

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS, THE RULES OF CIVIL PROCEDURE FOR THE MAGISTRATE
COURTS, THE RULES OF CIVIL PROCEDURE FOR THE METROPOLITAN
COURTS, AND THE CIVIL FORMS**

PROPOSAL 2025-005

March 6, 2025

The Rules of Civil Procedure for State Courts Committee has recommended the adoption of Forms 4-226A, 4-301A, 4-805B, and 4-805C NMRA and the amendment of Rules 1-009, 1-055, 1-060, 1-065.1, 1-065.2, 2-201, 2-702, 2-703, 2-801, 2-802, 3-201, 3-702, 3-704, 3-801, and 3-802 NMRA, and Forms 4-204, 4-801, 4-801A, 4-808, 4-808A, and 4-809 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 website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

1-009. Pleading special matters.

A. **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, that party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

B. **Fraud, mistake, and condition of the mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. **Conditions precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or

have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

D. **Official document or act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

E. **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

F. **Time and place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

G. **Special damage.** When items of special damage are claimed, they shall be specifically stated.

Statutes. It shall not be necessary in any pleading to set forth any statute, public or private or any special matter thereof, but it shall be sufficient for the party to allege that the act was done by authority of the statute, or contrary to the provisions of the statute, naming the subject matter of the statute, or referring thereto in some general term with convenient certainty.

I. **Copy to be served.** When any instrument of writing on which the action or defense is founded is referred to in the pleadings, the original or a copy of the instrument shall be served with the pleading, if within the power or control of the party wishing to use the same. A copy of the instrument of writing need not be filed with the district court.

J. **Consumer debt claims.**

(1) ~~[Definition.]~~ The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services which are the subject of the original transaction are primarily for personal, family, or household purposes, other than medical debt or loans secured by real property, shall comply with Rule 1-009(J)([2]3), Rule 1-017(E), and Form 4-226 NMRA.

(2) **Medical debt claims.** The pleading of a party whose cause of action is to collect a medical debt, as defined in Section 57-32-2(I) NMSA 1978, shall comply with Rule 1-009(J)(3), Rule 1-017(E), Form 4-226A NMRA, and shall include a copy of the current Attestation of Indigency form promulgated by the New Mexico Superintendent of Insurance.

(3) **Copy to be served and filed.** When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause.

(4) **An answer responding to a claim for medical debt that complies with Form 4-301A meets the requirement of Rule 1-009(C).**

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Paragraph J of this rule was added in 2016 to provide additional protections to consumers in consumer debt collection cases. Rules 1-017(E), 1-055(B), and 1-060(B)(6) NMRA were also amended, and Form 4-226 NMRA created, for the same purpose. After consulting with the New Mexico Attorney General’s Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, “*Repairing a Broken System: Protecting*

Consumers in Debt Collection Litigation and Arbitration,” the Committee concluded, and the Court agreed, that amendments to the rules are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase, “acting in the ordinary course of business,” see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as “business practice that is routine, regular, usual, or normally done”). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; foreclosure actions are not.

Committee commentary for 2025 amendment—For actions filed on or after July 1, 2021, seeking recovery for “medical debt,” as defined in the Patients’ Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978, the pleadings must comply with the 2025 amendments to Paragraph J of this rule.

Paragraph J(2) of this rule requires the claimant seeking to recover upon charges for medical debt to serve with its initial pleading a copy of the current Attestation of Indigency form promulgated by the New Mexico Office of the Superintendent of Insurance. The current version of the form may be found via the link on the Office of Superintendent of Insurance’s Patients Debt Collection Protection Act webpage at <https://www.osi.state.nm.us/pages/misc/patients-debt-collection-protection-act>.

[Adopted by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

1-055. Default.

A. **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

B. **Judgment.** Judgment by default may be entered as follows: in all cases the party entitled to a judgment by default shall apply to the court for judgment by default; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on the application; provided, however, that the filing of an appearance and disclaimer of interest shall not be construed as requiring the service of written notice of application for judgment under the terms of this rule. In cases controlled by Rule 1-009(J) NMRA, prior to entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rule 1-009(J)([2]1) and 1-017(E) NMRA, and has substantially complied with the

requirements of Form 4-226, or has complied with Rule 1-009(J)(2) and 1-017(E) NMRA, and has substantially complied with the requirements of Form 4-226A NMRA. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct those hearings or order those references as it deems necessary and proper and shall accord a right of trial by jury to the parties entitled thereto.

C. **Setting aside default.** For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 1-060 NMRA.

D. **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 1-054(C) NMRA.

E. **Limitations.** No judgment by default shall be entered against the state or an officer or agency of the state or against a party in any case based on a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court.

[As amended, effective August 27, 1999; as amended by Supreme Court Order 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order _____, effective for all cases pending or filed on or after _____]

Committee commentary. Paragraph B of this rule was revised in 2016 to provide additional protections to consumers in consumer debt collection cases. See Commentary to Rule 1-009 NMRA. Paragraph B references Rule 1-009(J)(2) NMRA, under which, if the party seeking relief in a consumer debt claim has not served and filed with the district court the instrument of writing on which the party's claim is based, the district court shall not enter a default judgment without the court's finding of the party's good cause failure to do so. For cases involving a negotiable instrument which is not part of a consumer debt claim, Paragraph E of this rule requires that the original negotiable instrument be filed with the court unless the party seeking default judgment provides sufficient alternative evidence to demonstrate the party's right to relief.

Committee commentary for 2025 amendment. Effective _____, the Supreme Court amended Rule 1-009(J) NMRA, modifying the pleading rules applicable to consumer debt claims and creating a separate pleading rule applicable to collection actions pursuing "medical debt" as defined in the Patients' Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978. The changes in Rule 1-009(J) are reflected in this amendment to Rule 1-055 NMRA.

[As amended, effective August 27, 1999; as amended by Supreme Court Order 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order _____, effective for all cases pending or filed on or after _____.]

1-060. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, these mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

B. **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and on such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 1-059 NMRA;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment, including failure of a party who was subject to the provisions of Rule 1-009(J) NMRA to comply with Rule 1-009(J)(2) and 1-017(E) NMRA, and to substantially comply with Form 4-226 NMRA, or to comply with Rule 1-009(J)(2) and 1-017(E) NMRA, and to substantially comply with Form 4-226A NMRA. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the proceeding for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

[As amended by Supreme Court Order No. 13-8300-032, effective in all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Under Rule 12-201(D)(4) NMRA, a timely filed notice of appeal does not divest the district court of jurisdiction to dispose of any timely filed motion under Rules 1-050, 1-052, or 1-059 NMRA, or a Rule 1-060 NMRA motion filed within thirty (30) days after the filing of a judgment. The notice of appeal becomes effective when the last such motion is disposed of expressly by an order of the district court, is automatically denied, or is withdrawn.

2016 amendment

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046 provides that a judgment "is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing."

(Emphasis added). The amendment to Rule 1-060(B)(6) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 1-060(B)(4).

Rule 1-060(B)(6) now provides that non-compliance with the requirements of Rule 1-009(J)(2) NMRA or Rule 1-017(E) NMRA or the failure to have substantially complied with Form 4-226 NMRA can provide a basis for granting relief from a judgment entered in a case controlled by Rule 1-009(J). The addition of this language provides a ground for relief but does not compel the district court to grant relief in every case in which the movant shows non-compliance with these consumer debt provisions. In addition to the requirement of Rule 1-060(B)(6) that the movant file the motion within a reasonable time, the movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When these requirements are met, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a Rule 1-060(B)(4) motion to void the judgment can be brought at any time, does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87, 108 S. Ct. 896, 900, 99 L. Ed. 2d 75 (1988).

Committee commentary for the 2025 amendment. Effective July 1, 2017, the Supreme Court amended Rule 1-009 NMRA, by adding Rule 1-009(J) NMRA, which provides a pleading rule applicable to “consumer debt” claims including actions seeking to recover for “medical bills.” Effective _____, the Supreme Court amended Rule 1-009(J) NMRA, modifying the pleading rules applicable to consumer debt claims and creating a separate pleading rule applicable to collection actions pursuing “medical debt” as defined in the Patients’ Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978.

[As amended by Supreme Court Order No. 13-8300-032, effective in all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

1-065.1. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, on the filing of a timely application, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

- (1) if the judgment debtor is not a natural person, at any time after the filing of the judgment; or
- (2) if the judgment debtor is a natural person:
 - (a) on filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:
 - (i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and
 - (ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;

(b) on entry of an order finding that the property to be seized and sold is not exempt from execution; or

(c) on filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property that may be seized and sold to satisfy the debt.

