

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE  
DISTRICT COURTS  
PROPOSAL 2026-010**

**March 6, 2026**

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rule 1-056 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, 2026**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

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**1-056. Summary judgment.**

A. **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

B. **For defending party.** A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment as to all or any part thereof.

C. **Grounds for motion.** The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

If alternative grounds for summary judgment have been presented to the court, the order granting or denying the motion for summary judgment shall specify the grounds upon which the order is based.

D. **Time; procedure.**

(1) Motions for summary judgment will not be considered unless filed within a reasonable time prior to the date of trial to allow sufficient time for the opposing party to file a

response and affidavits, depositions or other documentary evidence and to permit the court reasonable time to dispose of the motion.

(2) The moving party shall submit to the court a written memorandum containing a short, concise statement of the reasons in support of the motion with a list of authorities relied upon. A party opposing the motion shall, within fifteen (15) days after service of the motion, submit to the court a written memorandum containing a short, concise statement of the reasons in opposition to the motion with authorities. The moving party may, within fifteen (15) days after the service of such memorandum, submit a written reply memorandum.

The memorandum in support of the motion shall set out a concise statement of all of the material facts as to which the moving party contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which the moving party relies.

A memorandum in opposition to the motion shall contain a concise statement of the material facts as to which the party contends a genuine issue does exist. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and shall state the number of the moving party's fact that is disputed. All material facts set forth in the statement of the moving party shall be deemed admitted unless specifically controverted.

E. **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

F. **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his position, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

G. **Affidavits, declarations or Rule 1-011(B) NMRA affirmations made in bad faith.** If satisfied that an affidavit, declaration, or a Rule-1-011(B) NMRA unsworn affirmation, under [Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to] this rule is submitted [are presented] in bad faith or [solely] for the purpose of delay, the court – after notice and a reasonable opportunity to respond – may [shall forthwith] order the offending party or attorney [employing them] to pay to the other party [the amount of] the reasonable expenses, including attorney's fees, it incurred as a result [which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any]. An offending party or attorney may also be held in [be adjudged guilty of] contempt or subjected to other appropriate sanctions.

[As amended, effective August 1, 1989; as amended by Supreme Court Order No. \_\_\_\_\_,  
effective for all cases pending or filed on or after \_\_\_\_\_.]



**New Mexico  
Courts**

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## [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

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**Supreme Court** <noreply@nmcourts.gov>

Mon, Mar 30, 2026 at 3:31 PM

Reply-To: noreply@nmcourts.gov

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**Proposal  
Number** 2026-10

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**Comment** I disagree with the proposed change to Rule 1-056(G), which brings only one subsection of the state rule – the sanction section - into conformity with Federal Rule 56, when in all other ways, the rules are divergent. New Mexico’s Rule 1-056 for summary judgment follows a “preponderance-of-the-evidence” standard, while under Federal Rule 56, the burden of proof for summary judgment is “clear and convincing evidence.” See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). This means summary judgment is granted liberally in the federal courts, while in New Mexico it is disfavored. Thus, the reasons justifying the stricter sanctions in the federal rule, which is to deter overzealous filings in the Federal civil system wherein they could be granted more easily, should not be implemented in the New Mexico Rule when no other adoption of the Federal Rule is incorporated. The adoption could hurt civil defense attorneys by threatening sanctions that create a chill on filing of summary judgment motions. While an attorney could believe the filing is proper, the proposed change would make that attorney more vulnerable to sanctions and a finding of contempt. Importantly, our judiciary has repeatedly rejected invitations to conform Rule 1-056 NMRA with its federal counterpart. As stated by retired Chief Judge of the New Mexico Court of Appeals Rudy Apodaca, adopting any part of the federal rule could cause “trial courts [to] interpret such adoption as ... a greater invitation to weigh the evidence. Whatever benefits might accrue to New Mexico from adoption of the federal rule do not outweigh what we see as its burdens.” *Bartlett v. Mirabal*, 2000-NMCA-036, ¶ 37, 128 N.M. 830, 837, 999 P.2d 1062, 1069. The reality is Rule 1-056 and F. R. 56 are not analogous. Thus, it makes little sense, and could be inherently unfair, to amend NMRA 1-056(G) to conform its subsection on sanctions with the federal rule when no other sections align.

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