

# CHAPTER 34

## Court Structure and Administration

### ARTICLE 1

#### General Provisions

##### **34-1-1. Court sessions to be public.**

Except as provided in the Children's Code [32A-1-1 NMSA 1978] and in other laws making specific provisions for exclusion of the public, all courts of this state shall be held openly and publicly, and all persons whatsoever shall be freely admitted to the courts and permitted to remain so long as they shall observe good order and decorum.

**History:** Laws 1851, p. 142; C.L. 1865, ch. 27, § 1; C.L. 1884, § 663; C.L. 1897, § 1037; Code 1915, § 1356; C.S. 1929, § 34-103; 1941 Comp., § 16-101; 1953 Comp., § 16-1-1; Laws 1972, ch. 97, § 46.

#### ANNOTATIONS

**Cross references.** — For vesting of judicial power, see N.M. Const., art. VI, § 1.

**Hearings in chambers are to be avoided.** — Courts operate in a forum of full disclosure, and unless there are exceptional reasons, hearings in chambers are to be avoided. 1972 Op. Att'y Gen. No. 72-34.

**Applicability of common-law procedure.** — The rule of procedure at common law as it existed at the time of our separation from England must govern in the absence of statutory rules of practice. Territory ex rel. *Wade v. Ashenfelter*, 4 N.M. (Gild.) 93, 12 P. 879 (1887), appeal dismissed, 154 U.S. 493, 14 S. Ct. 1141, 38 L. Ed. 1079 (1893).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Place of holding sessions of trial court as affecting validity of its proceedings, 18 A.L.R.3d 572.

##### **34-1-2. [Courts may preserve order and decorum; contempts.]**

It shall be within the power of each and every presiding officer [officer] of the several courts of this state, whether of record or not of record, to preserve order and decorum, and for that purpose to punish contempts by reprimand, arrest, fine or imprisonment, being circumscribed by the usage of the courts of the United States.

**History:** Laws 1851, p. 142; C.L. 1865, ch. 27, § 2; C.L. 1884, § 664; C.L. 1897, § 1038; Code 1915, § 1358; C.S. 1929, § 34-105; 1941 Comp., § 16-102; 1953 Comp., § 16-1-2.

## ANNOTATIONS

**Cross references.** — For judges as conservators of peace, see N.M. Const., art. VI, § 21.

For power of magistrates to punish for contempt, see 35-3-9 NMSA 1978.

For punishment for contempt in quo warranto proceedings, see 44-3-10 NMSA 1978.

For contempt of court, see 5-902 NMRA.

**Bracketed material.** — The bracketed material in this section was inserted by the compiler to correct an apparent misspelling. It was not enacted by the legislature and is not a part of the law.

**Sanction for non-appearance.** — In a child support proceeding, the district court awarded attorney's fees to the father of the child after the mother failed to appear at a scheduled hearing on the mother's objections to the special master's calculation of arrearages in child support; in the order awarding attorney's fees, mother had failed to appear at a previous hearing she had requested and at both hearings, father and his attorney had appeared; in her motion to set aside the order awarding attorney's fees, mother alleged that she notified the father's attorney and left telephone messages for the judge one hour before the hearing that she had medical problems which caused her failure to appear and offered to provide medical documentation, but mother did not explain why her medical history prevented her from either attending the hearing or rescheduling it; and the hearing on the motion was vacated by mother and she did not pursue it, the district court did not abuse its discretion in awarding attorney's fees to the father. *Thompson v. Dehne*, 2009-NMCA-120, 147 N.M. 283, 220 P.3d 1132.

**This section is only declaratory of common law.** *State v. Clark*, 56 N.M. 123, 241 P.2d 328 (1952); *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

**Court jurisdiction includes contempt.** — The courts are always open, and their jurisdiction is comprehensive enough to include proceedings in contempt. *In re Sloan*, 5 N.M. 590, 25 P. 930 (1891).

**Power to punish for contempt** is inherent in the courts and its exercise is the exercise of the highest form of judicial power. The real basis of this power is to be found in the doctrine of separation of powers as provided for in the Organic Act and later in the New Mexico constitution. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

Contempt is not made a crime by this section which reiterates the court's inherent power to punish contempt. *State v. Case*, 103 N.M. 574, 711 P.2d 19 (Ct. App. 1985).

**Legislative control over court's contempt power.** — The power of the courts to punish for contempt is not absolute, exclusive and free of all legislative regulation. The separation of powers between the executive, legislature and judiciary was never intended to be complete. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**Legislature may not unduly limit penalty.** — While the legislature may provide rules of procedure which are reasonable regulations of the contempt power, it may not, either by enacting procedural rules or by limiting the penalty unduly, substantially impair or destroy the implied power of the court to punish for contempt. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

Laws 1865, ch. 28, § 2 (C.L. 1897, § 1039), providing that fines for contempt were limited to \$50 in absence of a jury trial, was invalid in that it violated the separation of powers doctrine contained in §§ 3, 5 and 10 of the Organic Act, and was not within reasonable and proper regulatory limits; thus, it was not carried into effect upon statehood by N.M. Const., art. II, § 12. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**Intent necessary for conviction.** — Regardless of the motive for the refusal to testify, as long as it was done with the awareness it was wrongful, the degree of intent necessary for a conviction of contempt was established. *State v. Pothier*, 104 N.M. 363, 721 P.2d 1294 (1986).