B. Service of notice of right to claim exemptions from execution. If the judgment debtor is a natural person, no later than ten (10) days before the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve on each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 1-005 NMRA;

(2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 1-004 for service of the summons and complaint; or

(3) if service cannot be made on the judgment debtor under Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. Judgments for medical debt. If the judgment for which a writ of execution is sought is a judgment for medical debt as defined in the Patients' Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805C NMRA.

~~[C]~~**D. Claim of exemptions from execution.** Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

~~[D]~~**E. Service of claim of exemption.** At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor under Rule 1-005.

~~[E]~~**F. Failure to file claim of exemption.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

~~[F]~~**G. Dispute of claimed exemption.** Within ten (10) days after service of a claim of exemption on the judgment creditor under Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

[G]H. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

[H]I. **Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

[I]J. **Issuance and executions of writ.** A writ of execution issued under Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, on request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued under this rule may be served in the manner provided by law.

[J]K. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

[K]L. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

1-065.2. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon timely application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. **Judgments for medical debt.** If the judgment for which a writ of garnishment is sought is a judgment for medical debt as defined in the Patients’ Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805B NMRA.

[B]C. **Service of writ of garnishment.** A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 1-004 NMRA for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be sent to the judgment debtor’s last known address, and, if counsel remains of record in the proceeding,

to the last known address of the judgment debtor's counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

[C]D. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) ~~[unless the garnishment is for wages,]~~ a copy of the notice of right to claim exemptions and a copy of the claim of exemption form; and

(3) a copy of the answer by garnishee form approved by the New Mexico Supreme Court.

[D]E. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

[E]E. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

[F]G. **Service on judgment debtor by garnishee.** On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

[G]H. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment ~~[other than wages]~~ by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

[H]I. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 1-005 NMRA.

[I]J. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

[J]K. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

~~[K]~~L. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

~~[L]~~M. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

~~[M]~~N. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

~~[N]~~O. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Approved, effective January 1, 1996; as amended, effective February 15, 1999; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

2-201. Commencement of action.

A. **How commenced.** A civil action is commenced by filing with the court a complaint consisting of a written statement of a claim or claims setting forth briefly the facts and circumstances giving rise to the action.

B. **Jurisdiction.** Magistrates have jurisdiction in all cases as may be provided by law.

C. **Form of complaint.** The complaint shall be in substantially the form approved by the court administrator and the Supreme Court.

D. **Verified accounts.** Except in cases controlled by Paragraph E, accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for those accounts.

E. **Consumer debt claims.**

(1) ~~[Definition.]~~ The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for

personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 2-201(E)(23) and 2-401(D) NMRA, and Form 4-226 NMRA.

(2) **Medical debt claims.** The pleading of a party whose cause of action is to collect a medical debt, as defined in Section 57-32-2(I) NMSA 1978, shall comply with Rule 2-201(E)(3), Rule 2-401(D), Form 4-226A NMRA, and shall include a copy of the current Attestation of Indigency form promulgated by the New Mexico Superintendent of Insurance.

(3) **Copy to be served and filed.** When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause.

[As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph E of this rule was added in 2020 to provide additional protections to consumers in consumer debt collection cases. In addition, Rules 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

After considering the New Mexico Supreme Court’s 2016 amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and its creation of Form 4-226 NMRA, about consumer debt claim litigation in the district courts, the Committee concluded that similar amendments to the magistrate and metropolitan court rules are required to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases in these courts. The abuses include pleadings and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase “acting in the ordinary course of business,” see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, overruled on other grounds by *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as “business practice that is routine, regular, usual, or normally done”). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule.

Committee commentary for 2025 amendment. For actions filed on or after July 1, 2021, seeking recovery for “medical debt,” as defined in the Patients’ Debt Collection Protection Act, Section

57-32-2(I) NMSA 1978, the pleadings must comply with the 2025 amendments to Paragraph E of this rule.

Paragraph E(2) of this rule requires the claimant seeking to recover upon charges for medical debt to serve with its initial pleading a copy of the current Attestation of Indigency form promulgated by the New Mexico Office of the Superintendent of Insurance. The current version of the form may be found via the link on the Office of Superintendent of Insurance's Patients Debt Collection Protection Act webpage at <https://www.osi.state.nm.us/pages/misc/patients-debt-collection-protection-act>.

[As adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

2-702. Default.

A. **Failure to respond to summons.** If the defendant fails to appear at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons, and if the plaintiff proves by an appropriate return that proper service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs, and other items allowed by law. The court may require evidence as to any fact before entering default judgment. At a minimum, before entering a default judgment, the court shall require the plaintiff to allege sufficient facts to demonstrate the following:

(1) the plaintiff is a proper party to bring the lawsuit;
(2) the defendant is a proper party;
(3) a legal relationship exists between the plaintiff and the defendant that forms the basis of the lawsuit; [~~and~~]

(4) the amount of the damages, debt, or other relief requested, including principal, interest, and all other charges or costs[-]; and

(5) in cases controlled by Rule 2-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rule 2-201(E)(1) and 2-401(D) NMRA, and has substantially complied with the requirements of Form 4-226, or has complied with Rule 2-201(E)(2) and 2-401(D) NMRA, and has substantially complied with the requirements of Form 4-226A NMRA.

In cases controlled by Rule 2-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rules 2-201(E)(2) and 2-401(D) NMRA, and has substantially complied with the requirements of Form 4-226 NMRA.

A copy of the default judgment shall forthwith be mailed by the clerk of the court to each party against whom judgment has been entered. The clerk shall endorse on the judgment the date of mailing.

B. **Failure to appear at trial.** Failure to appear at the time and date set for trial shall be grounds for entering a default judgment against the nonappearing party.

C. **Setting aside default.** For good cause shown, within thirty (30) days after entry of judgment and if no appeal has been timely taken, the court may set aside a default judgment.

[As amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-005, effective

for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary.— In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph A of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 2-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

Paragraph A references Rule 2-201(E)(2) NMRA, which requires a party seeking relief in a consumer debt claim to serve with the pleading, and file with the magistrate court, the written instrument on which the party based its claim. If the party seeking relief fails to comply with this provision, the magistrate court shall not enter a default judgment without the party establishing good cause for its failure to comply.

Subparagraph (A)(5) was amended in _____, based on the Supreme Court's amendment to Rule 2-201(E) NMRA, which modified the pleading rules applicable to consumer debt claims and created a separate pleading rule applicable to collection actions pursuing "medical debt" as defined in the Patients' Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978. [Adopted by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

2-703. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or other parts of the file and errors therein arising from oversight or omission may be corrected by the magistrate at any time of his own initiative or on the request of any party after such notice to the opposing party, if any, as the magistrate orders. During the pendency of an appeal, such mistakes may be so corrected before the transcript is filed in the district court, and thereafter while the appeal is pending may be so corrected with leave of the district court.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** If the judgment has not been filed in the district court, on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise or excusable neglect;
- (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;
- (3) the judgment is void;
- (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated; or
- (5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 2-201(E) NMRA to comply with Rules 2-201(E)([2]1) and 2-401(D) NMRA, and to substantially comply with Form 4-

226 NMRA, or to comply with Rule 2-201(E)(2) and 2-401(D) NMRA, and to substantially comply with Form 4-226A.

A motion filed pursuant to Subparagraph (1) or (2) of this paragraph shall be filed not more than one (1) year after the judgment, order or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation.

An order granting or denying relief from a final judgment under this rule may be appealed to the district court in the same manner as other appeals from final judgments of the magistrate court are taken.

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released or discharged. The application shall be served upon the judgment creditor in the manner prescribed by Rule 2-202 for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at such hearing, a default satisfaction of judgment may be entered upon:

(1) the filing of the return of service or an affidavit that after “diligent search” the judgment creditor could not be located. For purposes of this subparagraph “diligent search” includes, but shall not be limited to an affidavit that:

(a) the judgment creditor no longer has a business or residence at the judgment creditor’s last known address as shown in the court file; and

(b) the judgment creditor could not be located through a search of telephone and city directories in each county where the judgment creditor was known to have resided or maintained a place of business in this state; and

(2) proof of payment of the full amount of such judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs has not been paid in full, payment into the court of a money order or cashier’s check made payable to the administrative office of the courts. Upon receipt of a money order or cashier’s check pursuant to this subparagraph, the administrative office of the courts shall deposit such money order or cashier’s check in a suspense account in the state treasury. Funds deposited in such account shall be disbursed in accordance with Section 39-1-6.2 NMSA 1978.

