CHAPTER 36
Attorneys

ARTICLE 1
District Attorneys

36-1-1. [Oath and bond of district attorneys.]

Each district attorney shall, within sixty days after his election, qualify by filing in the office of the secretary of state, an oath of office as prescribed for other officers and a good and sufficient bond to be approved by a justice of the supreme court in the sum of five thousand dollars [($5,000)].

History: Laws 1909, ch. 22, § 1; Code 1915, § 1857; C.S. 1929, § 39-101; 1941 Comp., § 17-101; 1953 Comp., § 17-1-1.

ANNOTATIONS

Cross references. — For compensation of district attorneys, *see* 36-1-6 and 36-1-7 NMSA 1978.

For removal of district attorneys generally, *see* 36-1-9 to 36-1-17 NMSA 1978.

For duties of district attorneys generally, *see* 36-1-18 NMSA 1978.

For constitutional provision relating to qualifications, election, term of office, duties and compensation of district attorneys, *see* N.M. Const., art. VI, § 24.

For oath of office of elected officers, *see* N.M. Const., art. XX, § 1.

For filling of vacancies in offices of district attorneys, *see* N.M. Const., art. XX, § 4.

Compiler's notes. — The 1915 Code compilers omitted the first part of this section which read: "For each district attorney's district as now or hereafter established by law, the governor shall, by and with the consent of the legislative council, appoint a competent attorney at law as district attorney, who shall hold his office for a period of two years, and until his successor shall have been appointed and qualified" and substituted "election" for "appointment."

The office of district attorney was created by N.M. Const., art. VI, § 24. State ex rel. Ward v. Romero, 17 N.M. 88, 125 P. 617 (1912).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27 C.J.S. District and Prosecuting Attorneys § 5.

36-1-2. Assistants; appointment; revocation; duties.

Each district attorney in this state may appoint one or more suitable persons who shall be attorneys-at-law practicing their profession in this state and members of the bar of this state to be his assistants. Every appointment of an assistant district attorney shall be in writing under the hand of the district attorney and filed in the office of the clerk of the district court of the judicial district in which the district attorney resides, and the person so appointed shall take and file in the office of the clerk of the district court of the judicial district in which the district attorney resides an oath of office as is now prescribed by law for district attorneys before entering upon his duties as assistant district attorney. Every such appointment may be revoked by the district attorney making it, which revocation shall be in writing and filed in that clerk's office. The assistant district attorney may attend the meetings of the boards of county commissioners, the district court, metropolitan, magistrate and probate courts in the district attorney's district and therein discharge any duties imposed by law upon or required of the district attorney by whom he was appointed.

History: Laws 1905, ch. 34, § 1; Code 1915, § 1858; C.S. 1929, § 39-102; 1941 Comp., § 17-102; 1953 Comp., § 17-1-2; Laws 1984, ch. 109, § 1.

ANNOTATIONS

Cross references. — For payments of salaries and expenses of assistant district attorneys, *see* 36-1-8 NMSA 1978.

For appointment of special assistant district attorneys, *see* 36-1-23.1 NMSA 1978.

Where local district attorney available. — Attorney who was part of the Medicaid Providers Fraud Control Unit and was appointed a special assistant district attorney, could not prosecute a criminal sexual penetration case for a local district attorney, where the state conceded there was no reason why the district attorney could not have prosecuted the case. State v. Hollenbeck, 112 N.M. 275, 814 P.2d 143 (Ct. App. 1991).

Fees and compensation of assistant district attorneys. — District attorneys are precluded from receiving fees or compensation other than the salary provided by law for services rendered the counties of their district. The duties of assistant district attorneys are the same as those imposed on district attorneys, and the inhibition applies to those officials as well. Hanagan v. Bd. of Cnty. Comm'rs, 64 N.M. 103, 325 P.2d 282 (1958).

Assistant district attorney may not recover special compensation for collecting delinquent taxes. 1915-16 Op. Att'y Gen. No. 15-1655.

Cross-designation of assistant city attorneys. — A district attorney has the authority to cross-designate assistant city attorneys as special assistant district attorneys for the purposes of assisting the district attorney in prosecuting violations of state law in magistrate court. 2008 Op. Att'y Gen. No. 08-06.

Member of the legislature may not be appointed assistant district attorney since the latter is a civil officer which makes these positions incompatible. 1941-42 Op. Att'y Gen. No. 41-3866.

Person who is probate judge may not also be appointed to the position of assistant district attorney by reason that his duties as a representative of the state would require his appearance in many matters before himself as presiding judge of the probate court. This is not only violative of the laws of the state of New Mexico but would also be a violation of the legal canons of ethics. 1953-54 Op. Att'y Gen. No. 54-5955.

Person appointed as assistant district attorney must be a practicing attorney and a member of bar of this state. 1931-32 Op. Att'y Gen. No. 32-479.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys § 9.

Power of assistant or deputy prosecuting or district attorney to file information, or to sign or prosecute it in his own name, 80 A.L.R.2d 1067.

27 C.J.S. District and Prosecuting Attorneys §§ 27 to 31.

36-1-3. District attorneys; travel expenses.

District attorneys and their employees shall be allowed per diem and shall be reimbursed for their necessary travel expenses incurred while absent from their district headquarters upon official business as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978]. These expenses shall be paid from the appropriation to the district attorney of the judicial district for which the business is transacted.

History: 1953 Comp., § 17-1-3, enacted by Laws 1968, ch. 69, § 49; 1971, ch. 7, § 2.

ANNOTATIONS

Cross references. — For payment of expenses of offices of district attorneys, *see* 36-1-8 NMSA 1978.

Repeals and reenactments. — Laws 1968, ch. 69, § 49, repealed 17-1-3, 1953 Comp., relating to expense allowances of district attorneys and employees, limitations upon private practice of district attorneys and assistants, appointment of assistants and maintenance of offices, and enacted a new 17-1-3, 1953 Comp.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys § 18, 41.

27 C.J.S. District and Prosecuting Attorneys § 21.

36-1-4. District attorneys; limitation of private practice.

After January 1, 1977, no district attorney or assistant district attorney shall engage in the private practice of law. Violation of this section is ground for removal from office.

History: 1953 Comp., § 17-1-3.1, enacted by Laws 1968, ch. 69, § 50; 1969, ch. 85, § 1; 1973, ch. 2, § 1; 1975, ch. 302, § 1.

ANNOTATIONS

Cross references. — For grounds for removal of district attorneys from office generally, *see* 36-1-9 NMSA 1978.

For restrictions on practices of attorneys who are partners of, or related to, district attorneys, *see* 36-2-20 NMSA 1978.

Purpose of this section and 36-1-19 NMSA 1978 is to prevent an attorney engaged in the performance of public duties from being influenced or appearing to be influenced, by personal or private interests. The potential for conflict between public and private interests exists whether the legal services rendered consist of court appearances or other legal services. 1977 Op. Att'y Gen. No. 77-7.

Section is mandatory in quality and provides no alternative to the disability imposed. 1957-58 Op. Att'y Gen. No. 57-71.

When individual is actually serving as assistant district attorney he is subject to the statutory disability. Once his term of office terminates, his disability ceases. 1957-58 Op. Att'y Gen. No. 57-71.

Applicability of disability to part-time assistant district attorney. — If the nature of the appointment is such as to be of a continuing nature, meaning that the so-called part-time assistant district attorney is held to be, at times, an assistant district attorney serving without pay, then said individual would be subject to the disability of the section. On the other hand, if the individual selected as a part-time assistant district attorney serves only between two specified dates and then is no longer an assistant district attorney, the disability of the section would not apply. 1957-58 Op. Att'y Gen. No. 57-71.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys §§ 16, 17, 21, 39.

Constitutionality and construction of statute against public attorney representing private person in civil action, 82 A.L.R.2d 774.

Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 A.L.R.3d 562.

27 C.J.S. District and Prosecuting Attorneys §§ 7, 12(9).

36-1-5. District attorneys; assistants; investigators.

A. Within legislative appropriations, the district attorney in each judicial district may appoint:

(1) necessary assistant district attorneys and other personnel and assign their duties; and

(2) full-time staff as peace officers for the purpose of investigating and enforcing the criminal laws of the state, within the district attorney's judicial district.

B. Those staff appointed as peace officers pursuant to the provisions of Paragraph (2) of Subsection A of this section shall comply with the certification provisions of Section 29-7-8 NMSA 1978.

History: 1953 Comp., § 17-1-3.3, enacted by Laws 1968, ch. 69, § 52; 1988, ch. 92, § 2.

ANNOTATIONS

Compiler's notes. — Section 29-7-8 NMSA 1978, referred to in Subsection B, was repealed in 1993.

Assistant district attorneys. — Attorney who was part of the Medicaid Providers Fraud Control Unit and was appointed a special assistant district attorney could not prosecute a criminal sexual penetration case for a local district attorney, where the state conceded there was no reason why the district attorney could not have prosecuted the case. State v. Hollenbeck, 112 N.M. 275, 814 P.2d 143 (Ct. App. 1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys §§ 10 to 14, 19, 42.

27 C.J.S. District and Prosecuting Attorneys §§ 27 to 31.

36-1-6. District attorneys; salaries.

A. For fiscal year 2000, district attorneys who serve in a district that does not include a class A county within the district shall receive an annual salary of seventy-four thousand four hundred eighty-one dollars ($74,481) and district attorneys who serve in a district that includes a class A county within the district shall receive an annual salary of seventy-eight thousand four hundred one dollars ($78,401).

B. For fiscal year 2001 and all subsequent fiscal years, the annual salary for district attorneys shall be established by the legislature in an appropriations act.

History: 1953 Comp., § 17-1-3.4, enacted by Laws 1976 (S.S.), ch. 18, § 1; 1978, ch. 173, § 1; 1980, ch. 132, § 1; 1982, ch. 31, § 1; 1986, ch. 49, § 8; 1988, ch. 136, § 6; 1990, ch. 117, § 1; 1995, ch. 168, § 1; 1999 (1st S.S.), ch. 7, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1976 (S.S.), ch. 18, § 1, repealed former 17-1-3.4, 1953 Comp., relating to salaries of district attorneys, and enacted a new 17-1-3.4, 1953 Comp.

The 1990 amendment, effective May 16, 1990, rewrote this section which read "District attorneys shall receive a salary of forty-seven thousand five hundred eighty-six dollars ($47,586) a year."

The 1995 amendment, effective June 16, 1995, substituted "seventy thousand two hundred sixty-five dollars ($70,265)" for "sixty four thousand one hundred twenty five dollars ($64,125)" in Subsection A, and substituted "seventy-three thousand nine hundred sixty-three dollars ($73,963)" for "sixty seven thousand five hundred dollars ($67,500)" in Subsection B.

The 1999 amendment, effective May 21, 1999, combined former Subsections A and B into present Subsection A, raising the salaries of all district attorneys, and added present Subsection B.

Appropriations. — Laws 1990, ch. 117, § 2, effective May 16, 1990, appropriates $288,756 from the general fund to be distributed in appropriate proportions to the office of the district attorney in each judicial district for expenditure in the seventy-ninth fiscal year for the purpose of providing salary increases to the district attorney in each district and provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

36-1-7. District attorneys; salary and allowances exclusive.

No district attorney shall receive to his own use any salary, fees or emoluments other than the salary and per diem and travel allowances prescribed by law.

History: Laws 1913, ch. 54, § 2; Code 1915, § 1870; C.S. 1929, § 39-202; 1941 Comp., § 17-104; 1953 Comp., § 17-1-4; Laws 1968, ch. 69, § 53.

ANNOTATIONS

Legal services for board of county commissioners. — There are no legal services that can be rendered by a district attorney for a board of county commissioners for which he may exact extra compensation. Hanagan v. Bd. of Cnty. Comm'rs, 64 N.M. 103, 325 P.2d 282 (1958).

Fees and compensation of assistant district attorneys. — District attorneys are precluded from receiving fees or compensation other than the salary provided by law for services rendered the counties of their district. The duties of assistant district attorneys are the same as those imposed on district attorneys, and the inhibition applies to those officials as well. Hanagan v. Bd. of Cnty. Comm'rs, 64 N.M. 103, 325 P.2d 282 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys §§ 18, 41.

27 C.J.S. District and Prosecuting Attorneys § 22.

36-1-8. District attorneys; payments of salaries and expenses.

A. The salaries of all district attorneys, assistant district attorneys and other employees of their offices shall be paid from the time when the district attorney or assistant district attorney qualifies and from the time when other employees begin their duties.

B. All salaries and expenses of the offices of the district attorneys, except the expenses of maintenance and upkeep of quarters occupied by the district attorneys and their staffs, shall be paid from funds appropriated to the district attorneys in the respective judicial districts upon warrants drawn by the secretary of finance and administration in accordance with budgets approved by the state budget division of the department of finance and administration.

C. Nothing in this section shall be construed to prevent an agreement between an incorporated municipality or a county and a district attorney whereby the district attorney agrees to assign an assistant to the municipality or county and the municipality or county agrees to reimburse the department of finance and administration to the credit of the district attorney's budget for all or a portion of the assistant's salary or expenses.

D. The provisions of this section shall not be interpreted to prevent a district attorney from contracting with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

(1) serve as a tribal prosecutor; or

(2) prosecute alleged violations of tribal codes by tribal members in tribal courts.

E. If a district attorney enters into a contract, as provided in Subsection D of this section, the district attorney shall be reasonably compensated for the expenses of staff and equipment.

History: Laws 1913, ch. 54, § 3; Code 1915, § 1871; Laws 1925, ch. 120, § 4; C.S. 1929, § 39-203; 1941 Comp., § 17-105; Laws 1945, ch. 73, § 2; 1949, ch. 102, § 2; 1951, ch. 125, § 2; 1953, ch. 89, § 2; 1953 Comp., § 17-1-5; Laws 1968, ch. 69, § 54; 1975, ch. 302, § 3; 1977, ch. 247, § 148; 1980, ch. 4, § 1; 2001, ch. 178, § 1.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, inserted subsection designations A, B, and C, and added Subsections D and E.

Temporary provisions. — Laws 1975, ch. 302, § 4, provides for elections by incumbent district attorneys as to compensation as fully or partially compensated district attorneys.

Payment of expenses of civil litigation. — A district attorney may use funds appropriated pursuant to Subsection B of Section 36-1-8 NMSA 1978 to pay litigation expenses incurred in a civil damages action. 2008 Op. Att'y Gen. No. 08-04.

Condemnation actions. — Where a district attorney or his assistants have incurred actual expenses while engaged in carrying out their duties in participating in condemnation actions brought by a county to condemn a right-of-way for portions of a new highway, these expenses should be paid out of the court fund of the county seeking to acquire such right-of-way. 1963-64 Op. Att'y Gen. No. 63-79.

36-1-8.1. District attorney facilities; maintenance and upkeep.

Each board of county commissioners shall provide adequate quarters for the operation of the district attorney and provide necessary utilities and maintenance service for the operation and upkeep of district attorney facilities.

History: Laws 1980, ch. 4, § 2.

36-1-8.2. Eleventh judicial district; two district attorney divisions.

The eleventh judicial district is divided into two separate district attorney divisions which shall constitute two separate election divisions, as follows:

A. district attorney division 1, to be composed of San Juan county; and

B. district attorney division 2, to be composed of McKinley county.

History: Laws 1981, ch. 25, § 1; 1993, ch. 336, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "which shall constitute two separate election divisions" in the introductory language.

Compiler's notes. — In *Tsosie v. King,* No. CIV 91-0905-M, in paragraph 6 of an order dated January 7, 1993, the United States District Court for the District of New Mexico provides that for district attorney elections after 1992, the Eleventh Judicial District will be divided into two separate election divisions, one division composed of McKinley County and one division composed of San Juan County, and the qualified registered electors in each division will elect one district attorney from that division. Nothing in the order shall affect the jurisdiction and powers of the Eleventh Judicial District district attorneys under current law and practice. The order further provides that enactment by the New Mexico Legislature during its 1993 session and approval by the Governor of legislation creating the electoral divisions and otherwise consistent with the provisions of paragraph 6 shall meet the requirements of that paragraph. *See* 1993 amendment of this section and 36-1-8.3 NMSA 1978.

36-1-8.3. District attorneys; election; residence.

The district attorney in division 1 shall be elected by the registered qualified electors of San Juan county and the district attorney in division 2 shall be elected by the registered qualified electors in McKinley county. Each district attorney shall have all the duties and powers vested in a district attorney.

