

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE MAGISTRATE AND METROPOLITAN COURTS
AND THE CIVIL FORMS
PROPOSAL 2020-011**

March 3, 2020

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA and Form 4-226 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 2, 2020, 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.

2-201. Commencement of action.

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

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

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

D. **Verified accounts.** Accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for the account thereof.

E. **Consumer debt claims.**

(1) **Definition.** The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for

personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 2-201(E)(2) and 2-401(D) NMRA, and Form 4-226 NMRA.

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

[As amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — For an interpretation of the phrase “acting in the ordinary course of business,” see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, overruled on other grounds by *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as “business practice that is routine, regular, usual, or normally done”). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; foreclosure actions are not.

[As amended by Supreme Court Order No. _____, effective _____.]

2-401. Parties; capacity.

A. **Real party in interest.** Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, personal representative, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. Where it appears that an action, by reason of honest mistake, is not prosecuted in the name of the real party in interest, the court may allow a reasonable time for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. **Capacity to sue or be sued.** The capacity of an individual, including those acting in a representative capacity, to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

C. **Minors or incompetent persons.** When a minor or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

D. Consumer debt claims.

(1) Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law; and further

provided that the collection agency must plead specific facts in its initial pleading demonstrating that it is the real party in interest.

(2) In any consumer debt claim in which the party seeking relief alleges entitlement to enforce the debt but is not the original creditor, the party must file an affidavit establishing the chain of title or assignment of the debt from the original creditor to and including the party seeking relief. The affidavit must be based on personal knowledge, setting forth those facts as would be admissible in evidence, showing affirmatively that the affiant is competent to testify to the matters stated in the affidavit. An affidavit based on a review of the business records of the party or any other person or entity in the chain of title must establish from personal knowledge compliance with the requirements of Rule 11-803(6)(a)-(c) NMRA, or demonstrate reliance on an attached certification complying with Rule 11-902(11) or (12) NMRA. The business records must be attached to the affidavit or certification.

[As amended by Supreme Court Order No. _____, effective _____.]

2-702. Default.

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

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

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

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

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

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

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

2-703. Relief from judgment or order.

A. **Clerical mistakes.** Clerical mistakes in judgments, orders, or other parts of the file and errors therein arising from oversight or omission may be corrected by the magistrate at any time of his own initiative or on the request of any party after such notice to the opposing party, if any, as the magistrate orders. During the pendency of an appeal, such mistakes may be so corrected before the transcript is filed in the district court, and thereafter while the appeal is pending may be so corrected with leave of the district court.

B. **Mistakes; inadvertence; excusable neglect; fraud, etc.** If the judgment has not been filed in the district court, on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

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

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

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

C. **Satisfied judgments.** Upon the filing with the court of a motion for an order declaring the judgment to be satisfied and notice to the opposing party, the court may set a hearing to determine if the judgment has been satisfied, released or discharged. The application shall be served upon the judgment creditor in the manner prescribed by Rule 2-202 for service of summons and complaint. A hearing on the application shall be held within a reasonable time after the filing of the application. Notice of the hearing shall be mailed to the parties by the clerk of the court. If the judgment creditor fails to appear at such hearing, a default satisfaction of judgment may be entered upon:

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

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

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

(2) proof of payment of the full amount of such judgment with interest thereon to date of payment, plus post-judgment costs incurred by the judgment creditor which can be determined from the court record or, if the judgment, including any interest and costs has not been

paid in full, payment into the court of a money order or cashier's check made payable to the administrative office of the courts. Upon receipt of a money order or cashier's check pursuant to this subparagraph, the administrative office of the courts shall deposit such money order or cashier's check in a suspense account in the state treasury. Funds deposited in such account shall be disbursed in accordance with Section 39-1-6.2 NMSA 1978.

D. **Filing in district courts.** If the judgment has been filed in the district court pursuant to Paragraph E of Rule 2-803 [Rule 2-804 NMRA], the motion for an order declaring the judgment satisfied shall be filed in the district court.

[As amended, effective July 1, 1990; January 1, 1993; January 1, 1997; as amended by Supreme Court Order No. _____, effective _____.]

3-201. Commencement of action.

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

B. **Nature of claim.** Metropolitan judges have jurisdiction in all cases as may be provided by law.

C. **Form of complaint.** The complaint shall be in substantially the form approved by the court administrator and the Supreme Court.

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

E. **Consumer debt claims.**

(1) **Definition.** The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a debt arising out of a transaction in which the money, property, insurance, or services, which are the subject of the original transaction, are primarily for personal, family, or household purposes, other than loans secured by real property, shall comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and Form 4-226 NMRA.

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

[As amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — For an interpretation of the phrase “acting in the ordinary course of business,” see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as “business practice that is routine, regular, usual, or normally done”). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; foreclosure actions are not.

[As amended by Supreme Court Order No. _____, effective _____.]

3-401. Parties; capacity.

A. **Real party in interest.** Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, personal representative, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. Where it appears that an action, by reason of honest mistake, is not prosecuted in the name of the real party in interest, the court may allow a reasonable time for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. **Capacity to sue or be sued.** The capacity of an individual, including those acting in a representative capacity, to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

C. **Minors or incompetent persons.** When a minor or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

D. Consumer debt claims.

(1) Collection agencies may take assignments of claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit in their own names; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a licensed attorney-at-law; and further provided that the collection agency must plead specific facts in its initial pleading demonstrating that it is the real party in interest.

(2) In any consumer debt claim in which the party seeking relief alleges entitlement to enforce the debt but is not the original creditor, the party must file an affidavit establishing the chain of title or assignment of the debt from the original creditor to and including the party seeking relief. The affidavit must be based on personal knowledge, setting forth those facts as would be admissible in evidence, showing affirmatively that the affiant is competent to testify to the matters stated in the affidavit. An affidavit based on a review of the business records of the party or any other person or entity in the chain of title must establish from personal knowledge compliance with the requirements of Rule 11-803(6)(a)-(c) NMRA or demonstrate reliance on an attached certification complying with Rule 11-902(11) or (12) NMRA. The business records must be attached to the affidavit or certification.

[As amended by Supreme Court Order No. _____, effective _____.]

3-702. Default.

A. **Failure to respond to summons.** If the defendant fails to appear at the hearing date set forth in the summons or fails to file an answer or other responsive pleading within the time period set forth in the summons, and if the plaintiff proves by an appropriate return that proper

service was made upon the defendant, the court may enter judgment for the plaintiff for the amount due, including interest, costs, and other items allowed by law. The court may require evidence as to any fact before entering default judgment. At a minimum, before entering a default judgment, the court shall require the plaintiff to allege sufficient facts to demonstrate the following:

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

(5) In cases controlled by Rule 3-201(E) NMRA, before entry of default judgment the court shall determine that the party seeking relief has stated a claim on which relief can be granted, has complied with Rules 3-201(E)(2) and 3-401(D) NMRA, and has substantially complied with the requirements of Form 4-226 NMRA.

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

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

C. **Setting aside default.** For good cause shown, within thirty (30) days after entry of judgment and if no appeal has been timely taken, the court may set aside a default judgment. [As amended, effective October 1, 1987; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective _____.]

3-704. Relief from judgment or order.

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

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

- (1) mistake, inadvertence, surprise or excusable neglect;
- (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;
- (3) the judgment is void; [or]
- (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated[~~-~~]; or

(5) any other reason justifying relief from the operation of a judgment, including failure of a party who was subject to the provisions of Rule 3-201(E) NMRA to comply

with Rules 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with Form 4-226 NMRA.

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

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

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

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

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

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

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

[As amended, effective July 1, 1990; January 1, 1997; as amended by Supreme Court Order No. _____, effective _____.]

4-226. Civil complaint provisions; consumer debt claims.

[For use with District Court Rule 1-009(J) NMRA, Magistrate Court Rule 2-201(E) NMRA, and Metropolitan Court Rule 3-201(E) NMRA]

In addition to the requirements set forth in the New Mexico Rules of Civil Procedure, a pleading asserting a claim subject to Rule 1-009(J) NMRA, Rule 2-201(E) NMRA, or Rule 3-201(E) NMRA shall include, at a minimum, the following provisions:

STATE OF NEW MEXICO

COUNTY OF _____

____ JUDICIAL DISTRICT/MAGISTRATE COURT/METROPOLITAN
COURT

____, Plaintiff,

v. No. _____

____, Defendant.

CIVIL COMPLAINT

____ (a) The full name and address of the Defendant is as follows: _____

(b) The last two (2) digits of the Defendant's social security number, contained in the original creditor's records are as follows: _____

(c) If the Plaintiff does not provide the social security number above, Plaintiff states, with specificity, that the basis on which it was determined that the named Defendant is the debtor on the debt is as follows: _____

____ [] The Plaintiff in this action IS the original creditor; OR

[] The Plaintiff IS NOT the original creditor and the name and address under which the original creditor did business with the Defendant is as follows:

____ The last four (4) digits of the Defendant's account number, used by the original creditor as of the date of default are as follows: _____

____ The balance due at the time of default is as follows: _____

____ (a) The total amount of the debt claimed is \$_____, itemized as follows:

Principal amount due: _____

Interest: _____

Other charges, fees, and expenses (specified individually): _____

The itemization of the amount of the debt claimed set forth above does not include attorney fees and court costs.

(b) The basis for each of the itemized charges, fees, or expenses is as follows:

___ The date of last payment made by Defendant is as follows: _____

___ Plaintiff states, consistent with Rule 1-011 NMRA, Rule 2-301 NMRA, or Rule 3-201 NMRA, that the applicable statute of limitations on this claim has not run.

___ The name and address of the current owner of this debt is as follows: _____

___ Plaintiff ☐ IS or ☐ IS NOT a collection agency. If the Plaintiff is a collection agency:

(a) the name and address of the collection agency is as follows:

(b) The New Mexico license number for the collection agency is as follows:

(c) The specific facts demonstrating that the collection agency is the real party in interest are as follows: _____

___ ☐ The original or copy of any instrument of writing on which the action is founded IS attached as Exhibit A. *See* Rule 1-009(J)(2) NMRA, Rule 2-201(E)(2) NMRA, or Rule 3-201(E)(2) NMRA.

☐ The original or copy of any instrument of writing on which the action is founded IS NOT attached. The reason the instrument of writing is not attached is as follows:

___ ☐ Plaintiff alleges entitlement to enforce the debt but is not the original creditor. Plaintiff has attached an affidavit showing the chain of title or assignment of the debt. *See* Rule 1-017(E)(2) NMRA, Rule 2-401(D)(2) NMRA, or Rule 3-401(D)(2) NMRA.

____ Plaintiff also seeks court costs and the following additional relief as specified:

WHEREFORE, Plaintiff demands judgment in the amount of \$_____, and costs [and attorney fees] and such further relief as the court deems proper.

Date

Signature

Name (print)

Address (print)

City, State, and Zip Code (print)

Telephone Number

USE NOTE

Rule 1-008(A)(3) NMRA bars asking for damages in any specific amount “unless it is a necessary allegation of the complaint.” Rule 1-054(C) NMRA bars default judgments exceeding the amount stated in the demand for judgment. Consistent with Rule 1-008(A)(3) and Rule 1-054(C), and in order to provide notice to the defendant of the consequences of a default judgment, the demand for judgment in a specific amount is here made a necessary part of the complaint.

[Adopted by Supreme Court Order No. 16-8300-031, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. _____, effective _____.]

Google Groups

Re: Comments on 1-009, 1-017, 1-055, 1-060, and Civil Form 4-226 NMRA

David Humphreys <David@hwh-law.com>

Mar 4, 2020 2:02 PM

Posted in group: **nmsupremecourtclerk**

Joey D. Moya, Clerk of the NM Supreme Court,

I request to substitute my earlier comment with the submission below. If not possible, I understand, but upon further consideration the last sentence has been revised to better reflect my intent.

Thank you.

David Humphreys

Humphreys Wallace Humphreys, PC

1701 Old Pecos Trail, Suite B

Santa Fe, New Mexico 87505

and

9202 South Toledo Avenue

Tulsa, OK 74137

(by appointment only please)

505 933 7026

918 747 5300

david@hwh-law.com

<http://hwh-law.com>

SUPREME COURT OF NEW MEXICO
FILED

MAR - 4 2020



From: David Humphreys <David@hwh-law.com>

Date: Wednesday, March 4, 2020 at 1:47 PM

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Subject: Comments on 1-009, 1-017, 1-055, 1-060, and Civil Form 4-226 NMRA

Joey D. Moya, Clerk of the NM Supreme Court,

I write to comment in favor of the proposed changes to reform the collection of consumer debt in Magistrate and Municipal Courts.

