

1 **13-304. Burden of proof; greater weight of the evidence; clear and convincing evidence.**

2 A party seeking a recovery [or a party relying upon a defense] has the burden of proving
3 every essential element of the claim [or defense] by the greater weight of the evidence.

4 To prove by the greater weight of the evidence means to establish that something is more
5 likely true than not true. [When I say, in these instructions, that the party has the burden of proof
6 on _____ (*theory(ies) of recovery by name*), I mean that you must be
7 persuaded that what is sought to be proved is more probably true than not true. Evenly balanced
8 evidence is not sufficient.]

9 [On _____ (*fraud, etc.*), however, a higher degree of proof is
10 required. Plaintiff has the burden of proving _____ by clear and convincing
11 evidence.]

12 USE NOTES

13 This instruction should be given in every civil case. The bracketed portion of the second
14 paragraph is always used where an appropriate burden of proof is by the greater weight of the
15 evidence. That bracketed portion of the second paragraph is omitted when the only appropriate
16 burden of proof is by clear and convincing evidence. The third paragraph is used only where an
17 appropriate burden of proof is by clear and convincing evidence.

18 If the defendant is not relying upon a defense other than a general denial, then the bracketed
19 portions of the first paragraph should not be used.

20 [As amended, effective November 1, 1991; March 1, 2005.]

21 **Committee commentary.** — [“]“Preponderance of the evidence[”] simply means the greater
22 weight of the evidence.” *Campbell v. Campbell*, 1957-NMSC-001, ¶ 24, 62 N.M. 330, [341,] 310
23 P.2d 266[~~, 272 (1957)~~]. A party is said to have established [his] the case by a preponderance of the

1 evidence when the evidence “tips the scales in favor of the party on whom rests the burden of
2 proof, even though it barely tips them.” *Lumpkins v. McPhee*, 1955-NMSC-052, ¶ 34, 59 N.M.
3 442, [453,] 286 P.2d 299[~~, 306 (1955)~~] (emphasis omitted).

4 Fraud, including undue influence, deceit or other theories involving fraudulent conduct, must be
5 proven by clear and convincing evidence under New Mexico law. *Rael v. Cisneros*, 1971-NMSC-
6 073, ¶ 11, 82 N.M. 705, 487 P.2d 133[~~(1971)~~].

7 [“]“It is the general rule [:-] . . . that issues of fact in civil cases are to be determined according to
8 the preponderance of the evidence [:-] [T]he requirement of clear and convincing proof to
9 sustain an issue claimed is the exception rather than the rule.[”]” *United Nuclear Corp. v. Allendale*
10 *Mut. Ins. Co.*, 1985-NMSC-090, ¶ 14, 103 N.M. 480, 709 P.2d 649[~~, 654 (1985)~~]; [~~Thorp~~] *Ferrill*
11 *v. Cash*, 1981-NMCA-074, ¶ 21, 97 N.M. 383, [392,] 640 P.2d 489[~~, 498 (Ct. App. 1981)~~, ~~cert.~~
12 ~~quashed~~], cert. quashed, 98 N.M. 51, 644 P.2d 1040 (1982); *Echols v. N.C. Ribble Co.*, 1973-
13 NMCA-038, 85 N.M. 240, 511 P.2d 566 [(~~Ct. App. 1973~~), ~~cert. denied~~] cert. denied, 85 N.M. 229,
14 511 P.2d 555 (1973)[:-](holding that the rule of [“]“preponderance of the evidence[”]” and the
15 requirement of [“]“clear and convincing evidence[”]” are not mutually exclusive).

16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]