History: Laws 1981, ch. 25, § 2; 1993, ch. 336, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "The district attorney in division 1" for "Each district attorney" at the beginning of the section, and divided the former provisions into two sentences by substituting the language beginning "San Juan county" at the end of the present first sentence and "Each district attorney" at the beginning of the present second sentence for "the eleventh judicial district and".

36-1-8.4. District attorneys; assistants.

Within legislative appropriations, the district attorney in each judicial division may appoint necessary assistant district attorneys and other personnel and assign their duties.

History: Laws 1981, ch. 25, § 3.

36-1-9. [Removal from office; grounds enumerated.]

Any district attorney may be removed from office according to the provisions of this act [36-1-9 to 36-1-17 NMSA 1978] on any of the following grounds:

A. conviction of any felony or of any misdemeanor involving moral turpitude;

B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;

C. knowingly demanding or receiving illegal fees as such officer;

D. failure to account for money coming into his hands as such officer;

E. gross incompetency or gross negligence in discharging the duties of the office;

F. any other act or acts, which in the opinion of the court amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

History: 1953 Comp., § 17-1-9.1, enacted by Laws 1955, ch. 180, § 1.

ANNOTATIONS

Cross references. — For engaging in private practice of law by district attorney as ground for removal from office, *see* 36-1-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorneys §§ 16, 39.

27 C.J.S. District and Prosecuting Attorneys § 7.

36-1-10. [Original jurisdiction of supreme court in removal proceedings.]

Charges of any of the causes for removal mentioned in Section 1 [36-1-9 NMSA 1978] hereof may be filed with the supreme court of the state of New Mexico, which is hereby given exclusive original jurisdiction of such matters, upon presentment by the governor, the attorney general or any regularly empaneled grand jury. Any such grand jury presentment shall be immediately certified to the supreme court by the clerk of the district court where such presentment is filed.

History: 1953 Comp., § 17-1-9.2, enacted by Laws 1955, ch. 180, § 2.

36-1-11. [Attorney general to prosecute removal proceedings; exceptions.]

All charges so presented to the court shall be prosecuted by the attorney general unless he should decline to act, or the governor, in the case of presentment by him, shall request the designation of another attorney; in either of which events the court will appoint another attorney.

History: 1953 Comp., § 17-1-9.3, enacted by Laws 1955, ch. 180, § 3.

36-1-12. [Service upon accused; appearance and answer.]

Upon any such presentment, the court shall make and enter its order directing service upon the accused and specifying the time for appearance and answer.

History: 1953 Comp., § 17-1-9.4, enacted by Laws 1955, ch. 180, § 4.

36-1-13. [Contents and nature of answer.]

Within the time prescribed in such order, the accused may by way of answer, object to the sufficiency of any charge or specification or deny the truth thereof. Any charge or specification legally sufficient and not denied shall be taken as admitted.

History: 1953 Comp., § 17-1-9.5, enacted by Laws 1955, ch. 180, § 5.

36-1-14. [Hearing and determination when defendant fails to appear.]

If the accused shall not appear, the court will proceed to hear and determine the charges in his absence.

History: 1953 Comp., § 17-1-9.6, enacted by Laws 1955, ch. 180, § 6.

36-1-15. [Issues to be tried without jury; applicability of Rules of Civil Procedure; burden of proof.]

The issues shall be tried to the court without a jury. So far as they may conveniently be applied and except as varied herein, the Rules of Civil Practice and Procedure in the District Courts shall govern the conduct of the trial, including compulsory attendance of witnesses, examination of witnesses, the admissibility of evidence and the amendment of pleadings. Upon the issues the burden of proof shall be upon the prosecution.

History: 1953 Comp., § 17-1-9.7, enacted by Laws 1955, ch. 180, § 7.

ANNOTATIONS

Cross references. — For Rules of Civil Procedure for District Courts, *see* Rule 1-001 et seq.

36-1-16. [Decision of court to be final.]

The decision and judgment of the court shall be final.

History: 1953 Comp., § 17-1-9.8, enacted by Laws 1955, ch. 180, § 8.

36-1-17. [No filing fee; taxation of costs.]

No docket fee or filing fee shall be required in any removal proceeding. Witness fees and other costs shall be taxed in such manner as may be determined by the court in its discretion.

History: 1953 Comp., § 17-1-9.9, enacted by Laws 1955, ch. 180, § 9.

36-1-18. Duties of district attorney.

A. Each district attorney shall:

(1) prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested;

(2) represent the county before the board of county commissioners of any county in his district in all matters before the board whenever requested to do so by the board, and he may appear before the board when sitting as a board of equalization without request;

(3) advise all county and state officers whenever requested; and

(4) represent any county in his district in all civil cases in which the county may be concerned in the supreme court or court of appeals, but not in suits brought in the name of the state.

B. A district attorney may contract with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

(1) serve as a tribal prosecutor; or

(2) prosecute alleged violations of tribal codes by tribal members in tribal courts.

History: Laws 1909, ch. 22, § 2; Code 1915, § 1859; C.S. 1929, § 39-108; 1941 Comp., § 17-111; 1953 Comp., § 17-1-11; Laws 1966, ch. 28, § 30; 2001, ch. 178, § 2.

ANNOTATIONS

Cross references. — For prosecution of solicitation of claims by attorneys, *see* 36-2-37 NMSA 1978.

For duties as member of commission to determine county boundary disputes, *see* 4-35-1 NMSA 1978.

For duty of attorney general to act when district attorney fails to act, *see* 8-5-3 NMSA 1978.

For duties relating to removal of officers, *see* 10-4-17 to 10-4-20 NMSA 1978.

For prosecutions for shortages in officer's accounts, *see* 10-17-9 to 10-17-11 NMSA 1978.

For duties relating to minimum wage actions by employees of public contractors, *see* 13-4-14 NMSA 1978.

For duties relating to fish and game laws, *see* 17-2-27 NMSA 1978.

For duties relating to failure to record townsite patent, *see* 19-4-3 NMSA 1978.

For duties relating to enforcement of law regarding burial of indigent persons, *see* 24-13-8 NMSA 1978.

For duties as attorney for persons seeking reemployment after discharge from armed forces, *see* 28-15-3 NMSA 1978.

For duties relating to grand juries, *see* 31-6-7 NMSA 1978.

For duties as ex-officio children's court attorney, *see* 32A-1-6 NMSA 1978.

For petitions under Children's Code generally, *see* 32A-1-10 NMSA 1978.

For duties relating to interstate family support, *see* 40-6A-308 NMSA 1978.

For duties as attorney for employment security commission, *see* 51-1-40 NMSA 1978.

For enforcement of Retail Installment Sales Act, *see* 56-1-10 and 56-1-11 NMSA 1978.

For duty to enforce motion picture regulations, *see* 57-5-2 NMSA 1978.

For duties relating to false advertising, *see* 57-15-4 to 57-15-8 NMSA 1978.

For prosecution of violations of Dental Health Care Act, *see* 61-5A-18 NMSA 1978.

For prosecution of violations of Motor Carrier Transportation Agent Law, *see* 65-4-15 NMSA 1978.

For duties relating to representation of soil and water conservation districts, *see* 73-20-41 NMSA 1978.

For duties relating to county board of horticultural commissioners, *see* 76-3-6 NMSA 1978.

For prosecution of seed law violations, *see* 76-10-21 NMSA 1978.

For prosecution of violations of Pecan Industry Law, *see* 76-16-8 NMSA 1978.

The 2001 amendment, effective July 1, 2001, inserted the Subsection A designation, added Subsection B and redesignated former Subsections A to D as Paragraphs A(1) to (4).

Compiler's notes. — The 1915 Code compilers deleted from the end of former subdivision 2 (now Paragraph A(2)) "and he shall appeal from the decisions of such board to the territorial board of equalization whenever in his judgment the same should be done, and a right of appeal in such cases is hereby given." The state board of equalization, as provided for in the constitution, was in effect abolished by the amendment to art. VIII, § 5, of the constitution adopted in 1914. The provisions concerning appeals to the state board of equalization were repealed by Laws 1915, ch. 54, § 5. Provisions relating to county valuation protests boards and proceedings thereof are compiled as 7-38-25 NMSA 1978 et seq.

Obligation of prosecutor. — The prosecutor is a public officer with duties quasi-judicial in nature. The prosecutor’s obligation is not only to protect the public interest but also the rights of the accused. In the performance of the prosecutor’s duties, the prosecutor must not only be disinterested and impartial, but must also appear to be so. State v. Hill, 88 N.M. 216, 539 P.2d 236 (Ct. App. 1975).

Discretion to determine criminal charges. — The district attorney makes the determination whether to file criminal charges and which charges to file. State v. Session, 91 N.M. 381, 574 P. 2d 600 (Ct. App. 1978); State v. Estrada, 2001-NMCA-034, 130 N.M. 358, 24 P.3d 793, cert. denied, 130 N.M. 459, 26 P.3d 103 (2001).

Familial relationship between defendant and district attorney. — Where defendant claimed that the district attorney was a third cousin of the defendant and that in Navajo culture, defendant and the district attorney had a clan relationship that made the district attorney culturally the grandfather of defendant, and the district attorney swore in an affidavit that although the district attorney was one-half Navajo, the district attorney was unaware of any clan relationship with defendant, that the district attorney had never had personal or direct contact with defendant until after the prosecution of defendant’s case had begun, and that the district attorney had only recently discovered that the district attorney’s grandmother was the sister of defendant’s great-grandfather, the trial court did not abuse its discretion in determining that the familial relationship between the

district attorney and defendant was insufficient to create a personal bias that warranted disqualification. State v. Juan, 2010-NMSC-041, 148 N.M. 747, 242 P.3d 314.

Disqualification of district attorney's office. — Where defendant's spouse wrote letters to the disciplinary board and to the prosecutor's supervisor and the prosecutor had initiated a federal investigation into defendant's spouse for stalking, the actions of defendant's spouse and the prosecutor did not create a disqualifying interest warranting the recusal of the prosecutor and the district attorney's office. State v. Trujillo, 2012-NMCA-112, 289 P.3d 238, cert. granted, 2012-NMCERT-011.

Threats against a prosecutor. — A defendant does not create a disqualifying interest and cannot choose his or her prosecutor for an underlying offense by the use of threats against prosecutors. An entire district attorney's office is not subject to disqualification unless an individual prosecutor is disqualified and there is a danger that the prosecutor's bias or disqualifying interest will taint the remaining attorneys in the office or give the appearance of impropriety to continued prosecution by other attorneys. State v. Robinson, 2008-NMCA-036, 143 N.M. 646, 179 P.3d 1254, cert. denied, 2008-NMCERT-002, 143 N.M. 666, 180 P.3d 673.

Historical law officer of the territory. — Prior to the adoption of the constitution the district attorney was by statute the law officer of the territory, and was required to represent the territory, within his district, in all cases, civil and criminal, and to give advice, when requested, to territorial officials. State ex rel. Ward v. Romero, 17 N.M. 88, 125 P. 617 (1912).

Under the constitution, the district attorney is a part of the judicial system of the state, and is a quasi-judicial officer. State ex rel. Ward v. Romero, 17 N.M. 88, 125 P. 617 (1912).

District officer construed. — The words "district officer" used in N.M. Const., art. XX, § 3, refer to the district attorney and district judge, but the words were used to designate the geographical limits within which such officer performed the duties of his office, and did not refer to the nature and grade of the office. State ex rel. Ward v. Romero, 17 N.M. 88, 125 P. 617 (1912).

District attorney has no powers outside his district, nor does he have any common-law powers. State ex rel. Attorney Gen. v. Reese, 78 N.M. 241, 430 P.2d 399 (1967).

District attorney or attorney general to represent state in criminal proceedings. — Although Subsection A does not require the district attorney to appear in a nonrecord court such as the metropolitan court, 36-1-19 NMSA 1978 prohibits anyone other than the attorney general's office and district attorney's office from representing the state in a criminal proceeding, except on order of the court and with the consent of those offices. State v. Baca, 101 N.M. 716, 688 P.2d 34 (Ct. App. 1984).

Institution of probation revocation proceedings. — Although the specific procedural authority of 40A-29-20, 1953 Comp., had been repealed, the district attorney, as the chief law officer of his district, had authority to institute probation revocation proceedings. State v. Paul, 82 N.M. 791, 487 P.2d 493 (Ct. App. 1971).

Appearance on appeal in criminal cases. — District attorney has authority to take an appeal, but it is the prerogative and duty of attorney general to brief the case and to present it in supreme court, and a district attorney may appear on appeal in a criminal case only by permission of the attorney general and in association with him. State v. Aragon, 55 N.M. 421, 234 P.2d 356 (1950), rev'd on other grounds, 55 N.M. 423, 234 P.2d 358 (1951).

Authority of district attorney to bind state agency. — When representing the state in a prosecution for driving under the influence, a district attorney had the authority to bind the motor vehicle division to the judgment and sentence which, pursuant to a plea bargain, expressly provided that the conviction was to be treated as a first conviction. Collyer v. State Taxation & Revenue Dep't Motor Vehicle Div., 1996-NMCA-029, 121 N.M. 477, 913 P.2d 665.

Office's immunity in defamation suit. — In a defamation suit arising out of a report prepared by an assistant district attorney at the request of the district attorney, the trial court's ruling of absolute immunity was based upon the concepts of judicial immunity, because the office of district attorney is a quasi-judicial office, as well as executive immunity, because that office has duties which cannot be properly classified as quasi-judicial. Candelaria v. Robinson, 93 N.M. 786, 606 P.2d 196 (Ct. App. 1980).

No fee for representation of the county. — All services rendered to boards of county commissioners by district attorneys are official duties. There are no legal services that can be rendered by a district attorney for a board of county commissioners for which the district attorney may exact extra compensation. Hanagan v. Bd. of Cnty. Comm’rs, 64 N.M. 103, 325 P.2d 282 (1958).

If criminal complaint is filed by sheriff without consent of the district attorney, the latter may at any time step in and take charge of the case and the prosecution on behalf of the state, since he is the chief law enforcement officer and the state's prosecutor in his district. 1939-40 Op. Att'y Gen. No. 39-3257.

District attorney may initiate a foreclosure action in the name of the county treasurer interested in the particular assessment. 1957-58 Op. Att'y Gen. No. 58-77.

District attorneys are not required to defend sheriffs in civil suits. Their duties are limited solely to representing the interests of the state in criminal and civil actions. 1959-60 Op. Att'y Gen. No. 59-98.

The district attorney is not obligated to represent a county sheriff in a civil suit. 1959-60 Op. Att'y Gen. No. 59-47.

District attorney to "represent the county" and "advise county officials." These terms are used in the generally accepted sense, namely, the district attorney is to serve as attorney for the county in all matters when called upon to so act. The legislature intended to make the district attorney the attorney for the counties of his district. 1955-56 Op. Att'y Gen. No. 56-6565.

District attorney to represent the county. — Whenever the county commissioners request representation in any matter before them, it is the duty of the district attorney to act for such county. 1955-56 Op. Att'y Gen. No. 56–6565.

Duty to advise state officers found in this section is limited to those matters relating to and pending in the judicial district in which the district attorney is located - not to matters of statewide application. 1961-62 Op. Att'y Gen. No. 61-61.

Duty to advise limited. — While a district attorney is to advise state officers within his district when requested, this means "advise these officers on matters relating to the judicial district in which he is located." 1961-62 Op. Att'y Gen. No. 61-61.

Law reviews. — For comment, "The Use of an Information Following the Return of a Grand Jury No Bill: State v. Joe Nestor Chavez," *see* 10 N.M.L. Rev. 217 (1979-80).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Prosecuting Attorney §§ 1, 4, 20 to 24, 26 to 29.

Confidential communications, 9 A.L.R. 1109, 59 A.L.R. 1555.

Liability for slander, 15 A.L.R. 429.

Criminal offenses, prosecution for, duty and discretion of district or prosecuting attorney as regards, 155 A.L.R. 10.

Change of venue, power or duty of prosecuting attorney to continue with prosecution after, 60 A.L.R.2d 864.

Enforceability of agreement by law enforcement officials not to prosecute if accused would help in criminal investigation or would become witness against others, 32 A.L.R.4th 990.

Who may institute proceedings to revoke probation. 21 A.L.R.5th 275.

Disqualification of prosecuting attorney in state criminal case on account of relationship with accused, 42 A.L.R.5th 581.

27 C.J.S. District and Prosecuting Attorneys § 12.

36-1-19. Legal representation; state; county.

