

RULE 1-005

SERVICE OF OTHER PAPERS

A. **Service; when required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of settlement, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 1-004 NMRA.

B. **Service; how made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

C. **Definitions.** As used in this rule:

- (1) "delivery of a copy" means:
 - (a) handing it to the attorney or to the party;
 - (b) sending a copy by facsimile or electronic transmission when permitted by Rule 1-005.1 NMRA or Rule 1-005.2 NMRA;
 - (c) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or
 - (d) if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; and
- (2) "mailing a copy" means sending a copy by first class mail with proper postage.

D. **Service; numerous defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

E. **Filing; certificate of service.** All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed

with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

- (1) summonses without completed returns;
- (2) subpoenas;
- (3) returns of subpoenas;
- (4) interrogatories;
- (5) answers or objections to interrogatories;
- (6) requests for production of documents;
- (7) responses to requests for production of documents;
- (8) requests for admissions;
- (9) responses to requests for admissions;
- (10) depositions;
- (11) briefs or memoranda of authorities on unopposed motions;
- (12) offers of settlement when made; and
- (13) mandatory and supplemental disclosures served pursuant to Rule 1-123 NMRA.

Except for the papers described in Subparagraphs (1), (10) and (11) of this paragraph, counsel shall file a certificate of service with the court within a reasonable time after service, indicating the date and method of service of any paper not filed with the court.

F. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy or filing an electronic copy as may be permitted pursuant to Rule 1-005.1 NMRA or Rule 1-005.2 NMRA. A paper filed by electronic means in compliance with Rule 1-005.1 NMRA constitutes a written paper for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.