D. **Filing in district courts.** If the judgment has been filed in the district court pursuant to Paragraph E of Rule 2-803, the motion for an order declaring the judgment satisfied shall be filed in the district court.

[As amended, effective July 1, 1990; January 1, 1993; January 1, 1997; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph B of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 2-201 NMRA, Committee commentary. In addition,

Rules 2-201, 2-401, 2-702, 3-201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and metropolitan court rules for consumer debt claims with the district court rules.

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046, provides that a judgment “is not voidable under Rule 1-060(B) due to a lack of prudential standing.” (Emphasis added). Rule 1-060(B)(4) NMRA is equivalent to Rule 2-703(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment to Rule 2-703 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 2-703(B)(3) NMRA.

Rule 2-703(B)(5) NMRA now provides that noncompliance with the requirements of Rule 2-201(E)(2) NMRA or Rule 2-401(D) NMRA, or the failure to substantially comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment entered in a case controlled by Rule 2-201(E) NMRA. The addition of this language provides a ground for relief, but does not compel the magistrate court to grant relief in every case in which the movant shows noncompliance with these consumer debt provisions. The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When the movant meets this requirement, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a motion to void the judgment under Rule 2-703(B)(3) NMRA does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

Subparagraph (B)(5) was amended in _____, based on the Supreme Court’s amendment to Rule 2-201(E) NMRA, which modified the pleading rules applicable to consumer debt claims and created a separate pleading rule applicable to collection actions pursuing “medical debt” as defined in the Patients’ Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978.

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

2-801. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, on the timely filing of an application, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

- (1) if the judgment debtor is not a natural person, at any time after the filing of the judgment;
- (2) if the judgment debtor is a natural person:
 - (a) on filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:
 - (i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and
 - (ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;

(b) on entry of an order finding that the property to be seized and sold is not exempt from execution; or

(c) on filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property which may be seized and sold to satisfy the debt.

B. Service of notice of right to claim exemptions from execution. If the judgment debtor is a natural person, no later than ten (10) days after the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve on each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 2-203 NMRA;

(2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 2-202 NMRA for service of the summons and complaint; or

(3) if service cannot be made on the judgment debtor under Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. Judgments for medical debt. If the judgment for which a writ of execution is sought is a judgment for medical debt as defined in the Patients' Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805C NMRA.

[C]D. Claim of exemptions from execution. Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

[D]E. Service of claim of exemption. At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor.

[E]F. Failure to file claim of exemption. If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

[F]G. Dispute of claimed exemption. Within ten (10) days after service of a claim of exemption on the judgment creditor under Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

[G]H. Notice of hearing on dispute. If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

~~[H]~~**I. Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

~~[I]~~**J. Issuance and executions of writ.** A writ of execution issued under Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, on request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued under this rule may be served in the manner provided by law.

~~[J]~~**K. Sheriff's sale.** A sale shall be conducted in the manner provided by law.

~~[K]~~**L. Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

2-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and on timely application of the judgment creditor, including an affidavit from the judgment creditor that the judgment creditor has made reasonable investigation and has no knowledge that the judgment debtor owns property within the state subject to execution, the clerk of the court shall issue a writ of garnishment.

B. **Judgments for medical debt.** If the judgment for which a writ of garnishment is sought is a judgment for medical debt as defined in the Patients’ Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805B NMRA.

~~[B]~~**C. Service of writ of garnishment.** Within thirty (30) days of its issuance, a writ of garnishment issued under this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 2-202 NMRA for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be sent to the judgment debtor's last known address, and, if counsel remains of record in the proceeding, to the last known address of the judgment debtor’s

counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

[C]D. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

[D]E. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

[E]F. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

[F]G. **Service on judgment debtor by garnishee.** On or before the fourth business day after service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor under Paragraph C of this rule.

[G]H. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

[H]I. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form on the judgment creditor and the garnishee in the manner provided by Rule 2-203 NMRA.

[I]J. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

[J]K. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

[K]L. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the

judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

[L]M. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

[M]N. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment. Interest shall continue to accrue on the judgment until the date the judgment is satisfied.

[N]O. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996; as amended by Supreme Court Order No. 08-8300-046, effective December 31, 2008; as amended by Supreme Court Order No. 14-8300-019, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

3-201. Commencement of action.

A. **How commenced.** A civil action is commenced by filing with the court a complaint consisting of a written statement of a claim or claims setting forth briefly the facts and circumstances giving rise to the action.

B. **Nature of claim.** Metropolitan judges have jurisdiction in all cases as may be provided by law.

C. **Form of complaint.** The complaint shall be in substantially the form approved by the court administrator and the Supreme Court.

D. **Verified accounts.** Except in cases controlled by Paragraph E, accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing, not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for those accounts.

E. **Consumer debt claims.**

(1) ~~[Definition.]~~ The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 3-201(E)([2]3) and 3-401(D) NMRA, and Form 4-226 NMRA.

(2) **Medical debt claims.** The pleading of a party whose cause of action is to collect a medical debt, as defined in Section 57-32-2(I) NMSA 1978, shall comply with Rule 3-201(E)(3), Rule 3-401(D), Form 4-226A NMRA, and shall include a copy of the current Attestation of Indigency form promulgated by the New Mexico Superintendent of Insurance.

(3) **Copy to be served and filed.** When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause.

[As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraphs C and E of this rule were added in 2020 to provide additional protections to consumers in consumer debt collection cases. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan and magistrate court rules for consumer debt claims with the district court rules.

After considering the New Mexico Supreme Court's 2016 amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and its creation of Form 4-226 NMRA, about consumer debt claim litigation in the district courts, the Committee concluded that similar amendments to the metropolitan and magistrate court rules are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases in these courts. The abuses include pleadings and judgments based on insufficient or unreliable evidence, "robo-signing" of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part

by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase "acting in the ordinary course of business," see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as "business practice that is routine, regular, usual, or normally done"). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule.

Subparagraph (E)(2) of this rule requires the claimant seeking to recover upon charges for medical debt to serve with its initial pleading a copy of the current Attestation of Indigency form promulgated by the New Mexico Office of the Superintendent of Insurance. The current version of the form may be found via the link on the Office of Superintendent of Insurance's Patients Debt Collection Protection Act webpage at <https://www.osi.state.nm.us/pages/misc/patients-debt-collection-protection-act>.

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

3-702. Default.

A. **Failure to respond to summons.** If the defendant fails to appear at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons, and if the plaintiff proves by an appropriate return that proper service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs, and other items allowed by law. The court may require evidence as to any fact before entering default judgment. At a minimum, before entering a default judgment, the court shall require the plaintiff to allege sufficient facts to demonstrate the following:

(1) the plaintiff is a proper party to bring the lawsuit;
(2) the defendant is a proper party;
(3) a legal relationship exists between the plaintiff and the defendant that forms the basis of the lawsuit; ~~and~~

(4) the amount of the damages, debt, or other relief requested, including principal, interest, and all other charges or costs[-]; and

(5) in cases controlled by Rule 3-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rule 3-201(E)(1) and 3-401(D) NMRA, and has substantially complied with the requirements of Form 4-226, or has complied with Rule 3-201(E)(2) and 4-401(D) NMRA, and has substantially complied with the requirements of Form 4-226A NMRA.

In cases controlled by Rule 3-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rules 3-201(E)(2) and 3-401(D) NMRA, and has substantially complied with the requirements of Form 4-226 NMRA.

A copy of the default judgment shall forthwith be mailed by the clerk of the court to each party against whom judgment has been entered. The clerk shall endorse on the judgment the date of mailing.

B. **Failure to appear at trial.** Failure to appear at the time and date set for trial shall be grounds for entering a default judgment against the nonappearing party.

C. **Setting aside default.** For good cause shown, within thirty (30) days after entry of judgment and if no appeal has been timely taken, the court may set aside a default judgment. [As amended, effective October 1, 1987; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary.— In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph A of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 3-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan and magistrate court rules for consumer debt claims with the district court rules.

Paragraph A references Rule 3-201(E)(2) NMRA, which requires a party seeking relief in a consumer debt claim to serve with the pleading, and file with the metropolitan court, the written instrument on which the party based its claim. If the party seeking relief fails to comply with this provision, the metropolitan court shall not enter a default judgment without the party establishing good cause for its failure to comply.