The most recent published Federal Trade Commission research of the debt buyer industry, in 2013, revealed the following:

PRICES BUYERS PAID FOR PURCHASED DEBT

Buyers paid an average of 4.0 cents per dollar of debt face value. Analysis of the prices debt buyers paid for debt purchased in more than 3,400 portfolios showed that the average price was 4.0 cents per dollar of debt face value. Older debt sold for a significantly lower price than newer debt. The price of debt older than 15 years was virtually zero. Buyers paid similar prices for debt purchased from original creditors and resellers, once the analysis controlled for other observable characteristics of the debt, such as their age and type.

ACCOUNT DOCUMENTATION THAT DEBT BUYERS RECEIVED

Buyers received few underlying documents about debts. Although buyers received the data file and some other information about the debts, as discussed above, they obtained very few documents related to the purchased debts at the time of sale or after purchase. For most portfolios, buyers did not receive any documents at the time of purchase. Only a small percentage of portfolios included documents, such as account statements or the terms and conditions of credit.

WARRANTIES AS TO INFORMATION AND DOCUMENTATION THAT DEBT BUYERS RECEIVED

Accuracy of information provided about debts at time of sale not guaranteed. In purchase and sale agreements obtained in the study, sellers generally disclaimed all representations and warranties with regard to the accuracy of the information they provided at the time of sale about individual debts – essentially selling debts, with some limited exceptions, “as is.” The fact that portfolios were generally sold “as is” does not necessarily mean that information inaccuracies were prevalent, but it does raise concerns about how debt buyers handled purchased debts when such inaccuracies became apparent, and for which they had no recourse available from the seller.

Accuracy of information in sellers’ documents not guaranteed. Some contracts stated that when account documents were available from the seller, the accuracy of the information in the documents was not warranted.

Source: <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>

It is a widely known fact that, conservatively, less than 10% of consumer debt collection suits are resolved in an adversary or contested fashion. Reports indicate that 95-99% of such suits result in default judgments.

Source: <https://www.nclc.org/issues/consumer-debt-collection-facts.html>

footnote 5

⁵See Testimony of April Kuehnhoff, National Consumer Law Center, Before the Massachusetts Joint Financial Services Committee In support of S.120/H.2811, An act relative to fairness in debt collection (Sept. 25, 2017), citing data collected by Erika Rickard, Associate Director of Field Research at Harvard Law School's Access to Justice Lab, in September 2017 using the Massachusetts Trial Court Electronic Case Access at <http://www.masscourts.org> (in four Massachusetts district court small claims sessions, the percentage of consumers sued to collect consumer debts who were represented by attorneys ranged from 0.3% to 1.4% in 2016); Paul Kiel, “So Sue Them: What We’ve Learned About the Debt Collection Lawsuit Machine,” ProPublica (May 5, 2016) (99% of defendants sued by New Jersey collection law firm Pressler & Pressler did not have attorneys; 97% of defendants in debt collection cases filed in New Jersey's lower level court in 2013 did not have attorneys; 91% of defendants in Missouri debt collection cases in 2013 did not have attorneys); Samantha Liss, “When a nonprofit health system outsources its ER, debt collectors follow,” St. Louis Post-Dispatch (Apr. 17, 2016) (reporting that in 1,078 lawsuits filed by CP Medical in St. Louis, St. Louis County and St. Charles County between December 2, 2014 and March 10, 2016, only 17 defendants had an attorney); Chris Albin-

Lackey, Human Rights Watch, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor (Jan. 2016) (consumers had legal representation in 3 out of 247 cases in a randomized sample of lawsuits filed in New York by debt buyers in 2013 that resulted in judgments); Peter Holland, "Junk Justice: A Statistical Analysis of 4400 Lawsuits Filed by Debt Buyers," 26 Loy. Consumer L. Rev. 179 (2014) (consumers were represented by an attorney in only 2% of debt collection lawsuits in Maryland); Susan Shin and Claudia Wilner, New Economy Project, The Debt Collection Racket in New York (June 2013) (attorneys represented consumers in only 2% of debt collection cases filed in New York City); Mary Spector, "Debts, Defaults, and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts," 6 Va. L. & Bus. Rev. 257, 288 (2011) (fewer than 10% of defendants served in debt collection lawsuits were represented by an attorney in Dallas County, Texas); Claudia Wilner and Nasoan Sheftel-Gomes, Neighborhood Economic Development Advocacy Project, Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Low Income New Yorkers (2010) (only 1% of people sued by debt buyers in New York City are represented by counsel). See also Paula Hannaford-Agor, et al., The Landscape of Civil Litigation in State Courts 32 (National Center for State Courts, 2015) (noting that defendants were represented in 13% of small collection cases but not distinguishing between debt collection and other small claims cases).

In spite of the efforts of this Court to provide greater access to legal services to low income New Mexicans, the statistics for default judgments here are no doubt similar. Because access to representation remains elusive, the proposed changes should be approved. They are minimal standards of proof to establish consumer debt claims.

Further, they should make the work of the Judicial Officers ruling on default judgments more efficient, fair and may provide peace of mind to the Judicial Officers with the duty to enter default judgments on consumer debt suits.

Respectfully,

David Humphreys

Humphreys Wallace Humphreys, PC

1701 Old Pecos Trail, Suite B

Santa Fe, New Mexico 87505

and

9202 South Toledo Avenue

Tulsa, OK 74137

(by appointment only please)

505 933 7026

918 747 5300

david@hwh-law.com

<http://hwh-law.com>

Paul D. Guglielmo ¹
John A. Daddona ¹
Stacy D. Stein ^{2,5}
Eliza A. Guglielmo ³
Roberta Ohlinger-Johnson ⁴
Kathryn Camelin ⁵

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2020

(877) 325-5700 TOLL FREE
(520) 325-5700 PHONE
(520) 325-2480 FAX



TO: New Mexico Supreme Court Rulemaking Committee

FROM: Eliza A Guglielmo CAID# 16/259

RE: Commentary in Opposition of Proposal 2020-011

DATE: March 23, 2020

Guglielmo & Associates PLLC submits the below commentary in opposition to the following proposed rule changes: **Proposal 2020-011 - Consumer debt litigation in magistrate and metropolitan courts [Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA and Form 4-226 NMRA]**

The proposed rule changes to consumer debt litigation in magistrate and metropolitan courts will have a large impact on all matters involving debt collections. The reach of the proposed rule change extends to creditors and small businesses alike and has the effect of impairing the obligation of contracts as prohibited by the Constitution of the United States. The existence and purpose of the Magistrate and Metropolitan courts is to provide parties with small claims matters an unbiased forum to secure the just, speedy and inexpensive determination of matter brought before the court. The rules should not create onerous requirements in the collection of debt. When onerous requirements are imposed by the courts on creditors and small businesses attempting to collect valid debts it creates an appearance of judicial impropriety and bias toward debt collections. The rules of evidence and pre-trial matters sufficiently address the burden to prove and legally enforce the collection of a debt. The proposed rules disproportionately target creditors and small businesses and fly in the face of judicial impartiality empowering the judge/magistrate to investigate and argue against a case brought by legitimate plaintiffs at the initial pleading.

The addition of these rules creates conflicts within the existing rules.

Specifically, proposed 2-201 (E) conflicts with what already exists with 2-201 (D). Under the current rules as written section D states that the account with an affidavit is sufficient evidence. However, if E is adopted and added it actually requires *more* evidence than what D said was sufficient. Additionally, an affidavit is sworn testimony sufficient throughout the rules (See NMRE 803(6) and NMRA 3-703(E)). Also, the addition of (E)(2) directly conflicts the notion of NM being a notice pleading state.

Currently 2-201 (D) only states:

D. Verified accounts. Accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for the account thereof.

Below (Proposed 2-201 (E)) would be added as part of the proposed rule change if adopted:

E. Consumer debt claims.

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

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

Form 4-226 presents additional conflicts with existing the rules.

Specifically limiting the plaintiff to only include the last 2 digits of a defendant's social security # - when NMRA 1-079, 2-112 and 3-112 state "protected personal identifier information" means all but the last four (4) digits of a social security number."

1	Admitted to practice Law in Arizona	3040 N Campbell Avenue Suite 100-Tucson, Arizona 85719
2	Admitted to practice Law in Utah	PO Box 41688-Tucson, AZ 85717
3	Admitted to practice Law in New Mexico	PO Box 41688-Tucson, AZ 85717
4	Admitted to practice Law in Nevada	415 South Sixth Street Suite 320-Las Vegas, Nevada 89101
5	Admitted to practice Law in Colorado	PO Box 41688-Tucson, AZ 85717

MAR 25 2020



Arizona Office:
2702 N 3rd St.
Suite 2010
Phoenix, AZ 85004
Phone 800-506-2652
Fax 714-754-9568

Nevada Office:
823 Las Vegas Blvd. South
Suite 260
Las Vegas, NV 89101
Phone 800-506-2652
Fax 714-754-9568



**The Moore
Law Group**
A Professional Corporation

Toll Free 1-800-506-2652

Mailing Address:

PO Box 25145

Santa Ana, CA 92799-5145

Dial 711 for Telecommunications Relay Service

California Office:
3710 S. Susan St., Ste 210
Santa Ana, CA 92704
Phone 714-431-2000
Fax 714-754-9568

Colorado Office:
1901 W. Littleton Blvd., Ste 214
Littleton, CO 80120
Phone 303-586-6561
Fax 720-278-7794

New Mexico Office:
PO Box 3767
Albuquerque, NM 87190-3767
Phone 505-903-5820
Fax 505-903-5833

March 24, 2020

My name is Harvey Moore. I am the President of The Moore Law Group, APC, a creditors' rights law firm that engages in the collection of unpaid debt in, among other states, the state of New Mexico from our physical office in Albuquerque, New Mexico. Our clients are primarily original credit grantors who have issued credit cards to consumers to use for the purchases of household goods and services.

I am a past president of the National Creditors Bar Association a bar association dedicated to serving law firms engaged in the practice of creditors rights law. Originally founded in 1993 as the National Association of Retail Collection Attorneys (NARCA), our membership grew and we quickly became the premier association for the creditors' rights attorney. In 2015, we recognized that the changes in our economy and in our member firms' practice areas, meant that our association needed to change too. We broadened our membership base to include firms practicing in foreclosure, bankruptcy, student loans, replevin, to name a few, and we expanded our educational offerings and networking opportunities.

Currently, our membership is comprised of over 500 law firms and individual members, totaling approximately 2000 attorneys, in the areas of creditors rights law, defense and in-house counsel. Members practice in over 20 different practice areas in the 50 states, Canada, Puerto Rico and the U.K. Our attorney members are committed to being professional, responsible and ethical in their practice and profession. Many of those firms practice creditors' rights law in the state of New Mexico.

This letter is sent to comment on the Proposed Revisions to the Rules of Civil Procedure for the Magistrate and Metropolitan courts and the Civil Forms Proposal 2020-011.

The proposed rule changes to consumer debt litigation in magistrate and metropolitan courts will have a large impact on all matters involving debt collections. The reach of the proposed rule change extends to creditors and small businesses alike and has the effect of impairing the obligation of contracts as prohibited by the Constitution of the United States. The existence and purpose of the Magistrate and Metropolitan courts is to provide parties with small claims matters an unbiased forum to secure the just, speedy and inexpensive determination of matter brought before the court. The rules should not create onerous requirements in the collection of debt. When onerous requirements are imposed by the courts on creditors and small businesses attempting to collect valid debts it creates an appearance of judicial impropriety and bias toward debt collections. The rules of evidence and pre-trial matters sufficiently address the burden to prove and legally enforce the collection of a debt. The proposed rules disproportionately target creditors and small businesses and fly in the face of judicial impartiality empowering the judge/magistrate to investigate and argue against a case brought by legitimate plaintiffs at the initial pleading.

The proposed revisions do not benefit the consumers who may become defendants in collection litigation but could actually confuse them.

