

**PROPOSED REVISIONS TO THE CIVIL FORMS
PROPOSAL 2020-013**

March 3, 2020

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Forms 4-905 and 4-924 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://supremecourt.nmcourts.gov/open-for-comment.aspx> 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 2, 2020, 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.

4-905. Summons and notice of trial on petition for writ of restitution (*Uniform Owner-Resident Relations Act*).

[Section 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT [No. _____]
_____ COUNTY

_____, Plaintiff,

v. No. _____

_____, Defendant.

**SUMMONS AND NOTICE OF TRIAL
ON PETITION FOR WRIT OF RESTITUTION
(*Uniform Owner-Resident Relations Act*)**

To: _____, defendant
Address: _____
_____, New Mexico _____

GREETINGS:

You are ordered to appear for trial before the Honorable _____, Judge, Div. _____, located at _____, New Mexico on the _____ day of _____, _____ (date), at the hour of _____m. to show cause and present all evidence you may have why the plaintiff's petition for a writ of restitution for the property located at _____ should not be granted and why the plaintiff should not have judgment against you for any back rents or damages you caused to the property, in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

Your answer must be filed with the court, which is located at: _____ (street address of court).
A copy of your answer must be mailed to: _____ (name and address of plaintiff or plaintiff's attorney)

Name: _____

Address: _____

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written answer and you must pay a jury fee when you file your answer.

If you need an interpreter, you must ask the court for one in writing.

~~[FOR USE ONLY IN METROPOLITAN COURT CASES~~

~~[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]~~

Dated: _____ .

Judge

- by delivering a copy of this summons, a copy of the complaint and an answer form to _____, (parent) (guardian) (custodian) of defendant *(used when defendant is a minor or an incompetent person)*.
- by delivering a copy of this summons, a copy of the petition and an answer form to _____ *(name of person)*, _____, *(title of person authorized to receive service)* *(used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)*.
- by service by mail.

Fees: _____

Signature of person making service

Title *(if any)*

Subscribed and sworn to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by posting)^{[4][5]}

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to before me
this _____ day of _____,
_____.

Judge, notary or other officer
authorized to administer oaths³

Official title

(To be completed if service is made by mail.)^{[5]6}

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and [~~acknowledgement~~] acknowledgment and a return envelope, postage prepaid, addressed to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title *(if any)*

Place of mailing

Date

Subscribed and sworn to before me
this _____ day of _____,
_____.

Judge, notary or other officer
authorized to administer oaths

Official title³

USE NOTES

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, *see* Rule 4-907 NMRA.

3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

4. Not for use in the district courts, unless such form of service has been authorized under Rule 1-004(J) NMRA.

[4]5. For use when service is by posting.

[5]6. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[Former Rule 4-904 SCRA 1986; recompiled as Rule 4-905 NMRA and amended, effective September 2, 1997; as amended by Supreme Court Order No. _____, effective _____.]

4-924. Summons and notice of trial on petition for termination of tenancy (*Mobile Home Park Act*).

[Sections 47-10-4 and 47-8-43 NMSA 1978]

STATE OF NEW MEXICO

_____ COURT [No. _____]
_____ COUNTY

_____, Plaintiff,

v. No. _____

_____, Defendant.

**SUMMONS AND NOTICE OF TRIAL ON
PETITION FOR TERMINATION OF TENANCY
(*Mobile Home Park Act*)**

To: _____, defendant
Address: _____
_____, New Mexico _____

You are notified that an action has been filed to terminate the rental agreement or lease of a mobile home space located in _____ County, New Mexico at:
_____ (*name of mobile home park*)
_____ (*mobile home address*)
_____ (*mobile home lot or space*)
_____, New Mexico _____.

You are ordered to appear for trial before the Honorable _____, Judge, Div. _____, located at _____, New Mexico on the _____ day of _____, _____, at the hour of _____m. to show cause and present all evidence you may have why the tenancy should not be terminated.¹

Your failure to appear at the time and place specified above may result in the entry of judgment against you in accordance with the petition filed by the plaintiff in this action, a copy of which is attached.

You may file a written answer and assert any claims you may have prior to the trial.

Your answer must be filed with the court, which is located at: _____ (*street address of court*).
A copy of your answer must be mailed to: _____ (*name and address of plaintiff or plaintiff's attorney*)

Name: _____

Address: _____

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written answer and you must pay a jury fee when you file your answer.

If you need an interpreter, you must ask the court for one in writing.

FOR USE ONLY IN METROPOLITAN COURT CASES

[IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT BEFORE THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.]

Dated: _____.

_____ Judge

By: _____

Clerk

**THIS IS YOUR NOTICE OF TRIAL
and will be the only notice
that you will receive.**

RETURN²

STATE OF NEW MEXICO)

) ss

COUNTY OF _____)

(complete if service is by a person other than the sheriff or deputy)³

I, being sworn state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____ (date), by delivering a copy of this summons, a copy of the petition and a copy of the answer form⁴ in the following manner:

(check and complete only if service by sheriff or deputy)³

I certify that I served this summons in _____ county on the _____ day of _____, (date), by delivering a copy of the summons, a copy of the petition and an answer form in the following manner:

(person serving summons must check one of following boxes and fill in appropriate blanks)

- by delivering a copy of this summons, a copy of the petition and an answer form to the defendant _____ (*used when defendant receives copy of summons or refuses to receive summons*).
- by delivering a copy of this summons, a copy of the petition and an answer form to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, located at _____ (address) (*used when defendant is not presently at the abode*).
- by posting a copy of the summons, petition and an answer form in the most public part of the premises of defendant _____ located at _____ (address). (*used if no person found at dwelling house or usual place of abode.*) (*If service is by posting a copy of the summons, petition and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.*)⁵
- by delivering a copy of this summons, a copy of the petition and an answer form to _____, an agent authorized to receive service of process for defendant.
- by delivering a copy of this summons, a copy of the complaint and an answer form to _____, (parent) (guardian) (custodian) of defendant (*used when defendant is a minor or an incompetent person*).
- by delivering a copy of this summons, a copy of the petition and an answer form to _____ (name of person), _____, (title of person authorized to receive service) (*used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).
- by service by mail.