A. Except as provided in Subsections B and C of this section, no one shall represent the state or any county thereof in any matter in which the state or county is interested except the attorney general, his legally appointed and qualified assistants or the district attorney or his legally appointed and qualified assistants and such associate counsel as may appear on order of the court, with the consent of the attorney general or district attorney.

B. Notwithstanding any other provision of law, a board of county commissioners may contract with private counsel for legal assistance to or representation of the county in any civil matter in which the county is interested. Such private counsel shall have the same powers of compromise, satisfaction or release in civil proceedings as are held by district attorneys pursuant to Section 36-1-22 NMSA 1978.

C. The private legal assistance permitted pursuant to Subsection B of this section shall not extend to the prosecution of any criminal action without the permission of the district attorney for that county, provided that such permission shall not be required for the prosecution of any violation of a county ordinance.

History: Laws 1909, ch. 22, § 15; Code 1915, § 1860; C.S. 1929, § 39-109; Laws 1933, ch. 21, § 7; 1941 Comp., § 17-112; 1953 Comp., § 17-1-12; Laws 1977, ch. 318, § 1; 1985, ch. 147, § 2.

ANNOTATIONS

Cross references. — For employment of special legal assistance by the attorney general, *see* 8-5-4 NMSA 1978.

Attorney general or district attorney must represent state or county. — The attorney general's office or the district attorney's office must represent the state, or a county, in any matter in which the latter is interested. State v. Davidson, 33 N.M. 664, 275 P. 373 (1929)(decided prior to 1977 amendment).

Representation of municipality. — This statute does not apply to the representation of a municipality by a city attorney in a prosecution to enforce a municipal ordinance. City of Roswell v. Smith, 2006-NMCA-040, 139 N.M. 381, 133 P.3d 271, cert. denied, 2006-NMCERT-004, 139 N.M. 429, 134 P.3d 120.

But Subsection A only applicable in suits in court. — It is only in suits in court by the state or a county, and where special counsel seek to represent the state or a county, that Subsection A has any application. State v. Davidson, 33 N.M. 664, 275 P. 373 (1929)(decided prior to 1933 amendment).

Improper representation of state denies jurisdiction of court. — Where there was no explicit approval by order of court authorizing a private counsel to prosecute for the district attorney, the metropolitan court lacked criminal jurisdiction to proceed in an

assault and battery proceeding on the criminal docket. State v. Baca, 101 N.M. 716, 688 P.2d 34 (Ct. App. 1984).

Purpose of this section and 36-1-4 NMSA 1978 is to prevent an attorney engaged in the performance of public duties from being influenced or appearing to be influenced by personal or private interests. The potential for conflict between public and private interests exists whether the legal services rendered consist of court appearances or other legal services. 1977 Op. Att'y Gen. No. 77-07.

Officer may not prosecute case in district court after appeal. — A peace officer who has prosecuted a criminal case in magistrate or municipal court may not continue to prosecute the case in district court after an appeal of the magistrate or municipal court judgment has been filed in district court. 1989 Op. Att'y Gen. No. 89-27.

Responsibility for attorney's fees. — In a lawsuit between a county commission and other elected county officials concerning employment terms and conditions, each party is responsible for its own attorney's fees. The county is responsible for legal fees of its elected officials and employees only to the extent required by statute. 1990 Op. Att'y Gen. No. 90-05.

Law reviews. — For annual survey of New Mexico criminal law, see 16 N.M.L. Rev. 9 (1986).

36-1-20. [Authority of district attorney before magistrate court.]

The district attorney may appear and represent the county or the state in any manner [matter] arising before the courts of justices of the peace [magistrate courts] or committing magistrates when in his opinion the interests of the people demand his services.

History: Laws 1909, ch. 22, § 3; Code 1915, § 1861; C.S. 1929, § 39-110; 1941 Comp., § 17-113; 1953 Comp., § 17-1-13.

ANNOTATIONS

Bracketed material. — The first bracketed item was inserted by the compiler to correct an obvious error. The second bracketed item was inserted by the compiler, as the office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. *See* 35-1-38 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Law reviews. — For annual survey of New Mexico criminal procedure, see 16 N.M.L. Rev. 25 (1986).

36-1-21. [Aiding defense; penalty against attorney general or district attorney; removal from office; exceptions; taking case in which state or county interested prohibited.]

If the attorney general or any district attorney shall consult with any accused defendant, or in any other manner shall aid the defense of any person accused of any crime or misdemeanor in this state, he shall be fined in the sum of not less than five hundred dollars ($500) and shall be removed from office by judgment of the court if convicted of the charge.

Provided, further, that said attorney general or district attorney are [is] authorized and should be allowed by the judge of the district court to defend their [his] cases already on the docket of said court, on which appears on said docket that said attorney general or district attorney were [was] the attorneys [attorney] of said cases prior to the appointment of said attorney general or district attorneys [attorney].

Provided, further, that where it appears in the record of the court that the attorney general or district attorney was the attorney in some cases prior to the appointment of the said attorney general or district attorney, in those cases the court shall appoint a lawyer to prosecute in those particular cases, allowing said lawyer the fee which is allowed to the attorney general or district attorney, and the attorney general or district attorney should be allowed to defend in those particular cases.

Provided, further, that said attorney general or district attorney shall not be allowed to take any case after he is appointed attorney general or district attorney in which the state or county is involved in the litigation in which the law compels the attorney general or district attorney to prosecute or defend as said attorney general or district attorney.

History: Laws 1889, ch. 56, § 11; C.L. 1897, § 2582; Laws 1905, ch. 93, § 1; Code 1915, § 1862; C.S. 1929, § 39-111; 1941 Comp., § 17-114; 1953 Comp., § 17-1-14.

ANNOTATIONS

Cross references. — For grounds for removal of district attorneys from office generally, *see* 36-1-9 NMSA 1978.

For restrictions on practices of attorneys who are partners of or related to district attorneys, *see* 36-2-20 NMSA 1978.

Compiler's notes. — The 1915 Code compilers substituted "attorney general" for "solicitor general".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Court's power to remove district attorney, 118 A.L.R. 173.

Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 A.L.R.3d 562.

27 C.J.S. District and Prosecuting Attorneys § 17.

36-1-22. [Compromise, satisfaction or release by attorney general or district attorney.]

The attorney general and district attorneys of this state in their respective districts, when any civil proceedings may be pending in their respective districts, in the district court, in which the state or any county may be a party, whether the same be an ordinary suit, scire facias proceedings, proceedings growing out of any criminal prosecution, or otherwise, shall have power to compromise or settle said suit or proceedings, or grant a release or enter satisfaction in whole or in part, of any claim or judgment in the name of the state or county, or dismiss the same, or take any other steps or proceedings therein which to him may appear proper and right; and all such civil suits and proceedings shall be entirely under the management and control of the said attorney general or district attorneys, and all compromises, releases and satisfactions heretofore made or entered into by said officers are hereby confirmed and ratified.

History: Laws 1875-1876, ch. 5, § 1; C.L. 1884, § 1856; C.L. 1897, § 2905; Code 1915, § 1863; C.S. 1929, § 39-112; 1941 Comp., § 17-115; 1953 Comp., § 17-1-15.

ANNOTATIONS

Cross references. — For power of private attorney to compromise, satisfy, or release in name of county, *see* 36-1-19 NMSA 1978.

Attorney general under the broad powers of his office has the management and control of suits and proceedings in which it is his duty to appear, and the power to take any steps or proceedings therein "which to him may appear proper and right." Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Power to settle cases. — A settlement entered into by the attorney general, with no evidence of bad motives, is not unconstitutional under N.M. Const., art. IV, § 32 and "in the absence of explicit legislative expression to the contrary, the attorney general possesses entire dominion over every suit instituted by him in his official capacity whether there is a relator or not. As an incident of such control, the attorney general has power to dismiss or to discontinue suits brought by him either with or without a stipulation by the other party, and to make any dispositions of such suits that he deems best for the interest of the state." Lyle v. Luna, 65 N.M. 429, 338 P.2d 1060 (1959).

Compromise and settlement of tax suits. — The authority of district attorneys to compromise and settle tax suits is not restrained by N.M. Const., art. IV, § 32 and does not violate N.M. Const., art. VIII, § 1 or art. II, § 18. State v. State Inv. Co., 30 N.M. 491, 239 P. 741 (1925).

Power to settle claims. — A stipulation of settlement concerning tax liability under 59-5-1 NMSA 1978 (now repealed) and 72-16-1 to 72-16-47, 1953 Comp., entered into by the attorney general of the state of New Mexico on behalf of the plaintiffs under the authority of the provisions of this section was not constitutionally prohibited by N.M. Const., art. IV, § 32. Lyle v. Luna, 65 N.M. 429, 338 P.2d 1060 (1959).

When representing the state in a prosecution for driving under the influence, a district attorney had the authority to bind the motor vehicle division to the judgment and sentence which, pursuant to a plea bargain, expressly provided that the conviction was to be treated as a first conviction. Collyer v. State Taxation & Revenue Dep't Motor Vehicle Div., 1996-NMCA-029, 121 N.M. 477, 913 P.2d 665.

Judicial review. — Absent a showing of fraud or misdealing, it is not for the courts to second-guess the attorney general in the exercise of his authority in compromising a matter. State ex rel. Property Appraisal Dep't v. Sierra Life Ins. Co., 90 N.M. 268, 562 P.2d 829 (1977).

Compromise and settlement of tax suits. — The district attorney has full authority to compromise and settle any action instituted in behalf of the state ex rel. its state tax commission (now property tax division of taxation and revenue department) and the county treasurer, for the collection of delinquent personal property taxes. This authority is, of course, subject to the duty of the attorney general's office to act, pursuant to 8-5-2 NMSA 1978, when in the judgment of the attorney general the interest of the state requires such action, and to the authority of the attorney general's office to act pursuant to this section, empowering the attorney general to compromise and settle civil proceedings, in the event of any conflict between the state tax commission (now property tax division of taxation and revenue department) and the district attorney as to the propriety of a particular proposed settlement in a case within the authority of the commission to act. 1957-58 Op. Att'y Gen. No. 58-54.

Section is completely harmonious with N.M. Const., art. IV, § 32. 1969 Op. Att'y Gen. No. 69-69.

Compromise and settlement of judgment which is entered of record as satisfaction of judgment would be a proper proceeding in court and would alert the public to the action of the district attorney or attorney general. 1969 Op. Att'y Gen. No. 69-69.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Release or compromise of claim for taxes, 99 A.L.R. 1068, 28 A.L.R.2d 1425.

27 C.J.S. District and Prosecuting Attorneys § 15.

36-1-23. Terminated.

ANNOTATIONS

Compiler's notes. — The provisions of 36-1-23 NMSA 1978, as enacted by Laws 1981, ch. 85, § 1, have terminated of their own accord and have been deleted from the code. This section related to the office of special prosecutors.

36-1-23.1. Special prosecutors in conflict cases.

Each district attorney may, when he cannot prosecute a case for ethical reasons or other good cause, appoint a practicing member of the bar of this state to act as special assistant district attorney. Any person so appointed shall have authority to act only in the specific case or matter for which the appointment was made. An appointment and oath shall be required of special assistant district attorneys in substantially the same form as that required for assistant district attorneys in Section 36-1-2 NMSA 1978.

History: 1978 Comp., § 36-1-23.1, enacted by Laws 1984, ch. 109, § 2.

ANNOTATIONS

Substantial compliance sufficient. — Substantial compliance with this section, not strict compliance, is all that is required, and there was substantial compliance in this case since the appointment of a district attorney as a special prosecutor was placed in writing and filed under a miscellaneous file number, he was administered the oath, and he did not act outside the bounds of his authority. State v. Cherryhomes, 1996-NMSC-072, 122 N.M. 687, 930 P.2d 1139.

Where local district attorney available. — Attorney who was part of the Medicaid Providers Fraud Control Unit and was appointed a special assistant district attorney could not prosecute a criminal sexual penetration case for a local district attorney, where the state conceded there was no reason why the district attorney could not have prosecuted the case. State v. Hollenbeck, 112 N.M. 275, 814 P.2d 143 (Ct. App. 1991).

Delegation of authority to assistant. — This section did not preclude a district attorney appointed as a special prosecutor from delegating responsibilities associated with his appointment to an assistant district attorney acting under his supervision; therefore, the assistant had the authority of a special prosecutor, and a separate appointment was not required. State v. Cherryhomes, 1996-NMSC-072, 122 N.M. 687, 930 P.2d 1139.

36-1-24. Terminated.

ANNOTATIONS

Compiler's notes. — The provisions of 36-1-24 NMSA 1978, as enacted by Laws 1981, ch. 85, § 4, have terminated of their own accord and have been deleted from the code. This section related to the misuse of funds appropriated to try cases that arose from the riots at the state penitentiary in February, 1980.

36-1-25. Administrative office of the district attorneys created; director; personnel.

A. There is created the "administrative office of the district attorneys," which shall be supervised by a director who shall be appointed by majority vote of the elected or appointed district attorneys and serve at their pleasure.

B. The director may, within legislative appropriations, appoint necessary personnel and assign their duties.

History: Laws 1984, ch. 110, § 1.

ANNOTATIONS

36-1-26. Director; duties.

The director of the administrative office of the district attorneys shall, under the supervision of the elected or appointed district attorneys:

A. assist in the preparation and presentation of fiscal and budgetary matters to the department of finance and administration, the legislative finance committee and the legislature;

B. prepare personnel pay plans and develop a comprehensive data base on case management;

C. prepare and distribute uniform forms and procedures manuals and develop uniform systems for use by district attorneys' offices with respect to administrative, personnel and budgetary matters;

D. prepare and distribute forms and procedures for the establishment of a uniform worthless check program;

E. prepare, update and distribute a district attorneys' trial manual;

F. prepare and conduct training and education programs for district attorneys;

G. prosecute conflict of interest and other cases at the request of an elected or appointed district attorney;

H. submit an annual report to the department of finance and administration and the legislative finance committee detailing the activities of the office and statistical and other data relating to all district attorneys' offices; and

I. perform such other duties in furtherance of the administration of justice and the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

History: Laws 1984, ch. 110, § 2.

36-1-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 324, § 45 repealed former 36-1-27 NMSA 1978, as enacted by Laws 1984, ch. 110, § 3, relating to creation of district attorney fund, effective July 1, 1990. For provisions of former section, *see* 1989 Cumulative Supplement.

36-1-28. District attorney fund; created; administration; purpose.

A. The "district attorney fund" is created in the state treasury. The fund shall consist of worthless check fees, preprosecution diversion fees, other statutory revenues directed to the fund, appropriations, gifts, grants and donations.

B. Money in the fund is appropriated to the administrative office of the district attorneys for the sole purpose of meeting necessary expenses incurred in the operation of the administrative office of the district attorneys.

C. Expenditures from the fund shall be pursuant to budgets approved by the state budget division of the department of finance and administration and made by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the administrative office of the district attorneys or his authorized representative.

D. The fund shall not revert at the end of any fiscal year.

History: Laws 1998, ch. 88, § 1.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 88, § 2 makes the act effective immediately. Approved March 10, 1998.

ARTICLE 1A
District Attorney Personnel and Compensation

36-1A-1. Short title.

This act [36-1A-1 to 36-1A-15 NMSA 1978] may be cited as the "District Attorney Personnel and Compensation Act".

History: Laws 1991, ch. 175, § 1.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-2. Purpose of act; enactment under constitution.

The purpose of the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978] is to establish for all district attorneys a uniform, equitable and binding system of personnel administration. The system shall be based solely on qualification and ability and will provide for classifications, compensation, fringe benefits, disciplinary procedures, appeal rights and other aspects of state employment. The District Attorney Personnel and Compensation Act will also provide a system of classification and compensation of district attorney personnel that is comparable to the personnel system in effect for other similar state employees. The District Attorney Personnel and Compensation Act is enacted pursuant to the provisions of Article 7, Section 2 of the constitution of New Mexico.

History: Laws 1991, ch. 175, § 2.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-3. Definitions.