Existing law allows certain creditors, including but not limited to banks and other federally regulated creditors, to capitalize principal monthly and then to "charge-off" a balance after 6 billing cycles have passed with the consumer failing to make the required minimum monthly payments. The charged-off balance is typically referred to as the capitalized principal balance. Consumers with credit card accounts typically receive monthly billing statements that capitalize the outstanding balance. Because credit card statements are typically issued monthly, and the payment cycle ends a few days before the monthly statement is generated, there is no monthly statement issued by the creditor that contains the exact balance owing on the date that the first uncured payment is not made. In addition, there is no clear definition in the credit card sphere of a date of default, as most in the industry use the charge off date as the critical date for determining the balance owing on the account when it is placed for collection through the legal stream. Creditors rely on the laws that allow them to capitalize interest and other charges, such as late charges and over limit charges. As a result, creditors cannot easily itemize pre-charge off balances or calculate the principal balance owing on the date of default. To require plaintiffs to itemize pre-charge off balances would be to create difficult if not impossible roadblocks to judgment for thousands of legitimate low balance credit card balances.

It is hereby respectfully requested that the Revisions be modified so that on federally regulated debts with a charge-off balance, to allow the plaintiff to plead the charged off balance, the charge off date, the date of last payment or charge (not an over limit or late fee) and all alleged post charge off damages. This would fairly meet the goal of transparency while also treating this class of heavily regulated creditors fairly. If there are concerns about the running of the applicable statute of limitations, this would be solved with the inclusion of the last pay or charge date.

The proposed rules also fly in the face of judicial impartiality empowering the judge/magistrate to investigate and argue against a case brought by plaintiffs in these matters as if a defense attorney without allowing plaintiff its day in court.

The addition of these rules create conflicts with existing rules. Specifically, proposed 2-201 (E) conflicts with what already exists with 2-201 (D). Under the current rules as written section D states that the account with an affidavit is sufficient evidence. However, if E is adopted and added it actually requires *more* evidence than what D said was sufficient. Why in a default setting are the rules being changed? An affidavit is sworn testimony sufficient throughout the rules (See NMRE 803(6) and NMRA 3-703(E)). Also, the addition of (E)(2) directly conflicts the notion of NM being a notice pleading state.

Currently 2-201 (D) states:

D. Verified accounts. Accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing not barred by law are sufficient evidence in any suit to create a rebuttable presumption, sufficient to enable the plaintiff to recover judgment for the account thereof.

Below (Proposed 2-201 (E)) would be added as part of the proposed rule change if adopted:

E. Consumer debt claims.

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

(2) Copy to be served and filed. When any instrument of writing on which a consumer debt claim is founded is referred to or relied on in the pleadings, the original or a copy of the instrument shall be

~~served with the pleading and filed with the court unless otherwise excused by the court on a showing of good cause. [As amended by Supreme Court Order No. , effective .]~~

Form 4-226 presents additional conflicts with existing the rules. Specifically limiting the plaintiff to only include the last 2 digits of a defendant's social security # - when NMRA 1-079, 2-112 and 3-112 state "protected personal identifier information" means all but the last four (4) digits of a social security number"

Respectfully submitted,
The Moore Law Group, APC



Harvey M. Moore, President



Brandon Burgess, New Mexico Managing Attorney

WILLIAM S. KELLER
6 Equestrian Court
Tijeras, NM 87059

March 25, 2020

Honorable Judith K. Nakamura, Chief Justice
Honorable Barbara J. Vigil, Senior Justice
Honorable Michael E. Vigil, Justice
Honorable C. Shannon Bacon, Justice
Honorable David K. Thomson, Justice

SUPREME COURT OF NEW MEXICO
FILED

MAR 25 2020



Re: Rule Change Proposal 2020-011

Honorable Justices:

I write in support of the proposed rule changes for Municipal and Magistrate Courts in Proposal 2020-011. These same changes were adopted by the New Mexico Supreme Court in 2016 (effective July 1, 2017) for District Courts (Rules 1-009, 1-017, 1-055, 1-060, and Form 4-226) after much study and discussion. The proposed changes will merely bring all of New Mexico's trial-level courts into alignment.

As a result of the deliberations relevant to the 2016 changes to the District Court rules, the Court is very much aware of the practices and abuses of the debt collection industry. The industry is comprised largely of third party debt buyers who buy distressed debt in bulk, for pennies on the dollar, with little information about the alleged debtors and seldom with any of the underlying documents. In many actions filed by these collectors, employees or agents of the debt buyers will submit affidavits purporting that the affiants have reviewed the business records pertaining to the alleged debts and that the employees or agents have personal knowledge of the facts asserted in the complaints. In fact, these "records" most often consist of second or third generation spreadsheets developed by the original creditor and subsequently converted by the debt buyers into their own databases. Typically, these spreadsheets lack critical details concerning the debts, and, as stated, seldom include the underlying debt documents. In these instances the assertions in these affidavits that they are founded on the personal knowledge of the affiants are simply false.

Of critical significance to the Court's consideration of the proposed rule changes are the Committee Commentaries that accompany the 2016 modifications to Rules 1-009, 1-017, 1-055, 1-060, and Form 4-226. These comments acknowledge the widespread abuses in the debt collection industry and note that the 2016 changes were intended to remedy them. The Commentaries state in pertinent part:

...After consulting with the New Mexico Attorney General's Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, "*Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*," the Committee concluded, and the Court agreed, that amendments to the rules are necessary to alleviate systemic

problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

The adoption in 2016 of the changes to the District Court rules did not resolve these problems and abuses. In fact, for cases within the jurisdictional limits of Municipal and Magistrate Courts, debt collectors have had the advantage of a safe haven against the significantly more stringent pleading and evidentiary requirements of the District Court rules. The inescapable conclusion, then, is that if the New Mexico Supreme Court and the Rules Committee determined in 2016 that the amendments to the District Court rules were necessary “...to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases...” in the District Courts of New Mexico, they are necessary also to alleviate those same problems and abuses in the State’s Municipal and Magistrate Courts, where a huge percentage of the dockets consist of debt collection lawsuits. The problems and abuses with the practices of the debt collection industry were not unique to District Courts in 2016; they were, and remain, pervasive, and they continue unabated in the Municipal and Magistrate Courts. The changes proposed in Proposal 2020-011 will provide consistency in all New Mexico courts in consumer debt cases, will remove the unfair advantage and incentive to file in the inferior courts available to debt collectors that exist under the current Municipal and Magistrate Court rules, and will protect alleged consumer debtors from the industry abuses that were recognized and addressed by this Court on a limited basis in 2016.

Respectfully,

William S. Keller

William S. Keller

April 2, 2020

Honorable Judith K. Nakamura, Chief Justice
Honorable Barbara J. Vigil, Senior Justice
Honorable Michael E. Vigil, Justice
Honorable C. Shannon Bacon, Justice
Honorable David K. Thomson, Justice

SUPREME COURT OF NEW MEXICO
FILED

APR 03 2020

RE: Rule Change Proposal 2020-011



Honorable Justices:

These comments are submitted by the Consumer Financial Protection Initiative for the City of Albuquerque. We write in support of the proposed rule changes for Municipal and Magistrate Courts in Proposal 2020-011 being considered by the New Mexico Supreme Court.

In 2016, the New Mexico Supreme Court adopted these same changes (effective July 1, 2017) for District Courts (Rules 1-009, 1-017, 1-055, 1-060, and Form 4-226) after much study, input, and discussion. These proposed changes will bring all of New Mexico's courts into alignment for debt collection cases and serve to promote fairness and access to justice for all involved.

During deliberations for the 2016 changes to the District Court rules, the Court reviewed the practices and abuses of the debt collection industry. As detailed in studies provided to the Court, the debt collection industry is comprised largely of third party debt buyers who buy distressed debt in bulk, for pennies on the dollar, with little information about the alleged debtors and seldom with any of the underlying documents. Current information from New Mexico courts demonstrates that a significant number of the cases filed are by "bulk filers".

In many actions filed by these collectors, an employee or agent of the debt collector will submit affidavits purporting that the person has reviewed the business records pertaining to the alleged debt and that the employee or agent has personal knowledge of the facts asserted in the complaint. In fact, these "records" most often consist of second or third generation spreadsheets developed by the original creditor and subsequently converted by the debt buyer into its own database. Typically, these spreadsheets lack critical details concerning the debts, and, as stated, seldom include the underlying debt documents. In these instances the assertions in these affidavits that they are founded on the personal knowledge of the affiants are simply false.

The proposed rule will level the playing field and provide crucial consumer protections in court process and procedures. The Committee Commentaries that accompany the

2016 modifications to Rules 1-009, 1-017, 1-055, 1-060 and From 4-226, acknowledge the widespread abuses in the debt collection industry and note that the 2016 changes were intended to remedy them. The Commentaries state in pertinent part:

...After consulting with the New Mexico Attorney General's Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, "*Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*," the Committee concluded, and the Court agreed, that amendments to the rules are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, "robo-signing" of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

The Supreme Court has recently adopted an On-Line Dispute Resolution process applicable to debt and money due cases. This new program makes even more pressing the need to adopt this rule change. While creditors in district courts are required to provide basic information to the debtor regarding the debt alleged, pursuant to the 2016 rule modifications, creditors are allowed to evade these protections by filing in Metropolitan and Magistrate Courts.

In fact, for cases within the jurisdictional limits of Metropolitan and Magistrate Courts, debt collectors still have the advantage of a safe haven against the significantly more stringent requirements of the District Court rules. Creditors are not required to attach or upload the contract upon which the creditor relies and the creditors can evade reasonable disclosures, such as regarding the chain of custody of the debt.

The inescapable conclusion, then, is that if the New Mexico Supreme Court and the Committee concluded in 2016 that the amendments to the District Court rules were necessary "...to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases..." in the District Courts of New Mexico, they are necessary also to alleviate those same problems and abuses in the State's Metropolitan and Magistrate Courts, where a huge percentage of the dockets consist of debt collection and money due lawsuits.

Without these amendments, the problems and abuses with the practices of the debt collection industry will remain pervasive unabated in the Metropolitan and Magistrate Courts. The changes proposed in Proposal 2020-011 will provide consistency in all New Mexico courts in consumer debt cases, will remove the unfair advantage and incentive to file in the inferior courts available to debt collectors that exist under the current Court rules, and will protect alleged consumer debtors from the industry abuses that were recognized and addressed by this Court on a limited basis in 2016. They will

also bring balance, fairness and increased access to justice to the ODR program underway in all courts in New Mexico.

Submitted by:

Karen J. Meyers
Director, Consumer Financial Protection Initiative
City of Albuquerque

Stein Law, P.C. dba Mountain Peak Law Group, PC submits the below commentary in opposition to the following proposed rule changes: **Proposal 2020-011 - Consumer debt litigation in magistrate and metropolitan courts [Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA and Form 4-226 NMRA] [comments begin on p.12]**

The purpose of the Magistrate and Metropolitan courts, in contrast to District Courts, is to provide parties with small balance matters an unbiased forum to secure just, speedy and inexpensive adjudication. Proposed Rule 2-201(E) as constructed is patently biased against one type of Plaintiff. Many of the parties affected by this rule change would be small business attempting to recover receivables necessary for continued operations. Much like a bill of attainder, this rule singles out a group of people and punishes them for their status when the existing rules of evidence sufficiently address a Plaintiff's burden of proof.

Proposed Rule 2-401(D)(2) again attempts to change the Magistrate and Metropolitan courts rules to create an extraordinary burden for one group of people. When a debt is bought or sold, its validity or enforceability does not change. Debt buying, while not in public favor, is an important part of the debt cycle and recovery by lenders. This process allows lenders the liquidity to continue originating new loans and keeps credit available for those who need it. Adding a personal knowledge requirement for every sale along the chain of title, especially for low balance accounts, creates a nearly impossible burden as it attaches the validity of the transfer to an individual present at the sale, not to the business who owns the account. Individuals come and go with employers, but the records and institutional knowledge of the transfer remain with the business that owns the account.

