

## Opinion No. 71-83

July 8, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. John Carmody Director Administrative Office of the Courts Supreme Court  
Building Santa Fe, N.M. 87501

### QUESTIONS

#### QUESTIONS

Are Magistrates entitled to be represented by the Attorney General of the State of New Mexico when they are sued as a result of actions taken by them in their official capacity?

#### CONCLUSION

Yes.

### OPINION

#### {\*121} ANALYSIS

Section 4-3-2, N.M.S.A., 1953 Comp. (1969 P.S.) states in pertinent part:

" **Duties of attorney general.** -- Except as otherwise provided by law, the attorney general shall: . . .

C. prosecute and defend all actions and proceedings brought by or against any **state officer** or head of a state department, board or commission, or any employee of the state in his official capacity." (Emphasis added.)

Section 36-1-1, N.M.S.A., 1953 Comp. (1969 P.S.) states:

" **Magistrate court -- Establishment.** -- There is established the 'magistrate court' as a court of limited original jurisdiction within the judicial department of the state government. Personnel of the magistrate court are subject to all laws and regulations applicable to other state {\*122} offices and agencies and to other state officers and employees except where otherwise provided by law. The magistrate court is not a court of record."

Section 36-1-1 states that the magistrate court is established within the judicial department of the state government. Personnel of the magistrate court are subject to

laws and regulations applicable to **other** state offices and agencies and to **other state officers** and employees.

Section 36-2-2, N.M.S.A., 1953 Comp. (1969 P.S.) provides that the governor shall fill vacancies which occur in the office of magistrate courts. Thus, on the basis of these two statutes we would conclude that a magistrate is a state officer. Since a magistrate is a state officer, he is entitled to be represented by the Attorney General's office when he is sued as a result of action taken by him in his official capacity.

By: Frank N. Chavez

Assistant Attorney General