

1 **2-702. Default.**

2 A. **Failure to respond to summons.** If the defendant fails to appear at the
3 hearing date set forth in the summons or fails to file an answer or other responsive pleading
4 within the time period set forth in the summons, and if the plaintiff proves by an appropriate
5 return that proper service was made upon the defendant, the court may enter judgment for
6 the plaintiff for the amount due, including interest, costs, and other items allowed by law.
7 The court may require evidence as to any fact before entering default judgment. At a
8 minimum, before entering a default judgment, the court shall require the plaintiff to allege
9 sufficient facts to demonstrate the following:

- 10 (1) the plaintiff is a proper party to bring the lawsuit;
- 11 (2) the defendant is a proper party;
- 12 (3) a legal relationship exists between the plaintiff and the defendant
13 that forms the basis of the lawsuit; and
- 14 (4) the amount of the damages, debt, or other relief requested, including
15 principal, interest, and all other charges or costs.

16 In cases controlled by Rule 2-201(E) NMRA, before entry of default judgment the
17 court shall determine that the party seeking relief has stated a claim on which relief can be
18 granted, has complied with Rules 2-201(E)(2) and 2-401(D) NMRA, and has substantially
19 complied with the requirements of Form 4-226 NMRA.

1 A copy of the default judgment shall forthwith be mailed by the clerk of the court
2 to each party against whom judgment has been entered. The clerk shall endorse on the
3 judgment the date of mailing.

4 B. **Failure to appear at trial.** Failure to appear at the time and date set for
5 trial shall be grounds for entering a default judgment against the nonappearing party.

6 C. **Setting aside default.** For good cause shown, within thirty (30) days after
7 entry of judgment and if no appeal has been timely taken, the court may set aside a default
8 judgment.

9 [As amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or
10 filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-
11 005, effective for all cases filed on or after December 31, 2020.]

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

15 Paragraph A of this rule was amended in 2020 to provide additional protections to
16 consumers in consumer debt collection cases. See Rule 2-201 NMRA, Committee
17 commentary. In addition, Rules 2-201, 2-401, 2-703, 3-201, 3-401, 3-702, and 3-704
18 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the magistrate and
19 metropolitan court rules for consumer debt claims with the district court rules.

20 Paragraph A references Rule 2-201(E)(2) NMRA, which requires a party seeking
21 relief in a consumer debt claim to serve with the pleading, and file with the magistrate

**MAGISTRATE COURT CIVIL
RULE 2-702**

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1 court, the written instrument on which the party based its claim. If the party seeking relief
2 fails to comply with this provision, the magistrate court shall not enter a default judgment
3 without the party establishing good cause for its failure to comply.
4 [As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or
5 after December 31, 2020.]