

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
MAGISTRATE COURTS AND THE RULES OF CIVIL PROCEDURE FOR
THE METROPOLITAN COURTS
PROPOSAL 2017-011**

The Courts of Limited Jurisdiction Committee and the Metropolitan Courts Rules Committee have recommended amendments to Rules 2-302, 2-307, 3-302, and 3-307 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2017, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

2-302. Defenses; answer.

A. **Answer; when filed.** The defendant shall file [~~his~~] an answer on or before the [~~appearance~~] date [~~as fixed~~] set forth in the summons.

B. **Defenses; how presented.** The answer shall describe in concise and simple language the reasons why the defendant denies the claim of the plaintiff, [~~as well as~~] and any defenses [~~he~~] the defendant may have to the claim of the plaintiff. Defenses shall be raised in the answer [~~and not by motion~~], except for challenges to the jurisdiction of the court, which may be raised at any time. A party may file a motion to have the answer clarified or explained. On the filing of such motion, the [~~magistrate~~] court may, in [~~his~~] its discretion, require a more explicit answer or order a pretrial conference to clarify the issues.

C. **Form of answer.** The answer shall be in substantially the form approved by the court administrator and the [~~supreme court~~] Supreme Court.

D. **Permissive counterclaim or setoff.** If the defendant possesses a claim or claims against the plaintiff at the time the action is begun, [~~they~~] the claim or claims may be asserted in the answer as a counterclaim or setoff. The facts and circumstances giving rise to the claim or claims must be briefly described, in the form of answer approved by the [~~supreme court~~] Supreme Court.

E. **Nature of claim and amount claimed.** The nature of the defendant's claim or claims and the total sum claimed shall comply with applicable law. A claim [~~which~~] that exceeds the jurisdiction of the magistrate court shall be amended by the defendant prior to trial to conform to the court's jurisdiction or shall be dismissed without prejudice.

**METROPOLITAN COURT CIVIL
RULE 3-302**

**Metro Committee Approved
January 26, 2016**

F. **Compulsory counterclaim.** There shall be no compulsory counterclaim.
[As amended by Supreme Court Order No. _____, effective _____.]

2-307. Motions.

A. **Defenses and objections which may be raised.** Any matter that is capable of determination without trial of the general issue[~~including defenses and objections;~~] may be raised before trial by motion. All motions shall state with particularity the grounds and the relief sought.

B. **Requirement of written motion.** All motions, except motions made during a pretrial conference or trial, or as may be permitted by the court, shall be in writing. A copy of every written motion shall be served on each party or the party's attorney as provided by Rule 2-203 NMRA. A motion for relief filed more than ninety (90) days after entry of the judgment shall be served on the opposing party in the manner provided by Rule 2-202 NMRA for service of a summons.

C. **Unopposed motions.** If both parties are represented by attorneys, prior to filing a written motion, the moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order approved by opposing counsel shall accompany the motion.

D. **Opposed motions.** A motion filed by an attorney in a case in which the opposing party is represented by an attorney shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a:

- (1) motion to dismiss;
- (2) motion for new trial;
- (3) motion for judgment on the pleadings.

E. **Notice and hearing.** No written motion shall be considered by the court unless served on each party or the party's attorney as required by these rules.

[Approved, effective March 21, 2005; amended by Supreme Court Order No. _____, effective _____.]

3-302. Defenses; answer.

A. **Answer; when filed.** The defendant shall file [~~his~~] an answer on or before the [~~appearance~~] date [~~stated~~] set forth in the summons.

B. **Defenses; how presented.** The answer shall describe in concise and simple language the reasons why the defendant denies the claim of the plaintiff, and any defenses [~~he~~] the defendant may have to the claim of the plaintiff. Defenses shall be raised in the answer, except for challenges to the jurisdiction of the court, which may be raised at any time. A party may file a motion to have the answer clarified or explained. On the filing of such motion, the [~~judge~~] court may, in [~~his~~] its discretion, require a more explicit answer or order a pretrial conference to clarify the issues.

C. **Permissive counterclaim or setoff.** If the defendant possesses a claim or claims against the plaintiff at the time the action is begun, [~~they~~] the claim or claims may be asserted in the answer as a counterclaim or setoff. The facts and circumstances giving rise to the claim or claims shall be briefly described.

D. **Nature of claim and amount claimed.** The nature of the defendant's claim or claims and the total sum claimed shall comply with applicable law. A claim [~~which~~] that exceeds the

**METROPOLITAN COURT CIVIL
RULE 3-302**

**Metro Committee Approved
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jurisdiction of the metropolitan court shall be amended by the defendant prior to trial to conform to the court's jurisdiction or shall be dismissed without prejudice.

E. **Compulsory counterclaim.** There shall be no compulsory counterclaim.
[As amended by Supreme Court Order No. _____, effective _____.]

3-307. Motions.

A. **Defenses and objections which may be raised.** Any matter that is capable of determination without trial of the general issue[~~including defenses and objections,~~] may be raised before trial by motion. All motions shall state with particularity the grounds and the relief sought.

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E. **Notice and hearing.** No written motion shall be considered by the court unless served on each party or the party's attorney as required by these rules.

[Approved by Supreme Court Order 05-8300-05, effective March 21, 2005; as amended by Supreme Court Order _____, effective _____.]

Your Name
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Proposal Number
Proposal 2017-011 - Answers and Defenses in Civil Cases [Rules 2-302, 2-307, 3-302, and 3-307 NMRA];

Comment
If this is approved the notes in Form 4-301 may need to be updated as well.

SUPREME COURT OF NEW MEXICO
FILED

MAR 14 2017

A handwritten signature in black ink, appearing to be 'JLA', is written over the date stamp.