As used in the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978]:

A. "appeal" means a formal request for a full hearing before the board or authorized hearing officer to review a disciplinary action solely involving suspension, demotion or termination of a covered employee in a district attorney's office;

B. "board" means the District Attorney Personnel Review Board;

C. "class specification" means a written statement of the duties and responsibilities characteristic of a class of positions, and includes the class title, supervision exercised and received, guidelines available, examples of work performed, working conditions and minimum qualifications or substitutions thereof that specify education, training, health, experience, knowledge, abilities and skills required for a position;

D. "classification series" means a group of class specifications or employment positions similar enough in powers and responsibilities that they can be covered by similar qualifications and titles. A classification series may consist of many levels, starting with the entry level position and advancing upward in duties, complexity, authority and responsibility;

E. "compensation plan" means a plan that establishes for each class in the plan a salary range that consists of at least minimum and maximum salaries, as authorized by the legislature;

F. "covered employee" means a person in a full-time or part-time covered position who has successfully completed the probationary period and is covered by all provisions of the District Attorney Personnel and Compensation Act;

G. "covered position" means any position within a district attorney's office except the positions of district attorney, attorney, district office manager and special program director;

H. "disciplinary action" means a suspension, demotion or dismissal of a covered employee;

I. "district attorneys" means the present fourteen duly elected district attorneys, or a substitute appointee for one of them, plus any additional elected district attorneys or future appointees created after the effective date of the District Attorney Personnel and Compensation Act;

J. "employee" means a person in a full-time or part-time position in a district attorney's office but shall not be construed to include district attorneys;

K. "performance evaluation" means the written appraisal of an employee's performance of assigned duties;

L. "position" means any position in a district attorney's office; and

M. "probationary employee" means a person who is appointed to a covered position but who has not yet completed the probationary period.

History: Laws 1991, ch. 175, § 3.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-4. Coverage of service; exemptions.

A. The District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978] shall cover all employees except only covered employees shall be entitled to utilize grievance procedures and the appeals provisions in Section 9 of the District Attorney Personnel and Compensation Act [36-1A-9 NMSA 1978].

B. The positions of attorney, district office manager and special program director are "at will" positions that serve at the pleasure of the district attorney.

History: Laws 1991, ch. 175, § 4.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-5. Personnel board; appointment.

There is created the "district attorney personnel review board". The board shall consist of five district attorneys, including a president, vice-president, secretary-treasurer and two voting members, all elected annually by the district attorneys.

History: Laws 1991, ch. 175, § 5.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-6. Board members; compensation.

Each board member shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] when traveling on board business directly related to the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978].

History: Laws 1991, ch. 175, § 6.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-7. Board; duties.

The board shall:

A. recommend to the district attorneys regulations necessary or appropriate to implement and administer the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978];

B. determine the qualifications for each class specification or classification series, including required levels of education, experience, special skills and legal knowledge;

C. prepare class specifications to be performed in each class of positions;

D. recommend a compensation plan of pay ranges to which class specifications and classification series are assigned, subject to legislative appropriations;

E. hear appeals solely involving suspension, demotion or termination of a covered employee, and render its final decision, unless the covered employee elects under Section 9 [36-1A-9 NMSA 1978] of the District Attorney Personnel and Compensation Act to have the appeal heard by a state-personnel-office-designated hearing officer;

F. make periodic reviews of the personnel regulations, classification plan and compensation ranges that govern employees to ensure that all federal action, legislative mandates and other substantive changes are incorporated into the regulations in a timely fashion and make recommendations thereon to the district attorneys;

G. recommend to the district attorneys to contract for services of consultants necessary to perform a compensation or classification plan of all district attorney positions, subject to legislative appropriation; and

H. consider other personnel matters as designated by the district attorneys.

History: Laws 1991, ch. 175, § 7.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-8. Rules; adoption; coverage.

A. Personnel rules shall be promulgated by the district attorneys and shall be effective when filed as required by law.

B. The personnel rules of the district attorneys shall include provisions governing:

(1) a classification plan for all positions;

(2) a compensation plan for all positions;

(3) a reasonable period of probation during which a probationary employee may be discharged, demoted or transferred without benefit of hearing;

(4) hours of work requirements and holiday, overtime and leave policies;

(5) the evaluation of performance of employees for the purpose of improving staff effectiveness;

(6) any reduction in force needed due to lack of funds or work, abolition of a position, material change in duties or reorganization;

(7) promotions or transfers, which shall give appropriate consideration to the applicant's qualifications, skills, job performance and duties;

(8) a disciplinary procedure, which shall provide for an equitable response to infractions of rules or work performance standards; and

(9) an appeal process to review a disciplinary action solely involving suspension, demotion or termination.

History: Laws 1991, ch. 175, § 8.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-9. Appeals by covered employees to the board; judicial review.

A. A covered employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appellant and the agency whose action is reviewed shall have the right to be heard publicly and to present facts pertinent to the appeal.

B. Formal rules of evidence shall not apply to appeals to the board.

C. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. The cost of transcripts may be assessed by the court to the losing party on appeal.

D. Appeals may be heard, at the election of the appellant, either by the board or by a hearing officer selected by the state personnel office. If the appellant does not elect to have his case heard by a state-personnel-office-designated hearing officer as provided in this section, the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing held pursuant to this section.

This latter hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law.

E. If the appellant chooses to have his case heard by a state-personnel-office-designated hearing officer, the appellant shall elect in writing within twenty days after filing the notice of appeal to have his appeal heard solely by a state-personnel-office-designated hearing officer. In the event of that election, the board shall promptly make that request to the state personnel office and promptly execute any and all documents necessary to implement this election. The state personnel office shall promptly arrange for the hearing officer without charge. This hearing officer shall have all of the rights, duties and responsibilities provided to the board by the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978], and that hearing officer's decision shall be binding and of the same force and effect as if the board itself had rendered the final decision.

F. If the board or the state-personnel-office-designated hearing officer finds that the action taken was without just cause, the board or the state-personnel-office-designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his former position or to a position of like status and pay. When the board or the state-personnel-office-designated hearing officer orders a reinstatement of an appellant, the reinstatement shall be effective within thirty days after the service of a written copy of the decision on the affected party. The board or the state-personnel-office-designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the order may specify.

G. A party aggrieved by the decision of the board or the state-personnel-office-designated hearing officer made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1991, ch. 175, § 9; 1998, ch. 55, § 43; 1999, ch. 265, § 45.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, in the section heading inserted "; judicial review"; rewrote Subsection G; deleted Subsection H; and made minor stylistic changes.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection G.

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-10. Oaths; testimony; records; refusal.

The board or the state-personnel-office-designated hearing officer has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978]. Refusal to testify on matters pertaining to personnel is grounds for dismissal from employment.

History: Laws 1991, ch. 175, § 10.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-11. District attorneys to establish a compensation plan coverage.

A. The district attorneys shall establish a compensation plan for all employees of district attorneys. Before being implemented, the compensation plan shall be reviewed by the legislative finance committee and approved by the department of finance and administration. The compensation plan shall substantially conform to the compensation plan and classification series in effect for all other state employees. In addition, the plan shall include class specifications and requirements for performance evaluation.

B. The compensation plan provided by this section and adopted by the district attorneys shall apply to all employees.

History: Laws 1991, ch. 175, § 11.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-12. Additional duties of district attorneys.

The district attorneys as a group shall:

A. adopt and promulgate regulations to effectuate the provisions of the compensation plan for all employees;

B. conduct periodic reviews of the regulations, classification series and compensation ranges to ensure that applicable federal action, legislative mandates and

other substantive changes are incorporated in the compensation plan in a timely fashion;

C. contract for consultant services to reevaluate the classification and compensation plans to ensure their compatibility, subject to legislative appropriation, with classes covered by the Personnel Act [10-9-1 NMSA 1978] and the judicial pay plan; and

D. prepare an annual fiscal report and specify proposed changes, if any, to the compensation plan prior to each regular legislative session. Before any proposed changes are implemented, they shall be reviewed by the legislative finance committee and approved by the department of finance and administration.

History: Laws 1991, ch. 175, § 12.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-13. Status of present employees.

All current employees holding covered positions affected by the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978] shall be continued in their positions and shall be recognized as covered employees if they have held the position for at least six months prior to the effective date of the District Attorney Personnel and Compensation Act. All other employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be continued as probationary employees until they have successfully completed their probationary period. Nothing in the District Attorney Personnel and Compensation Act shall preclude the reclassification or reallocation of any position held by a current employee.

History: Laws 1991, ch. 175, § 13.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-14. Existing rules.

Existing personnel rules, policies and compensation plans for the employees shall remain in full force and effect until new rules, policies and pay plans are established pursuant to the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978].

History: Laws 1991, ch. 175, § 14.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

36-1A-15. Federal funds and assistance.

When the provisions of any laws of the United States or any rule, order or regulation of any federal agency or authority providing federal funds for use in the state, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds other or higher personnel standards or different classifications than are provided for by the District Attorney Personnel and Compensation Act [36-1A-1 to 36-1A-15 NMSA 1978], the board shall recommend to the district attorneys adoption of rules and regulations to meet the requirements of such laws, rules, order or regulation.

History: Laws 1991, ch. 175, § 15.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

ARTICLE 2
Regulation of Attorneys

36-2-1. [Rules defining and regulating practice of law; authority of supreme court; distribution; effective date.]

The supreme court of the state of New Mexico shall, by rules promulgated from time to time, define and regulate the practice of law within the state of New Mexico. The supreme court shall cause such rules to be printed and distributed to all members of the bar, to applicants for admission and to all courts within the state of New Mexico and the same shall not become effective until thirty (30) days after the same shall have been made ready for distribution and so distributed.

History: 1941 Comp., § 18-101, enacted by Laws 1941, ch. 96, § 1; 1953 Comp., § 18-1-1.

ANNOTATIONS

Cross references. — For right of attorney to portion of land as fee in actions quieting title, *see* 42-6-10 NMSA 1978.

For limitation of fees in proceedings before employment security commission, *see* 51-1-37 NMSA 1978.

For limitation on fees in workmen's compensation cases, *see* 52-1-54 NMSA 1978.

For incorporation by attorneys, *see* 53-6-1 NMSA 1978.

For provisions of Rules Governing Admission to the Bar, *see* Rule 15-101 et seq.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Authority of supreme court. — The supreme court's constitutional power of superintending control encompasses the court's authority and duty to prescribe the qualifications for admission to the bar, to prescribe standards of conduct for lawyers, to determine what constitutes grounds for the discipline of lawyers and to discipline, for cause, any person admitted to practice law in New Mexico. Any legislative attempt to limit what conduct the court may consider as grounds for imposing attorney discipline would be an unconstitutional infringement on the court's authority to regulate the practice of law. In re Treinen, 2006-NMSC-013, 139 N.M. 318, 131 P.3d 1282.

Prime purpose of licensing attorneys and in making them the exclusive practitioners in their field is to protect the public from the evils occasioned by unqualified persons performing legal services. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Purpose of attorney regulation. — The close regulation of those who practice law is to protect the unwary and the uninformed from injury at the hands of persons unskilled or unlearned in the law. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

"Practice of law". — *See* annotations to 36-2-27 NMSA 1978.

Power of legislature to regulate admission to bar. — The process of admitting to the bar comprehends fixing standards as to mental and scholastic qualifications and determining whether the applicant meets such requirements. The exercise thereof is a judicial function, inherent in the courts. The legislature may enact valid laws in aid of such functions and may, if in furtherance thereof, fix minimum requirements, but in no event, maximum requirements; and may not require the courts to admit on standards other than as accepted or established by the courts. Any legislation which attempts to do so is an invasion of the judicial power and violative of the constitutional provisions establishing the separate branches of government and prohibiting the legislature from invading the judiciary. In re Sedillo, 66 N.M. 267, 347 P.2d 162 (1959).

Authority to discipline lawyers. — The New Mexico state racing commission does not have the authority to prohibit an attorney from representing a client before the commission in adjudicatory proceedings or public hearings on the basis of alleged misconduct: The supreme court has the exclusive authority to discipline lawyers. 1987 Op. Att'y Gen. No. 87-61.

Law reviews. — For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," *see* 5 Nat. Resources J. 299 (1965).

For article, "Separation of Powers and the Judicial Rule-Making Power in New Mexico: The Need for Prudential Restraints," *see* 15 N.M.L. Rev. 407 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 2, 8 to 11.

Tax matters, services in connection with, as practice of law, 9 A.L.R.2d 797.

Land contracts: drafting, or filling in blanks in printed forms, of instruments relating to land by real estate agents, brokers, or managers as constituting practice of law, 53 A.L.R.2d 788.

Trust company's acts as fiduciary as practice of law, 69 A.L.R.2d 404.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law, 85 A.L.R.2d 184.

Compelling admission to membership in professional association or society, 89 A.L.R.2d 964.

Handling, preparing, presenting, or trying workmen's compensation claims or cases as practice of law, 2 A.L.R.3d 724.

Practice by attorneys and physician as corporate entities or associations under professional service corporations statutes, 4 A.L.R.3d 383.

Representation of another before state public utilities or service commission as involving practice of law, 13 A.L.R.3d 812.

Activities of law clerks as illegal practice of law, 13 A.L.R.3d 1137.

Collection agency: operation of collection agency as unauthorized practice of law, 27 A.L.R.3d 1152.

Incapacity: validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law, 52 A.L.R.3d 1326.

Books and forms: sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law, 71 A.L.R.3d 1000.

Propriety of attorney's resignation from bar in light of pending or potential disciplinary action, 54 A.L.R.4th 264.

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause, 57 A.L.R.4th 1260.

In-house counsel's right to maintain action for wrongful discharge, 16 A.L.R.5th 239.

Handling, preparing, presenting, or trying workers' compensation claims or cases as practice of law, 58 A.L.R.5th 449.

Bar examination: validity, under federal constitution, of state bar examination proceedings, 30 A.L.R. Fed. 934.

7 C.J.S. Attorney and Client §§ 3 to 6, 10 to 42, 59 to 87; 7A C.J.S. Attorney and Client §§ 88 to 130.

36-2-2 to 36-2-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 143, § 2, repeals 36-2-2 to 36-2-9 NMSA 1978, relating to the board of commissioners of the state bar and the state board of bar examiners. For present provisions, *see* 36-2-9.1 NMSA 1978 and Judicial Pamphlets 13 and 14.

36-2-9.1. Exclusion.

The board of bar commissioners of the state bar and the state board of bar examiners are bodies of the judicial department and are not a state agency nor their employees public employees for purposes of workmen's compensation coverage, public employment retirement programs or social security coverage.

History: Laws 1979, ch. 143, § 1.

36-2-10. [Duties of attorneys.]

It is the duty of an attorney-at-law:

A. to support the constitution and the laws of the United States and of this state;

B. to maintain the respect due to courts of justice and judicial officers;

C. to counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense;

D. to employ for the purpose of maintaining causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;

E. to maintain inviolate the confidence and preserve the secrets of his client;

F. to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which he is charged;

G. not to encourage either the commencement or continuation of an action or proceeding from any corrupt motive of passion or interest;

H. never to reject for any consideration personal to himself the cause of the defenseless or oppressed.

History: Laws 1909, ch. 53, § 27; Code 1915, § 353; C.S. 1929, § 9-127; 1941 Comp., § 18-109; 1953 Comp., § 18-1-9.

ANNOTATIONS

Cross references. — For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

Compiler's notes. — The state bar and the medical society have adopted the following:

"STATEMENT OF PRINCIPLES RELATING

TO THE RESPONSIBILITIES OF ATTOR-

NEYS AND PHYSICIANS IN THEIR

INTERPROFESSIONAL RELATIONS

"These principles should govern the

interprofessional relations of

physicians and attorneys

"I.

"THE PATIENT-CLIENT

"The welfare of the patient-client is the paramount and joint goal of these principles.

"II.

"PHYSICIANS AND THE LAW

"1. Physicians shall refrain from giving legal advice.

"2. Physicians shall refrain from interfering with established lawyer-client relationships.

"III.

"ATTORNEYS AND HEALTH CARE

"1. Attorneys shall refrain from giving medical advice.

"2. Attorneys shall refrain from interfering with established physician-patient relationships.

"IV.

"AN ATTORNEY'S RESPONSIBILITIES

"An attorney's responsibility is always first to his client. However, in his relationships with physicians, an attorney has the following responsibilities:

"1. *Testimony.* An attorney must keep the physician fully informed as to the status of the litigation and in particular inform him sufficiently in advance of:

"a) trial settings;

"b) vacated settings;

"c) pre-trial settlements.

"2. *Fees.* The services of a physician in a legal matter involve the consumption of the physician's time and the utilization of his facilities and his expertise over and above that required in merely treating his patient. As a result, the attorney shall make proper arrangements with all involved physicians beforehand for payment for the physician's services either directly by his client or by the attorney himself through the advancement of costs.

"An attorney is not expected to advance costs for physician's services involving treatment.

