

10-103. Service of process.

A. **Summons; issuance.** ~~[Upon]~~ On the filing of the petition, the clerk shall issue a summons and deliver it to the petitioner for service. ~~[Upon]~~ On the request of the petitioner, the clerk shall issue separate or additional ~~[summons]~~ summonses. Any respondent 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 respondent. 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 petition 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) in an abuse and neglect proceeding, a notice that the respondent has a right to an attorney and that a child must have an attorney or guardian ad litem;

(3) in an abuse and neglect proceeding, a notice that the proceeding could ultimately result in the termination of parental rights; and

(4) in a fostering connections proceeding, a notice that the eligible adult has a right to an attorney and that the eligible adult may request to be represented by a prior attorney from the eligible adult's abuse or neglect case, if any; and

(5) the name, address, and telephone number of the petitioner's attorney.

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 petitioner shall furnish the person making service with all 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 J 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 petition, 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 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 the service or by the sheriff of the county where the person may be found;

(3) if the process to be served is a writ other than a writ specified in Subparagraph ~~[(2)]~~ 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 respondent 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 respondent and further provided that the respondent or a person authorized by appointment, by law, or by this rule to accept service of process ~~upon~~ on the respondent signs a receipt for the envelope or package containing the summons and petition, 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~~ on an individual.

(1) Personal service of process shall be made ~~upon~~ on an individual by delivering a copy of a summons and petition or other process as follows:

(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 the copies or permit them to be left, that action shall constitute valid service; or

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

(2) If, after the petitioner attempts service of process by either of the methods of service provided by Subparagraph ~~(1)~~ 1 of this paragraph, and the respondent 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 respondent who is over the age of fifteen (15) years and mailing by first class mail to the respondent at the respondent’s last known mailing address a copy of the process; or

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

G. Service ~~[upon]~~ on minor, incompetent person, custodian, guardian, or fiduciary.

(1) A child who is a respondent in delinquency, youthful offender, or abuse and neglect proceedings shall be served by delivering a copy of the summons and petition to the respondent child and to a custodial parent, custodian, guardian, or conservator of the minor in the manner and priority provided in Paragraph F or H 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. If the respondent child has a known guardian ad litem or attorney, notice of the proceedings shall be served on the guardian ad litem or attorney as provided in Rule 10-105 NMRA.

(2) A child who is alleged to be an abused or neglected child, or a child whose family is alleged to be in need of court-ordered services, shall be served by service on the child's guardian ad litem if the child is less than fourteen (14) years old or the child's attorney if the child is fourteen (14) years old or over.

(3) An incompetent person shall be served by serving a copy of the process ~~[to]~~ on the conservator or guardian, if there is a conservator of the estate or guardian of the incompetent

1 person, in the manner and priority provided by Paragraph F or H of this rule. If the incompetent
2 person does not have a conservator or guardian, process may be served on a person designated by
3 the court.

4 (4) Service [~~upon~~] on a personal representative, guardian, conservator, trustee,
5 or other fiduciary in the same manner and priority for service as provided in Paragraphs F or H of
6 this rule as may be appropriate.

7 **H. Service in manner approved by court.**

8 (1) Except in delinquency and youthful offender proceedings, [~~upon~~] on
9 motion, without notice, and showing by affidavit that service cannot reasonably be made as
10 provided by this rule, the court may order service by any method or combination of methods,
11 including publication, that is reasonably calculated under all of the circumstances to apprise the
12 respondent of the existence and pendency of the action and afford a reasonable opportunity to
13 appear and defend.

14 (2) In delinquency or youthful offender proceedings, a child shall not be served
15 at the child's school except that [~~upon~~] on written motion, without notice, and a showing by
16 affidavit that service cannot reasonably be made by any other method or combination of methods
17 provided by this rule, the court may order service at the child's school.

18 **I. Service by publication.** Service by publication may be made only under Paragraph
19 H of this rule. A motion for service by publication shall be substantially in the form approved by
20 the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion.
21 Service by publication shall be made once each week for three consecutive weeks unless the court
22 for good cause shown orders otherwise. Service by publication is complete on the date of the last
23 publication.

(1) Service by publication under this rule shall be made 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 respondent notice of the pendency of the action, the court may also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears most likely to give the respondent notice of the action.

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

(a) the caption of the case, as provided in Rule 10-112 NMRA, except that any party other than the respondent against whom service by publication is sought shall be identified in the caption using the initials of the party's first and last name;

(b) a statement which describes the action or relief requested;

(c) the name of the respondent or, if there is more than one respondent, the name of each of the respondents against whom service by publication is sought; and

(d) the name, address, and telephone number of the petitioner's attorney.

J. **Proof of service.** 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 respondent's signature receipt. Proof of service by publication

1 shall be by affidavit of publication signed by an officer or agent of the newspaper in which the
2 notice of the pendency of the action was published. Failure to make proof of service shall not affect
3 the validity of service.

4 **K. Service of process in the United States, but outside of state.** Whenever the
5 jurisdiction of the court over the respondent is not dependent [~~upon~~] on service of the process
6 within the State of New Mexico, service may be made outside the State as provided by this rule.

7 **L. Service of process in a foreign country.** Service [~~upon~~] on an individual may be
8 effected in a place not within the United States as follows:

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

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

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

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

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

22 **M. Service by mail on child in delinquency or youthful offender proceedings; time**
23 **to appear.** If service is made by mail under Subparagraph (E)(3) of this rule [~~upon~~] on a child who

is a respondent in a delinquency or youthful offender proceeding, service shall be made at least ten (10) days before the child is required to appear, unless a shorter time is ordered by the court.

N. **Failure to appear.** If the respondent in a delinquency or youthful offender proceeding fails to appear at the time and place specified in the summons, the court may take the following action:

(1) issue a warrant for the respondent’s arrest; or

(2) direct that service of the summons and petition may be made in the manner prescribed by the court.

[As amended, effective September 1, 1995; Rule 10-104 NMRA recompiled and amended as Rule 10-103 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended by Supreme Court Order No. 18-8300-011, effective for all cases pending or filed on or after December 31, 2018; as provisionally amended by Supreme Court Order No. 21-8300-007, effective for all cases pending or filed on or after November 12, 2021; as amended by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — This rule has been rewritten to be consistent with Rule 1-004 NMRA, with special provisions on service for minors to take into consideration the unique circumstances of children.

Subparagraph (H)(2), which was added to the rule in 2016, prohibits serving a child in a delinquency proceeding at the child’s school, “except that ~~upon~~ on written motion, without notice, and a showing by affidavit that service cannot reasonably be made by any other method or combination of methods provided by this rule.” The committee views the practice of serving a child at school with disfavor because of the negative social and educational consequences that may

1 result for the child. The committee acknowledges, however, that serving a child at school may be
2 appropriate in rare circumstances. Subparagraph (H)(2), therefore, permits service [~~upon~~] on a
3 child at the child’s school only with court approval and only when the court is satisfied that service
4 cannot be reasonably achieved by any other method or combination of methods under the rule.

5 [As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as amended
6 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after
7 December 31, 2016; as amended by Supreme Court Order No. 22-8300-017, effective for all cases
8 pending or filed on or after December 31, 2022.]