

Third Judicial District Court
Dona Ana County, NM

Service by Publication for Civil Cases



AFTER FILING YOUR COMPLAINT, YOU MUST GIVE THE OTHER PARTY (CALLED THE “DEFENDANT”) LEGAL NOTICE OF YOUR LAWSUIT BY ARRANGING TO HAVE THE SUMMONS AND COMPLAINT DELIVERED INTO THEIR HANDS. THIS IS CALLED “SERVING” THE DEFENDANT.

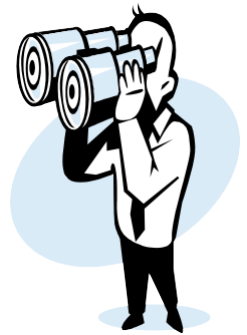
IF YOU CANNOT FIND THE DEFENANT FOR SERVING, YOU MAY ASK THE COURT’S PERMISSION TO SERVE HIM/HER BY PUBLISHING A SPECIAL “NOTICE” IN THE LEGAL ADS SECTION OF THE NEWSPAPER. THIS IS CALLED SERVICE BY PUBLICATION.

FIRST YOU MUST LOOK FOR THE DEFENDANT

You must try really hard to find the Defendant. This is called *diligent efforts*. And, you should keep a record of what you do (keep copies of letters, emails, or returned mail, for example).

WHY do you have to look for the Defendant?

First, the judge can’t give you permission to publish in the newspaper unless your Motion (form #1) shows that you made *diligent efforts* find the Defendant. Second, if you serve by publication and later the Defendant can prove you could have found him/her, then he/she can argue, months or even years later, that the Order or Decree you got from the court isn’t valid!



LIST OF FORMS

- #1 Motion & Affidavit for Service by Publication
- #2 Order for Service of Process by Publication in a Newspaper
- #3 Notice of Suit
- #4 Submission of Affidavit of Publication

CAUTION

DO NOT USE THIS PACKET:

- * If the defendant lives in another country!
- * In quiet title actions!
- * In actions where unknown heirs are parties!

That takes a lawyer’s help.

Take it one step at a time:

- Fill-out all 4 forms in this packet.
- Give the court clerk the original and one copy of the: Motion (#1), Order (#2), and Notice (#3). **IMPORTANT!!!** If the Defendant cannot be found in Dona Ana County, give the court clerk 2 copies of the Notice (#3). That’s because you **MUST** publish in Dona Ana County AND in the county where the Defendant is most likely to be found. If that is the case, you need one Notice per newspaper.
- Give the court clerk a letter-sized envelope with first-class postage (address the envelope to you).
- If the judge approves your request, the court clerk puts a raised seal (called “issuing”) on the Notice. The Order and the Notice with the raised seal are mailed to you in the envelope you gave the court clerk. **IMPORTANT!! DON’T publish until you receive the Notice with the raised seal!!**
- Arrange with the newspaper to publish the issued Notice. You must pay for the cost to publish. The court cannot waive the newspaper’s fee.
- After the Notice is published, the newspaper sends an affidavit to you that proves your Notice was put in the newspaper. Attach the newspaper’s affidavit to the last form in this packet—the Submission of Affidavit of Publication (#4) and file it with the court. This is your official proof that you served the Defendant by publishing in the newspaper.

This information and materials are provided as a courtesy only. They are not intended as legal advice and do not substitute for seeking independent legal or other professional advice as to the handling of this lawsuit, or related legal matters. The Court and the Court’s Self Help Center are not responsible for any errors contained in these materials or information, and are not liable for direct, indirect, special or consequential damages in connection with the furnishing of these materials or information.

SERVICE BY PUBLICATION:

RULE 1-004, NMRA (Process, paragraphs J and K)

- J. Process; service in manner approved by court. 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 defendant of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.
- K. Process; service by publication. Service by publication may be made only pursuant to Paragraph J 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 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 defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.
 - (2) The notice of pendency of action shall contain:
 - (a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;
 - (b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;
 - (c) the name, address and telephone number of plaintiff's attorney; and
 - (d) a statement that a default judgment may be entered if a response is not filed.
 - (3) If the cause of action involves real property, the notice shall describe the property as follows:
 - (a) If the property has a street address, the name of the municipality or county address and the street address of the property.
 - (b) If the property is located in a Spanish or Mexican grant, the name of the grant.
 - (c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.
 - (4) In actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons" followed by the names of the deceased persons whose unknown heirs are sought to be served. As to parties named in the alternative, the notice shall be given to "the following named defendants by name, if living; if deceased, their unknown heirs" followed by the names of the defendants. As to parties named as "unknown claimants", notice shall be given to the "unknown persons who may claim a lien, interest or title adverse to the plaintiff" followed by the names of the deceased persons whose unknown claimants are sought to be served.