"An attorney who requests information from a physician solely to advance his medical knowledge is responsible personally for prompt payment of those services.

"3. *Background.* An attorney must familiarize himself with the medical issues involved in his case from available medical literature in order that he may have some initial understanding of the problem and so that he might be able to specify the information requested from the physician and understand the physician and understand the physician's explanation and report.

"V.

"A PHYSICIAN'S RESPONSIBILITIES

"A physician's primary responsibility is always the health of his patient. However, a physician having a patient involved in the legal process has the following responsibilities:

"1. *Records.* Given a valid authorization, the physician should promptly transfer information from his records to the requesting attorney.

"2. *Reports.* Given a valid authorization, reports covering a summation of medical facts and opinions concerning their significance shall be furnished upon request by the treating physician or the physician specifically engaged to do such work insofar as their expertise permits. The attorney should specify the items he wishes covered in that report.

"3. *Conferences.* Given a valid authorization, attorneys may confer with physicians either to:

"a) gain medical information on a topic of the attorney's interest, or

"b) discuss medical aspects of the case of a particular client with the treating physician or with one engaged to render such opinions. This may include a discussion of testimony that may be elicited at trial.

"4. *Testimony.* Physicians may be required to testify either in court or by deposition. Cooperation between both attorneys and physicians should obviate the necessity for subpoenas.

"A physician should familiarize himself with the basic requirements of court procedure.

"A physician is not an advocate and should leave the representation of his patient and advancement of the patient's interests to the patient's attorney.

"5. *Fees.* Physicians may use the expenditure of their time, office facilities, and funds as a basis for arriving at a reasonable fee for services rendered pursuant to these

principles. If an attorney fails to give timely notification of a change in the scheduled time for the physician's services, which makes the physician unavailable for other remunerative work, the physician may charge for the time set aside."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 4, 5.

Duty of attorney to call witness or to procure or aid in procuring his attendance, 56 A.L.R. 174.

Attorney's liability for failure to follow client's instructions, 56 A.L.R. 962.

Duties, rights, and remedies between attorney and client where attorney purchases property of client at or through tax, execution, or judicial sale, 20 A.L.R.2d 1280.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 A.L.R.2d 1340.

Attorney's liability for negligence in preparing or conducting litigation, 45 A.L.R.2d 5, 6 A.L.R.4th 342, 10 A.L.R.5th 828.

Abatement or survival of action for attorney's malpractice or negligence upon death of either party, 65 A.L.R.2d 1211.

Wills, liability of attorney drawing invalid will to beneficiary named therein, 65 A.L.R.2d 1363.

Security document, attorney's liability for negligence in preparing or recording, 87 A.L.R.2d 991.

Attorney's negligence in connection with estate, will, or succession matters, 55 A.L.R.3d 977.

Restitution: power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 A.L.R.3d 307.

Domestic relations: attorney's liability for negligence in case involving domestic relations, 78 A.L.R.3d 255.

Legal malpractice in connection with attorney's withdrawal as counsel, 6 A.L.R.4th 342.

Right of prosecution to discovery of case-related notes, statements, and reports - state cases, 23 A.L.R.4th 799.

Attorney-client privilege as extending to communications relating to contemplated civil fraud, 31 A.L.R.4th 458.

Liability of attorney for suicide of client based on attorney's professional act or omission, 41 A.L.R.4th 351.

Liability of attorney, acting for client, for malicious prosecution, 46 A.L.R.4th 249.

Court appointment of attorney to represent, without compensation, indigent in civil action, 52 A.L.R.4th 1063.

Attorney's liability under state law for opposing party's counsel fees, 56 A.L.R.4th 486.

Attorney's liability, to one other than immediate client, for negligence in connection with legal duties, 61 A.L.R.4th 615.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 314.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in estate or probate matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action - modern cases, 70 A.L.R.4th 786.

Legal malpractice in handling or defending medical malpractice claim, 78 A.L.R.4th 725.

Authority of attorney to compromise action - modern cases, 90 A.L.R.4th 326.

Measure and elements of damages recoverable for attorney's negligence in preparing or conducting litigation - twentieth century cases, 90 A.L.R.4th 1033.

Legal malpractice in defense of criminal prosecution, 4 A.L.R.5th 273.

Legal malpractice: negligence or fault of client as defense, 10 A.L.R.5th 828.

Attorney malpractice in connection with services related to adoption of child, 18 A.L.R.5th 892.

Legal malpractice in defense of parents at proceedings to terminate parental rights over dependent or neglected children, 18 A.L.R.5th 902.

Engaging in offensive personality as ground for disciplinary action against attorney, 58 A.L.R.5th 429.

When statute of limitations begins to run upon action against attorney for legal malpractice - deliberate wrongful acts or omissions, 67 A.L.R.5th 587.

Privileged communications: what constitutes privileged communications with preparer of federal tax returns so as to render communications inadmissible in federal tax prosecution, 36 A.L.R. Fed. 686.

Attorney's work product privilege, under Rule 26(b)(3) of the Federal Rules of Civil Procedure, as applicable to documents prepared in anticipation of terminated litigation, 41 A.L.R. Fed. 123.

Attorney's disclosure, in federal proceedings, of identity of client as violating attorney-client privilege, 84 A.L.R. Fed. 852.

7A C.J.S. Attorney and Client §§ 234 to 279.

36-2-11. [Authority of attorneys.]

An attorney has authority:

A. to execute in the name of his client any bond or other written instrument necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding or final judgment rendered therein;

B. to bind his client to any agreement in respect to any proceeding within the scope of his proper duties and power, but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk or an entry thereof on the records of the court;

C. to receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment, unless a revocation of his authority is filed and, upon payment thereof and not otherwise to discharge the claim or acknowledge satisfaction of the judgment.

History: Laws 1909, ch. 53, § 29; Code 1915, § 356; C.S. 1929, § 9-130; 1941 Comp., § 18-110; 1953 Comp., § 18-1-10.

ANNOTATIONS

Section does not alter case law governing authority of attorney to settle or compromise cases for his client. Augustus v. John Williams & Assocs., 92 N.M. 437, 589 P.2d 1028 (1979).

Oral settlement by attorney who has specific authority to settle is enforceable under certain circumstances. Augustus v. John Williams & Assocs., 92 N.M. 437, 589 P.2d 1028 (1979).

Client accepting benefits of unauthorized settlement is bound. — Where an attorney has not been authorized to settle a case but the client accepts the benefits of the settlement before attempting to treat the settlement as unauthorized and unenforceable, the client is bound by his attorney's settlement. Augustus v. John Williams & Assocs., 92 N.M. 437, 589 P.2d 1028 (1979).

Authority to settle. — An attorney may not settle a client's claim without specific authorization from the client. If there is an issue as to whether there was authorization, the party seeking enforcement of the alleged settlement agreement has the burden of establishing authorization. If it is undisputed that client authorization existed, the burden of persuasion is on the party seeking to escape from the enforceability of an authorized settlement agreement. Gomez v. Jones-Wilson, 2013-NMCA-007, 294 P.3d 1269.

Apparent authority to settle. — It is the client's conduct, not the attorney's conduct, that gives rise to apparent authority. The law requires some affirmative indication from the client that the client's attorney has the appropriate authority to settle before a settlement agreement is enforced. Gomez v. Jones-Wilson, 2013-NMCA-007, 294 P.3d 1269.

No apparent authority to settle. — Where plaintiff was injured due to the negligence of the driver of a truck that the driver's employer had leased from a leasing agency; plaintiff's attorney began settlement negotiations with the leasing agency; the leasing agency's attorney subsequently made a written settlement offer for both the leasing agency and the driver; after the leasing agency's attorney's offer expired, the attorneys had a telephone conversion; the leasing agency's attorney claimed that plaintiff's attorney orally agreed to settle with both the leasing agency and the driver; plaintiff's attorney claimed that plaintiff's attorney orally agreed only to settle with the leasing agency; plaintiff asserted that plaintiff had agreed to settle only with the leasing agency and never authorized plaintiff's attorney to settle with the driver; plaintiff's assertion was undisputed; and there was no evidence of any conduct or communication by plaintiff suggesting that plaintiff clothed plaintiff's attorney with apparent authority to settle with the driver, the alleged settlement agreement with the driver was unenforceable because plaintiff's attorney lacked express authority to settle with the driver and the driver failed to present evidence that plaintiff, rather than plaintiff's attorney, acted in a way that created the appearance that plaintiff's attorney had authority to settle with the driver. Gomez v. Jones-Wilson, 2013-NMCA-007, 294 P.3d 1269.

Scope of authority. — Where defendant did not personally sign the answer in the prior suit, in which appears the admission of the debt now sued upon, but in her answer in the present suit she admits her deceased husband signed the answer in the prior suit as attorney for her and himself, and no question has been raised as to his authority to sign the answer as her attorney or to make the admission on her behalf, then his signature on her behalf to the answer in the prior suit had the same effect as if she had personally signed. Smith v. Walcott, 85 N.M. 351, 512 P.2d 679 (1973)(decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 129 to 167.

Right of attorney to remit from verdict or judgment in favor of infant, 30 A.L.R. 1111.

Adjustment of claims, 151 A.L.R. 795.

Authority of attorney to compromise action, 30 A.L.R.2d 944, 90 A.L.R.4th 326, 5 A.L.R.5th 56.

Compelling admission to membership in professional association or society, 89 A.L.R.2d 964.

Right of attorney to continue divorce or separation suit against wishes of his client, 92 A.L.R.2d 1009.

Attorney's submission of dispute to arbitration, or amendment of arbitration agreement, without client's knowledge or consent, 48 A.L.R.4th 127.

Attorney's personal liability for expenses incurred in relation to services for client, 66 A.L.R.4th 256.

Authority of attorney to compromise action - modern cases, 90 A.L.R.4th 326.

7A C.J.S. Attorney and Client §§ 191 to 217, 280 to 384.

36-2-12. [Proof of authority; stay of proceedings.]

The court may, on motion of either party and on showing of reasonable grounds thereof, require the attorney for the adverse party or for any one of the several adverse parties to produce or prove by his oath or otherwise the authority under which he appears and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

History: Laws 1909, ch. 53, § 10; Code 1915, § 357; C.S. 1929, § 9-131; 1941 Comp., § 18-111; 1953 Comp., § 18-1-11.

ANNOTATIONS

Order under this section does not deprive the affected party of his right to counsel of his choice. State v. Evans, 89 N.M. 765, 557 P.2d 1114, cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Failure of trial court to require proof held proper. — Where no action was or had ever been taken at any time by the board of trustees of community land grant to renounce or rescind any action taken by its attorney on its behalf, the trial court acted

within its discretion in declining to require the attorney to produce further proof of his authority to represent the board of trustees. Board of Trustees v. Montano, 82 N.M. 340, 481 P.2d 702 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client § 170.

36-2-13. [Attorneys prohibited from acting as surety for clients.]

No practicing attorney shall be a surety in any action or proceeding in which he is an attorney in any of the courts in this state.

History: Laws 1909, ch. 53, § 31; Code 1915, § 358; C.S. 1929, § 9-132; 1941 Comp., § 18-112; 1953 Comp., § 18-1-12.

ANNOTATIONS

Scope of authority. — Where defendant did not personally sign the answer as her attorney or to make the admission on her behalf, then his signature on her behalf to the answer as her attorney or to make the admission on her behalf, then his signature on her behalf to the answer in the prior suit, in which appears the admission of the debt now sued upon, but in her answer in the present suit she admits her deceased husband signed the answer in the prior suit as attorney for her and himself, and no question has been raised as to his authority to sign the answer as her attorney or to make the admission on her behalf, then his signature on her behalf to the answer in the prior suit had the same effect as if she had personally signed. Smith v. Walcott, 85 N.M. 351, 512 P.2d 679 (1973)(decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 129 to 167.

Compelling admission to membership in professional association or society, 89 A.L.R.2d 964.

7A C.J.S. Attorney and Client §§ 191 to 217, 280 to 384.

36-2-13.1. Liability for court reporting costs.

A. Except as provided in Subsection C of this section, an attorney who engages a court reporter to perform court reporting services shall be jointly and severally liable with the client for whom the services were performed for costs of:

(1) the shorthand reporting of the proceedings;

(2) transcribing the proceedings; and

(3) each copy of the transcript of proceedings requested by the attorney.

B. Any other attorney who orders a copy or transcript of proceedings shall be jointly and severally liable with his client for the costs of preparing the copy he orders.

C. An attorney may agree in writing with the court reporter prior to the commencement of the proceedings that he shall not be liable for costs related to the proceedings. An attorney may also make a statement into the record at the commencement of the proceedings that he shall not be liable for costs. The court reporter may at that time choose not to record the proceedings at no liability to the court reporter.

D. As used in this section, "attorney" means a person engaged in the practice of law.

E. As used in this section, "court reporter" means a person who engages in the verbatim recording of judicial proceedings and who possesses a certificate as a New Mexico certified court reporter.

History: Laws 1993, ch. 125, § 1.

ANNOTATIONS

Cross references. — For licensing of court reporters, *see* Rule 22-201 NMRA.

Effective dates. — Laws 1993, ch. 125 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature.

Constitutionality. — This section is not an unconstitutional encroachment upon the power of the judiciary to regulate the practice of law. Trambley v. Wyman, 1998-NMCA-035, 125 N.M. 13, 956 P.2d 144, cert. denied, 124 N.M. 589, 953 P.2d 1087 (1998).

Conflict with rules. — This section does not conflict with Rule 16-108E(1) NMRA, Rules of Professional Conduct. Trambley v. Wyman, 1998-NMCA-035, 125 N.M. 13, 956 P.2d 144, cert. denied, 124 N.M. 589, 953 P.2d 1087 (1998).

Joinder of parties. — Court reporter was not required to join an attorney's former client as an indispensable party in a proceeding to recover her costs for court reporting services. Trambley v. Wyman, 1998-NMCA-035, 125 N.M. 13, 956 P.2d 144, cert. denied, 124 N.M. 589, 953 P.2d 1087 (1998).

36-2-14. [Method for changing attorney; notice.]

The attorney in any action or proceeding may be changed at any time before judgment or after final determination, as follows:

A. upon his own consent filed with the clerk or entered upon the minutes;

B. upon the order of the court or the judge thereof, upon application of the client after notice to the attorney. And when such change is made as provided in this section written notice of the change and of the substitution of a new attorney must be given to the adverse party; until such notice he must recognize the former attorney.

History: Laws 1909, ch. 53, § 32; Code 1915, § 359; C.S. 1929, § 9-133; 1941 Comp., § 18-113; 1953 Comp., § 18-1-13.

ANNOTATIONS

Cross references. — For withdrawal or substitution of attorneys in civil or criminal appellate proceedings, *see* Rule 12-302.

Compiler's notes. — This section, with changes, has been incorporated in the Rules of Civil Procedure for the District Courts. *See* Rule 1-089.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 148.

Rights and remedies of client as regards papers and documents on which attorney has retaining lien, 3 A.L.R.2d 148.

Duties, rights, and remedies between attorney and client where attorney purchases property of client at or through tax, execution, or judicial sale, 20 A.L.R.2d 1280.

Liability in tort for interference with attorney-client relationship, 90 A.L.R.4th 621.

7A C.J.S. Attorney and Client §§ 227 to 233.

36-2-15. [Death, removal, etc., of attorney; procedure.]

When an attorney dies or is removed or suspended, or ceases to act as such, a party to an action or proceeding for whom he was acting must, before any further proceedings are had against him, be required by the adverse party, by written notice to appoint another attorney or to appear in person.

History: Laws 1909, ch. 53, § 33; Code 1915, § 360; C.S. 1929, § 9-134; 1941 Comp., § 18-114; 1953 Comp., § 18-1-14.

ANNOTATIONS

Cross references. — For withdrawal or substitution of attorneys in civil or criminal appellate proceedings, *see* Rule 12-302.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorney at Law § 146.

7A C.J.S. Attorney and Client § 223.

36-2-16. [Breach of confidence; deserting or jeopardizing client; penalty.]

Any attorney or attorneys, counselor or counselors, defender or defenders whatever, in the courts of this state, who maliciously reveal the secrets of their client to the opposite party, or who, being charged with the defense of one party, and having informed himself of his cause and means of defense, shall desert him and defend the other, or who in any way whatever shall knowingly jeopardize his client in order to favor the opponent or derive some personal profit, or because greater fees have been proffered him after having been retained by his client, upon conviction of such an offense before any court whatsoever of this state, justice of the peace [magistrate court], probate judge or district court, shall be fined in a sum double the amount he may have received for the defense of the cause, and all fines that may result shall accrue one-half to the funds of the counties and the other half to the funds of the state; and upon conviction, he shall be deprived of the exercise of such office of attorney, counselor or defender.