Subparagraph (A)(5) was amended in _____, based on the Supreme Court's amendment to Rule 3-201(E) NMRA, which modified the pleading rules applicable to consumer debt claims and created a separate pleading rule applicable to collection actions pursuing "medical debt" as defined in the Patients' Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978. [Adopted by Supreme Court Order No. 16-8300-032; amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

3-704. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the district court, and thereafter while the appeal is pending may be so corrected with leave of the district court or the appellate court before which the appeal is pending.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise or excusable neglect;

(2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

(3) the judgment is void; [or]

(4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated; or

(5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 3-201(E) NMRA to comply with Rules 3-201(E)([2]1) and 3-401(D) NMRA, and to substantially comply with Form 4-226 NMRA, or to comply with Rule 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with Form 4-226A NMRA.

A motion filed pursuant to Subparagraph (1) or (2) of this paragraph shall be filed not more than one (1) year after the judgment, order or proceeding was entered or taken. A motion under this paragraph does not affect the finality of a judgment or suspend its operation.

An order granting or denying relief from a final judgment under this rule may be appealed to the district court in the same manner as other appeals from final judgments of the metropolitan court are taken.

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released or discharged. The application shall be served upon the judgment creditor in the manner prescribed by Rule 3-202 for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at such hearing, a default satisfaction of judgment may be entered upon

(1) the filing of the return of service or an affidavit that after “diligent search” the judgment creditor could not be located. For purposes of this subparagraph “diligent search” includes, but shall not be limited to an affidavit that:

(a) the judgment creditor no longer has a business or residence at the judgment creditor’s last known address as shown in the court file; and

(b) the judgment creditor could not be located through a search of telephone and city directories in each county where the judgment creditor was known to have resided or maintained a place of business in this state; and

(2) proof of payment of the full amount of such judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs has not been paid in full, payment into the court registry of the balance owed in accordance with Section 39-1-6.2 NMSA 1978 plus any costs of court for receiving into and paying the money out of the registry of the court.

[As amended, effective July 1, 1990; January 1, 1997; as amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — In 2016, the New Mexico Supreme Court approved amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

Paragraph B of this rule was amended in 2020 to provide additional protections to consumers in consumer debt collection cases. *See* Rule 3-201 NMRA, Committee commentary. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, and 3-702 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan and magistrate court rules for consumer debt claims with the district court rules.

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046, provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing.” (Emphasis added). Rule 1-060(B)(4) NMRA is equivalent to Rule 3-704(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment to Rule 3-704 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule 3-704(B)(3) NMRA.

Rule 3-704(B)(5) NMRA now provides that noncompliance with the requirements of Rule 3-201(E)(2) NMRA or Rule 3-401(D) NMRA, or the failure to substantially comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment entered in a case controlled by Rule 3-201(E) NMRA. The addition of this language provides a ground for relief, but does not compel the metropolitan court to grant relief in every case in which the movant shows noncompliance with these consumer debt provisions. The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When the movant meets this requirement, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a motion to void the judgment under Rule 3-704(B)(3) NMRA does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

Subparagraph (B)(5) was amended in _____, based on the Supreme Court’s amendment to Rule 3-201(E) NMRA, which modified the pleading rules applicable to consumer debt claims and created a separate pleading rule applicable to collection actions pursuing “medical debt” as defined in the Patients’ Debt Collection Protection Act, Section 57-32-2(I) NMSA 1978.

[Adopted by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

3-801. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, on the timely filing of an application, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

- (1) if the judgment debtor is not a natural person, at any time after the filing of the judgment;
- (2) if the judgment debtor is a natural person:
 - (a) on filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:
 - (i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and
 - (ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;
 - (b) on entry of an order finding that the property to be seized and sold is not exempt from execution; or
 - (c) on filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property which may be seized and sold to satisfy the debt.

B. **Service of notice of right to claim exemptions from execution.** If the judgment debtor is a natural person, no later than ten (10) days before the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve on each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

- (1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 3-203 NMRA;
- (2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 3-202 NMRA for service of the summons and complaint; or
- (3) if service cannot be made on the judgment debtor under Subparagraphs (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. **Judgments for medical debt.** If the judgment for which a writ of execution is sought is a judgment for medical debt as defined in the Patients' Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805C NMRA.

~~[C]~~D. **Claim of exemptions from execution.** Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

~~[D]~~E. **Service of claim of exemption.** At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor.

~~[E]~~F. **Failure to file claim of exemption.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a

depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

~~[F]~~G. **Dispute of claimed exemption.** Within ten (10) days after service of a claim of exemption on the judgment creditor under Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

~~[G]~~H. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

~~[H]~~I. **Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

~~[I]~~J. **Issuance and executions of writ.** A writ of execution issued under Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued pursuant to this rule may be served in the manner provided by law.

~~[J]~~K. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

~~[K]~~L. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

3-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and on timely application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. **Judgments for medical debt.** If the judgment for which a writ of garnishment is sought is a judgment for medical debt as defined in the Patients' Debt Collection Protection Act, Section 57-3-2(I) NMSA 1978, the application for the writ shall comply with Form 4-805B NMRA.

[B]C. **Service of writ of garnishment.** A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be sent to the judgment debtor's last known address, and, if counsel remains of record in the proceeding, to the last known address of the judgment debtor's counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

[C]D. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

[D]E. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

[E]F. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

[F]G. **Service on judgment debtor by garnishee.** On or before the fourth business day after service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor under Paragraph C of this rule.

[G]H. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

[H]I. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form on the judgment creditor and the garnishee in the manner provided by Rule 3-203 NMRA.

[I]J. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory

exemption other than wages. Notwithstanding the foregoing, for actions filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 1978.

[~~F~~]K. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

[~~K~~]L. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

[~~L~~]M. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

[~~M~~]N. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed under this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

[~~N~~]O. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024.]

4-204. Civil summons.

[For use with Metropolitan Court Rule[s] 2-202 NMRA and Magistrate Court Rule 3-202 NMRA]

STATE OF NEW MEXICO

COURT

COUNTY

_____, Plaintiff,

v.

No. _____
Judge assigned: _____

_____, Defendant.

CIVIL SUMMONS

TO: _____, Defendant¹

ADDRESS: _____

GREETINGS: THIS IS A COURT ISSUED SUMMONS.

A LAWSUIT HAS BEEN FILED AGAINST YOU. A copy of the lawsuit (complaint) and a response form (answer form)² are attached.

YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file (in person or by mail) your written response with the court. When you file your response, you must give or mail a copy to the person who signed the complaint.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THE TWENTY (20) DAY PERIOD, NO COURT DATE WILL BE SET, AND THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU FOR THE MONEY OR OTHER RELIEF REQUESTED IN THE COMPLAINT. A DEFAULT JUDGMENT MEANS YOU LOSE THE CASE AND YOU OWE THE PLAINTIFF.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT, YOU MAY BE GIVING UP ANY DEFENSES YOU MAY HAVE, FOR EXAMPLE, THAT YOU DO NOT OWE THE PLAINTIFF OR THAT TOO MUCH TIME HAS PASSED.

You may wish to consult a lawyer. [~~You may contact the State Bar of New Mexico for~~] For help finding a lawyer, you may consult the online bar directory on the State Bar of New Mexico's

website at [~~www.nmbar.org~~] <https://www.sbnm.org/For-Public/I-Need-a-Lawyer/Online-Bar-Directory>. [~~1-800-876-6227; 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 response, and you must pay a jury fee when you file your response.

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

(The following paragraph is for use only if summons issued by the Metropolitan Court.)

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.

Your answer must be filed with the court, which is located at:

_____ *(street address of court).*

A copy of your answer or responsive pleading must be mailed to: *(name and address of plaintiff or plaintiff's attorney)*

Name: _____

Address: _____

Clerk

RETURN

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

(complete the following, unless service by 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 _____, _____, by delivering a copy of this summons, a copy of the complaint, and an answer *(indicate below how served)*:

(complete if service by sheriff or deputy)³

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

(person serving summons must check one box and fill in appropriate blanks)

☐ by delivering a copy of this summons, a copy of the complaint, 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 complaint, and an answer form to _____, a person over fifteen (15) years of age and residing at the usual home of the defendant, _____, located at _____ (*address*) (*used when defendant is not presently at the home*).

☐ by posting a copy of the summons, complaint, and an answer form in the most public part of the usual home of _____ (*name of defendant*) located at _____ (*address*) (*used if no person found at home or usual place of residence*).

(If service is by posting, a copy of the summons, complaint, 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.)

☐ by delivering a copy of this summons, a copy of the complaint, 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 complaint, 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

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

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

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

I, being sworn, state that I am over the age of eighteen (18) years, 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 (2) copies of the notice and 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

Place of mailing

Date

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

Judge, notary, or other officer
authorized to administer oaths³

Official title

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] see [Rules] Forms 4-301, 4-301A, and 4-302 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. For use if service is by posting.
5. If service is by mail, Civil Form 4-208 NMRA must be completed and mailed

with this summons.

