

6-205. Summons; service; failure to appear.

A. **Methods of service.** Service of a summons shall be by mail unless the court directs that personal service be made.

B. **Issuance.** ~~[Upon]~~ On receipt of a complaint, the clerk shall docket the action, forthwith issue a summons, and deliver it for service. ~~[Upon]~~ On the request of the prosecution, separate or additional summons shall issue against any defendant. Any defendant may waive the issuance or service of summons.

C. **Execution; form.** The summons shall be substantially in the form approved by the Supreme Court. The summons shall be signed by the judge or the clerk^[7] and be directed to the defendant, and must contain^[7]

(1) the name of the court and county in which the complaint is filed, the docket number of the case, and the name of the defendant to whom the summons is directed;

(2) a direction that the defendant appear at the time and place set forth; and

(3) the name and address of the prosecuting attorney, if any^[7]; otherwise the address of the law enforcement entity filing the complaint^[7].

~~[(4) The summons shall be substantially in the form approved by the supreme court.]~~

D. **Summons; time to appear.** Service shall be made at least ten (10) days before the defendant is required to appear. If service is made by mail an additional three (3) days shall be added ~~[pursuant to]~~ under Rule 6-104 NMRA. Service by mail is complete ~~[upon]~~ on mailing.

E. **Summons; service of copy.** The summons and complaint shall be served together. The prosecution shall furnish the person making service with ~~[such]~~ all copies as are necessary.

F. **Summons; by whom served.** In criminal actions any process may be served by the sheriff of the county where the defendant may be found, or by any other person who is over the age of eighteen (18) years and not a party to the action.

G. **Summons; service by mail.** A summons and complaint may be served ~~upon~~ on any defendant by the clerk of the court, the judge, or the prosecutor mailing a copy of the summons and a copy of the complaint, ~~[€]by first-class mail, postage prepaid[€]~~, to the person to be served. If a defendant fails to appear in person, or by counsel when permitted by these rules, at the time and place specified in the summons, the court, after review of the file to determine whether the summons was returned as not delivered, may~~[:]~~

(1) issue a warrant for the defendant's arrest, and thereafter the action shall be treated as if the warrant had been the first process in the action; or

(2) direct that service of ~~[such]~~ the summons and complaint may be made by a person authorized by Paragraph F of this rule in the manner prescribed for personal service by Paragraph ~~[H]~~ I of this rule.

H. Summons for initial appearance; returned mail.

(1) For a defendant's initial appearance in court, if a mailed summons has been returned as not delivered and the defendant has failed to appear in person, or by counsel when permitted by these rules, at the time and place specified in the summons, the court may either

(a) direct service to be made by a person authorized by Paragraph F of this rule in the manner prescribed by Paragraph I of this rule; or

(b) issue a warrant for the defendant's arrest with the directive that the defendant be released on the defendant's own recognizance, unless the court makes a finding of fact that supports the imposition of an appropriate bond.

_____ (2) If the summons is returned as not delivered after a warrant has been issued under Subparagraph (G)(1) of this rule, the court may cancel or quash the warrant, waive or suspend the administrative bench warrant fee, and proceed under Subparagraph (H)(1) of this rule.

[H.]I. **Summons; how served.** Service may be made within the state as follows:

(1) [upon] on an individual other than a minor or an incapacitated person by delivering a copy of the summons and a copy of the complaint to [him] the defendant personally; or if the defendant refuses to receive [such] the copies of the summons and complaint, by leaving [same] the copies of the summons and complaint at the location where [he] the defendant has been found; and if the defendant refuses to receive [such] the copies or permit them to be left, [such] that action shall constitute valid service. If the defendant [be]is absent, service may be made by delivering a copy of the process or other papers to be served to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years; and if there be no [such] person who meets that criteria available or willing to accept delivery, then service may be made by posting [such] the copies in the most public part of the defendant's premises, and by mailing to the defendant at [his] the defendant's last known mailing address copies of the process;

(2) [upon] on a domestic or foreign corporation by delivering a copy of the summons and a copy of the complaint to an officer, a managing or a general agent, or [to] any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute [so] requires, by also mailing [a copy] the copies to the defendant; [upon] on a partnership by delivering a copy of the summons and a copy of the complaint to any general partner; and [upon] on other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and a copy of the complaint to an officer, a managing or general agent, or [to] any other agent authorized by

1 appointment or by law to receive service of process and, if the agent is one authorized by law to
2 receive service and the statute ~~[sø]~~ requires, by also mailing ~~[a-copy]~~ the copies to the
3 unincorporated association. If the person refuses to receive ~~[such]~~ the copies, ~~[such]~~ that action
4 shall constitute valid service. If none of the persons mentioned is available, service may be made
5 by delivering a copy of the process or other papers to be served ~~[at]~~ to the principal office or place
6 of business during regular business hours to the person there in charge~~[-thereof]~~.

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

9 ~~[I.]~~J. **Return.** If service is made by mail ~~[pursuant to]~~ under Paragraph G of this rule,
10 return shall be made by the defendant appearing as required by the summons. If service is by
11 personal service ~~[pursuant to]~~ under Paragraph ~~[H]~~I of this rule, the person serving the process
12 shall make proof of service ~~[thereof]~~ to the court promptly and in any event within the time during
13 which the person served must respond to the process. When service is made by the sheriff or a
14 deputy sheriff, proof ~~[thereof]~~ of service shall be by certificate; and when made by a person other
15 than a sheriff or a deputy sheriff, proof ~~[thereof]~~ of service shall be made by affidavit. Where
16 service within the state includes mailing, the return shall state the date and place of mailing.

17 ~~[J.]~~K. **Construction of terms.** Wherever the terms “summons₁”~~[;]~~ “process₁”~~[;]~~ “service
18 of process₁” or similar terms are used, ~~[such]~~ the terms shall include the summons, complaint₁ and
19 any other papers required to be served.

20 [As amended, effective January 1, 1990; as amended by Supreme Court Order No. 22-8300-026,
21 effective for all cases pending or filed on or after December 31, 2022.]

22 **Committee Commentary** — Paragraph H was added in 2022 to address situations in which
23 a defendant is mailed a summons for the defendant’s first appearance in a criminal case and the

summons is returned to the court as undelivered or undeliverable. In these instances, the defendant has not received notice to appear. Paragraph H applies only to the first appearance, i.e., bond arraignment, and not to subsequent appearances as the defendant is under an obligation to keep the court apprised of a current mailing address after the defendant's first appearance.

Courts should avoid issuing a warrant or leaving a warrant in place when facts indicate that the defendant did not receive proper notice. In deciding whether facts indicate that an appropriate bond should be imposed, the judge should consider factors such as the defendant's failure to appear history and whether there was contact between the defendant and law enforcement that indicates the defendant received notice.

Warrants issued under Paragraphs (G)(1) and (H)(1)(b) of this rule are not bench warrants for failure to appear. Rather, these warrants are arrest warrants issued on the underlying charge as prescribed in Rules 6-204 and 6-206 NMRA.

[Adopted by Supreme Court Order No. 22-8300-026, effective for all cases pending or filed on or after December 31, 2022.]