Further, the idea of requiring businesses to have personal knowledge of each step in the chain of title is contrary to established case law in New Mexico. Courts have widely accepted the adoptive business records doctrine wherein one company incorporates the business records of another company into its own business records. *United States v. Powers*, 578 Fed.Appx. 763, 779 (10th Cir. 2014). Under that doctrine, the "record created by a third party and integrated into another entity's records is admissible as the record of the custodian entity, so long as the custodian entity relied upon the accuracy of the record and the other requirements of Rule 803(6), [the business records exception to the hearsay rule,] are satisfied." *Browner v. Allstate Indem. Co.*, 591 F.3d 984, 987 (8th Cir. 2010). As such, the personal knowledge requirement in the new rule exceeds the evidentiary requirements of nearly all other jurisdictions. Considering the limited jurisdiction of the Magistrate and Metropolitan courts, exceeding the evidentiary burden required by the federal district courts is *in apropos*.

SUPREME COURT OF NEW MEXICO
FILED

APR 06 2020

A handwritten signature in black ink, appearing to be "JPA" followed by a horizontal line.



Executive Director: Ellen Leitzer, Esq.

Telephone: (505) 265-2300

Facsimile: (505) 265-3600

Website: www.sclonm.org

4317 Lead Avenue SE, Suite A
Albuquerque, New Mexico 87108

April 17, 2020

Board of Directors:

President: Kathleen B. Hammar, J.D.

Vice-President: Shelly Fritz, DDS

Treasurer: Tiffani Luna CPA

Secretary: Lynne Carlberg SCP, SPHR

Honorable Judith K. Nakamura, Chief Justice

Honorable Barbara J. Vigil, Senior Justice

Honorable Michael E. Vigil, Justice

Honorable C. Shannon Bacon, Justice

Honorable David K. Thomson, Justice

RE: Proposal 2020-011 - Comments in Support

To the Honorable Justices of the Supreme Court:

The Senior Citizens' Law Office submits the following comments in support of Proposal 2020-011. As an organization that assists seniors - many of whom are reliant upon fixed incomes to meet their basic needs - we have direct experience with the influx of consumer debt lawsuits in New Mexico and its effects upon a particularly vulnerable population.

This Court has recognized that our state's legal system is inundated with consumer debt claims, and that the nature of debt buying is such that proof of a right to collect can become increasingly tenuous over time.¹ The Court has already acted to try to relieve the judicial burden of such claims; the prior amendments to the District Court Rules are a prime example. Since July 2017, professed creditors suing in District Court must provide basic information showing they have a legitimate ownership interest in the account they seek to collect, and that they have good reason to believe they are suing the correct defendant. Yet, in the Metropolitan and Magistrate Courts - where a large portion of such cases are filed - consumer debt claims are still held to a much weaker pleading standard. This lesser pleading standard enables our state's Magistrate-level courts to still be a vehicle for claims that may not have been properly vetted before filing.

The proposed rule changes are fair. Defendants in consumer debt claims should be given proper notice of the allegations against them - in particular, the existence and amount of the alleged debt, and the plaintiff's basis for claiming the right to collect it. The Court has already

¹ Indeed, the Committee Commentary to District Court Rule 1-009 highlights the "systemic problems and abuses" that have led to the Court adopting a heightened pleading standard for consumer debt claims. "These include pleadings and judgments based on insufficient or unreliable evidence, 'robo-signing' of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity)."


recognized this through its prior changes to the District Court Rules, which merely require a creditor to produce sound evidence that its suit has merit. Such information empowers consumer defendants, giving them the information necessary to fairly assess whether the debt is actually theirs; whether the plaintiff has a legitimate right to collect it; and whether they may have valid defenses to pursue. This helps promotes justice and fairness towards consumers, and especially the *pro se* defendants who form a substantial share of those defending against such claims.

These rules do not impose any undue burden upon creditor plaintiffs. It is perfectly reasonable to expect a business that seeks to avail itself of our state's courts to be able to produce the relevant facts and documentation to prove its case. Requiring the plaintiff to show *prima facie* evidence of entitlement to collect a debt will discourage baseless claims. It will also promote judicial efficiency in well-founded cases, since the defendant will not have to pursue discovery to determine whether the plaintiff is actually the current owner of a claimed debt or whether the debt is beyond the statute of limitations.

It makes sense to have a consistent pleading standard for consumer debt cases across all New Mexico courts. If a plaintiff cannot produce proof that they have a legitimate right to collect a debt, then there is no valid policy reason why consumers should be more vulnerable to that plaintiff's lawsuit simply because the case was brought in a small claims court.

The proposed changes provide sensible protections to consumer defendants, and only ask creditor plaintiffs to provide proof and knowledge that they should already have. The Senior Citizens' Law Office respectfully asks the Court to adopt these proposed changes, and thus set a clear and consistent pleading standard for all the courts of our state.

Sincerely,



Ellen Leitzer

Executive Director

Comments to Proposed Changes to Rules of Civil Procedure 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702 and 3-704 and Form 4-226

Patricia Simpson <patricia@simpsonlawoffice.com>

Apr 17, 2020 11:33 AM

Posted in group: **nmsupremecourtclerk**

Mr. Moya:

Below are my comments to Proposed Changes to Rules of Civil Procedure 2-201, 2-401, 2-702, 2-703 and Form 4-226:

Magistrate Courts are, as the Judge's tell people every day, "people's courts." Many, many, many, if not the majority of, parties in Magistrate Courts represent themselves. The proposed amendments and revisions to Form 4-226 are very complicated and confusing and time consuming. Non-legal trained parties will have great difficulty understanding and completing the forms. Who is going to explain to these pro se parties what information goes into forms and how to complete them? Pro se Clinics are already over-full and over whelmed. This is not to mention that Magistrate Judges are not legally trained. Who is going to train them? Who is going to tell the pro se parties which form they need to use for the type of case they are filing? What about amending the ANSWER TO CIVIL COMPLAINT form? Who is going to assist pro se defendants in preparing answers to the complex complaints? How many pro se litigants do you think will even begin to understand the information needed and stated in the proposed new form?

The proposed amendments will force otherwise pro se litigants to obtain legal representation and if they cannot afford legal representation, they simply won't file complaints or won't file answers to complaints. In my opinion, the proposed amendments will be more detrimental to consumer debtors than beneficial. They will significantly increase the legal costs that are borne by the consumer debtor, thereby increasing the financial burden on them even more. The proposed amendments should not take place in Magistrate Courts where the majority of all parties, including the judges, have no legal training and cannot begin to even comprehend the complexity of the amendments.

Thank you for considering my comments.

Patricia L. Simpson

SIMPSON LAW OFFICE

4001 N. Butler Ave., Ste 8101

Farmington, NM 87401

(505) 325-0380 Fax (505) 325-4550

patricia@simpsonlawoffice.com

Comments to proposed amendments to Supreme Court Rules of Practice & Procedure

Katherine Gibson <albdkjg@nmcourts.gov>

Apr 17, 2020 1:45 PM

Posted in group: **nmsupremecourtclerk**

Greetings:

These comments relate to the proposed revisions to Form 4-905 (Summons and notice of trial on petition for writ of restitution – Uniform Owner-Resident Relations Act), and Form 4-924 for Mobile Home Park Act cases.

Proposed addition regarding right to jury trial. I believe there may not be a right to a jury trial on the issue of restitution (eviction/possession), which by statute must be heard by the court within 7 to 10 days from return of service of summons. NMSA 1978, § 47-8-43(A)(1). I suggest a modification to avoid creating the expectation of a right to a jury on the eviction issue. Parties are entitled to a jury trial on damages, which may be set and determined separately from the discrete issue of eviction if a jury is requested. This comment applies to the same proposed addition to Form 4-924 (Summons and notice of trial on petition for termination of tenancy - Mobile Home Park Act).

Proposed deletion of language regarding taped proceedings in metropolitan court. For Form 4-905 - I suggest retaining the first sentence: "If you want a tape recording of any proceeding, you must request it before the beginning of the proceeding." Metropolitan court is no longer a court of record in UORRA cases; however, any record created in the metropolitan court is helpful to the district court conducting de novo appellate review, and litigants may wish to have a record for purposes of using it in an appeal. Though a recording of the proceedings is not required for appellate review, litigants should be made aware of the option to request one.

Katherine J. Gibson
Staff Attorney
Second Judicial District Court
P.O. Box 488
Albuquerque, NM 87103

Comments to proposed revision to form 4-905

Gene Vance <gvance@vancefirm.com>

Apr 17, 2020 2:29 PM

Posted in group: **nmsupremecourtclerk**

Dear Mr. Moya,

As an attorney who practices frequently in the landlord tenant area and was a long time member of the rules committee for Magistrate and Metropolitan Court, I would respectfully suggest that the form changes be given additional thought.

Eliminating the notice concerning recording in Metropolitan Court may be premature. First, to my knowledge, there is no rule in place for how Metropolitan Court Appeals under the New Mexico Uniform Owner Resident Relations Act (NMUORRA) will be handled in the Second Judicial District following the changes to NMSA 1978 34-8A-6. At present, the District Court is ordering litigants to file a statement of issues under the current Rule 1-073, which requires citation to the record. It seems like we should have a rule in place determining how the appeals will be handled before the summons form is changed.

Second, It is not clear how Mobile Home Park Act Appeals will be handled or which court has appellate jurisdiction. We also have the possibility that a case including a claim under the NMUORRA will be combined with another claim which is an on-record civil matter. This happens with counterclaims not governed by the NMUORRA. It also happens where it is not clear whether the NMUORRA or the Forcible Entry and Detainer law will be applied, such as cases where exemptions to the NMUORRA are in question. Until this new statute is interpreted, it is premature to eliminate the notice regarding a record. It is important that the defendant know that requesting a record may affect the right to appeal, and what is gained from eliminating this notice is outweighed by the injustice to a defendant who does not request a record when one turns out to have been required.

Finally, in the last legislative session, the original House sponsor of the statute which changed the Metropolitan Court appellate jurisdiction submitted a bill to repeal much of it. The bill did not make it in the Governor's message. It is expected that she will do so again in the general session 8 months from now.

I also have concerns about the benefit and detriment of the addition concerning the possible right to a jury trial. In the vast majority of restitution cases, the only hearing is the hearing on the writ of restitution. That hearing does not carry a right to a jury trial. This language on the summons needs to be very carefully limited or it will create far more confusion than it eliminates. The proposed language is fairly vague, but there should, perhaps, be some indication that the hearing for possession does not carry with it a right to a jury so that Defendants do not needlessly pay the jury fee.

Thank you very much for the consideration of the committee and the court.

Gene Vance

Vance Chavez & Associates

500 Fourth St. NW Suite 405

247-1111

www.vancechavez.com

gene@vancechavez.com



Rule Proposal Comment Form

1 message

mailservices@sks.com <mailservices@sks.com>

Fri, Apr 17, 2020 at 3:17 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your Name

John P. Burton

Phone Number

5059543906

Email

jburton@rodey.com

Proposal Number

2020-011

Comment

This comment is my own personal view, and not of my law firm, any of its other lawyers, any other group to which I belong, or any client.

I have reviewed the other comments in support of the amendments and in opposition. I submit that those in support have the more persuasive case.

One addition would be of great help: A reference to the comparable 2016 amendments to the Rules of Civil Procedure for the District Courts and to the advisory committee's note to Rule 1-009(J).

The opponents of the amendment are incorrect when they claim a conflict because 2-201(D) provides a rule evidence and they assert that proposed rules 2-201(E) and 2-401(D) would create conflicting evidence rules. The fallacy is that the proposed rules do not create evidentiary rules. Instead, 2-201(E) clearly creates a pleading rule and 2-401(D) clearly creates a standing rule. It is up to the Court whether to make this distinction even clearer.

The opponents' other arguments are similarly misplaced.

Upload

LAW OFFICES OF
FEFERMAN, WARREN & MATTISON

300 Central Avenue, S.W.
Suite 2000 West
Albuquerque, New Mexico 87102
consumer@nmconsumerwarriors.com

Richard N. Feferman
Susan M. Warren
Nicholas H. Mattison

Phone (505) 243-7773
Fax (505) 243-6663

April 17, 2020

Honorable Judith K. Nakamura, Chief Justice
Honorable Barbara J. Vigil, Senior Justice
Honorable Michael E. Vigil, Justice
Honorable C. Shannon Bacon, Justice
Honorable David K. Thomson, Justice

Re: Rule Change Proposal 2020-011

Honorable Justices,

I write in support of the proposed rule changes relating to consumer debt collection cases in Metropolitan and Magistrate Courts. My firm is dedicated to protecting consumers, including consumers faced with debt collection abuse. Our experience leads us to believe that these rule changes are absolutely essential to assuring fairness in the Courts for all New Mexicans.