[As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 21-8300-012, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

4-226A. Civil complaint provisions; medical debt claims.

[For use with District Court Rule 1-009(J) NMRA,
Magistrate Court Rule 2-201(E) NMRA, and
Metropolitan Court Rule 3-201(E) NMRA]

In addition to the requirements set forth in the New Mexico Rules of Civil Procedure, a pleading asserting a claim subject to Rule 1-009(J) NMRA, Rule 2-201(E) NMRA, or Rule 3-201(E) NMRA shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT/MAGISTRATE COURT/
METROPOLITAN COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

CIVIL COMPLAINT FOR MEDICAL DEBT

(a) The full name and address of the Defendant is as follows:

(b) The last two (2) digits of the Defendant's social security number, contained in the original creditor's records are as follows:

(c) If the Plaintiff does not provide the social security number above, Plaintiff states, with specificity, that the basis on which it was determined that the named Defendant is the debtor on the debt is as follows:

____ The Plaintiff has determined that the Defendant is not indigent as follows:

☐ The Plaintiff in this action is a Health Care Facility

☐ Plaintiff conducted a screening, pursuant to 13.10.39.8 NMAC, during which it determined that the Defendant is not indigent.

or

☐ After complying with 13.10.39.9(A)(a) and (B) NMAC Plaintiff determined that the Defendant is not indigent.

or

☐ Upon information and belief, the Defendant is not indigent under the methodology in 13.10.39.9(B) NMAC, and Plaintiff was unable to make a determination otherwise due to noncooperation by the Defendant, including after making at least the following three documented attempts to contact the Defendant:
(add lines)

☐ The Plaintiff in this action is a Third-party Health Care Provider.

☐ The Health Care Facility has not informed the Plaintiff that the Defendant is indigent.

and

☐ After complying with Reg.13.10.39.9(A)(a) and (B) NMAC Plaintiff determined that the Defendant is not indigent.

or

☐ Upon information and belief, the Defendant is not indigent under the methodology in 13.10.39.9(B) NMAC, and Plaintiff was unable to make a determination otherwise due to noncooperation by the Defendant, including after making at least the following three documented attempts to contact the Defendant:
(add lines)

☐ The Plaintiff in this action is a Medical Creditor other than a Health Care Facility or a Third-party Health Care Provider.

☐ After complying with 13.10.39.9(A)(a) and (B) NMAC Plaintiff determined that the Defendant is not indigent.

or

[] Upon information and belief, the Defendant is not indigent under the methodology in 13.10.39.9(B) NMAC, and Plaintiff was unable to make a determination otherwise due to noncooperation by the Defendant, including after making at least the following three documented attempts to contact the Defendant:
(add lines)

[] The Plaintiff in this action is a Medical Debt Collector seeking to recover a medical debt initially owed to a Health Care Facility or a Third-party Health Care Provider or another Medical Creditor.

(1) The name and address of the current owner of this debt is as follows:

(2) The name and address of the Medical Debt Collector is:

(3) The New Mexico license number for the Medical Debt Collector is as follows:

(4) The name and address under which the original creditor did business with the Defendant is as follows:

(5) The last four (4) digits of the Defendant's account number, used by the original creditor as of the date of default are as follows:

(6) The name and address of the current owner of this debt is as follows:

(7) The specific facts demonstrating that the Medical Debt Collector is the real party in interest are as follows:

☐ The original or copy of any instrument of writing on which the action is founded IS attached as Exhibit A. *See* Rule 1-009(J)(2) NMRA, Rule 2-201(E)(2) NMRA, or Rule 3-201(E)(2) NMRA.

☐ The original or copy of any instrument of writing on which the action is founded IS NOT attached. The reason the instrument of writing is not attached is as follows:

☐ Plaintiff has attached an affidavit showing the chain of title or assignment of the debt. *See* Rule 1-017(E)(2) NMRA, Rule 2-401(D)(2) NMRA, or Rule 3-401(D)(2) NMRA.

☐ The Plaintiff communicated with the ☐ Health Care Facility ☐ Third-party Health Care Provider ☐ other Medical Creditor, which informed Plaintiff that it has not made a determination that the Defendant is indigent.

and

☐ After complying with 13.10.39.9(A)(a) and (B) NMAC Plaintiff determined that the Defendant is not indigent.

or

☐ Upon information and belief, the Defendant is not indigent under the methodology in 13.10.39.9(B) NMAC, and Plaintiff was unable to make a determination otherwise due to noncooperation by the Defendant, including after making at least the following three documented attempts to contact the Defendant:
(add lines).

☐ I am serving a copy of the current Attestation of Indigency form promulgated by the New Mexico Office of the Superintendent of Insurance on Defendant for alleging indigency as a defense in Defendant's Answer to this Complaint.

The balance due at the time of default is as follows:

(a) The total amount of the debt claimed is \$ _____, itemized as follows:

Principal amount due: _____

Interest: _____

Other charges, fees, and expenses (specified individually): _____

The itemization of the amount of the debt claimed set forth above does not include attorney fees and court costs.

(b) The basis for each of the itemized charges, fees, or expenses is as follows:

The date of last payment made by Defendant is as follows: _____

Plaintiff states, consistent with Rule 1-011 NMRA, Rule 2-301 NMRA, or Rule 3-301 NMRA, that the applicable statute of limitations on this claim has not run.

Plaintiff also seeks court costs and the following additional relief as specified:

WHEREFORE, Plaintiff demands judgment in the amount of \$ _____, and costs [and attorney fees] and such further relief as the court deems proper.

Date

Signature

Name (*print*)

Address (*print*)

City, State, and Zip Code (*print*)

Telephone Number

USE NOTES

Rule 1-008(A)(3) NMRA bars asking for damages in any specific amount “unless it is a necessary allegation of the complaint.” Rule 1-054(C) NMRA bars default judgments exceeding the amount stated in the demand for judgment. Consistent with Rule 1-008(A)(3) and Rule 1-

054(C), and in order to provide notice to the defendant of the consequences of a default judgment, the demand for judgment in a specific amount is here made a necessary part of the complaint.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

4-301A. Answer to civil complaint for medical debt.

[For use with District Court Rule 1-009(J)(2), Magistrate Court Rules 2-201(E)(2), 2-302 NMRA and Metropolitan Court Rules 3-301(E)(2), 3-302 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
_____ COURT

No. _____

_____, Plaintiff

v.

_____, Defendant

ANSWER TO CIVIL COMPLAINT FOR MEDICAL DEBT¹

1. The Plaintiff seeks recovery for medical debt as defined in Section 57-32-2(I) NMSA 1978. Collection actions, including lawsuits seeking recovery for medical debt, must be dismissed if the defendant is indigent. Section 57-32-4(A) NMSA 1978.

2. ☐ A copy of an Attestation of Indigency form was served on me with the Plaintiff's Complaint;

OR

☐ The Plaintiff did not attach a copy of the Attestation of Indigency form.

3. ☐ I am an indigent patient as defined in Section 57-32-2(G) NMSA 1978. This means I have a household income no greater than 200 percent of the federal poverty level.

☐ In support of my assertion that I am an indigent patient I have filled out and attached to this Answer a copy of the Attestation of Indigency form; OR

☐ I have attached other proof of indigency such as copies of pay stubs or other relevant documents, while making unreadable all but the last two (2) digits of my social security number or other taxpayer numbers;

OR

☐ I admit I am not an indigent patient.

4. *(If applicable)* In addition, the Plaintiff is not entitled to the amount claimed because:

☐ The Plaintiff did not attach a copy of the Attestation of Indigency form;

☐ The Plaintiff did not contact me to obtain information to determine whether I am an indigent patient; OR

☐ Other reasons Plaintiff is not entitled to the amount claimed (list reasons):

_____.

5. *(If applicable)* Defendant asserts the following counterclaim or set-off against Plaintiff:

_____.

6. Trial by jury ☐ is ☐ is not demanded. *(If Plaintiff has already demanded trial by jury, as indicated in the complaint, a jury will be provided automatically and you need not fill in this item. If Plaintiff has not demanded trial by jury, you may do so here, but if you do you must pay an additional cost upon filing this answer.)*

Dated: _____

Signed

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

CERTIFICATE OF SERVICE²

I hereby certify that on this ____ day of _____, _____ this _____ (*insert paper served, such as "answer" or "notice"*) was

[mailed by United States first class mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State _____

and zip code: _____]

[faxed by _____ (*name of person who faxed document*) to _____ (*name of recipient*) at _____ (*telephone number*). The transmission was reported as complete. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

[e-mailed to _____ (*name of party or attorney*) at _____ (*electronic mail address of recipient*) upon agreement of the party to accept electronic service. The transmission was reported as complete. The time and date of the transmission was _____ (a.m.) (p.m.) on _____ (*date*).]