**Notice of penalty.** — It was not a due process violation that a person was not given notice of the possible penalty for contempt before committing that crime by refusing to answer questions as a witness during a trial. *State v. Case*, 103 N.M. 574, 711 P.2d 19 (Ct. App. 1985).

**Known but unissued order.** — Since the board of county commissioners had knowledge of an order of an associate justice of the supreme court for issuance of writ or prohibition, but proceeded, on advice of counsel, to take the action prohibited because the supreme court clerk had not issued the writ, the commissioners, their counsel and the clerk were guilty of contempt. *Territory v. Clancy*, 7 N.M. 580, 37 P. 1108 (1894).

**Failure of attorney to file brief for indigent.** — Where the respondent, an attorney at law, failed to file a brief on or before a day certain in the appeal of defendant, an indigent whom respondent had been appointed to represent, and respondent appeared pro se at the contempt hearing, respondent was in contempt of the supreme court of the state of New Mexico. *In re Rainwater*, 80 N.M. 33, 450 P.2d 633 (1969).

**Contempt cannot be predicated upon breach of promise to individual.** *Horcasitas v. House*, 75 N.M. 317, 404 P.2d 140 (1965).

**No basis for contempt after temporary injunction dissolved.** — If a litigant violates a temporary injunction in a divorce action, during its existence, the litigant may be punished for civil or criminal contempt or both. However, if the temporary injunction is merged in the final decree of divorce, and thereby dissolved, no basis remains upon which to predicate a proceeding in contempt. *Canavan v. Canavan*, 18 N.M. 640, 139 P. 154, 51 L.R.A. (n.s.) 972 (1914).

**Repeated questioning cannot multiply contempts.** — Although a witness cannot pick and choose the questions to which an answer will be given, nevertheless, the prosecution cannot multiply contempts by repeated questioning on the same subject of inquiry within which a recalcitrant witness already has refused answers. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Answering some questions may limit number of contempts.** — Where, by answers to other questions, the witness held in contempt distinguished between questions directed to actions of the defendant toward herself and actions of defendant toward the deceased, consistently refusing to answer questions designed to establish whether the defendant had threatened her, but answering most questions directed to the relationship between defendant and the deceased, refusal to testify as to threats on her life and on that of the deceased constituted two contempts, not three. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Civil and criminal contempts distinguished.** — Civil contempts are those proceedings instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court; criminal contempt proceedings are instituted to preserve the authority and vindicate the dignity of the court. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979); *Murphy v. Murphy*, 96 N.M. 401, 631 P.2d 307 (1981).

**Trial of criminal and civil contempt** may be, and often is, tried in the same proceeding. Indeed, the same conduct or acts may justify a court in resorting to coercive and punitive measures. *State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc.*, 74 N.M. 201, 392 P.2d 347 (1964).

**Civil and criminal contempt in single act.** — Contempts are neither wholly civil nor criminal, and it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both. *State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc.*, 74 N.M. 201, 392 P.2d 347 (1964).

**Nature of punishment controls contempt classification.** — In determining whether a contempt proceeding is civil or criminal or whether it partakes of the characteristics of both, the nature and purpose of the punishment, rather than the character of the acts to be punished, is a controlling factor. *International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers*, 74 N.M. 195, 392 P.2d 343 (1964).

**Major factor in determining whether contempt is civil or criminal** is the purposes for which the power is exercised. In re Klecan, 93 N.M. 637, 603 P.2d 1094 (1979).

**Public official or state involvement not determinative.** — Although the alleged violation of an injunctive order was issued in an action brought by a public official charged with enforcement of a statutory duty and although the state was a party to the contempt proceeding neither fact was determinative of whether it was a civil or criminal proceeding. The purpose for which the power is exercised is a major factor in determining its character. State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc., 74 N.M. 201, 392 P.2d 347 (1964).

The fact that the state is a party to a contempt proceeding is not the conclusive factor in determining whether it is a criminal or civil proceeding. The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. States ex rel. Bliss v. Greenwood, 63 N.M. 156, 315 P.2d 223 (1957).

**Proceeding is criminal if punitive, not remedial.** — Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. The polar concepts are "punitive" versus "remedial." State ex rel. Bliss v. Greenwood, 63 N.M. 156, 315 P.2d 223 (1957).

Where the district court summarily ordered the indefinite detention of petitioners, who were courtroom spectators, for contempt of court after a contentious hearing evolved into a courtroom disruption created by some, but not all, of the petitioners; during the disruption, the petitioners who had been acting in a disruptive manner ceased doing so when the court orally announced that the court would send everyone to jail; and the court ordered the petitioners to be jailed when several unidentified petitioners made further disruptive statements, the commitment order was for criminal contempt because the petitioners were jailed for past behavior and could not obtain release from jail by complying with the court's orders. Concha v. Sanchez, 2011-NMSC-031, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_.

