Courts**

Amy Feagans <supajf@nmcourts.gov>

[rules.supremecourt-grp] Rule Proposal Comment Form, 09/01/2022, 11:21 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Sep 1, 2022 at 11:21 AM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your
Name: Micah Standridge

Phone
Number: 5054005497

Email: lcrdmw@nmcourts.gov

Proposal
Number: 2022-024

Comment: Forms 4-959 and 4-960 should both have options for the petitioner to check/indicate that the DA, DPS or arresting agency have NOT filed a response. In the vast majority of EX cases, the DA and the arresting agency are properly served and do not file any response. DPS most often does file a response, but on some occasions does not.



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[rules.supremecourt-grp] Rule Proposal Comment Form, 09/01/2022, 11:38 am

1 message

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Thu, Sep 1, 2022 at 11:38 AM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your
Name: Micah Standridge
Phone
Number: 5054005497
Email: lcdrmmw@nmcourts.gov
Proposal
Number: 2022-024

Comment: Rule 1-077.1(E) provides that service "is only required in cases seeking expungement of records upon release without conviction and upon conviction," which are cases brought pursuant to NMSA 29-3A-4 and 29-3A-5. Thus, as currently written, there is no service requirement in the Rule for petitions brought pursuant to NMSA 29-3A-8, cases seeking automatic expungement of records of offenses related to the cannabis regulation act. Is this intentional? From the Courts' perspective, we need to hear from DPS and the DA in these automatic expungement cases. Further, the requirement for responses in 1-077.1(G) is only applicable to "parties entitled to notice of the proceeding by way of service of the petition." If DPS and the DA are not entitled to notice in the automatic expungement cases, then they are not obligated to file a response and the Courts do not have a means pursuant to the rule to compel them to respond.