

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE DISTRICT COURTS
PROPOSAL 2019-007**

March 4, 2019

The Rules of Civil Procedure Committee has recommended amendments to Rule 1-055 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 3, 2019, 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.

1-055. Default.

A. **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

B. **Judgment.** Judgment by default may be entered as follows: in all cases the party entitled to a judgment by default shall apply to the court for judgment by default; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on the application; provided, however, that the filing of an appearance and disclaimer of interest shall not be construed as requiring the service of written notice of application for judgment under the terms of this rule. In cases controlled by Rule 1-009(J) NMRA, prior to 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 1-009(J)(2) and 1-017(E) NMRA, and has substantially complied with the requirements of Form 4-226 NMRA. If, in order to enable the court to enter judgment or to carry it

into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct those hearings or order those references as it deems necessary and proper and shall accord a right of trial by jury to the parties entitled thereto.

C. **Setting aside default.** For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 1-060 NMRA.

D. **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 1-054(C) NMRA.

E. **Limitations.** No judgment by default shall be entered against the state or an officer or agency of the state or against a party in any case based on a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court.

[As amended, effective August 27, 1999; as amended by Supreme Court Order 16-8300-031, effective for all cases pending or filed on or after July 1, 2017.]

Committee commentary. — Paragraph B of this rule was revised in 2016 to provide additional protections to consumers in consumer debt collection cases. *See* Comment to Rule 1-009 NMRA. Under Paragraph B references Rule 1-009(J)(2) NMRA, under which, if the party seeking relief in a consumer debt claim has not served and filed with the district court the instrument of writing on which the party's claim is based, the district 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.

[As 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

SUPREME COURT OF NEW MEXICO
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Proposal 2019-007

APR - 3 2019

Theresa S. Delgado <lvedtsd@nmcourts.gov>

Apr 3, 2019 5:00 PM

Posted in group: nmsupremecourtclerk



Good afternoon.

In response to Proposal 2019-007 - Default judgment, required filing of original negotiable instrument [Rule 1-055 NMRA]. I have the following comments:

"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."

How is the original document to be filed with the Court Clerk since all CV cases are electronically filed? Rule 1-005.2(I) Demand for original; electronic conversion of paper documents seems to conflict with this requirement.

"I. Demand for original; electronic conversion of paper documents.

(1) Original paper documents filed or served electronically, including original signatures, shall be maintained by the attorney filing the document and shall be made available, upon reasonable notice, for inspection by other parties or the court. If an original paper document is filed by electronic transmission, the electronic version of the document shall conform to the original paper document. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

There is an active document, from July of 2012 which I am attaching entitled Executive Summary of Subcommittee's Report on The Retention of Original Documents which states that promissory notes and other negotiable instruments are to be considered for retention pursuant to Position 2 and pursuant to Rule 1-055 NMRA. I do not believe that Position 1 or Position 2 of this document have been approved and there is no direction on the storage of original documents. Most courts do not have the capability to store documents due to space constraints. Until there is a determination of how records and documents will be stored, I believe that this requirement is in contradiction of 1-005.2 NMRA. If we are going to require attorneys to file the original document, the document must be submitted by mail to the court and with a cover sheet indicating the Case Caption, who the filer is and what document this is related to. Ex. Promissory Note - Exhibit A to Petition for Breach of Contract filed on xx/xx/xxxx. There should then be instructions on when the document is to be returned to the filer so the court does not become a repository of such documents since there is still no decision from Records and Archives.

Respectfully,
Theresa "TD" Delgado
Court Manager
4th Judicial District Court
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