[delivered to _____ (*Specify how service by delivery was made. See Use Note 2 for the methods service may be made using this alternative*) _____:]

Signature of person sending paper

Date of signature

USE NOTES

1. This Answer must be filed with the court on or before the date set in the Summons.
2. This Answer must be served on all other parties pursuant to Rule 1-005, Rule 2-203 NMRA or Rule 3-203 NMRA.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4-801. Writ of execution.

[For use with Rules 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO
IN THE _____ COURT

_____ COUNTY No. _____

_____, Plaintiff
_____, Plaintiff's Address
v.
_____, Defendant
_____, Defendant's Address

WRIT OF EXECUTION

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of any New Mexico county:

Judgment having been entered in this action, you are ordered to levy against personal property of _____ at _____ in your county, the sum of \$ _____ (*which is the judgment and costs to date*) plus interest at the rate of _____ % per year from the _____ day of _____, _____ (*date of judgment*), and your fees thereon, and return this writ to me within sixty (60) days.

_____, _____
Judge or clerk

(This form may also be issued as a second or subsequent writ.)

RETURN

I certify that I carried out this writ of execution, as follows:
(*check appropriate box or boxes and fill in blanks*)

[] The writ was served on judgment debtor on _____,
_____, and

- ☐ full payment was made
☐ partial payment was made in the amount of \$ _____
☐ No non-exempt personal property of judgment debtor was found on which levy could be made.

Property seized:

- ☐ Personal property was taken into custody on _____, _____. A written inventory is attached.
☐ Judgment debtor provided bond to retain possession; a copy of the bond is attached.

Date of return: _____

SHERIFF OF _____
COUNTY, State of New Mexico

By _____
Deputy or other authorized person

USE NOTES

The sheriff is obligated by law to make timely return.

Only non-exempt property may be seized. The sheriff may not seize any personal clothing, furniture or books ~~[or any jewelry unless the total value of all jewelry exceeds \$2,500.]~~, or any other exempt property claimed by the judgment debtor and either (1) not disputed by the judgment creditor, or (2) disputed by the judgment creditor and adjudicated to be valid by the court. The sheriff must make inquiry as to all applicable exempt property.

[As amended, effective July 1, 1992; January 1, 1995; January 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4-801A. Writ of execution.

[For use with Rule 1-065.1 NMRA]

STATE OF NEW MEXICO
IN THE DISTRICT COURT

COUNTY _____

No. _____

_____, Plaintiff

v.

_____, Defendant

WRIT OF EXECUTION

THE STATE OF NEW MEXICO to the sheriff or a full-time salaried deputy sheriff of any New Mexico county:

Judgment having been entered in this action, you are ordered to levy against property of _____ at _____ in your county, the sum of \$ _____ (*which is the judgment and costs to date*) plus interest at the rate of _____ % per year from the _____ day of _____, _____ (*date of judgment*), and your fees thereon, and return this writ to me within sixty (60) days.

_____, _____

Judge or clerk

(This form may also be issued as a second or subsequent writ.)

RETURN

I certify that I carried out this writ of execution, as follows:
(*check appropriate box or boxes and fill in blanks*)

☐ The writ was served on judgment debtor on _____, _____, and

☐ full payment was made

☐ partial payment was made in the amount of _____

☐ No non-exempt property of judgment debtor was found on which levy could be made.

Property seized:

☐ I levied upon the following real property

☐ Personal property was taken into custody on _____, _____. A written inventory is attached.

☐ Judgment debtor provided bond to retain possession. A copy of the bond is attached.
Date of return: _____

SHERIFF OF _____
COUNTY, State of New Mexico
By _____
Deputy or other authorized person

USE NOTES

The sheriff is obligated by law to make timely return.

Only non-exempt property may be seized.

_____ The sheriff may not seize any personal clothing, furniture or books, ~~[or any jewelry unless the total value of all jewelry exceeds \$2,500]~~ or any other exempt property claimed by the judgment debtor and either (1) not disputed by the judgment creditor, or (2) disputed by the judgment creditor and adjudicated to be valid by the court. The sheriff must make inquiry as to all applicable exempt property.

[Adopted, effective July 1, 1992; as amended, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective for all case pending or filed on or after _____.]

[NEW MATERIAL]

4-805B. Application for writ of garnishment; medical debt judgment.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT
_____, Plaintiff

v. _____ No. _____
_____, Defendant

APPLICATION FOR WRIT OF GARNISHMENT: MEDICAL DEBT JUDGMENT

The judgment creditor, _____, states:

- (1) The underlying judgment is based on a cause of action to recover judgment for medical debt under the Patients' Debt Collection Protection Act, Section 57-32-1 to 57-32-9 NMSA 1978.
- (2) The judgment creditor has a judgment dated _____ against the judgment debtor whose name is _____, and whose last known address is _____.

- (3) The total amount of the judgment including the principal, interest, costs, and attorney fees awarded by the judgment was \$_____.
- (4) From the date the judgment was filed through the date this Application was signed, additional interest at the rate of _____% totals \$_____. Judgment creditor has incurred additional costs of \$_____ and additional attorney fees of \$_____.
- (5) Payments totaling \$_____ have been received.
- (6) The unpaid balance now due is \$_____ (*Insert this amount on Form 4-806 NMRA as "Balance Due upon Application for Writ."*) plus interest from the date this Application is filed.
- (7) Estimated costs would equal \$_____ and the judgment creditor will seek \$_____ in attorney fees.
- (8) Judgment debtor, to my knowledge, does not have sufficient property within New Mexico subject to execution to satisfy the judgment. I understand that I have a duty to make a reasonable investigation into the truth of this statement and have done so as follows:¹
(*This allegation is not necessary before garnishment of funds for child support or alimony obligations.*)
_____,
_____,
_____.
- (9) I have reason to believe, and do believe, that the garnishee, _____ (*name of garnishee*) _____ (*address*), holds or controls money or personal property which belongs to the judgment debtor or is indebted to the judgment debtor.²
- (10) The money or property held by the garnishee is not exempt from garnishment because:
(*check one*)
☐ In compliance with Section 57-32-4 NMSA 1978, and 13.10.39.9 NMAC, judgment creditor has determined that the judgment debtor is not now an indigent patient as defined in Section 57-3-2(G) NMSA 1978;
or
☐ Judgment creditor has determined the judgment debtor is not now indigent based on information and belief, and was unable to determine otherwise due to the noncooperation by the judgment debtor. In compliance with 13.10.39.9(A)(b)

NMAC, judgment creditor affirms that it made at least three documented efforts to contact the judgment debtor as follows:

_____,
_____,
_____.

- (11) Therefore, the judgment creditor requests a Writ of Garnishment.
- (12) On issuance of a Writ of Garnishment, judgment creditor will promptly serve the judgment debtor and the garnishee a copy of the application for writ of garnishment and the writ of garnishment, and also shall serve the judgment debtor with the following forms:
- (a) a notice of right to claim exemptions;³
 - (b) a claim of exemptions on garnishment;⁴ and
 - (c) a copy of the current Attestation of Indigency form promulgated by the New Mexico Office of the Superintendent of Insurance.⁵

Judgment creditor or attorney for judgment creditor

Judgment creditor's or attorney's name printed

Address of judgment creditor or attorney

City, state, and zip code (*print*)

Telephone number of judgment creditor or attorney

Date of signing

AFFIDAVIT

*(application must be sworn to
unless signed by an attorney)*

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

(*seal*)

Notary or other officer authorized
to administer oaths

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on
or after _____.]

USE NOTES

1. The judgment creditor shall list any steps taken to investigate whether the judgment debtor possesses property within New Mexico subject to execution to satisfy the judgment. A reasonable investigation may be made, for example, by conducting a credit check or by asking the judgment debtor to identify all of the judgment debtor's assets during a court hearing.

2. See *Jemko, Inc. v. Liaghat*, 1987-NMCA-069, ¶ 10, 106 N.M. 50, 738 P.2d 922 (providing that a judgment creditor, acting under a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

3. The judgment creditor must serve promptly on the garnishee and judgment debtor Form 4-808 NMRA, Notice of Right to Claim Exemptions from Garnishment.

