

Opinion No. 69-12

February 19, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Robert J. Laughlin,
Assistant Attorney General

TO: Mr. Philip T. Manly, Attorney, New Mexico Legislative Council, 334 State Capitol,
Santa Fe, New Mexico

QUESTIONS

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May an individual or a corporation be represented in a magistrate court by a person other than an attorney licensed to practice law in this state?

CONCLUSION

See analysis.

OPINION

{*18} ANALYSIS

Section 18-1-26, N.M.S.A., 1953 Compilation, provides that a person must be licensed to practice law in this state in order to practice before any of the courts "except courts of justice of the peace." This section has been interpreted {*19} as allowing a non-lawyer to "practice law" in justice of the peace courts, at least to a limited extent. See Attorney General Opinion 1959-60, No. 60-173. The New Mexico Legislature in abolishing the justice of the peace system and setting up the magistrate courts system enacted Section 36-1-38, N.M.S.A., 1953 Compilation which provides as follows:

"The office of justice of the peace is abolished. All jurisdiction, power and duties conferred by law upon justices of the peace are transferred to the magistrate court. Whenever the term 'justice of the peace' may be used in the laws, it shall be construed to refer to the magistrate court."

It is the opinion of this office that the above quoted statute is clear and that a layman would be allowed to practice in magistrate courts to whatever extent he could formerly practice in the justice of the peace courts. It would perhaps be well for the legislature to re-examine this situation in the light of the fact that the new magistrate courts have more civil jurisdiction than the old justice of the peace courts.

We do not mean to suggest by this opinion that a non-lawyer would have an unlimited right to practice law in magistrate courts. A person holding himself out as a "magistrate

court lawyer" and charging fees for his services and advice in that capacity would likely be violating Section 18-1-27, N.M.S.A., 1953 Compilation, which provides a penalty for the unauthorized practice of law.