

1 **3-702. 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 3-201(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 3-201(E)(2) and 3-401(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, effective October 1, 1987; as amended by Supreme Court Order No. 16-
10 8300-032, effective for all cases pending or filed on or after December 31, 2016; as
11 amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or after
12 December 31, 2020.]

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

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

**METROPOLITAN COURT CIVIL
RULE 3-702**

**Supreme Court Approved
November 1, 2020**

1 Paragraph A references Rule 3-201(E)(2) NMRA, which requires a party seeking
2 relief in a consumer debt claim to serve with the pleading, and file with the metropolitan
3 court, the written instrument on which the party based its claim. If the party seeking relief
4 fails to comply with this provision, the metropolitan court shall not enter a default judgment
5 without the party establishing good cause for its failure to comply.
6 [As amended by Supreme Court Order No. 20-8300-005, effective for all cases filed on or
7 after December 31, 2020.]