4. The judgment creditor must serve promptly on the garnishee and judgment debtor Form 4-809, Claim of Exemption from Garnishment.

5. The current Attestation of Indigency form, which must have been served on the judgment debtor, may be found via the link on the Office of Superintendent of Insurance's Patients Debt Collection Protection Act webpage at <https://www.osi.state.nm.us/pages/misc/patients-debt-collection-protection-act>.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on
or after _____.]

[NEW MATERIAL]

4-805C. Application for writ of execution: medical debt judgment.

[For use with District Court Rule 1-065.1 NMRA,
Magistrate Court Rule 2-801 NMRA
and Metropolitan Court Rule 3-801 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

IN THE _____ COURT

Plaintiff

v.

No. _____

Defendant

APPLICATION FOR WRIT OF EXECUTION: MEDICAL DEBT JUDGMENT

_____, the judgment creditor, states:

(1) The underlying judgment is based on a cause of action to recover judgment for medical debt under the Patients' Debt Collection Protection Act, Section 57-32-1 to 57-32-9 NMSA 1978.

(2) The judgment creditor has a judgment dated _____ (date judgment filed) against the judgment debtor whose name is _____, and whose last known address is _____. The total of the principal, interest, costs and attorney's fees awarded by the judgment was \$ _____. Since the judgment was entered, additional interest at the judgment rate of _____% and costs total \$ _____.

Payments totaling \$ _____ have been received.

The unpaid balance now due is \$ _____ (insert this amount on Civil Form 4-801 NMRA as "Balance Due upon Application for Writ") plus interest from the date this Application is executed.

The estimated costs would equal \$ _____; and the judgment creditor will seek \$ _____ in attorney fees.

(3) (check one of the following)

[] In compliance with Section 57-32-4 NMSA 1978 and 13.10.39.9 NMAC, judgment creditor has determined that the judgment debtor is not now an indigent patient as defined in Section 57-32-2(G) NMSA 1978;

OR

[] Judgment creditor has determined the judgment debtor is not now indigent based on information and belief, and was unable to determine otherwise due to the noncooperation by the judgment debtor. In compliance with 13.10.39.9(A)(b) NMAC, judgment creditor affirms that it made at least three documented efforts to contact the judgment debtor as follows:

(4) The judgment debtor is a natural person,

and not later than ten (10) days prior to filing this application for writ of execution:

[] I served the judgment debtor with:

(a) a notice of right to claim exemptions;¹

(b) a claim of exemptions on execution;² and

(c) A copy of the current Attestation of Indigency form promulgated by the New Mexico Superintendent of Insurance;³

AND (check one of the following)

[] Within ten (10) days after service of the documents listed in Paragraph 4, the judgment debtor has filed an Attestation of Indigency form or other proof of indigency, or a claim of exemption(s) for the property to be seized and sold, and has served a copy on the judgment creditor. The judgment creditor disputes the judgment debtor's assertion of indigency or claimed exemption(s) and requests a hearing be held on this dispute.

or

[] Within ten (10) days after service of the documents listed in Paragraph 4, the judgment debtor has not requested a determination of indigency or filed a claim of exemption for the property to be seized and sold. The judgment creditor requests the court to issue a Writ of Execution for the non-exempt property for the judgment debt.

Judgment creditor or
attorney for judgment creditor

Judgment creditor's name printed

Address of judgment creditor

Printed name of person signing for judgment
creditor

Telephone of judgment creditor

Printed name of judgment creditor's attorney
(if any)

Mailing address of judgment creditor's attorney
(number and street or P.O. box)

City, State, zip code

Telephone number of judgment creditor's attorney

AFFIDAVIT

(This application must be sworn to unless it is signed by an attorney.)

I declare under penalty of perjury that the foregoing is true and correct.

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

(seal)

Notary or other officer authorized
to administer oaths

USE NOTES

1. Civil Form 4-808A NMRA, Notice of Right to Claim Exemptions from Execution, must have been served on the judgment debtor.
2. Civil Form 4-803, Claim of Exemptions, must have been served on the judgment debtor.
3. The current Attestation of Indigency form, which must have been served on the judgment debtor, may be found via the link on the Office of Superintendent of Insurance's Patients Debt Collection Protection Act webpage at <https://www.osi.state.nm.us/pages/misc/patients-debt-collection-protection-act>.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4-808. Notice of right to claim exemptions (*garnishment*).

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
[IN THE [DISTRICT] [MAGISTRATE] [METROPOLITAN] COURT]
[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v. No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS (GARNISHMENT)

1. THE JUDGMENT CREDITOR IS GARNISHING YOUR PROPERTY, WHICH MAY INCLUDE YOUR BANK ACCOUNT:

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor has started to collect that money from your property, which may include your bank account.

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. These funds or property are protected under federal or state law. Money or property that may not be taken is called “exempt” property. You may claim an exemption by filing with the court a claim of exemption (*garnishment*) form. There are limits on how much of your wages may be taken. You do not need to file a claim of exemption form to protect your exempt wages.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt. YOU MAY WISH TO CONSULT AN ATTORNEY BEFORE COMPLETING AND FILING THIS FORM.

3. PARTIAL LIST OF EXEMPTIONS:

- a. social security benefits (OASDI, SSI);
- b. public assistance benefits such as medicaid, medicare, food stamps, or other aid from a government public assistance program;
- c. life, accident, or health insurance proceeds;
- d. workers’ compensation awards (*part may be garnished for child or spousal support*);
- e. occupational health benefits;
- f. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978;
- g. veterans’ benefits;
- h. pensions and retirement funds;
- i. crime victims’ reparation fund payments;
- j. a family allowance to a decedent’s surviving spouse and children, subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;

- k. the minimum amount of shares necessary for certain cooperative associations as provided by Section 53-4-28 NMSA 1978;
- l. fraternal benefit society payments;
- m. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978[-];
- n. the aggregate of two thousand four hundred dollars (\$2,400) held in a depository or investment account;
- o. a health savings account that would qualify for tax exemptions under 26 U.S.C. Section 223 or any similar health savings account;
- p. an educational savings account that would qualify for tax exemptions under 26 U.S.C. Section 529 or any similar educational savings account;
- q. any refundable tax credit payments from the Internal Revenue Service (IRS) or the New Mexico Taxation and Revenue Department;
- r. alimony, family, or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;
- s. payment under a stock bonus, pension, profit-sharing individual retirement account, annuity, or similar plan or contract on account of illness, disability, death, or length of service, to the extent reasonably necessary for the support of the person or any dependent of the person, unless such plan or contract does not qualify under Section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986;
- t. exempt wages as defined by Section 35-12-7 NMSA 1978;
- u. any stimulus payment held by or payable to the person or the person's dependents in any form;
- v. an interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan, and any other retirement account.

4. EXEMPTION FROM GARNISHMENT OF JUDGMENT FOR MEDICAL DEBT:
If the underlying judgment in this case was a cause of action to recover a judgment for medical debt under the Patients' Debt Collection Protection Act, Section 57-32-1 to 57-32-9 NMSA 1978, Section 57-32-4(A) NMSA 1978 bars collection actions, including writs of garnishment, against patients who are indigent at the time the collection action is brought.

[4.] 5. HOW TO PROTECT EXEMPT PROPERTY:

A "claim of exemption (*garnishment*)" form is attached for you to complete and file with the court. YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE ~~[UPON]~~ ON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. If you dispute the amount of garnishment by the garnishee, you must file with the clerk a Notice of Dispute and Request for Hearing form. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions (*garnishment*) form within ten (10) days and attend the hearing, your money or property may be turned over to the judgment creditor.

YOU SHOULD COMPLETE AND RETURN THE CLAIM OF EXEMPTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS FORM ON YOU. MAKE A COPY OF THE COMPLETED FORM FOR YOUR RECORDS AND SERVE A COPY ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

USE NOTES

1. If you dispute the amount of garnishment by the garnishee, you must file with the clerk a Notice of Dispute and Request for Hearing form.
2. Use this form only for actions filed on or after July 1, 2023.

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4-808A. Notice of right to claim exemptions from execution.

[For use with District, Magistrate, and
Metropolitan Court Rules of Civil Procedure
Rules 1-065.1, 2-801, and 3-801 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[IN THE [DISTRICT] [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v.

No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS FROM EXECUTION

1. THE JUDGMENT CREDITOR (*IS SEIZING*) (*HAS A RIGHT TO SEIZE*)¹ YOUR PROPERTY

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor may collect that money from seizure and sale of your property. (Before the judgment creditor has the sheriff seize your property, you may have a right to claim exemptions of certain property.)

