

## PROPOSED REVISIONS TO THE CHILDREN'S COURT RULES AND FORMS

The Children's Court Rules Committee has recommended proposed amendments to Rule 10-103 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments 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://nmsupremecourt.nmcourts.gov>/ or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk  
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 April 6, 2016, 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.

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### **10-103. [Process] Service of process.**

A. **Summons; issuance.** Upon the filing of the petition, the clerk shall issue a summons and deliver it to the petitioner for service. Upon the request of the petitioner, the clerk shall issue separate or additional summons. 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) 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 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 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 such 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]~~ 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 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 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 an individual.**

(1) Personal service of process shall be made upon 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 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~~ (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) of this paragraph, 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) of this paragraph, then service of process may be made by delivering a copy of the process at 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 minor, incompetent person, custodian, guardian or fiduciary.**

(1) A child who is a respondent[;] in [~~either~~] 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 of these rules.

(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 the conservator or guardian, if there is a conservator of the estate or guardian of the incompetent person, in the manner and priority provided by Paragraph F or H 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.

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

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

(1) Except in delinquency and youthful offender proceedings, 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 respondent of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.

(2) In delinquency or youthful offender proceedings, upon 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 court may order service at the child's school.

**I. Service by publication.** Service by publication may be made only pursuant to Paragraph H 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 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 10-108 NMRA, including a statement which describes the action or relief requested;

(b) 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

(c) 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 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.

**K. Service of process in the United States, but outside of state.** Whenever the jurisdiction of the court over the respondent 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.

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

(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 or H of this rule as may be appropriate.

**M. Service by mail on child in delinquency or youthful offender proceedings; time to appear.** If service is made by mail under Subparagraph (E)(3) upon 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.

**[M]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 such 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. \_\_\_\_\_, effective for all cases filed or pending on or after \_\_\_\_\_.]

**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.

[As amended by Supreme Court Order No. 08-8300-042, effective January 15, 2009.]



Proposed Rule Changes Comment Form.

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SUPREME COURT OF NEW MEXICO  
FILED

APR 06 2016

Rule No: 10-103



Comments:

Thanks to the Committee for its work in reviewing and revising this rule.

I have a concern and a comment. First, the comment. In regard to section M, I would suggest that the Committee consider adding the language from the former 10-104.1 (E): "If service is made by mail an additional three (3) days shall be added."

My concern is in regard to section H: I am concerned that by adding a special provision allowing service of a petition on a child at school in a delinquency/youthful offender matter, the delinquency system thereby adds another inroad for the school-to-prison pipeline in New Mexico. The Rule as it stands already provides for alternate methods of service. Service can even be completed by leaving process at the address if the person at the address refuses to accept service, under F(1)(a). Certainly if a child is attending school, JPO or the children's court attorney can obtain the child's address from the school. The CCA can then mail or leave service at that address rather than finding the child and serving the child at their educational institution. Further, what stops a child from hiding a court notice received at school, or ensures that the child reads and understands that notice? What happens when a child goes to a teacher or counselor or administrator with the paperwork and

asks the administrator to explain, and the allegations are now essentially public record with the school, with all of the accompanying labeling?

I see another problematic aspect of this proposal, that when service at school is an enumerated available mechanism, it may be that the overburdened system comes to rely on it more frequently than the rule anticipates. Thereby we create another disincentive for children to attend school; once kids know school is a place where one is served with court paperwork, they will add that to the list of reasons to avoid educational facilities. This is the school-to-prison pipeline; it contributes to the educational problems that we New Mexicans are well aware of, and that we all want to fix. I understand that the Committee has tried to limit the use of this provision by specifying the circumstances under which it would be used, but I nevertheless believe

that codifying the mechanism of serving a child at school is unnecessary and fear that it may further the criminalization, and school push-out, of children in our state.

A sincere thanks again for your consideration.

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