

1 **1-009. Pleading special matters.**

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

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

12 C. **Conditions precedent.** In pleading the performance or occurrence of conditions
13 precedent, it is sufficient to aver generally that all conditions precedent have been performed or
14 have occurred. A denial of performance or occurrence shall be made specifically and with
15 particularity.

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

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

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

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

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

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

12 J. **Consumer debt claims.**

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

18 (2) **Medical debt claims.** The pleading of a party whose cause of action is to
19 collect a medical debt, as defined in NMSA 1978, Section 57-32-2(I), shall comply with Rule 1-
20 009(J)(3), Rule 1-017(E), Form 4-226A, and shall include a copy of the current Attestation of
21 Indigency form promulgated by the New Mexico Superintendent of Insurance.

22 [~~(2)~~] (3) **Copy to be served and filed.** When any instrument of writing on which a
23 consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy

1 of the instrument shall be served with the pleading and filed with the court unless otherwise
2 excused by the court on a showing of good cause.

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

5 [As amended, effective January 1, 1987; as amended by Supreme Court Order No. 16-8300-031,
6 effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court
7 Order No. S-1-RCR-2025-00174, effective for all cases pending or filed on or after December 31,
8 2025.]

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10 Committee commentary. — Paragraph J of this rule was added in 2016 to provide
11 additional protections to consumers in consumer debt collection cases. Rules 1-017(E), 1-055(B),
12 and 1-060(B)(6) NMRA were also amended, and Form 4-226 NMRA created, for the same
13 purpose. After consulting with the New Mexico Attorney General’s Office Consumer Protection
14 Division and creditor and debtor rights representatives, and researching concerns identified by the
15 Federal Trade Commission in its report issued in July of 2010, “*Repairing a Broken System:*
16 *Protecting Consumers in Debt Collection Litigation and Arbitration,*” the Committee concluded,
17 and the Court agreed, that amendments to the rules are necessary to alleviate systemic problems
18 and abuses that currently exist in the litigation of consumer debt cases. These include pleadings
19 and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those
20 with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-
21 barred debts, and an alarmingly high percentage of default judgments (often caused in part by a
22 lack of sufficient detail in the complaint for a self-represented defendant to determine the nature
23 of the claim and its validity).

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

8 **2025 amendment**

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

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

18 [Adopted by Supreme Court Order No. 16-8300-031~~], effective for all cases pending or filed on~~
19 ~~or after July 1, 2017~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00174.]