Three years ago, New Mexico's District Courts adopted rules identical to those now proposed for the Metropolitan and Magistrate Courts. At the time, opponents from the debt collection industry predicted dire results from these changes. None of the predictions have come to pass. The Courts should now create a uniform set of standards for consumer debt collection cases across all trial courts in the State.

The purpose of the proposed rule changes is to ensure that all litigants have access to justice. While industry opponents claim that the rules unfairly disfavor debt collectors, this is untrue. The rules simply require that debt collectors provide full and transparent documentation of their claims. The reason that special rules are needed in consumer debt collection cases is that these cases are different.

Over the past decade, the "debt buyer" industry has exploded. Many debt collection cases are filed by debt buyers rather than the original creditor, and even those cases filed on behalf of original creditors are often prosecuted by high volume debt collection firms. Debts often pass through multiple debt buyers before a case is filed in court. Because of the high volume, low margin nature of the industry, debt buyers rarely invest the time to acquire documentation to prove their claims, such as the underlying contract. Lawsuits are filed without even perfunctory evaluation of the accuracy or adequacy of the data. As a result, errors are common. One study found that in 53% of debt collection contacts, consumers reported that an incorrect amount was sought, the debt was not owed, or the person owing the debt was a family member, not the person contacted. These

errors notwithstanding, debt buyers commonly win judgments, since unsophisticated consumers, lacking counsel, allow default judgment to be entered against them.

It was this potential for abuse that led to the adoption of the District Court rules three years ago. The Committee Commentary to Rule 1-009 NMRA explains that:

... amendments to the rules are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

The same concerns should lead to the adoption of identical rules for the Metropolitan and Magistrate Courts.

Arguments against adoption of the proposed rules by the debt collection industry are overblown and unconvincing. Several collectors have claim (without citation) that the rules “impair[] the obligation of contracts” under the Constitution. Constitutional case law does not support this claim. *Honeyman v. Hanan*, 302 U.S. 375, 378 (1937) (“The Federal Constitution does not undertake to control the power of a state to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure gives reasonable notice and affords fair opportunity to be heard before the issues are decided”). Another debt collector argues that it is too burdensome to require debt collectors to itemize the amount owed by the consumer at the time of default, and that debt collectors should instead be permitted to rely on arcane “charge-off balances” reflecting internal creditor accounting. These charge-off balances are meaningless to the consumer and legally irrelevant to the debt collector’s claims. It is emblematic of the abuses of the industry that representatives have the gall to claim that they should not be required in a lawsuit to explain how much the consumer owes. One debt collector goes so far as to assert that the proposed rules are unfair in requiring personal knowledge to support a debt collector’s claims. The requirement of personal knowledge is fundamental in New Mexico’s Rules of Evidence. Rule 11-602 NMRA; *Martinez v. Metzgar*, 1981-NMSC-126, ¶ 9, 97 N.M. 173, 175 (“Belief or opinion testimony alone, no matter how sincere it may be, is not equivalent to personal knowledge.”).¹

In the final analysis, the proposed rules are a reasonable response to the special problems presented by consumer debt collection cases. Debt collectors with adequate documentation of their claims will not be disadvantaged in any way. Consumers will be able to understand the nature of the claims against them, allowing them to evaluate potential defenses or settle meritorious cases when no defenses exist.

Thank you for your consideration of this matter.

¹ Several debt collectors have also claimed that the new rules conflict with Rule 2-201(D) and 3-201(C) NMRA, which create a presumption of validity for a verified account. This is incorrect. The amended rules simply create an exception to these rules for consumer debt collection cases.

Sincerely,

/s/Nicholas H. Mattison
Nicholas H. Mattison



www.newmexicolegalaid.org
600 Montana Avenue, Suite D, Las Cruces, NM 88001

Robert Greenbaum, Staff Attorney
Direct line: 575.915.1282
Fax: 505.227.8712
robertg@nmlegalaid.org

New Mexico Legal Aid, Inc.

April 17, 2020

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

submitted online only: <http://supremecourt.nmcourts.gov/open-for-comment.aspx>

Re: Comments on Proposal 2020-011, Consumer debt litigation in magistrate and metropolitan courts [Rules 2-201, 2-401, 2-702, 2-703, 3-201, 3-401, 3-702, and 3-704 NMRA and Form 4-226 NMRA]

To Chief Justice Judith K. Nakamura, Senior Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice David K. Thomson; and to the Rules of Civil Procedure for State Courts Committee:

New Mexico Legal Aid (NMLA) is strongly in favor of the adoption of Proposal 2020-011 to increase protections to consumers in consumer debt collection cases in the Magistrate and Metropolitan Courts in a manner comparable to the protections approved by the New Mexico Supreme Court in 2016 for such cases in the District Courts. Since the District Court rules became effective in July 2017, NMLA has seen numerous consumer debt collection cases filed in the Magistrate and Metropolitan Courts which did not satisfy the enhanced consumer debt claim pleading requirements established for the District Courts. However, since those cases were brought in the Magistrate or Metropolitan Courts, those pleading requirements did not apply, allowing those cases—and surely numerous others that NMLA never saw—to be brought and to move forward without the same floor of protections for consumers in place in the District Courts.

There is no justification for leaving consumers exposed to the same debt collection abuses in the Magistrate and Metropolitan Courts from which they would be protected in the District Courts. The forum in which a consumer debt claim case is filed does not seem always to be driven by the size or sophistication of the plaintiff, nor by the amount of the claim. The same nationwide debt buyers that file consumer debt claim lawsuits in the District Courts also do so in the Magistrate and Metropolitan Courts, so it cannot be said that consumer debt claims in those courts are the purview only of small businesses. Regardless of the size of the business, consumers should be entitled to the same level of basic protections from debt collection lawsuits being brought without reasonable safeguards, including basic information about the debt, information to confirm the identity of the debtor, an effort to assure the statute of limitations has not passed, and sufficient evidence of the ownership or assignment of the debt. Many consumer debt claim cases are brought in the District Courts even when the

dollar amount of the claims are well within the jurisdictional limit of the Magistrate and Metropolitan Courts, so there is no basis to say that the additional consumer protections are warranted only for larger claims exceeding the jurisdictional dollar limit of those courts.

Therefore, NMLA supports the proposed rule changes because they would provide consumers with the same basic protections regardless of the forum in which creditors file, in furtherance of the overall purpose of protecting consumers from the worst litigation abuses of the debt collection industry. *See* Comment to Rule 1-009 NMRA.

SUGGESTED CHANGES TO THE PROPOSED AMENDMENTS

There is one citation error in the proposed amendment to Form 4-226 NMRA that should be corrected. The proposed amended Form 4-226 includes the statement (found on page 10 of Proposal 2020-011), “Plaintiff states, consistent with Rule 1-011 NMRA, Rule 2-301 NMRA, or Rule 3-201 NMRA, that the applicable statute of limitations on this claim has not run.” The citation to “Rule 3-201” appears to be an error and should be replaced with “Rule 3-301,” the Metropolitan Court equivalent to Rule 1-011.

As was the case for the corresponding amendments to the rules for the District Courts, the effective date for each of the proposed rule changes, including the amendment to Form 4-226, should specify that it is “effective for all cases pending or filed on or after” the appropriate date selected. Doing so would allow uniformity in the treatment of consumer debt claim cases as of the effective date. Where necessary, plaintiffs in pending cases would have to be given an opportunity to come into compliance with the new rules.

For consistency, either the proposed amendment to Rule 2-702(A) NMRA for the Magistrate Courts should be changed to be subparagraph (5), or the proposed amendment to Rule 3-702(A) NMRA for the Metropolitan Courts should be changed to be an unnumbered subparagraph. Both provisions are the same in adding requirements that each court must find have been met before granting a default judgment in consumer debt claims. The differences in paragraph numbering or formatting between the proposed amendments to the two rules appears to be accidental.

At present, the proposal includes official Committee commentary for only Rules 2-201 and 3-201 NMRA. The Committee commentary for each of those two rules is copied from the second paragraph of the commentary for the District Court rule containing the comparable consumer debt claim provisions, Rule 1-009 NMRA. The commentary includes the statement: “Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; foreclosure actions are not.” NMLA suggests that the clause “foreclosure actions are not” should be deleted from the proposed Committee commentary for Rules 2-201 and 3-201, given that the exclusion seems superfluous, since foreclosure actions are not within the jurisdiction of Magistrate or Metropolitan Courts.

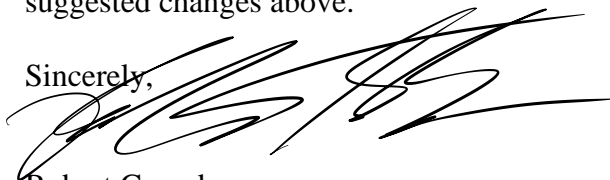
On a broader scale, NMLA advocates for the Committee to recommend, and for the Court to approve, that the final rule changes include Committee commentary adapted from the commentary in all of the existing, comparable District Court rules governing consumer debt

claims. NMLA believes that incorporating such commentary would provide similarly useful guidance for understanding and applying the Magistrate and Metropolitan Court rule changes. Official committee commentary in the New Mexico Rules Annotated does not serve as independent legal authority; “comments must stand on their own merit.” *Cress v. Scott*, 1994-NMSC-008, ¶ 6, 117 N.M. 3. Nonetheless, committee commentary can be an aide to understanding the intent and context of a New Mexico Supreme Court rule. *See State v. Bradford*, 2013-NMCA-071, ¶¶ 9, 12.

In large part, the commentaries that accompanied the 2016 amendments to District Court Rules 1-009, 1-017(E), 1-055(B), and 1-060(B)(6) NMRA are equally applicable to the corresponding proposed amendments to the Magistrate and Metropolitan Court rules. Some changes from the District Court rules’ commentaries would be necessary to adjust references to rules and courts; and some language would need to be modified to reflect differences in the rules or in the rulemaking process. NMLA has adapted the commentaries from the corresponding District Court rules accordingly, as presented in the attached **Exhibit A** (Suggested Official Committee Commentary for Magistrate Court Rules 2-201, 2-401, 2-702, and 2-703 NMRA) and **Exhibit B** (Suggested Official Committee Commentary for Metropolitan Court Rules 3-201, 3-401, 3-702, and 3-704 NMRA). NMLA believes that adoption of these commentaries as part of the proposed rule amendments would provide uniform guidance for understanding and applying the consumer debt claim rules.

NMLA supports the adoption of the Proposal and appreciates your consideration of the suggested changes above.

Sincerely,



Robert Greenbaum
Staff Attorney
Las Cruces Office

Mari Kempton
Managing Attorney - Consumer Law Practice Group
New Mexico Legal Aid, Inc.
P.O. Box 25486
Albuquerque, NM 87125-5486
(505) 545-8540
marik@nmlegalaid.org

Chris Garcia
Staff Attorney
New Mexico Legal Aid, Inc.
P.O. Box 25486
Albuquerque, NM 87125-5486
(505) 243-7871
chris@nmlegalaid.org

Cassie M. Fleming
Staff Attorney
New Mexico Legal Aid, Inc.
P.O. Box 25486
Albuquerque, NM 87125-5486
(505) 814-6596
cassief@nmlegalaid.org

Exhibit A

Suggested Official Committee Commentary for Magistrate Court Rules 2-201, 2-401, 2-702, and 2-703 NMRA

The following suggested commentary shows alterations from the commentary to the corresponding district court rules. References to rules and courts have been adjusted, and some language has been modified to reflect differences in the rules or in the rulemaking process.

