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 about 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 the 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.

H. **Statutes.** It shall not be necessary in any pleading to set forth any statute, public or private or any special matter of these, 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 to it 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) 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)(1)~~] Subparagraph (J)(3) of this rule, Rule 1-017(E) 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 NMSA 1978, Section 57-32-2(I), shall comply with [~~Rule 1-009(J)(3)~~] Subparagraph (J)(3) of this rule, Rule 1-017(E), and Form 4-226A[~~,~~] 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 NMRA meets the requirement of [~~Rule 1-009(C)~~] Paragraph C of this rule.

[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. S-1-RCR-2025-00174, effective for all cases pending or filed on or after December 31, 2025; as amended by Supreme Court Order No. S-1-RCR-2026-00232, effective for all cases pending or filed on or after December 31, 2026.]

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.

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, NMSA 1978, Section 57-32-2(I) (2021), the pleadings must comply with the 2025 amendments to Paragraph J of this rule.

Subparagraph (J)(2) of this rule requires the claimant seeking to recover on charges for medical debt to serve with the 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; as amended by Supreme Court Order No. S-1-RCR-2025-00174; as amended by Supreme Court Order No. S-1-RCR-2026-00232.]