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths³

Official title

*(To be completed if service is made by posting)*⁵

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title (*if any*)

Place of mailing

Date

Subscribed and sworn to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths³

Official title

*(To be completed if service is made by mail.)*⁶

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the _____ day of _____, _____, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and [~~acknowledgement~~] acknowledgment and a return envelope, postage prepaid, addressed to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Signature of person making service

Title (if any)

Place of mailing

Date

Subscribed and sworn to before me
this _____ day of _____,
_____.

Judge, notary or other officer
authorized to administer oaths

Official title³

USE NOTES

1. The trial setting must be not less than seven (7) nor more than ten (10) days after service of this summons. *See* Section 47-8-43 NMSA 1978.
2. A separate summons must be used for each defendant.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. An answer form must be attached to the summons at the time of service. *See* Rule 4-925 NMRA for answer to petition for termination of tenancy.
5. For use when service is by posting. *See* Section 47-10-4 NMSA 1978 for service by posting under the Mobile Home Park Act. This form requires service by mail in addition to posting.
6. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed with this summons.

[Adopted, effective September 2, 1997; as amended by Supreme Court Order No. _____, effective _____.]



Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Tue, Mar 3, 2020 at 3:39 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Frank Sedillo

SUPREME COURT OF NEW MEXICO
FILED

Phone Number
5058418287

MAR - 3 2020

Email
metrfas@nmcourts.gov

A handwritten signature in black ink, appearing to be "T. Saxon".

Proposal Number
2020-013

Comment

The Summons form should not contain any information with regard to a jury trial because the UORRA & Mobile Home Park Act are injunctive forms of relief. Parties are not entitled to a jury in such situations.

Upload



Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Tue, Mar 3, 2020 at 3:43 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name
Frank Sedillo

SUPREME COURT OF NEW MEXICO
FILED

Phone Number
5058418287

MAR - 3 2020

Email
metrfas@nmcourts.gov

A handwritten signature in black ink, appearing to be "GPA" followed by a horizontal line.

Proposal Number
2020-013

Comment

The Mobile Home Park Summons is incorrect with regard to the language concerning appeals. Under the current law, appeals under the Mobile Home Park Act are taken to the Court of Appeals, not the District Court.

Upload



New Mexico Legal Aid, Inc.

April 17, 2020

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

RE: Comments to Proposed Revisions to the Civil Form, Proposal 2020-013 (March 3, 2020)
Form 4-905 — Summons and notice of trial on petition for writ of restitution (*Uniform Owner-Resident Relations Act*) and
Form 4-924 — Summons and notice of trial on petition for termination of tenancy (*Mobile Home Park Act*)

Dear Mr. Moya:

Kindly consider these comments to Proposal 2020-013.

Proposed form 9-405 removes the mention of requesting a recording in light of HB 279, which made appeals from Uniform Owner-Resident Relations Act (UORRA) cases *de novo* to the District Court. While we welcome amending the summons form to address that change, we ask that the Court also simultaneously implement a rule for *de novo* UORRA appeals. The Second Judicial District Court, lacking an applicable rule, continues to apply Rule 1-073 NMRA (*Appeal from metropolitan court on the record*), to *de novo* UORRA appeals. This rule, which, among other things, requires that issues have been preserved below, does not provide for a *de novo* trial, and limits the district court to an on-the-record review, is not applicable to a *de novo* appeal. We continue to urge the Supreme Court to adopt a rule addressing *de novo* UORRA appeals from metropolitan court.

With regard to proposed form 9-924, we ask the Court also to amend the appellate rules so as to encompass on-the-record appeals from metropolitan court to the Court of Appeals, including Mobile Home Park Act (MHPA) appeals, consistent with HB 279.

Finally, we ask the Court to remove from the proposed MHPA summons the language imposing on the defendant-tenant an *option* to request a recording in on-the-record cases. In MHPA eviction cases, the vast majority of defendant-tenants are poor, uneducated and unrepresented. Many do not speak English. They haven't the faintest idea of the difference between an on-the-record appeal and a *de novo* appeal. They do not understand the impact of their failure to request a recording. It is a facile calculus that pretends these most vulnerable and least sophisticated of litigants understand their failure to request a record means they lose

their constitutional right to appeal. We urge the Court to remove the language from proposed form 4-924 imposing on defendants the obligation to request a recording. Consistent with HB 279 and the New Mexico Constitution, we ask the Court to adopt proposed Rule 3-109, which was approved by the Metropolitan Court Rules Committee in September 28, 2017, and which required that all metropolitan court on-the-record proceedings, including MHPA eviction cases, in fact be put on the record.

Thank you for considering these comments.

Respectfully submitted,

/s/ Thomas Prettyman
Managing Attorney-Albuquerque
505-814-6516
thomasp@nmlegalaid.org