Committee commentary for Rule 2-201 NMRA (adapted from that of Rule 1-009 NMRA):

Paragraph ~~J~~E of this rule was added in ~~2016~~2020 to provide additional protections to consumers in consumer debt collection cases. Rules ~~1-017(E)~~2-401, ~~1-055(B)~~2-702(A), and ~~1-060(B)(6)~~2-703(B) NMRA, and Form 4-226 NMRA, were also amended, ~~and Form 4-226 NMRA created,~~ for the same purpose. After considering the New Mexico Supreme Court's 2016 amendments to Rules 1-009, 1-017(E), 1-055(B), and 1-060(B)(6) NMRA, and creation of Form 4-226 NMRA, regarding consumer debt claim litigation in the district courts, ~~consulting with the New Mexico Attorney General's Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration,"~~ the Committee concluded, and the Court agreed, that similar amendments to the rules for the magistrate courts likewise are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, "robo-signing" of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase, "acting in the ordinary course of business," see *Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as "business practice that is routine, regular, usual, or normally done"). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; ~~foreclosure actions are not.~~

Committee commentary for Rule 2-401 NMRA (adapted from that of Rule 1-017 NMRA):

Paragraph ~~E~~D of this rule provides additional protections to consumers in consumer debt collection cases. See Comment to Rule ~~1-009~~2-201 NMRA. Paragraph (~~E~~D)(2)'s affidavit requirements derive from Rule 1-056(E) NMRA. A proper affidavit can support the introduction of business records. See *Nader v. Blair*, 549 F.3d 953, 963 (4th Cir. 2008) (stating that

“employees who are familiar with the record-keeping practices of a business are qualified to speak from personal knowledge that particular documents are admissible business records, and affidavits sworn by such employees constitute appropriate summary judgment evidence.”). In like manner, an affidavit from the “custodian or another qualified witness” or “a certification that complies with Rule 11-902(11) or (12) NMRA” that demonstrates compliance with Rule 11-803(6) NMRA suffice, if the business records accompany the affidavit or certification.

The business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records. *See State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115 (holding that, based on the plain language of Rule 11-803(F) NMRA (2007) (now Rule 11-803(6) NMRA), “it is clear that the business records exception requires some form of document that satisfies the rule’s foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule,” and concluding that “testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay”) (internal quotation marks and citation omitted); *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 33, 320 P.3d 1.

Committee commentary for Rule 2-702 NMRA (adapted from that of Rule 1-055 NMRA):

Paragraph [B](#) of this rule was revised in ~~2016~~2020 to provide additional protections to consumers in consumer debt collection cases. *See* Comment to Rule ~~1-009~~2-201 NMRA. Paragraph [B](#) references Rule ~~1-009(J)(2)~~2-201(E)(2) NMRA, under which, if the party seeking relief in a consumer debt claim has not served and filed with the ~~district~~magistrate court the instrument of writing on which the party’s claim is based, the ~~district~~magistrate court shall not enter a default judgment without the court’s finding of the party’s good cause failure to do so. ~~For cases involving a negotiable instrument which is not part of a consumer debt claim,— Paragraph E of this rule requires that the original negotiable instrument be filed with the court unless the party seeking default judgment provides sufficient alternative evidence to demonstrate the party’s right to relief.~~

Committee commentary for Rule 2-703 NMRA (adapted from that of Rule 1-060 NMRA):

Deutsche Bank Nat’l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046 provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing.” (Emphasis added). Rule 1-060(B)(4) NMRA is equivalent to Rule 2-703(B)(3) NMRA in providing grounds for relief of a void judgment. The amendment to Rule ~~1-060(B)(6)~~2-703(B) adding subparagraph (5) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule ~~1-060(B)(4)~~2-703(B)(3).

Rule ~~1-060(B)(6)~~2-703(B)(5) now provides that non-compliance with the requirements of Rule ~~1-009(J)(2)~~2-201(E)(2) NMRA or Rule ~~1-017(E)~~2-401(D) NMRA or the failure to have substantially complied with Form 4-226 NMRA can provide a basis for granting relief from a judgment entered in a case controlled by Rule ~~1-009(J)~~2-201(E). The addition of this language

provides a ground for relief but does not compel the ~~district~~ magistrate court to grant relief in every case in which the movant shows non-compliance with these consumer debt provisions. ~~In addition to the requirement of Rule 1-060(B)(6) that the movant file the motion within a reasonable time, t~~The movant must also demonstrate that it has a meritorious defense. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When ~~these~~ this requirements ~~are~~ is met, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a Rule ~~1-060(B)(4)~~ 2-703(B)(3) motion to void the judgment ~~can be brought at any time,~~ does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87, 108 S. Ct. 896, 900, 99 L. Ed. 2d 75 (1988).

Exhibit B

Suggested Official Committee Commentary for Metropolitan Court Rules 3-201, 3-401, 3-702, and 3-704 NMRA

The following suggested commentary shows alterations from the commentary to the corresponding district court rules. References to rules and courts have been adjusted, and some language has been modified to reflect differences in the rules or in the rulemaking process.

Committee commentary for Rule 3-201 NMRA (adapted from that of Rule 1-009 NMRA):

Paragraph ~~J~~E of this rule was added in ~~2016~~2020 to provide additional protections to consumers in consumer debt collection cases. Rules ~~1-017(E)~~3-401, ~~1-055(B)~~3-702(A), and ~~1-060(B)(6)~~3-704(B) NMRA, and Form 4-226 NMRA, were also amended, ~~and Form 4-226 NMRA created,~~ for the same purpose. After considering the New Mexico Supreme Court's 2016 amendments to Rules 1-009, 1-017(E), 1-055(B), and 1-060(B)(6) NMRA, and creation of Form 4-226 NMRA, regarding consumer debt claim litigation in the district courts, ~~consulting with the New Mexico Attorney General's Office Consumer Protection Division and creditor and debtor rights representatives, and researching concerns identified by the Federal Trade Commission in its report issued in July of 2010, "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration,"~~ the Committee concluded, and the Court agreed, that similar amendments to the rules for the metropolitan courts likewise are necessary to alleviate systemic problems and abuses that currently exist in the litigation of consumer debt cases. These include pleadings and judgments based on insufficient or unreliable evidence, "robo-signing" of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and an alarmingly high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity).

For an interpretation of the phrase, "acting in the ordinary course of business," *see Wilson v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 32, 135 N.M. 506, 90 P.3d 525, *overruled on other grounds by Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259 (interpreting course of business as "business practice that is routine, regular, usual, or normally done"). Medical bills, subject to relevant Health Insurance Portability and Accountability Act (HIPAA) regulations, and student loans, are considered consumer debt claims for the purposes of this rule; ~~foreclosure actions are not.~~

Committee commentary for Rule 3-401 NMRA (adapted from that of Rule 1-017 NMRA):

Paragraph ~~E~~D of this rule provides additional protections to consumers in consumer debt collection cases. *See* Comment to Rule ~~1-009~~3-201 NMRA. Paragraph (~~E~~D)(2)'s affidavit requirements derive from Rule ~~1-056(E)~~3-703(E) NMRA. A proper affidavit can support the introduction of business records. *See Nader v. Blair*, 549 F.3d 953, 963 (4th Cir. 2008) (stating

that “employees who are familiar with the record-keeping practices of a business are qualified to speak from personal knowledge that particular documents are admissible business records, and affidavits sworn by such employees constitute appropriate summary judgment evidence.”). In like manner, an affidavit from the “custodian or another qualified witness” or “a certification that complies with Rule 11-902(11) or (12) NMRA” that demonstrates compliance with Rule 11-803(6) NMRA suffice, if the business records accompany the affidavit or certification.

The business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records. *See State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115 (holding that, based on the plain language of Rule 11-803(F) NMRA (2007) (now Rule 11-803(6) NMRA), “it is clear that the business records exception requires some form of document that satisfies the rule’s foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule,” and concluding that “testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay”) (internal quotation marks and citation omitted); *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 33, 320 P.3d 1.

Committee commentary for Rule 3-702 NMRA (adapted from that of Rule 1-055 NMRA):

Paragraph [B](#) of this rule was revised in ~~2016~~2020 to provide additional protections to consumers in consumer debt collection cases. *See* Comment to Rule ~~1-009~~[3-201](#) NMRA. Paragraph [B](#) references Rule ~~1-009(J)(2)~~[3-201\(E\)\(2\)](#) NMRA, under which, if the party seeking relief in a consumer debt claim has not served and filed with the ~~district-metropolitan~~ court the instrument of writing on which the party’s claim is based, the ~~district-metropolitan~~ court shall not enter a default judgment without the court’s finding of the party’s good cause failure to do so. ~~For cases involving a negotiable instrument which is not part of a consumer debt claim,— Paragraph E of this rule requires that the original negotiable instrument be filed with the court unless the party seeking default judgment provides sufficient alternative evidence to demonstrate the party’s right to relief.~~

Committee commentary for Rule 3-704 NMRA (adapted from that of Rule 1-060 NMRA):

Deutsche Bank Nat’l Trust Co. v. Johnston, 2016-NMSC-013, ¶ 34, 369 P.3d 1046 provides that a judgment “is not voidable under Rule 1-060(B) [NMRA] due to a lack of prudential standing.” (Emphasis added). [Rule 1-060\(B\)\(4\) NMRA is equivalent to Rule 3-704\(B\)\(3\) NMRA in providing grounds for relief of a void judgment.](#) The amendment to Rule ~~1-060(B)(6)~~[3-704\(B\)](#) [adding subparagraph \(5\)](#) provides a ground for relief in consumer debt litigation separate from the relief from voidable judgments under Rule ~~1-060(B)(4)~~[3-704\(B\)\(3\)](#).

Rule ~~1-060(B)(6)~~[3-704\(B\)\(5\)](#) now provides that non-compliance with the requirements of Rule ~~1-009(J)(2)~~[3-201\(E\)\(2\)](#) NMRA or Rule ~~1-017(E)~~[3-401\(D\)](#) NMRA or the failure to have substantially complied with Form 4-226 NMRA can provide a basis for granting relief from a judgment entered in a case controlled by Rule ~~1-009(J)~~[3-201\(E\)](#). The addition of this language

provides a ground for relief but does not compel the ~~district~~metropolitan court to grant relief in every case in which the movant shows non-compliance with these consumer debt provisions. ~~In addition to the requirement of Rule 1-060(B)(6) that the movant file the motion within a reasonable time, t~~The movant must also demonstrate that it has a meritorious defense. See *Rodriguez v. Conant*, 1987-NMSC-040, ¶ 18, 105 N.M. 746, 737 P.2d 527. When ~~these~~this requirements ~~are~~is met, the court may exercise discretion to determine whether intervening equities or other considerations outweigh the desire “that the ultimate result will address the true merits and substantial justice will be done.” *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶¶ 15, 20, 21, 92 N.M. 47, 582 P.2d 819.

In contrast, a Rule ~~1-060(B)(4)~~3-704(B)(3) motion to void the judgment ~~can be brought at any time,~~ does not permit the trial court to exercise discretion to deny the motion, *Classen v. Classen*, 1995-NMCA-022, ¶¶ 10, 13, 119 N.M. 582, 893 P.2d 478, and does not require proof of a meritorious defense. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87, 108 S. Ct. 896, 900, 99 L. Ed. 2d 75 (1988).



924 Park Ave SW, Ste C
Albuquerque, NM 87102
505.255.2840
nmpovertylaw.org

Joey D. Moya, Clerk
New Mexico Supreme Court
P O Box 848
Santa Fe, New Mexico 87504

April 17, 2020

Dear Chief Justice Nakamura,

On behalf of the New Mexico Center on Law & Poverty, we submit these comments in support of Supreme Court Proposal 2020-11. We urge the Court to adopt in full the proposed changes to Court Rules 2-107, 2-201, 2-401, 2-702, 2-703, 3-107, 3-201, 3-401, 3-702, and 3-704 and Civil Form 4-226.

The proposed amendments are necessary to stop the most abusive debt collection practices in New Mexico Courts. In 2016, after the Attorney General's Office received reports of predatory debt collection practices in the state courts, the Supreme Court initiated a rulemaking to amend the New Mexico District Court Rules of Civil Procedure. The 2016 amendments established minimal pleading requirements for plaintiffs filing consumer debt collection actions in District Courts. Unfortunately, the same predatory debt collection practices have persisted in the Metropolitan and Magistrate Courts. We hope the Court will adopt Proposal 2020-11 to address pervasive predatory practices and eliminate procedural inconsistencies across New Mexico Courts.

Predatory Debt Collection Practices Are a Documented Problem in New Mexico.

Abuses in the debt collection and debt litigation industry have been well documented nationally. In 2010, the Federal Trade Commission (FTC) has conducted extensive research around the country and thoroughly documented the most pervasive abuses in debt litigation.¹ The FTC noted that debt collection lawsuits filed without sufficient evidence, resulting in high rates of default judgments, improper wage garnishment, and attempts to collect on time-barred debts occurred in courts across the country at alarming rates.²

A primary reason for the proliferation of predatory debt collection abuses nationally is the growth of the debt buying industry. Debt buyers are third party companies that purchase defaulted debt for fractions of pennies on the dollar. In the past decade, the debt buying industry has grown significantly. After purchasing defaulted debt, third party debt buyers attempt to recoup whatever costs possible, often using aggressive collection tactics, including filing lawsuits en masse.

