

1 **1-055. Default.**

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

5           B.       **Judgment.** Judgment by default may be entered as follows: in all cases the  
6 party entitled to a judgment by default shall apply to the court for judgment by default; but  
7 no judgment by default shall be entered against an infant or incompetent person unless  
8 represented in the action by a general guardian, committee, conservator, or other such  
9 representative who has appeared in the action. If the party against whom judgment by default  
10 is sought has appeared in the action, the party (or, if appearing by representative, the party's  
11 representative) shall be served with written notice of the application for judgment at least  
12 three (3) days prior to the hearing on the application; provided, however, that the filing of an  
13 appearance and disclaimer of interest shall not be construed as requiring the service of  
14 written notice of application for judgment under the terms of this rule. In cases controlled by  
15 Rule 1-009(J) NMRA, prior to entry of default judgment the court shall determine that the  
16 party seeking relief has stated a claim on which relief can be granted, has complied with  
17 Rules 1-009(J)(2) and 1-017(E) NMRA, and has substantially complied with the  
18 requirements of Form 4-226 NMRA. If, in order to enable the court to enter judgment or to  
19 carry it into effect, it is necessary to take an account or to determine the amount of damages  
20 or to establish the truth of any averment by evidence or to make an investigation of any other  
21 matter, the court may conduct those hearings or order those references as it deems necessary  
22 and proper and shall accord a right of trial by jury to the parties entitled thereto.

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

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

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

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

15           **Committee commentary.** — Paragraph B of this rule was revised in 2016 to provide  
16 additional protections to consumers in consumer debt collection cases. *See* Comment to Rule  
17 1-009 NMRA. [~~Under~~ Paragraph B references Rule 1-009(J)(2) NMRA, under which, if the  
18 party seeking relief in a consumer debt claim has not served and filed with the district court  
19 the instrument of writing on which the party's claim is based, the district court shall not enter  
20 a default judgment without the court's finding of the party's good cause failure to do so. For  
21 cases involving a negotiable instrument which is not part of a consumer debt claim,  
22 Paragraph E of this rule requires that the original negotiable instrument be filed with the

**DISTRICT COURT CIVIL  
RULE 1-055**

**Supreme Court Approved  
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1 court unless the party seeking default judgment provides sufficient alternative evidence to  
2 demonstrate the party's right to relief.

3 [As adopted by Supreme Court Order No. 16-8300-031, effective for all cases pending or  
4 filed on or after July 1, 2017; as amended by Supreme Court Order No. 19-8300-017,  
5 effective for all cases pending or filed on or after December 31, 2019.]