History: Laws 1863-1864, p. 32; C.L. 1865, ch. 11, § 1; C.L. 1884, § 819; C.L. 1897, § 1213; Code 1915, § 354; C.S. 1929, § 9-128; 1941 Comp., § 18-115; 1953 Comp., § 18-1-15.

ANNOTATIONS

Cross references. — For disbarment and suspension generally, *see* 36-2-18 to 36-2-23 NMSA 1978.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Bracketed material. — The bracketed reference to "magistrate court" was inserted by the compiler, as the office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. *See* 35-1-38 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Compiler's notes. — That part of this section relating to the disposition of fines may be superseded by N.M. Const., art. XII, § 4, which reads in part: "All fines and forfeitures collected under general laws * * * shall constitute the current school fund of the state."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 32.

Propriety and effect of attorney representing interest adverse to that of former client, 52 A.L.R.2d 1243.

Conflicting interests: what constitutes representation of conflicting interests subjecting attorney to disciplinary action, 17 A.L.R.3d 835.

Restitution: power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 A.L.R.3d 307.

Communication with party represented by counsel as ground for disciplining attorney, 26 A.L.R.4th 102.

Attorney's disclosure, in federal proceedings, of identity of client as violating attorney-client privilege, 84 A.L.R. Fed. 852.

7 C.J.S. Attorney and Client §§ 43 to 58, 76 to 87.

36-2-17. [Deceit or collusion; damages; disbarment.]

If an attorney is guilty of deceit or collusion or consents thereto with intent to deceive the court, judge or party, he shall forfeit to the injured party, treble damages to be recovered in a civil action, and may, if in the opinion of the board of bar examiners such conduct warrants it, be disbarred.

History: Laws 1909, ch. 53, § 28; Code 1915, § 355; C.S. 1929, § 9-129; 1941 Comp., § 18-116; 1953 Comp., § 18-1-16.

ANNOTATIONS

Cross references. — For disbarment and suspension generally, *see* 36-2-18 to 36-2-23 NMSA 1978.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq. For Rules Governing Discipline, *see* Rule 17-101 et seq.

The terms "the court, judge or party" suggest that the statute applies only in the context of judicial proceedings. An action for deceit and collusion does not lie outside the context of pending judicial proceedings. An action against an attorney representing a two-person partnership who deceived one of the partners is not cognizable under this section. Richter v. Van Amberg, 97 F. Supp. 2d 1255 (D.N.M. 2000)

Applicability in bankruptcy proceedings. — A claim of violation of Section 36-2-17 NMSA 1978 in conduct occurring during the appeals process arising after the magistrate court action does not fall under the auspices of the bankruptcy court's post-dismissal jurisdiction. Kline v. Tiedemann, 424 B. R. 516 (D.N.M. 2010)

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 180.

Divorce: participation in allegedly collusive or connived divorce proceedings as subjecting attorney to disciplinary action, 13 A.L.R.3d 1010.

7 C.J.S. Attorney and Client § 23; 7A C.J.S. Attorney and Client, § 138.

36-2-18. [Grounds for disbarment and suspension by supreme court.]

An attorney may be disbarred or suspended by the supreme court for any of the following causes arising after his admission to practice:

A. his conviction of felony or misdemeanor involving moral turpitude in which case the record of conviction is conclusive;

B. wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession and any violation of the oath taken by him or of his duty as such attorney as before provided in this chapter;

C. corruptly or wilfully and without authority appearing as attorney for a party to an action or proceeding;

D. lending his name to be used as an attorney by another party who is not an attorney;

E. failing or refusing to account for money of his client coming into his hands as such attorney;

F. for any other act to which such a consequence is by law attached.

History: Laws 1909, ch. 53, § 34; Code 1915, § 361; C.S. 1929, § 9-135; 1941 Comp., § 18-117; 1953 Comp., § 18-1-17.

ANNOTATIONS

Cross references. — For breach of confidence of or deserting or jeopardizing client as grounds for depriving attorney of office, *see* 36-2-16 NMSA 1978.

For deceit of court, judge or party as grounds for disbarment, *see* 36-2-17 NMSA 1978.

For Rules Governing Discipline, *see* Rule 15-101 et seq.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

Compiler's notes. — The 1915 Code compilers substituted "as before provided in this chapter" at the end of Subsection B for "as hereinbefore provided," presumably referring

thereby to the 1915 Code, ch. 8, §§ 327 to 360, the operative provisions of which are compiled as 36-2-10 to 36-2-17 and 36-2-27 NMSA 1978.

Giving fraudulent checks. — Attorney disbarred following hearing concerning his guilty plea to charges of giving fraudulent check. In re McGarry, 68 N.M. 308, 361 P.2d 718 (1961).

Writing insulting letter to judge. — A letter of insulting character, charging personal and official ignorance, and corruption, written by a member of the bar to a district judge, was sufficient ground for disbarment. In re Rogers, 28 N.M. 375, 212 P. 1034 (1923).

Obtaining information from grand jurors relating to proceeding in which attorney interested. — In re Hittson, 20 N.M. 319, 150 P. 733 (1915).

Alteration of tax assessment. — Attorney who, while employed by the state, caused unlawful changes to be made in an invalid tax assessment and subsequently, when in the employment of the taxpayer, pleaded the unlawful changes as a defense to the assessment was guilty of unprofessional conduct and was disbarred. In re Eaton, 34 N.M. 329, 281 P. 24 (1929).

Misappropriation of funds of client. — Where an attorney collects money for his client, and deceives such client as to the fact of having collected the same, and appropriates it to his own use, he is guilty of unprofessional conduct. In re Barth, 26 N.M. 93, 189 P. 499 (1920).

Attorney who was representing a beneficiary under a will, induced his client to assign to him an interest in such legacy, under agreement on his part to account for same as soon as it was collected, and thereafter collected interests so assigned and appropriated the same to his own use, failing and refusing to account for same, was guilty of unprofessional conduct. In re Barth, 26 N.M. 93, 189 P. 499 (1920).

Law reviews. — For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," *see* 5 Nat. Resources J. 299 (1965).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law, §§ 21 to 69.

Purchase of cause of action by attorney as champertous, 4 A.L.R. 173.

Disloyal acts or political opinions as ground for disbarment or suspension of attorney, 8 A.L.R. 1262, 12 A.L.R. 1189, 19 A.L.R. 936.

Moral delinquency or other conduct not affecting court or client as ground for disbarment or suspension of attorney, 9 A.L.R. 189, 43 A.L.R. 107, 55 A.L.R. 1373.

Conduct with regard to proposed legislation as ground for disbarment, 9 A.L.R. 1277.

Encouraging divorce litigation as ground for disbarment or suspension, 9 A.L.R. 1500, 55 A.L.R. 1313.

Conduct in respect of coaching law students as ground for disbarment, 31 A.L.R. 748.

Aspersing character or reputation of litigant as ground for disbarment of attorney, 41 A.L.R. 494.

Failure to account for money of client as ground for disbarment, 43 A.L.R. 54.

Methods employed in collecting debts as ground for disbarment or suspension of an attorney, 47 A.L.R. 267.

Conviction of crime involving moral turpitude as proof of grounds for disbarment when conviction is not itself an independent cause, 81 A.L.R. 1196.

Trial and conviction as necessary condition of disbarment proceedings based in whole or in part on charge amounting to crime, 90 A.L.R. 1111.

Suspension for failure to pay fees imposed annually on members of state bar, 151 A.L.R. 622.

Misconduct of one partner in a law firm as affecting disbarment or other disciplinary proceedings against other partner, 157 A.L.R. 613.

Effect of removal of member of bar from state, 160 A.L.R. 1372.

Admissibility in proceeding to inquire into conduct of attorney, of evidence or record in separate proceeding involving or indicating his corrupt or improper conduct, 161 A.L.R. 898.

Statutory power to revoke or suspend license of attorney for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

"Heir-hunting" activities as ground for disciplinary action against attorney, 171 A.L.R. 352.

Governing law as to the existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon disqualification to practice as attorney, 175 A.L.R. 798.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 A.L.R.2d 1340.

Propriety and effect of attorney representing interest adverse to that of former client, 52 A.L.R.2d 1243.

Libel and slander: privilege in connection with proceedings to disbar or discipline attorney, 77 A.L.R.2d 493.

Fees: attorney's splitting fees with other attorney or laymen as ground for disciplinary proceedings, 6 A.L.R.3d 1446.

Advances: validity and propriety of arrangement by which attorney pays or advances expenses of client, 8 A.L.R.3d 1155.

Release of information concerning forthcoming or pending trial as ground for contempt proceedings or other disciplinary measures against member of the bar, 11 A.L.R.3d 1104.

Criticism: attorney's criticism of judicial acts as ground of disciplinary action, 12 A.L.R.3d 1408.

Divorce: participation in allegedly collusive or connived divorce proceedings as subjecting attorney to disciplinary action, 13 A.L.R.3d 1010.

Conflicting interests: what constitutes representation of conflicting interests subjecting attorney to disciplinary action, 17 A.L.R.3d 835.

Securities acts: violation of securities regulations as ground of disciplinary action against attorney, 18 A.L.R.3d 1408.

Homicide or assault as ground for disciplinary measures against attorney, 21 A.L.R.3d 887.

Compensation: attorney's right to compensation as affected by disbarment or suspension before complete performance, 24 A.L.R.3d 1193.

Presenting or permitting false evidence as ground for disbarment or suspension, 40 A.L.R.3d 169.

Announcements: publication and distribution of announcement of new or changed associations or addresses, change of firm name, or the like as grounds for disciplinary action, 53 A.L.R.3d 1261.

Will: disciplinary proceeding based on attorney's naming of himself or associate as executor or attorney for executor in will drafted by him, 57 A.L.R.3d 703.

Judicial officer: misconduct in an official capacity as judicial officer as basis for disbarment, suspension, or other disciplinary action against attorney, 57 A.L.R.3d 1150.

Federal income tax conviction as involving moral turpitude warranting disciplinary action against attorney, 63 A.L.R.3d 476.

Federal income tax conviction as constituting nonprofessional misconduct warranting disciplinary action against attorney, 63 A.L.R.3d 512.

Perjury: rights and duties of attorney in a criminal prosecution where client informs him of intention to present perjured testimony, 64 A.L.R.3d 385.

Communication: failure to communicate with client as basis for disciplinary action against attorney, 80 A.L.R.3d 1240.

Income tax conviction: disciplinary action against attorney or accountant for misconduct related to preparation of tax returns for others, 81 A.L.R.3d 1140.

Fee collection practices as ground for disciplinary action, 91 A.L.R.3d 583.

Attorney's failure to report promptly receipt of money or property belonging to client as ground for disciplinary action, 91 A.L.R.3d 975.

Conduct of attorney in connection with settlement of client's case as ground for disciplinary action, 92 A.L.R.3d 288.

Conduct of attorney in capacity of executor or administrator of decedent's estate as ground for disciplinary action, 92 A.L.R.3d 655.

Disciplinary action against attorney based on misconduct prior to admission to bar, 92 A.L.R.3d 807.

Attorney's commingling of client's funds with his own as ground for modern action - modern status, 94 A.L.R.3d 846.

Restitution as mitigating circumstance in disciplinary action against attorney based in wrongful conduct, 95 A.L.R.3d 724.

Communication with party represented by counsel as ground for disciplining attorney, 26 A.L.R.4th 102.

Election campaign activities as ground for disciplining attorney, 26 A.L.R.4th 170.

Advertising as ground for disciplining attorney, 30 A.L.R.4th 742.

Failure to cooperate with or obey disciplinary authorities as ground for disciplining attorney - modern cases, 37 A.L.R.4th 646.

Disciplinary action against attorney for aiding or assisting another person in unauthorized practice of law, 41 A.L.R.4th 361.

Initiating, or threatening to initiate, criminal prosecution as ground for disciplining counsel, 42 A.L.R.4th 1000.

Attorney's misrepresentation to court of his state of health or other personal matter in seeking trial delay as ground for disciplinary action, 61 A.L.R.4th 1216.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action - modern cases, 63 A.L.R.4th 656.

Imposition of sanctions upon attorneys or parties for miscitation or misrepresentation of authorities, 63 A.L.R.4th 1199.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving real-estate transactions as ground for disciplinary action - modern cases, 65 A.L.R.4th 24.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 314.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in estate or probate matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action--modern cases, 67 A.L.R.4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action - modern cases, 68 A.L.R.4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action - modern cases, 69 A.L.R.4th 410.

Bringing of frivolous civil claim or action as ground for discipline of attorney, 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney, 85 A.L.R.4th 567.

Misconduct involving intoxication as ground for disciplinary action against attorney, 1 A.L.R.5th 874.

Engaging in offensive personality as ground for disciplinary action against attorney, 58 A.L.R.5th 429.

Attorney's right to compensation as affected by disbarment or suspension before complete performance, 59 A.L.R.5th 693.

Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney's family or law firm is beneficiary, grantee, legatee, or devisee, 80 A.L.R.5th 597.

7 C.J.S. Attorney and Client §§ 66 to 87.

36-2-19. [Conviction of crime; certifying copy of record to supreme court; disbarment.]

In the case of the conviction of an attorney of a felony or of a misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had must within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction, and the supreme court upon receipt of such record, after judgment of such conviction, is filed, must enter an order disbarring such attorney.

History: Laws 1909, ch. 53, § 35; Code 1915, § 363; C.S. 1929, § 9-137; 1941 Comp., § 18-118; 1953 Comp., § 18-1-18.

ANNOTATIONS

Cross references. — For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 50 to 57.

Constitutionality of statute providing for disbarment of attorneys convicted of crime, 32 A.L.R. 1068.

Violation of liquor law as infamous crime or offense involving moral turpitude, 40 A.L.R. 1048, 48 A.L.R. 266, 71 A.L.R. 217.

Trial and conviction as necessary condition of disbarment proceeding based in whole or in part on charge amounting to crime, 90 A.L.R. 1111.

Admissibility in proceeding to inquire into conduct of attorney, of evidence or record in separate proceeding involving or indicating his corrupt or improper conduct, 161 A.L.R. 898.

Governing law as to the existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon disqualification to practice as attorney, 175 A.L.R. 798.

Homicide or assault as ground for disciplinary measures against attorney, 21 A.L.R.3d 887.

Pardon as defense to disbarment of attorney, 59 A.L.R.3d 466.

License: entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine, 61 A.L.R.3d 357.

Federal income tax conviction as involving moral turpitude warranting disciplinary action against attorney, 63 A.L.R.3d 476.

Federal income tax conviction as constituting nonprofessional misconduct warranting disciplinary action against attorney, 63 A.L.R.3d 512.

Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding, 26 A.L.R.4th 995.

7 C.J.S. Attorney and Client §§ 71 to 74.

36-2-20. [Attorneys who are partners of or related to district attorney; restrictions on practice.]

No attorney-at-law, who is at the time a partner of any district attorney, or the father, son or brother of a district attorney, shall defend in any court any person charged with any criminal offense, or appear in any civil action against the state in which it is the duty of such district attorney to prosecute or appear for the state. A violation of the provisions of this act [section] shall be grounds for disbarment.

History: Laws 1933, ch. 172, § 1; 1941 Comp., § 18-119; 1953 Comp., § 18-1-19.

ANNOTATIONS

Cross references. — For limitation on private practice of district attorneys, *see* 36-1-4 NMSA 1978.

36-2-21. [Judgment of disbarment.]

Upon conviction of the accused in cases arising under the first subdivision of Section 36-2-18 NMSA 1978, the judgment of the court must be that the name of the party be stricken from the roll of attorneys of the court, and that he be precluded from practicing as such attorney in all the courts of this state and upon conviction in other cases the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as an attorney in the courts of this state permanently or for a limited period.

History: Laws 1909, ch. 53, § 45; Code 1915, § 373; C.S. 1929, § 9-147; 1941 Comp., § 18-120; 1953 Comp., § 18-1-20.

ANNOTATIONS

Cross references. — For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 69.

Abatement of disbarment proceedings, 76 A.L.R. 674.

Review of disbarment by mandamus, 95 A.L.R. 1425.