¹ Federal Trade Commission, "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration" ii <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf> (2010).

² *Id.*

However, debt collectors or ““mass filers,” as they are frequently described, often lack information about the underlying debts themselves, such as when an alleged debtor entered into a contract, with whom the debtor entered the contract, or even the original amount. This lack of information leads to precisely the problem that Proposal 2020-11 attempts to address: lawsuits filed with insufficient evidence that frequently result in defaults against consumers who do not have enough information to contest the debt in court.

Abusive debt collection is unfortunately ubiquitous not only nationally, but also here in New Mexico. **40% of New Mexicans are currently facing a debt in collections.**³ Debt/money due cases make up a substantial volume of Magistrate and Metropolitan judges’ civil dockets across the New Mexico. Cases with insufficient pleadings, often brought by non-attorneys with very little information about the alleged debts, proliferate. Many cases are filed by debt collectors who lack the legal authority to enforce the debt – nearly a quarter of all public complaints about debt collection concern false representations of the money owed.⁴

The current system in place in Metropolitan and Magistrate Courts is unfair for consumers, who could be facing a lawsuit for a decade-old debt, or an incorrect debt, or a debt that they never even owed, without any safeguards to address the abusive practices. Defaults in the courts of limited jurisdiction remain very high. The current pleading requirements have created a scenario where New Mexico judges are declaring a winner in a dispute without any opportunity to assess the facts and apply the law. Proposal 2020-11 is a procedural solution to address the most predatory practices in debt collection litigation and make the proceedings more balanced for all litigants.

Stop the Disproportionate Impact of Predatory Debt Collection on Low-Income Families.

Attached to this letter are examples of debt/money due pleadings from Metropolitan and Magistrate Courts around the state. If Proposal 2020-11 were adopted, these pleadings would be insufficient and would not be permitted under the amended rules.

The attached pleadings from Metropolitan and Magistrate Courts are from high cost lenders and third-party debt collectors, including one debt collector suing for an alleged medical debt. Storefront loans are capped at 175% APR in New Mexico and are disproportionately concentrated in communities of color, especially Native American communities.⁵ Medical debt is a growing crisis nationally⁶, and the devastating financial impact of surprise billing, opaque pricing, and out-of-network costs in New Mexico recently generated national attention.⁷

³ National Consumer Law Center, “New Mexico: Debt Collection Factsheet” (2018)
https://www.nclc.org/images/pdf/debt_collection/fact-sheets/NewMexico.pdf.

⁴ *Id.*

⁵ National Equity Atlas, “New Mexicans Deserve Fair Loans” (2019)
https://nationalequityatlas.org/sites/default/files/New_Mexico_Small_Loans_factsheet_08-05-19.pdf; National Consumer Law Center, “What States Can Do To Help Consumers” (last accessed April 2020)
https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-debt-collection-state-reform.pdf

⁶ National Consumer Law Center, “Medical Debt Collection” (last accessed April 2020)
<https://www.nclc.org/images/Medical-Debt-Collection.pdf>

⁷ Laura Bell, “As Patients Struggle with Bills, Hospital Sues Thousands” THE NEW YORK TIMES (September 3, 2019)
<https://www.nytimes.com/2019/09/03/health/carlsbad-hospital-lawsuits-medical-debt.html>

Both high-cost loan and medical debt collectors frequently file debt/money due cases in New Mexico Metropolitan and Magistrate Courts. The people these businesses sue are often low-income New Mexicans who do not have access to an attorney or legal assistance to raise possible defenses or identify illegal debt collection practices. For a low-income family facing a court order in debt/money due case, the consequences of these “small claims” can be devastating. A wage garnishment can keep a family that is already struggling to meet basic needs, from affording food, rent or car payments. Adopting Proposal 2020-11 is vital to stop the disproportionate impact that predatory debt collection practices have on low-income families. Requiring that debt collectors provide basic information about alleged debts will give consumers a fair shake to defend themselves against predatory collection practices.

We Urge the Court to Adopt Consistent Consumer Protections Across New Mexico Courts.

In 2016, the NM Center on Law & Poverty expressed its concern that creating different standards for debt/money due cases in Metropolitan and Magistrate Courts would encourage forum shopping. While form 4-226 has been widely utilized by debt collection plaintiffs in the District Courts, our office still sees many complaints like those attached to this letter that are filed in Metropolitan and Magistrate Courts and contain no information beyond a statement of default and an alleged amount owed. Adopting Proposal 2020-11 to align the standards for consumer debt cases in all New Mexico courts is a commonsense fix that will create consistent standards for all borrowers.⁸

Sincerely,

Lindsay Cutler
Attorney, Economic Equity
505.255.2840
Lindsay@nmpovertylaw.org

Maria Griego
Director, Economic Equity

Rob Treinen
Treinen Law Office, PC

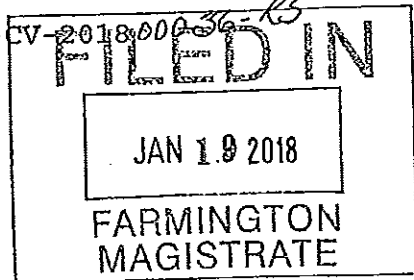
⁸ There is one discrepancy that the NM Center on Law & Poverty wishes to point out to the Court. On page 7 of the proposed rules, the proposed amendment for Rule 3-704(B)(5) reads “*any other reason justifying relief from the operation of judgment*, including failure of a party who was subject to the provisions of 3-201(E) NMRA to comply with Rules 3-201(E)(2) and 3-401(D) NMRA, and to substantially comply with Form 4-226 NMRA.” (emphasis added). This proposal for the Metropolitan Court Relief from Judgment Rule differs from the proposed Magistrate Court counterpart Rule 2-703(B)(5). The italicized language above was included only in the Metropolitan Court rules and not the Magistrate Court rules. The NM Center on Law & Poverty believes this discrepancy was unintentional and the italicized language should be removed from Rule 3-704(B)(5) to ensure procedural consistency in the both the Magistrate and Metropolitan Court Rules.

STATE OF NEW MEXICO
IN THE SAN JUAN MAGISTRATE COURT
SAN JUAN COUNTY

AUTOMATED RECOVERY SYSTEMS OF NEW MEXICO, INC. (Plaintiff)

against

Case No. M- 47-CV-2018-00036-15




CAROLYN ROSE JAQUEZ-MCADAM
ROBERT D MCASAM
18 ROAD 5433
FARMINGTON, NM 87401

, (Defendant(s))

CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.
2. Plaintiff claims from defendant the amount of \$1100.52 and also claims interest of \$624.63, court costs of \$77.00 and attorney fees of \$366.84 plus service fees amount to be determined.
3. Plaintiff's claim arises from the following event or transaction: Collection of account(s) listed in EXHIBIT A on page 2 of this complaint, which accounts were assigned to Plaintiff, a licensed collection agency licensed in the State of New Mexico, for collection.
4. Trial by jury is not demanded.

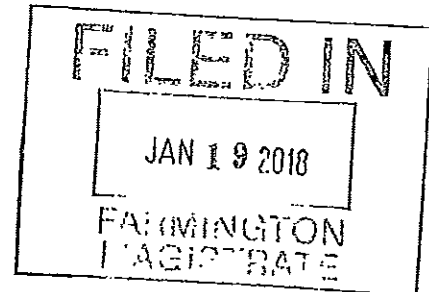
DEC 15, 2017


PATRICIA L SIMPSON, P.C.
Attorney for Plaintiff
4001 N. Butler Ave., Ste 8101
Farmington, NM 87401
(505) 599-9178 Fax (505) 325-4550

[As amended, effective January 1, 1995.]

EXHIBIT A

CLIENT	DOS	PRINCIPAL	INTEREST
SAN JUAN REGIONAL MED CENTER	12/14/12	\$361.84✓	\$258.59
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$164.90✓	\$31.11
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$51.20✓	\$9.66
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$33.60✓	\$6.34
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$24.80✓	\$4.68
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$41.42✓	\$7.81
PINON FAMILY MEDICINE- ATHENA	09/12/16	\$25.75✓	\$4.86
SAN JUAN REGIONAL MED CENTER	10/08/12	\$192.53✓	\$151.45
SAN JUAN REGIONAL MED CENTER	01/02/13	\$204.48✓	\$150.59



[2-201, 3-201]

STATE OF NEW MEXICO

IN THE Magistrate COURT
Valencia COUNTY

Fast Bucks, Plaintiff

No. M-59 CV-2018-00216

v.

Michael Pino, Defendant
1546 Heaton Ct., Address
Los Lunas, City

FILED IN

APR 26, 2018

VALENCIA COUNTY DIV I & III
MAGISTRATE COURT

CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.
2. Plaintiff claims from Defendant the amount of \$ 498.61 also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ _____, which is described as follows: _____

3. Plaintiff's claim arises from the following event or transaction: _____

Default on Contract

4. Trial by jury is (not) demanded. (If a jury is demanded, an additional cost must be paid upon filing.)

Dated: 4/25/18

[Signature]

Signed

Cynthia Romero

Name (print)

3526 Hwy 47

Address (print)

Peralta, NM 87042

City, state and zip code (print)

(505) 565-0643

Telephone number

Distribution Instructions

1 copy - Court 1 copy - Defendant 1 copy - Plaintiff

[Supreme Court Approved, September 30, 1994; as amended, effective January 1, 1995.]

Skip to Main Content Logout My Account Search Menu Search Refine Search Back

Location : All Courts Images

REGISTER OF ACTIONS**Case No. M-59-CV-2018-00216****FastBucks, Plaintiff(s) v. Michael Pino, Defendant(s)**

Case Type: General Civil
 Date Filed: 04/26/2018
 Location:
 Judicial Officer: Sanchez, John W.

§ § § § § § § §

PARTY INFORMATION**Attorneys**
Pro Se

Defendant Pino, Michael
 1546 Heaton Ct
 Los Lunas, NM 87031

Plaintiff FastBucks *Doing Business As* INFINITY LOANS OF LOS
 LUNAS
 3526 Hwy 47
 Peralta, NM 87042

Pro Se**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

07/09/2018 Decision for the Plaintiff (Judicial Officer: Sanchez, John W.)

OTHER EVENTS AND HEARINGS

04/26/2018 Cause Of Actions Debt and Money Due
 Filed By: FastBucks
 Action Against: Pino, Michael
 Action Type: Action
 Remedies Sought: Filing Fee
 Other

04/26/2018 **OPN: GENERAL CIVIL COMPLAINT FILED**

04/26/2018 Summons and Answer packet

Pino, Michael

Served 05/10/2018
 Response Received 06/11/2018
 Returned 06/11/2018

06/11/2018 **MTN: FOR DEFAULT JUDGMENT**06/11/2018 **RET: SUMMONS SERVED**

Served on 5/10/18

06/11/2018 **ANS: NO ANSWER RECEIVED**07/02/2018 **RETURNED MAIL**

07/09/2018 Motion Hearing, (9:00 AM) (Judicial Officer Sanchez, John W.)

