

1 **3-704. Relief from judgment or order.**

2 A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or parts of the
3 record and errors therein arising from oversight or omission may be corrected by the court
4 at any time of its own initiative or on the motion of any party and after such notice, if any,
5 as the court orders. During the pendency of an appeal, such mistakes may be so corrected
6 before the appeal is docketed in the district court, and thereafter while the appeal is pending
7 may be so corrected with leave of the district court or the appellate court before which the
8 appeal is pending.

9 B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** On motion and
10 upon such terms as are just, the court may relieve a party or his legal representative from a
11 final judgment, order or proceeding for the following reasons:

- 12 (1) mistake, inadvertence, surprise or excusable neglect;
- 13 (2) fraud (whether heretofore denominated intrinsic or extrinsic),
14 misrepresentation or other misconduct of an adverse party;
- 15 (3) the judgment is void; [øf]
- 16 (4) the judgment has been satisfied, released or discharged, or a prior
17 judgment upon which it is based has been reversed or otherwise vacated[-]; or
- 18 (5) any other reason justifying relief from the operation of a judgment,
19 including failure of a party who was subject to the provisions of Rule 3-201(E) NMRA to
20 comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with
21 Form 4-226 NMRA.

1 A motion filed pursuant to Subparagraph (1) or (2) of this paragraph shall be filed
2 not more than one (1) year after the judgment, order or proceeding was entered or taken. A
3 motion under this paragraph does not affect the finality of a judgment or suspend its
4 operation.

5 An order granting or denying relief from a final judgment under this rule may be
6 appealed to the district court in the same manner as other appeals from final judgments of
7 the metropolitan court are taken.

8 C. **Satisfied judgments.** Upon the filing with the court of a motion for an
9 order declaring the judgment to be satisfied and notice to the opposing party, the court may
10 set a hearing to determine if the judgment has been satisfied, released or discharged. The
11 application shall be served upon the judgment creditor in the manner prescribed by Rule 3-
12 202 for service of summons and complaint. A hearing on the application shall be held
13 within a reasonable time after the filing of the application. Notice of the hearing shall be
14 mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at
15 such hearing, a default satisfaction of judgment may be entered upon

16 (1) the filing of the return of service or an affidavit that after “diligent
17 search” the judgment creditor could not be located. For purposes of this subparagraph
18 “diligent search” includes, but shall not be limited to an affidavit that:

19 (a) the judgment creditor no longer has a business or residence
20 at the judgment creditor’s last known address as shown in the court file; and

1 (b) the judgment creditor could not be located through a search
2 of telephone and city directories in each county where the judgment creditor was known to
3 have resided or maintained a place of business in this state; and

4 (2) proof of payment of the full amount of such judgment with interest
5 thereon to date of payment, plus post-judgment costs incurred by the judgment creditor
6 which can be determined from the court record or, if the judgment, including any interest
7 and costs has not been paid in full, payment into the court registry of the balance owed in
8 accordance with Section 39-1-6.2 NMSA 1978 plus any costs of court for receiving into
9 and paying the money out of the registry of the court.

10 [As amended, effective July 1, 1990; January 1, 1997; as amended by Supreme Court Order
11 No. 20-8300-005, 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 B of this rule was amended in 2020 to provide additional protections to
16 consumers in consumer debt collection cases. See Rule 3-201 NMRA, Committee
17 commentary. In addition, Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, and 3-702
18 NMRA, as well as Form 4-226 NMRA, were amended in 2020 to align the metropolitan
19 and magistrate court rules for consumer debt claims with the district court rules.

20 Deutsche Bank Nat’l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046,
21 provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of

1 prudential standing.” (Emphasis added). Rule 1-060(B)(4) NMRA is equivalent to Rule 3-
2 704(B)(3) NMRA in providing grounds for relief of a void judgment. The 2020 amendment
3 to Rule 3-704 NMRA (adding Subparagraph (B)(5)) provides a ground for relief in
4 consumer debt litigation separate from the relief from voidable judgments under Rule 3-
5 704(B)(3) NMRA.

6 Rule 3-704(B)(5) NMRA now provides that noncompliance with the requirements
7 of Rule 3-201(E)(2) NMRA or Rule 3-401(D) NMRA, or the failure to substantially
8 comply with Form 4-226 NMRA, can provide a basis for granting relief from a judgment
9 entered in a case controlled by Rule 3-201(E) NMRA. The addition of this language
10 provides a ground for relief, but does not compel the metropolitan court to grant relief in
11 every case in which the movant shows noncompliance with these consumer debt
12 provisions. The movant must also demonstrate that it has a meritorious
13 defense. See *Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527.
14 When the movant meets this requirement, the court may exercise discretion to determine
15 whether intervening equities or other considerations outweigh the desire “that the ultimate
16 result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp.*
17 *v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

18 In contrast, a motion to void the judgment under Rule 3-704(B)(3) NMRA does not
19 permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-
20 NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a
21 meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

**METROPOLITAN COURT CIVIL
RULE 3-704**

**Supreme Court Approved
November 1, 2020**

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