Proceedings before state bar or to investigation of charge against members and as to discipline or disbarment, 114 A.L.R. 168, 151 A.L.R. 617.

Prohibition to control action of bar authority in disciplinary measures, 115 A.L.R. 33, 159 A.L.R. 627.

Admissibility in proceeding to inquire into conduct of attorney of evidence or record in separate proceeding involving or indicating his corrupt or improper conduct, 161 A.L.R. 898.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

7 C.J.S. Attorney and Client § 36.

36-2-22. [Payment of costs in disbarment proceedings.]

In all disbarment proceedings where the respondent is disbarred or suspended from practice, the costs of such proceedings shall be taxed against such respondent. Where such respondent is reprimanded only, the costs, at the option of the court may be taxed either against the respondent or the state, or may be apportioned. If such respondent be discharged he shall pay no costs, but such costs shall be paid out of the court fund of the county of the residence of the respondent, upon order of the court trying such cause. If the respondent shall have no property subject to execution, and such fact be established to the satisfaction of the court trying such cause, such court may order the

costs incurred by the state in prosecuting such cause, to be paid out of the court fund of the county of the residence of such respondent.

History: Laws 1917, ch. 41, § 1; C.S. 1929, § 9-148; 1941 Comp., § 18-121; 1953 Comp., § 18-1-21.

ANNOTATIONS

Cross references. — For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client § 119.

36-2-23. [Effect of disbarment; reinstatement.]

Every judgment or order of disbarment or suspension made in pursuance of this chapter by the supreme court of this state, shall operate while it continues in force to deny the party against whom the same is rendered the right to appear in any of the courts of this state; but an attorney-at-law, who by such order or judgment of the supreme court has been disbarred from practice or suspended for a longer period than two years for any offense not indictable, on application to the supreme court may be reinstated as such attorney in the discretion of the court at any time after two years from the date of such judgment.

History: Laws 1909, ch. 53, § 46; Code 1915, § 374; C.S. 1929, § 9-149; 1941 Comp., § 18-122; 1953 Comp., § 18-1-22.

ANNOTATIONS

Cross references. — For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Compiler's notes. — The 1915 Code compilers substituted "this chapter" for "this act," presumably to refer to Code 1915, ch. 8, §§ 327 to 376, the operative provisions of which are compiled as 36-2-10 to 36-2-19, 36-2-21, 36-2-23, 36-2-24 and 36-2-27 NMSA 1978.

Effect of order of suspension. — After an order of suspension from practice in all of the courts of the state, it is a contempt of court for an attorney to hold himself out as an attorney at law. State ex rel. Patton v. Marron, 22 N.M. 632, 167 P. 9 (1917).

An order of suspension from practice in "all of the courts of this state" prohibits an attorney at law from practicing in the probate or other inferior courts during the term of such suspension. State ex rel. Patton v. Marron, 22 N.M. 632, 167 P. 9 (1917).

Disbarred attorney who is not a bona fide resident of the state is not eligible to reinstatement, such application being in effect one for admission to practice. In re Fleming, 36 N.M. 93, 8 P.2d 1063 (1932).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 19, 20, 70 to 72.

Pardon as restoring license or other special privilege or office forfeited by conviction, 58 A.L.R.3d 1191.

Continued practice: disbarment or suspension of attorney in one state as affecting right to continue practice in another state, 81 A.L.R.3d 1281.

Reinstatement of attorney, 83 A.L.R.3d 871.

7A C.J.S. Attorney and Client §§ 120 to 130.

36-2-24. [License fraudulently obtained; revocation.]

The supreme court may revoke the license of any attorney at any time within three years after the same is granted, upon satisfactory showing that the same was obtained by false representations, fraud or deceit.

History: Laws 1909, ch. 53, § 47; Code 1915, § 375; C.S. 1929, § 9-150; 1941 Comp., § 18-123; 1953 Comp., § 18-1-23.

ANNOTATIONS

Cross references. — For disciplinary procedure generally, *see* Rule 17-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 23.

7 C.J.S. Attorney and Client § 70.

36-2-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 143, § 2, repeals 36-2-25 NMSA 1978, relating to payment of annual license fee to the board of commissioners of the state bar. For present provisions, *see* Rule 24-102.

36-2-26. [Annual meetings of state bar; annual election.]

There shall be an annual meeting presided over by the president of the state bar, open to all members of the bar in good standing, and held at such time and place as the

board of commissioners may designate, for the discussion of the affairs of the bar and the administration of justice. At noon on the last day of such meeting the annual election shall close and the ballots [be] canvassed and the results announced.

History: Laws 1925, ch. 100, § 11; C.S. 1929, § 9-211; 1941 Comp., § 18-125; 1953 Comp., § 18-1-25.

ANNOTATIONS

Cross references. — For annual meeting of state bar, *see* Rule 24-103.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 C.J.S. Attorney and Client § 8.

36-2-27. Practice without admission; contempt of court; foreign attorneys.

No person shall practice law in a court of this state, except a magistrate court, nor shall a person commence, conduct or defend an action or proceeding unless he has been granted a certificate of admission to the bar under the provisions of Chapter 36 NMSA 1978. No person not licensed as provided in that chapter shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law or hold himself out as an attorney or counselor at law, and all persons violating the provisions of that chapter shall be deemed guilty of contempt of the court in which the violation occurred, as well as of the supreme court of the state; provided, however, that nothing in this section shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in participating in an action or proceeding.

History: Laws 1909, ch. 53, § 26; Code 1915, § 352; Laws 1917, ch. 48, § 4; 1925, ch. 24, § 1; 1927, ch. 64, § 1; C.S. 1929, § 9-126; Laws 1935, ch. 124, § 1; 1941 Comp., § 18-126; 1953 Comp., § 18-1-26; Laws 1957, ch. 106, § 1; 1999, ch. 272, § 1.

ANNOTATIONS

Cross references. — For rules governing bar examiners, bar examinations and admission to the bar, *see* Rule 15-101 et seq.

For promulgation of rules as to requirements for admission to practice of law by supreme court generally, *see* Rule 15-102.

The 1999 amendment, effective June 18, 1999, substituted "a magistrate court" for "courts of justice of the peace", substituted "unless he has been granted" for "in any of said courts unless he be an actual and bona fide resident of the state of New Mexico and unless he shall have first obtained a temporary license as herein provided or shall have been granted", and substituted "Chapter 36 NMSA 1978" for "this chapter" in the

first sentence; and deleted a further proviso from the end of the section, which read as set out in the 1991 Replacement Pamphlet.

Compiler's notes. — The 1915 Code compilers substituted "this chapter" for "this act," presumably to refer to Code 1915, ch. 8, §§ 327 to 376, the operative provisions of which are compiled as 36-2-10 to 36-2-19, 36-2-21, 36-2-23, 36-2-24 and 36-2-27 NMSA 1978.

The preliminary clause of Laws 1935, ch. 124, § 1, read: "Section 1. That Section 126 of chapter 9 of the New Mexico Statutes Annotated, Compilation of 1929 be amended by adding thereto the following." The provisions of the present final proviso of the section followed that clause. The validity of this method of amendment may be affected by N.M. Const., art. IV, § 18, which provides that each section of a law which is amended shall be set out in full.

The provisions of the final proviso of this section were held to be in conflict with former Rule II(A)9 of Rules Governing Admission to the Bar, adopted effective January 12, 1934, which provided in part that no person, other than one admitted on certificate from another state, should be granted a license to practice law in New Mexico or should be entitled to take an examination for admission to the bar unless such person had graduated from a law school approved by the American Bar Association. *See* In re Sedillo, 66 N.M. 267, 347 P.2d 162 (1959).

For present rule governing qualifications of applicants for admission to the bar, *see* Rule 15-103.

Constitutionality of last proviso in section. — The last proviso in this section, which sets educational requirements for admission to the bar which are less than those found in rules governing admission to the bar, is an unconstitutional invasion of the judicial powers. In re Sedillo, 66 N.M. 267, 347 P.2d 162 (1959) (decided under former Rules Governing Admission to the Bar).

Rule 24-101 NMRA applies to all courts of this state without exception. — The practice of law in any court is limited to duly licensed attorneys who are members of the state bar or otherwise authorized by the supreme court’s rules in specific, limited circumstances. The limited exceptions that allow certain individuals without a bar license to practice law in New Mexico courts require that a proper authority must be notified in writing of their non-licensed status, the state bar in the case of an out-of-state attorney and the judge presiding over the proceeding in the case of a clinical law student. State v. Rivera, 2012-NMSC-003, 268 P.3d 40, rev'g in part, 2010-NMCA-109, 149 N.M. 406, 249 P.3d 944.

Prosecution of criminal case by a non-licensed individual. — Where an assistant district attorney and an individual who was not licensed to practice law in New Mexico participated in the prosecution of a DWI case in metropolitan court; the assistant district attorney was present for the entire trial and personally conducted most of the trial; and

the unlicensed individual examined only one of the state's witnesses, defendant was not prejudiced by the unlicensed individual's impermissible participation at trial. State v. Rivera, 2012-NMSC-003, 268 P.3d 40, rev'g in part 2010-NMCA-109, 149 N.M. 406, 249 P.3d 944.

Guardians ad litem. — The provision of Rule 1-017C NMRA allowing a child's representative to sue or defend on the child's behalf does not constitute an exception to the general prohibition against unauthorized practice of law. Chisholm v. Rueckhaus, 1997-NMCA-112, 124 N.M. 255, 948 P.2d 707, cert. denied, 124 N.M. 268, 949 P.2d 282 (1997).

When filling in blanks in legal instruments constitutes "practice of law". — Filling in blanks in legal instruments where the forms have been drafted by attorneys, and where filling in the blanks requires only the use of common knowledge regarding the information to be inserted, does not constitute the "practice of law"; but when the filling in of the blanks affects substantial legal rights, and if the reasonable protection of such rights requires legal skill and knowledge greater than that possessed by the average citizen, then such practice is restricted to members of the legal profession. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Likewise, where separate additional charges made by title company for filling in blanks. — The making of separate additional charges to fill in blanks on legal instruments by employees of a title company is considered the "practice of law," for the reason that it would place emphasis on conveyancing and legal drafting as a business rather than on the business of the title company. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Where title company personnel use information to advise. — Persons working for title companies who confer with parties to obtain facts and information about their personal and property status, who obtain more information than that necessary to fill in the blank spaces in standardized forms used for company purposes and who use the information instead for the purpose of advising the parties of their rights and the action to be taken concerning them are engaging in the "practice of law," such practice being restricted to members of the legal profession. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Layman may not hold self out as expert or consultant at closing loans. — A layman, regardless of whether he is expert at closing loans, may not hold himself out to the public as an expert or consultant in this field or describe himself by any similar phrase which implies that he has a knowledge of the law. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Power to bring suits to prevent unauthorized practice of law. — A state bar, even though it is not a corporate "person," may have conferred upon it the power to bring suits to prevent the unauthorized practice of law to protect both itself and the public. Statute creating the board of bar commissioners and giving it power to make and

enforce rules "generally for the control and regulation of . . . the state bar" necessarily gave it the power to seek the court's help to prevent the unauthorized practice of law. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

The board of bar commissioners and the committee on unauthorized practice of law were both empowered to maintain and prosecute suits to prevent the unauthorized practice of law, but under circumstances where suit is not entered by the bar association or its branches and it becomes necessary for individual attorneys to act in the public interest, the individuals have standing to bring action. State Bar v. Guardian Abstract & Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

Metropolitan court. — Where an assistant district attorney and a person who was not licensed to practice law entered their appearances on behalf of the state in defendant's DWI bench trial in metropolitan court; the unlicensed person conducted the direct and redirect examination of the supervising officer of the roadblock where defendant was arrested; and the unlicensed person was supervised by a licensed attorney at all times, did not commence the prosecution of defendant, and did not exert control over the prosecution, the participation of the unlicensed person in defendant's case in metropolitan court was expressly authorized by Section 36-2-27 NMSA 1978. State v. Rivera, 2010-NMCA-109, 149 N.M. 406, 249 P.3d 944, aff'd in part, rev'd in part by, 2012-NMSC-003, 268 P.3d 40.

Arrangements in which a credit bureau represents clients on a contingency fee basis constitutes unlawful practice of law. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

Medical malpractice actions. — A non-attorney parent was required to be represented by counsel in order to bring a medical malpractice claim on behalf of his minor son. Chisholm v. Rueckhaus, 1997-NMCA-112, 124 N.M. 255, 948 P.2d 707, cert. denied, 124 N.M. 268, 949 P.2d 282 (1997).

Right of unlicensed person to practice in magistrate court. — The court would not permit the practice of law by unlicensed magistrate courts' lawyers who are unfettered by the strictures which apply to the rest of the legal profession. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

The indicia of practice of law, insofar as court proceedings are concerned, include the following: (1) representation of parties before judicial or administrative bodies, (2) preparation of pleadings and other papers incident to actions and special proceedings, (3) management of such action and proceeding, and noncourt-related activities such as (4) giving legal advice and counsel, (5) rendering a service that requires the use of legal knowledge or skill and (6) preparing instruments and contracts by which legal rights are secured. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

Meaning of "practice of law". — It is the character of the services rendered and not the denomination of the tribunal before whom they are rendered which controls in determining whether such services constitute the practice of law. 1957-58 Op. Att'y Gen. No. 58-200.

The practice of law, as generally understood, is the doing or performing of services in a court of justice, in any matter pending therein, throughout its various stages, and in conformity with the adopted rules or procedure, but, is not confined to performing services in an action or proceeding pending in courts of justice, and, in a larger sense, it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court. To "practice law" is to carry on the business of an attorney at law; to do or practice that which an attorney or counselor at law is authorized to do and practice; to exercise the calling or profession of the law, usually for the purpose of gaining a livelihood, or at least for gain; to make it one's business to act for, and by the warrant of, others in legal formalities, negotiations, or proceedings. 1959-60 Op. Att'y Gen. No. 60-173.

If a layman or an attorney appears in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the state of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and, in that representative capacity, files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence or performs any of the other duties normally associated with an attorney requiring specialized training and skill, such layman or attorney is practicing law within the meaning of the term as it is used in this section. 1957-58 Op. Att'y Gen. No. 58-200 (superseded by statute, *see* Section 12-8-11 NMSA 1978).

All foreign licensed attorneys must associate themselves with resident counsel before commencing, conducting or otherwise participating in any administrative proceeding. 1957-58 Op. Att'y Gen. No. 58-200 (superseded by statute, *see* Section 12-8-11 NMSA 1978).

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," *see* 7 Nat. Resources J. 599 (1972).

For note, "Group and Prepaid Legal Services in New Mexico," *see* 4 N.M.L. Rev. 225 (1974).

For note, "The Unauthorized Practice of Law in New Mexico," *see* 9 N.M.L. Rev. 403 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 8 to 11.

Tax matters, services in connection with, as practice of law, 9 A.L.R.2d 797.

Land contracts: drafting, or filling in blanks in printed forms, of instruments relating to land by real estate agents, brokers, or managers as constituting practice of law, 53 A.L.R.2d 788.

Trust company's acts as fiduciary as practice of law, 69 A.L.R.2d 404.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law, 85 A.L.R.2d 184.

Handling, preparing, presenting, or trying workmen's compensation claims or cases as practice of law, 2 A.L.R.3d 724.

Representation of another before state public utilities or service commission as involving practice of law, 13 A.L.R.3d 812.

Activities of law clerks as illegal practice of law, 13 A.L.R.3d 1137.

Collection agency: operation of collection agency as unauthorized practice of law, 27 A.L.R.3d 1152.

Books and forms: sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law, 71 A.L.R.3d 1000.

Drafting of will or other estate-planning activities as illegal practice of law, 22 A.L.R.3d 1112.

Attorney's right to appear pro hac vice in state court, 20 A.L.R.4th 855.

Disciplinary action against attorney for aiding or assisting another person in unauthorized practice of law, 41 A.L.R.4th 361.

Attorneys: revocation of state court pro hac vice admission, 64 A.L.R.4th 1217.

Handling, preparing, presenting, or trying workers' compensation claims or cases as practice of law, 58 A.L.R.5th 449.

What constitutes "unauthorized practice of law" by out-of-state counsel?, 83 A.L.R.5th 497.

7 C.J.S. Attorney and Client §§ 13 to 16, 26 to 28, 30, 31, 39 to 42.

36-2-28. Repealed.