Default hearing

Parties Present

Result: Failure to Appear - Defendant

07/09/2018 **NCJ: JUDGMENT**

\$615.61

08/17/2018 **GAR: APPLICATION OF WRIT OF GARNISHMENT AND AFFIDAVIT**08/24/2018 **GAR: WRIT OF GARNISHMENT- WAGE PACKET ISSUED**

Packet contains Writ of Garnishment and Answer by Garnishee

08/24/2018 **Writ of Garnishment on Wages**

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
MAGISTRATE COURT

FILED IN
MAGISTRATE COURT

JUN 03 2019

Community Financial Service Centers, LLC
Plaintiff

SANDOVAL COUNTY
DIVISION 1 & 2

M-LS-CV-2019-00489

No. _____

Dominique Thomas, Defendant
4515 Arrowhead Ridge DR, Address SE #515
Rio Rancho, NM 87124, City, State and Zip Code

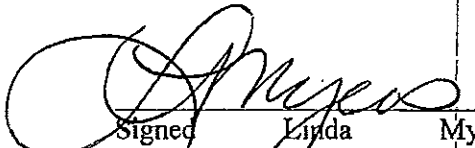
CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.
2. Plaintiff claims from Defendant the amount of \$ 672¹¹ and also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ N/A, which is described as follows: _____

3. Plaintiff's claim arises from the following event or transaction: Defendant Signed a legal binding loan contract on Date: 1-24-19 and did not fulfill contract _____
4. Trial by jury is (not) demanded. *(If a jury is demanded, an additional cost must be paid upon filing.)*
5. An audio recording of the Trial is (not) demanded. *(If you do not request an audio recording, your right to appeal may be limited.)*

Date _____


Signed Linda Myers
Community Financial Service
Centers, LLC d/b/a SpeedyLoan
P.O. 44248
Rio Rancho, NM 87174
Telephone Number 5053360469

STATE OF NEW MEXICO
SANDOVAL COUNTY MAGISTRATE COURT IN BERNALILLO

FILED IN
SANDOVAL COUNTY
June 03, 2019
MAGISTRATE COURT

Community Financial Service Centers, LLC d/b/a
SpeedyLoan, Plaintiff(s)

v.

Dominique Thomas, Defendant(s)

No. M-45-CV-2019-00489
Judge Assigned: Delilah Montano-Baca

CIVIL SUMMONS

To:
Dominique Thomas

Address:
4515 Arrowhead Rdige DR SE #515 Rio Rancho, NM 87124

GREETINGS: THIS IS A COURT ISSUED SUMMONS.

A LAWSUIT HAS BEEN FILED AGAINST YOU. A copy of the lawsuit (complaint) and a response form (answer form)² are attached.

YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file (in person or by mail) your written response with the court. When you file your response, you must give or mail a copy to the person who signed the complaint.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THE TWENTY (20) DAY PERIOD, NO COURT DATE WILL BE SET, AND THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU FOR THE MONEY OR OTHER RELIEF REQUESTED IN THE COMPLAINT. A DEFAULT JUDGMENT MEANS **YOU LOSE THE CASE AND YOU OWE THE PLAINTIFF.**

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT YOU MAY BE GIVING UP ANY DEFENSES YOU MAY HAVE, FOR EXAMPLE, THAT YOU DO NOT OWE THE PLAINTIFF OR THAT TOO MUCH TIME HAS PASSED.

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written response, and you must pay a jury fee when you file your response.

If you need an interpreter, you must ask the court for one in writing.

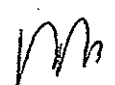
Your answer must be filed with the above named court which is located at:

Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo NM 87004

A copy of your answer must be mailed to the plaintiff or to the plaintiff's attorney.

Name and Address of Plaintiff or Plaintiff's Attorney:

COMMUNITY FINANCIAL SERVICE CENTERS, LLC PO BOX 44248
D/B/A SPEEDYLOAN RIO RANCHO, NM 87174


Natalie Montoya, Clerk

STATE OF NEW MEXICO
SANDOVAL COUNTY MAGISTRATE COURT IN BERNALILLO

FILED IN
SANDOVAL COUNTY
June 03, 2019
MAGISTRATE COURT

Community Financial Service Centers, LLC d/b/a
SpeedyLoan, Plaintiff(s)

v.

Dominique Thomas, Defendant(s)

No. M-45-CV-2019-00489
Judge Assigned: Delilah Montano-Baca

CIVIL SUMMONS

To:
Dominique Thomas

Address:
4515 Arrowhead Rdige DR SE #515 Rio Rancho, NM 87124

GREETINGS: THIS IS A COURT ISSUED SUMMONS.

A LAWSUIT HAS BEEN FILED AGAINST YOU. A copy of the lawsuit (complaint) and a response form (answer form)² are attached.

YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file (in person or by mail) your written response with the court. When you file your response, you must give or mail a copy to the person who signed the complaint.

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THE TWENTY (20) DAY PERIOD, NO COURT DATE WILL BE SET, AND THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU FOR THE MONEY OR OTHER RELIEF REQUESTED IN THE COMPLAINT. A DEFAULT JUDGMENT MEANS **YOU LOSE THE CASE AND YOU OWE THE PLAINTIFF.**

IF YOU DO NOT FILE A WRITTEN RESPONSE WITH THE COURT YOU MAY BE GIVING UP ANY DEFENSES YOU MAY HAVE, FOR EXAMPLE, THAT YOU DO NOT OWE THE PLAINTIFF OR THAT TOO MUCH TIME HAS PASSED.

You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

You are entitled to a jury trial in most types of lawsuits. To get a jury trial, you must request one in your written response, and you must pay a jury fee when you file your response.

If you need an interpreter, you must ask the court for one in writing.


Your answer must be filed with the above named court which is located at:

Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo NM 87004

A copy of your answer must be mailed to the plaintiff or to the plaintiff's attorney.

Name and Address of Plaintiff or Plaintiff's Attorney:

COMMUNITY FINANCIAL SERVICE CENTERS, LLC PO BOX 44248
D/B/A SPEEDYLOAN RIO RANCHO, NM 87174


Natalie Montoya, Clerk

RETURN

FILED IN

JUN 17 2019

MAGISTRATE COURT
SANDOVAL CO. DIV. I & III

STATE OF NEW MEXICO)

ss

COUNTY OF SANDOVAL)

(complete the following, unless service by sheriff or deputy)

☒ I, being duly sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Sandoval County on the 15 day of June, 2019, by delivering a copy of this summons, a copy of the complaint and an answer (indicate below how served):

(complete if service by sheriff or deputy)

☐ I certify that I served this summons in _____ County on the _____ day of _____, _____, by delivering a copy of this summons, a copy of the complaint and an answer form, in the following manner:

(person serving summons must check one box and fill in appropriate blanks)

☐ by delivering a copy of this summons, a copy of the complaint and an answer form to the defendant Dominique Thomas (used when defendant receives copy of summons or refuses to receive summons).

☐ by delivering a copy of this summons, a copy of the complaint and an answer form to _____, a person over fifteen (15) years of age and residing at the usual home of the defendant, Dominique Thomas, located at _____

☒ by posting a copy of the summons, complaint and an answer form in the most public part of the usual home of Dominique Thomas located at 4515 Arrowhead Ridge SE, #515 (address) (used if no person found at home or usual place of residence). Rio Rancho, NM

(If service is by posting a copy of the summons, complaint and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

☐ by delivering a copy of this summons, a copy of the complaint and an answer form to _____, an agent authorized to receive service of process for defendant.

☐ by delivering a copy of this summons, a copy of the complaint and an answer form to _____, (parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).

☐ by delivering a copy of this summons, a copy of the complaint and an answer form to _____ (name of person), _____ (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

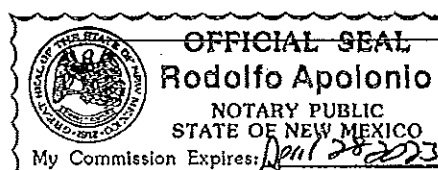
☐ by service by mail.

Fees: \$ _____

*Subscribed and sworn to before me this 15 day of June, 2019.

Judge, Notary or Other Officer Authorized to Administer Oaths

Signature of Person Making Service



Title (if any)

_____, Official Title

Distribution 1 copy-Court 1 copy Service 1 copy-Return of Service

[As amended, 9/2/97; rev forms 4/4/18]
Page 3 of 10

Civil forms 4-204, 4-301 and CV File Worksheet

Sandoval County Magistrate Court 1000 Montoya Road
Bernalillo NM 87004 Phone: (505) 867-5202 (fax) (505) 867-0970

website: www.nmcourts.gov

Case No M-45-CV-2019-
00489

FILED IN

JUN 17 2019

No. M-45-CV-2019-00489

(To be completed if service is made by posting)⁴

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the 17 day of June, 2019, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, and an answer form to:

Dominique Thomas (name of person served)
4515 Arrowhead Ridge Dr. SE #515 (address where mailed)
Sandoval (county)
Rio Rancho, NM 87124 (city, state and zip code)

Subscribed and sworn to before me this 15
day of June, 2019

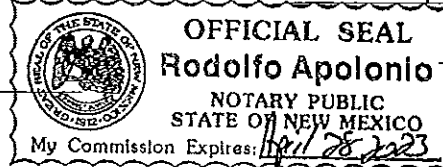
Signature of person making service

Title (if any)

Judge, notary or other officer authorized to administer oaths¹

Place of mailing

Official title



RRM

6-17-19

Date

(To be completed if service is made by mail.)⁵

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the ___ day of ___, ___, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

(name of person served)
(address where mailed)
(county)
(city, state and zip code)

Subscribed and sworn to before me this _____
day of _____, _____

Signature of person making service

Title (if any)

Judge, notary or other officer authorized to administer oaths³

Place of mailing

Official title

Date

USE NOTE

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, see Rules 4-301 and 4-302 NMRA.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. For use when service is by posting.
5. If service is by mail, Civil Form 4-208 must be completed and mailed with this summons. [As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997; as amended by Supreme Court Order No. 16-8300-032, effective for all cases pending or filed on or after December 31, 2016.]

Distribution 1 copy-Court 1 copy-Service 1 copy-Return of Service

[As amended, 9/2/97; rev forms 4/4/18]
Page 4 of 10

Civil forms 4-204, 4-301 and CV File Worksheet

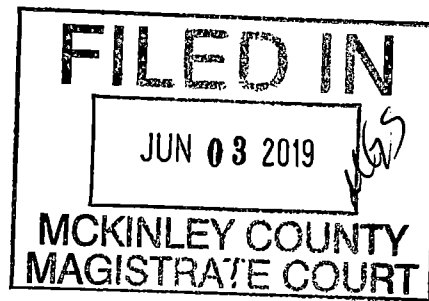
Sandoval County Magistrate Court 1000 Montoya Road
Bernalillo NM 87004 Phone: (505) 867-5202 (fax) (505) 867-0970 website: www.nmcourts.gov

Case No M-45-CV-2019-00489

04-201 . Civil Complaint.

[2-201, 3-201]

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
MAGISTRATE COURT



D&L Loans, LLC
d.b.a Paradise Loans

Plaintiff

No. M-35-CV-2019- 213
Judge Yazzie

Vs.

Ernest Johnson
Valanesia Johnson

Defendant

SSN# 525-25-9987
Date of Birth: 11/07/1969
SSN#: 525-85-0987
Date of Birth: 04/02/1985

P.O. Box 791
Gallup, NM 87305

Address
City, State & Zip

CIVIL COMPLAINT

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.
2. Plaintiff claims from the defendant the amount of **\$2925.12** and claims interest and courts costs.
Plaintiff claims Defendant personal property of the value of **\$2925.12**, which is described as follows: Holiday Installment loan
3. Plaintiff's claim arises from the following event or transaction: ***Mrs. Johnson obtained a Holiday Installment loans in 2018, signed a contract to repay said loan. Mrs. Johnson has failed to comply with their signed contract.***

4. Trial by jury is (not) demanded. (if a jury is demanded, an additional cost must be paid upon filing.)

Date:

5/24/2019


Signed

Joanna Bieck
Name (Print)

1727 S. 2nd Street
Address (Print)

Gallup, NM 87301
City, State, Zip code (Print)

505-863-4336
Telephone Number

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE METROPOLITAN COURT

No.

Barclays Bank Delaware
Plaintiff,

VS.

Raquel S Montano,
Defendant.

T4CV 2017 1515

FILED IN
METROPOLITAN COURT
2017 JAN 27 AM 9:50
CUSTOMER SERVICE
DIVISION

COMPLAINT FOR DEBT AND MONEY DUE

Plaintiff states:

1. That, Defendant, Raquel S Montano, who resides in Bernalillo County, New Mexico applied to Plaintiff for issuance of credit to enable Defendant to purchase merchandise and services upon credit, and agreed to pay for such merchandise and services, together with interest at specific rates, in monthly payments.
2. That, Defendant failed to pay the payments when they were due and now owes Plaintiff the sum of \$2315.14.

WHEREFORE, Plaintiff prays the Court for judgment against Defendant, in the amount of \$2315.14, together with its costs and for such other relief as the Court may direct.

THE MOORE LAW GROUP, APC

By: _____
Francella M. Wright
Karel Raba _____
Attorneys for Plaintiff
PO Box 3767
Albuquerque, NM 87190
Telephone: 800-506-2652
File# 251500705.001