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. This property is protected under state law. The property which may not be taken is called “exempt property.”

YOU MUST FILE A CLAIM OF EXEMPTION FORM TO CLAIM ANY EXEMPT PROPERTY. YOU MAY WISH TO CONSULT WITH AN ATTORNEY BEFORE COMPLETING AND FILING THE CLAIM OF EXEMPTION FORM.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

3. PARTIAL LIST OF EXEMPTIONS FROM EXECUTION.

Part I. Homestead exemption.

(This exemption may only be used in the district court.)

A judgment debtor who owns, leases, or is purchasing a dwelling occupied by the judgment debtor is entitled to hold as exempt property a homestead in the amount of one hundred fifty thousand dollars (\$150,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption.

(Parts II and III are for use in the district court, magistrate court, and metropolitan court.)

Residents of this state who do not claim a homestead exemption are entitled to an exemption of real or personal property in the amount of fifteen thousand dollars (\$15,000) under Section 42-10-10 NMSA 1978. You may not claim this exemption if you claimed a homestead exemption above.

Part III. Personal property exemptions.

In addition to the property claimed as exempt above, judgment debtors are entitled to claim certain personal property exemptions. Most of those exemptions are listed below:

- a. your aggregate interest in household goods and furnishings, not exceeding a value of seventy-five thousand dollars (\$75,000);

- b. your aggregate interest in motor vehicles, not exceeding ten thousand dollars (\$10,000) in value;
- c. your interest in a wedding band and an engagement ring, and your interest in additional jewelry held primarily for your use, the use of your spouse, or any dependent of yours, with an aggregate value not exceeding five thousand dollars (\$5,000) for that additional jewelry;
- d. your aggregate interest in, or the interest of any relative of yours, in any artwork, with an aggregate value not exceeding a value of two thousand five hundred dollars (\$2,500) in the aggregate;
- e. your aggregate interest in tools, equipment, implements, professional books, instruments, inventory, supplies, and materials reasonably necessary for use in your trade, profession, or occupation, or that of your spouse not exceeding fifteen thousand dollars (\$15,000);
- f. pension or retirement funds;
- g. not more than fifty thousand dollars (\$50,000) in benefits from a benevolent association of which the judgment debtor is a member;
- h. veteran's benefits;
- i. building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- j. worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;
- k. occupational health benefits as provided by Section 52-3-37 NMSA 1978;
- l. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;
- m. public benefits such as medicaid, medicare, food stamps, or other aid from a government public assistance program;
- n. cash surrender values and benefits of life insurance contracts;
- o. payment from life, accident, and health insurance policies or annuity contracts;
- p. crime victims' reparation fund payments;

- q. fraternal benefit society benefits;
- r. the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- s. the debtor's membership interest in the property of a club or association under Section 53-10-2 NMSA 1978;
- t. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- u. allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- v. a health savings account that would qualify for tax exemptions under 26 U.S.C. Section 223 or any similar health savings account;
- w. an educational savings account that would qualify for tax exemptions under 26 U.S.C. Section 529 or any similar educational savings account;
- x. an individual retirement account that would qualify for tax exemptions under 26 U.S.C. Section 408 or any similar individual retirement account;
- y. alimony, family, or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;
- z. any refundable tax credit payments from the Internal Revenue Service (IRS) or the New Mexico Taxation and Revenue Department;
- aa. exempt wages as defined by Section 35-12-7 NMSA 1978;
- ab. any stimulus payment held by or payable to the person or the person's dependents in any form;
- ac. the aggregate of not more than two thousand four hundred dollars (\$2,400) held in any bank account by or for your benefit;
- ad. interests in personal property worth up to fifteen thousand dollars (\$15,000), tangible or intangible, not otherwise specified in this subsection, including any deposits in financial or investments accounts or personal property that exceeds the monetary limits set forth in this section.

You may not claim an exemption for personal property which is subject to a security interest under the Uniform Commercial Code given to the judgment creditor.

Part IV. Exemption from Execution of Judgment for Medical Debt.

If the underlying judgment in this case was a cause of action to recover a judgment for medical debt under the Patients' Debt Collection Protection Act, Section 57-32-1 to 57-32-9 NMSA 1978, Section 57-32-4(A) NMSA 1978 bars collection actions, including writs of execution, against patients who are indigent at the time the collection action is brought.

4. HOW TO PROTECT EXEMPT PROPERTY.

The sheriff may not seize your personal clothing, furniture, and books or any jewelry unless the total value of each category exceeds the values specified above or in state law. For other property, you must claim an exemption or it may be seized and sold. A claim of exemptions on execution form is attached for you to complete and file with the court.

YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS ON EXECUTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE ON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS ON EXECUTION FORM ON THE JUDGMENT CREDITOR.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions on execution form within ten (10) days and attend the hearing, your property may be seized and sold by the sheriff.

FAILURE TO COMPLETE AND FILE A CLAIM OF EXEMPTIONS ON EXECUTION FORM WITHIN TEN (10) DAYS AND SERVE A COPY ON THE JUDGMENT CREDITOR WILL RESULT IN THE LOSS OF YOUR RIGHT TO CLAIM AN EXEMPTION.

(The following proof of service may be used ONLY if the judgment debtor has entered an appearance in the case.)

AFFIDAVIT OF SERVICE

I declare, under penalty of perjury, that this notice, a claim of exemptions on execution form and a copy of the judgment in the above cause of action were mailed on the ____ day of _____, _____ from _____ (street address or post office branch) in _____, New Mexico.

[] after due diligence I was unable to serve this notice.

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn² to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Strike out the inapplicable alternative.
2. 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.
3. Use this form only for actions filed on or after July 1, 2023.

[As amended, effective January 1, 1993; May 1, 1994; January 1, 1996; as amended by Supreme Court Order No. 09-8300-030, effective October 12, 2009; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

4-809. Claim of exemption from garnishment.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

COUNTY
_____, Plaintiff

against

_____, Defendant
_____, Garnishee

CLAIM OF EXEMPTION FROM GARNISHMENT

Judgment debtor claims the following exemptions:

(check box next to exemption)

- a. ☐ social security benefits (OASDI, SSI);
- b. ☐ public benefits such as medicaid, medicare, food stamps, or other aid from a government public assistance program;
- c. ☐ life, accident, or health insurance proceeds;
- d. ☐ workers' compensation awards;
- e. ☐ unemployment compensation benefits;
- f. ☐ veterans' benefits;
- g. ☐ pensions and retirement funds;
- h. ☐ crime victims' reparation fund payments;
- i. ☐ allowances to surviving spouse and children from deceased's estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- j. ☐ the minimum amount of shares necessary for certain non-profit cooperative associations as provided by Section 53-4-28 NMSA 1978;
- k. ☐ fraternal benefit society payments as provided by Section 59A-44-18 NMSA 1978;
- l. ☐ alimony, family, or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;
- m. ☐ payment under a stock bonus, pension, profit-sharing individual retirement account, annuity, or similar plan or contract on account of illness, disability, death or length of service, to the extent reasonably necessary for the support of the person or any dependent of the person, unless such plan or contract does not qualify under Section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986;
- n. ☐ refundable federal and state tax credits;
- o. ☐ exempt wages as defined by Section 35-12-7 NMSA 1978;
- p. ☐ any stimulus payment held by or payable to the person or the person's dependents in any form;

- q. ☐ an interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan, and any other retirement account;
- r. ☐ an individual retirement account that would qualify for tax exemptions under 26 U.S.C. Section 408 or any similar individual retirement account;
- s. ☐ an educational savings account that would qualify for tax exemptions under 26 U.S.C. Section 529 or any similar educational savings account;
- t. ☐ a health savings account that would qualify for tax exemptions under 26 U.S.C. Section 223 or any similar health savings account;
- u. ☐ money held in a depository or investment account, which is not otherwise exempt, up to two thousand four hundred dollars (\$2,400);
- v. ☐ occupational health benefits[?];
- w. ☐ all property, under Section 57-32-4(A) NMSA 1978, because the underlying judgment in this case is for medical debt and I am indigent.

A completed and signed copy of this form must be returned to the Clerk of the Court whose address is

A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption, a court hearing will be scheduled to consider the disputed exemptions. At this hearing you must bring evidence supporting each of your claims of exemption.

Date

Signature of judgment debtor

Printed name of judgment debtor

Number and street or P.O. box

City, state, zip code

Telephone number

USE NOTE

1. Use this form only for actions filed on or after July 1, 2023.

[As amended, effective July 1, 1992; January 1, 1995; January 1, 1996; as amended by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**No Comments
Received**