ANNOTATIONS

Repeals. — Laws 2011, ch. 107, § 3 repealed 36-2-28 NMSA 1978, as enacted by Laws 1925, ch. 100, § 12, relating to practicing law without a valid license, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMONESOURCE.COM.*

36-2-28.1. Unauthorized practice of law; private remedies.

A. A person likely to be damaged by an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for an injunction against the alleged violator. An injunction shall be granted pursuant to the principles of equity and on terms that the court considers reasonable. Proof of monetary damage or loss of profit is not required for an injunction to be granted pursuant to this subsection.

B. A person who suffers a loss of money or other property as a result of an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for the greater of actual damages or one thousand dollars ($1,000) and for the restitution of any money or property received by the alleged violator, provided that if the court finds that the alleged violator willfully engaged in the unauthorized practice of law, the court may award up to three times the actual damages or three thousand dollars ($3,000), whichever is greater.

C. A person bringing an action pursuant to Subsection A or B of this section shall, if the person prevails, also be awarded attorney fees and costs.

D. The relief provided by this section is in addition to other remedies available at law or equity.

History: Laws 2011, ch. 107, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 107, § 4 made Laws 2011, ch. 107, § 1 effective July 1, 2011.

36-2-28.2. Unauthorized practice of law; action by attorney general or bar association.

A. Whenever the attorney general, the state bar of New Mexico or a local bar association authorized by the state bar of New Mexico to prosecute actions related to the unauthorized practice of law has reason to believe that a person has engaged in the unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 or has aided or abetted another person in the unauthorized practice of law and the initiation of legal proceedings would be in the public interest, the attorney general or bar association may bring an action in the name of the state against the alleged violator. The action may be brought in the district court for the county in which the alleged violator resides or has a principal place of business or in the district court for a county in which the alleged

violation took place. In an action brought pursuant to this section, in addition to civil penalties, the attorney general or bar association may petition the court for a temporary or permanent injunction and restitution and, if seeking a temporary or permanent injunction, the attorney general or bar association shall not be required to post bond.

B. In lieu of filing or continuing an action pursuant to this section, the attorney general or bar association may accept a written assurance of discontinuance of the unauthorized practice of law from the alleged violator. The assurance may contain an agreement by the alleged violator that restitution of money or property received from them in any transaction related to the unauthorized practice will be made to all persons, provided that a person harmed by the unauthorized practice is not required to accept restitution. If the offer of restitution is accepted, the person accepting the restitution is barred from recovering damages from the alleged violator in an action based upon the same unauthorized practice.

C. In an action brought by the attorney general or bar association pursuant to this section, if the court finds the alleged violator engaged in the unauthorized practice of law, the court may impose a civil penalty not to exceed five thousand dollars ($5,000) per violation. In addition, if the court finds that a person has aided or abetted another to engage in the unauthorized practice of law, the court may impose a civil penalty not to exceed one thousand dollars ($1,000) for the first violation and a civil penalty not to exceed five thousand dollars ($5,000) for each subsequent violation.

History: Laws 2011, ch. 107, § 2.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 107, § 4 made Laws 2011, ch. 107, § 2 effective July 1, 2011.

36-2-29. [Direct and indirect solicitation of damage claims declared illegal.]

It shall be unlawful for any person to solicit employment for himself or for another in the collection of any claim for damage to property or for damages for personal injuries sustained within this state or elsewhere or for death resulting therefrom, whether to be presented, collected, enforced or prosecuted in this state or elsewhere, or to accept any employment so solicited or to employ any person or agent by, through or on whose behalf such solicitation is made; or directly or indirectly to pay the debts or liabilities of the person from whom such employment is sought, or to lend any money or give or promise to give any money or other consideration to or for the benefit of the person from whom such employment is sought.

History: 1941 Comp., § 18-128, enacted by Laws 1949, ch. 81, § 1; 1953 Comp., § 18-1-28.

ANNOTATIONS

Cross references. — For penalty, *see* 36-2-36 NMSA 1978.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 40, 42, 226.

Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

7 C.J.S. Attorney and Client §§ 76 to 87.

36-2-30. [Solicitation of damage claims; injunction.]

The attorney general or the board of bar commissioners of the New Mexico state bar association or any person, firm, corporation or association against whom any claim for damage to property or damages for personal injuries or for death resulting therefrom, is or has been asserted, may file an action for an injunction in the district court against any person, firm, corporation or association who has solicited employment for himself or itself or another, or for whom employment has been solicited, to collect or prosecute such claim, and in any such action the court, upon finding that such employment was solicited in violation of this act [section], whether such solicitation was successful or unsuccessful, may enjoin and permanently restrain such person, firm, corporation or association, his or its agents, representatives and principals from soliciting any such claims against any person, firm, corporation or association subsequent to the date of the injunction.

History: 1953 Comp., § 18-1-28.1, enacted by Laws 1955, ch. 190, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-31. [Fee splitting prohibited; division of fees by attorneys excepted.]

It shall be unlawful for any person, firm, corporation or association to divide with or receive from any attorney-at-law, or group of attorneys-at-law, whether practicing in this state or elsewhere, either before or after action is brought, any portion of any fee or compensation charged or received by such attorney-at-law, or any valuable consideration or reward, as an inducement for placing or in consideration of being placed in the hands of such attorney or attorneys-at-law, or in the hands of another person, firm, corporation or association, a claim or demand of any kind, for the purpose

of collecting such claim or instituting an action thereon or of representing claimant in the pursuit of any civil remedy for the recovery thereof, or for the settlement or compromise thereof, whether such compromise, settlement, recovery, suit, claim, collection or demand shall be in this state or elsewhere. This paragraph [section] shall not apply to agreements between attorneys to divide compensation received in cases or matters legitimately, lawfully and properly received by them.

History: 1941 Comp., § 18-129, enacted by Laws 1949, ch. 81, § 2; 1953 Comp., § 18-1-29.

ANNOTATIONS

Cross references. — For penalty, *see* 36-2-36 NMSA 1978.

For provisions of Rules of Professional Conduct, *see* Rule 16-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 260.

Fees: attorney's splitting fees with other attorney or laymen as ground for disciplinary proceeding, 6 A.L.R.3d 1446.

Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

Validity and enforceability of referral fee agreement between attorneys, 28 A.L.R.4th 665.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court, 73 A.L.R.4th 938.

Attorney's obligation to share fee award with party representing public interest, 43 A.L.R.5th 793.

7A C.J.S. Attorney and Client § 294.

36-2-32. [Hospital or other employees; communication with attorneys concerning damage claims declared illegal.]

It shall be unlawful for any person in the employ of, or in any capacity attached to or connected with, any hospital, infirmary or other institution, public or private, which receives patients for medical or surgical treatment, to communicate, directly or indirectly, with any attorney-at-law, or any person representing such attorney, for the purpose of enabling such attorney, or any associate or employee of such attorney, to solicit employment to present a claim for damages or prosecute an action for the enforcement thereof, on behalf of any patient in any such institution, or to negotiate or attempt to negotiate the settlement of any such claim.

History: 1941 Comp., § 18-130, enacted by Laws 1949, ch. 81, § 3; 1953 Comp., § 18-1-30.

ANNOTATIONS

Cross references. — For penalty, *see* 36-2-36 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 42.

Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-33. [Solicitation prosecutions; prima facie evidence of agency.]

The solicitation by any person of another person to employ, or procure or bring about the employment of, any attorney-at-law for the purpose of presenting, collecting, enforcing or prosecuting such a claim for damages, if followed by the employment of said attorney for such purposes, shall, in any prosecution for violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] or in any injunction action instituted pursuant to this act, be prima facie evidence that such person so soliciting was an agent, employee or acting on behalf of said attorney at law.

History: 1941 Comp., § 18-131, enacted by Laws 1949, ch. 81, § 4; 1953 Comp., § 18-1-31.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-34. [Solicitation violation; stay of proceeding; employment of other counsel.]

In any action for personal injury brought in any court of this state, the court, upon being satisfied that the employment of counsel for any party has been solicited in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], shall order all proceedings in the action stayed until such party has been given an opportunity to engage other counsel, and may deny the right to collect costs wholly or in part to any party to the action. Counsel employed in violation hereof shall not be permitted to appear further in the action.

History: 1941 Comp., § 18-132, enacted by Laws 1949, ch. 81, § 5; 1953 Comp., § 18-1-32.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-35. [Solicited employment contracts void; recovery of compensation paid.]

Any contract of employment obtained or made in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] shall be absolutely void as to the attorney but the client may recover any compensation paid thereunder to or for or received by the attorney on account of such employment.

History: 1941 Comp., § 18-133, enacted by Laws 1949, ch. 81, § 6; 1953 Comp., § 18-1-33.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 226.

Compensation: attorney's right to compensation as affected by disbarment or suspension before complete performance, 24 A.L.R.3d 1193.

Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

Attorney's right to compensation as affected by disbarment or suspension before complete performance, 59 A.L.R.5th 693.

7A C.J.S. Attorney and Client § 331.

36-2-36. [Penalty for solicitation.]

Any person who shall violate any of the provisions of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] shall be guilty of a misdemeanor and shall be punished by a fine not less than $100, nor more than $1,000, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment, and if such person is an attorney-at-law, in addition to the penalty hereinbefore provided, he shall be disbarred or suspended from acting as an attorney-at-law.

History: 1941 Comp., § 18-134, enacted by Laws 1949, ch. 81, § 7; 1953 Comp., § 18-1-34.

ANNOTATIONS

Cross references. — For disbarment generally, *see* 36-2-18 to 36-2-23 NMSA 1978.

For provisions of Rules Governing Discipline, *see* Rule 17-101 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-37. [Prosecution by attorney general for solicitation.]

Whenever the attorney general has reason to believe that employment as an attorney has been solicited and obtained in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], he shall cause an action to be instituted in the name of the state against the person owning such right of action or to whose benefit the same inures, the person employed to enforce the same and the person against whom such right of action is claimed to exist, or as many of such persons as can be personally served within this state. In any such action the court, upon finding that such employment was solicited and obtained in violation of this act, may enjoin the person solicited and the person employed to prosecute such claim from continuing such employment and from continuing the prosecution of such claim through the person so employed and may further enjoin the person against whom such claim is asserted from settling such claim or negotiating for the settlement thereof with any person so employed. No undertaking shall be required upon the issuance of any temporary or permanent injunction.

History: 1941 Comp., § 18-135, enacted by Laws 1949, ch. 81, § 8; 1953 Comp., § 18-1-35.

ANNOTATIONS

Cross references. — For prima facie evidence of agency, *see* 36-2-33 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-38. [Duty to testify in action for solicitation; immunity; perjury.]

No person shall be excused from testifying in any action, civil or criminal, brought in pursuance of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], on the ground that his testimony may expose him to prosecution for any crime or misdemeanor. But no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any such action, excepting a prosecution for perjury committed in giving such testimony.

History: 1941 Comp., § 18-136, enacted by Laws 1949, ch. 81, § 9; 1953 Comp., § 18-1-36.

ANNOTATIONS

Cross references. — For right against self-incrimination, *see* N.M. Const., art. II, § 15.

Severability clauses. — Laws 1949, ch. 81, § 10, provides for the severability of the act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of law regarding solicitation of business by or for attorney, 5 A.L.R.4th 866.

36-2-39. Recompiled.

ANNOTATIONS

Recompilations. — Former 36-2-39 NMSA 1978 has been recompiled as 39-2-2.1 NMSA 1978 pursuant to an order of the New Mexico compilation commission.

36-2-40. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 36-2-1 through 36-2-40 NMSA 1978.

History: 1953 Comp., § 18-1-38, enacted by Laws 1974, ch. 78, § 7.

ARTICLE 3
Immigration and Nationality Law Practice

36-3-1. Short title.

This act [36-3-1 to 36-3-10 NMSA 1978] may be cited as the "Immigration and Nationality Law Practice Act".

History: Laws 1987, ch. 60, § 1.

36-3-2. Purpose.

The purpose of the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978] is to prevent the unauthorized practice of law by nonlawyers who hold themselves out as immigration consultants rendering services in immigration, nationality or citizenship matters and who are outside pertinent federal regulations regulating the practice of immigration law.

History: Laws 1987, ch. 60, § 2.

36-3-3. Definitions.

As used in the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978]:

A. "immigration consultant" means any person who renders services, including the completion of forms and applications, to a client where the services are related to the client's desire to determine his legal status in an immigration or naturalization matter and who is beyond the scope of federal regulations regulating appearances and practice under the Immigration and Nationality Act of 1952, as amended.

B. "immigration or naturalization matter" includes all matters implicating any law, action, filing or proceeding related to a person's immigration or citizenship status in the United States;

C. "original document" means any document of the United States government or any department or agency thereof, any foreign government, any state government or political subdivision thereof or any other document, including signed affidavits, that would demonstrate physical presence by a person in the United States; and

D. "unauthorized practice of law" occurs where any person gives legal advice of any kind or acts on behalf of a client in any legal matter without authorization under the Immigration and Nationality Law Practice Act.

History: Laws 1987, ch. 60, § 3.

ANNOTATIONS

Immigration and Nationality Act of 1952. — The federal Immigration and Nationality Act of 1952, referred to in Subsection A, appears primarily as 8 U.S.C. §§ 1101 to 1503.

36-3-4. Representation.

A. A person desiring immigration and nationality services may be represented by any of the following:

(1) attorneys in the United States; as used in this subsection, "attorney" means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the district of Columbia and is not under any order of any court, suspending, enjoining, restraining, disbarring or otherwise restricting him in the practice of law;

(2) a law student who is enrolled in the final year of an accredited law school or a law school graduate who is not yet admitted to the bar, provided that:

(a) he is appearing on an individual case basis at the request of the person entitled to representation; or

(b) his appearance is permitted by the official before whom he wishes to appear including an immigration judge, district immigration director, immigration officer-in-charge, regional immigration commissioner, the commissioner of immigration and naturalization or the immigration board, which official, if in his opinion special circumstances warrant it, may require that a law student be accompanied by the supervising faculty member or attorney;

(3) any reputable individual of good moral character, provided that:

(a) he is appearing on an individual case basis, at the request of the person entitled to representation;

(b) he is appearing without direct or indirect remuneration and files a written declaration to that effect;

(c) he has a preexisting relationship or connection with the person entitled to representation including a relative, neighbor, clergyman, business associate or personal friend, provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(d) if appearing on behalf of a client, his appearance is permitted by the official before whom he wished to appear including an immigration judge, district immigration director, immigration officer-in-charge, regional immigration commissioner, the commissioner of immigration and naturalization or the immigration board, provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and nationality practice or preparation or holds himself out to the public as qualified to do so;

(4) a person representing an organization accredited by the board of immigration appeals and who has been accredited by the immigration board; or

(5) an accredited official in the United States of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

B. Except as set forth in this section, no other person or persons shall represent others in any case, nor prepare applications or forms or given [give] any legal advice.

History: Laws 1987, ch. 60, § 4.

36-3-5. Unauthorized practice of law prohibited.

On or after the effective date of the Immigration and Nationality Law Practice Act, it shall be unlawful for any person to render for compensation any service constituting the

unlawful practice of law or to otherwise violate any provision of the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978].

History: Laws 1987, ch. 60, § 5.

ANNOTATIONS

Compiler's notes. — The "effective date of the Immigration and Nationality Law Practice Act" is June 19, 1987, the effective date of Laws 1987, Chapter 60.

36-3-6. Authority of the attorney general.

A. Whenever the public interest so requires, the attorney general shall initiate appropriate proceedings to prevent violations of the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978].

B. A person having an interest or right which is or may be adversely affected under the Immigration and Nationality Law Practice Act may initiate an action for private remedies in accordance with the procedures of Section 57-12-10 NMSA 1978.

History: Laws 1987, ch. 60, § 6.

36-3-7. Filing; process.

Any information required to be filed by any subsection of the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978] shall be a matter of public record and shall be disclosed by the attorney general upon written request.

History: Laws 1987, ch. 60, § 7.

36-3-8. Unlawful acts.

Any person who misrepresents the services he may provide in immigration or nationality matters is in violation of the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978].

History: Laws 1987, ch. 60, § 8.

36-3-9. Original documents of the client.

No person shall retain original documents of a client in his possession unless authorized by the client.

History: Laws 1987, ch. 60, § 9.

36-3-10. Violation is a misdemeanor.

Violation of any provision in the Immigration and Nationality Law Practice Act [36-3-1 to 36-3-10 NMSA 1978] constitutes a misdemeanor the penalty for which is as provided in Section 31-19-1 NMSA 1978.

History: Laws 1987, ch. 60, § 10.