

1 **2-201. Commencement of action.**

2 A. **How commenced.** A civil action is commenced by filing with the court a
3 complaint consisting of a written statement of a claim or claims setting forth briefly the
4 facts and circumstances giving rise to the action.

5 B. **Jurisdiction.** Magistrates have jurisdiction in all cases as may be provided
6 by law.

7 C. **Form of complaint.** The complaint shall be in substantially the form
8 approved by the court administrator and the supreme court.

9 D. **Verified accounts.** [~~Accounts~~] Except in cases controlled by Paragraph E,
10 accounts duly verified by the oath of the party claiming the same, or his agent, and
11 promissory notes and other instruments in writing not barred by law are sufficient evidence
12 in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover
13 judgment for the account thereof.

14 **E. Consumer debt claims.**

15 (1) **Definition.** The pleading of a party, acting in the ordinary course of
16 business, whose cause of action is to collect a debt arising out of a transaction in which the
17 money, property, insurance, or services, which are the subject of the original transaction,
18 are primarily for personal, family, or household purposes, other than loans secured by real
19 property, shall comply with Rules 2-201(E)(2) and 2-401(D) NMRA, and Form 4-226
20 NMRA.

1 (2) Copy to be served and filed. When any instrument of writing on
2 which a consumer debt claim is founded is referred to or relied on in the pleadings, the
3 original or a copy of the instrument shall be served with the pleading and filed with the
4 court unless otherwise excused by the court on a showing of good cause.

5 [As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or
6 after December 31, 2020.]

7 **Committee commentary.** — In 2016, the New Mexico Supreme Court approved
8 amendments to Rules 1-009, 1-017, 1-055, and 1-060 NMRA, and created a new civil
9 complaint form for consumer debt claims, Form 4-226 NMRA, for use in the district courts.

10 Paragraph E of this rule was added in 2020 to provide additional protections to
11 consumers in consumer debt collection cases. In addition, Rules 2-401, 2-702, 2-703, 3-
12 201, 3-401, 3-702, and 3-704 NMRA, as well as Form 4-226 NMRA, were amended in
13 2020 to align the magistrate and metropolitan court rules for consumer debt claims with
14 the district court rules.

15 After considering the New Mexico Supreme Court’s 2016 amendments to Rules 1-
16 009, 1-017, 1-055, and 1-060 NMRA, and its creation of Form 4-226 NMRA, regarding
17 consumer debt claim litigation in the district courts, the Committee concluded that similar
18 amendments to the magistrate and metropolitan court rules are required to alleviate
19 systemic problems and abuses that currently exist in the litigation of consumer debt cases
20 in these courts. The abuses include pleadings and judgments based on insufficient or
21 unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of

1 the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an
2 alarmingly high percentage of default judgments (often caused in part by a lack of
3 sufficient detail in the complaint for a self-represented defendant to determine the nature
4 of the claim and its validity).

5 For an interpretation of the phrase “acting in the ordinary course of business,” see
6 *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525,
7 *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t,*
8 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as
9 “business practice that is routine, regular, usual, or normally done”). Medical bills, subject
10 to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and
11 student loans, are considered consumer debt claims for the purposes of this rule.
12 [As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or
13 after December 31, 2020.]