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

Case No. D-307-CV _____

Judge: _____

_____, Defendant.

**MOTION and AFFIDAVIT FOR
SERVICE OF PROCESS BY PUBLICATION**

1. My name is _____. I am the Plaintiff in this action. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

2. The name of the Defendant I am trying to serve is: _____.
(print first, middle and last name)

3. The last I knew, this Defendant was most likely to be found:

(check the box that applies to your situation)

in Dona Ana County. The *Las Cruces Sun News*, *The Bulletin*, and *El Diario de El Paso* are newspapers of general circulation in Dona Ana County.

In this place *(City/County/State)* _____.
A newspaper of general circulation in this County is: _____.

I don't know where this Defendant is likely to be found.

4. **DILIGENT EFFORTS:**

This is a list of the diligent efforts I made to find/serve this Defendant. Even though I made all these efforts, I have been unable to find this Defendant. Service of Process cannot be reasonably made except by publication.

(check ALL boxes that apply)

- Personal service was attempted, but failed.
- Service by mail/courier service was attempted, but failed.
- I tried to find this Defendant's address by checking with his/her family or friends, but failed.
- I tried to find this Defendant's address in the local telephone book and/or on the internet, but failed.
- I looked for this Defendant on the internet (Facebook, Twitter, etc.), but failed.
- I asked the post office for the zip code of this Defendant's last known address and there was no forwarding address.
- I searched the records of the following court(s): _____
- I checked with the motor vehicle division for this Defendant's listed address, but there is no listed address or the listed address is wrong.
- I was in contact with this Defendant as recently as (month/year) _____, but he/she would not give me his/her address.
- I have been separated from this Defendant since (month/year) _____, and we've had no contact since then. I have no idea where he/she might be now.
- I have *some* information about this Defendant (phone number, email address, etc.), but it hasn't led to an address where he/she can be served.
- Here are other ways I have tried to find this Defendant:

<input type="radio"/> YES <input type="radio"/> NO I have attached copies of notes or documents that show my efforts to find this Defendant.

REMINDER!!

**AFTER YOU FILL-OUT THE
“NOTICE OF SUIT” (form #2 in the packet)**

ATTACH A COPY TO YOUR PETITION

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

Case No. D-307-CV _____

Judge: _____

_____, Defendant.

NOTICE OF SUIT

TO _____, DEFENDANT:

Take notice that a lawsuit has been filed against you.

The subject of this lawsuit is: _____

If you do not file an answer or responsive pleading with the above-titled Court within 30 days after the third publication of this Notice, the Court may enter a default judgment against you.

This lawsuit is not about real property.

This lawsuit is about the real property located at:

(Street address/City/County) _____

(Other descriptive information) _____

Plaintiff's: Name: _____

Mailing Address: _____

City/State/Zip: _____

Telephone: _____

WITNESS the Honorable _____, District Judge of the Third
Judicial District Court of the State of New Mexico and the seal of the District Court of Dona Ana
County, this _____ day of _____, 20_____.

BERNICE A. RAMOS
CLERK OF THE DISTRICT COURT

(SEAL)

BY: _____
DEPUTY

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

Case No. D-307-CV _____

Judge: _____

_____, Defendant.

**ORDER FOR SERVICE OF PROCESS
BY PUBLICATION IN A NEWSPAPER**

Plaintiff has filed a motion requesting that the court approve service of process by publication in a newspaper of general circulation.

The Defendant to be served is _____
(print the name of person to be served)

THE COURT FINDS AND ORDERS:

- That the Plaintiff's motion is **NOT** well taken and is **DENIED**.
- That the Plaintiff's motion is well taken and is **GRANTED**.
- That since the Plaintiff has made diligent efforts to make personal service, but has not been able to complete service of process, Plaintiff serve process by publication on the above-named Defendant by publishing once a week for three consecutive weeks in a newspaper of general circulation in Dona Ana County; specifically:

Las Cruces Sun News *The Bulletin* *El Diario de El Paso*

- And, since the above-named Defendant is most likely to be found outside Dona Ana County, that service of process be published once a week for three consecutive weeks in a newspaper of general circulation in the county where Defendant is most likely to be found; specifically:

_____ (name of the newspaper)

- That Plaintiff will file a copy of the affidavit(s) of publication when publication has been completed.

DISTRICT COURT JUDGE

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Plaintiff,

v.

Case No. D-307-CV _____

Judge: _____

_____, Defendant.

SUBMISSION OF PROOF OF PUBLICATION

Submitted for the Court's review is the original Proof Of Publication prepared by the:

Las Cruces Sun News

The Bulletin

El Diario de El Paso

Other: _____

Respectfully submitted,

(SIGN YOUR NAME)

(PRINT YOUR NAME)

(YOUR MAILING ADDRESS)

(CITY/STATE/ZIP)

(YOUR TELEPHONE)