**Criminal nature of acts may be considered,** particularly if acts complained of are indictable crimes. International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers, 74 N.M. 195, 392 P.2d 343 (1964).

**Collection of alimony is civil.** — Where affidavits, motions and orders for contempt of court are filed in the original divorce action, and the prayer is for commitment to jail until costs and an amount decreed to plaintiff is paid, the proceeding is for civil and not criminal contempt. Canavan v. Canavan, 18 N.M. 640, 139 P. 154, 51 L.R.A. (n.s.) 972 (1914).

**Court need not label proceeding.** — Witness who was sentenced for contempt had notice that a refusal to answer would be contempt and that sanctions in the form of a jail

sentence or fine might be imposed; thus, the witness was not deprived of due process on a theory of lack of notice because the court failed to label the contempt proceedings as criminal. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Failure to verify motion may nullify jurisdiction.** — Because the trial court had the matter of whether defendant should be cited for contempt for violating an injunction under advisement for 21 days and then entered judgment of conviction for contempt before the district attorney filed a verification of the motion that defendant be cited, the trial and judgment were nullities for lack of jurisdiction. *State v. Clark*, 56 N.M. 123, 241 P.2d 328 (1952).

**Requirements before imposition of criminal contempt.** — Before criminal contempt may be imposed and enforced, the following requirements must be met: (1) except in cases of flagrant contemptuous conduct, the trial court should not exercise the power of summary contempt in the absence of a prior warning; (2) there must be an opportunity to explain; and (3) there must be a hearing on the matter. *Murphy v. Murphy*, 96 N.M. 401, 631 P.2d 307 (1981).

**Essential rights must be preserved in criminal proceeding.** — Since willful disobedience of a court's order is punishable by traditional criminal proceedings, and is sometimes referred to as quasi-criminal, the essential rights of the accused must be preserved and safeguarded. *International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers*, 74 N.M. 195, 392 P.2d 343 (1964).

Where the district court summarily ordered the indefinite detention of petitioners, who were courtroom spectators, for contempt of court after a contentious hearing evolved into a courtroom disruption created by some, but not all, of the petitioners; the contempt orders provided no fair notice of the petitioners' alleged contemptuous behavior; the findings that petitioners were in contempt of court were not based on any evidence; the petitioners were not given any opportunity to prepare or to present any defense or afforded assistance of counsel; and petitioners were held without any opportunity to be released on bail, the district court's convictions and jail sentences of petitioners violated the due process protections of indirect criminal contempt proceedings. *Concha v. Sanchez*, 2011-NMSC-031, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_.

**Accused presumed innocent.** — The general rule is that an accused in a criminal contempt proceeding is presumed innocent until found guilty beyond a reasonable doubt by evidence introduced. *International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers*, 74 N.M. 195, 392 P.2d 343 (1964).

**Self-incrimination.** — A defendant in a criminal contempt proceeding cannot be compelled to testify against himself. *International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers*, 74 N.M. 195, 392 P.2d 343 (1964).

**Right to bill of particulars.** — An information charging a criminal contempt is a substitute for an indictment at common law. It serves the same purpose as the

indictment in charging a criminal offense. The right of a defendant "to demand the nature and cause of the accusation," assured by N.M. Const., art. II, § 14, is preserved by the right to a bill of particulars. The information and bill of particulars are to be read together as a single instrument constituting the accusation. *Norton v. Reese*, 76 N.M. 602, 417 P.2d 205 (1966).

**Direct and indirect contempts distinguished.** — Direct contempts are contemptuous acts committed in the presence of the court. Indirect, or constructive contempts, are contemptuous acts committed outside the presence of the courts. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

**Summary punishment of criminal contemnor.** — In the case of criminal contempt committed in its presence, the court has the power to punish the contemnor summarily. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

Where the district court summarily ordered the indefinite detention of petitioners, who were courtroom spectators, for contempt of court after a contentious hearing evolved into a courtroom disruption created by some, but not all, of the petitioners and the individual petitioners who were engaged in the disruptive behavior were not specifically identified, the summary contempt proceeding was inappropriate because the court did not have personal knowledge of the guilt or innocence of any single one of the thirty-two petitioners who were sentenced to jail. *Concha v. Sanchez*, 2011-NMSC-031, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_.

**Necessity for summary procedure in direct contempt case** is for greater than in the case of contempt outside the presence of the court. Summary measures may be the only effective means of defending the dignity of judicial tribunals and of insuring that they are able to accomplish the purpose of their existence. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**Requirements for summary punishment of contempt.** — Except in cases of flagrant, contemptuous conduct, before summary punishment for contempt may be imposed and enforced, the record should be clear that a specific warning was given by the judge, that an opportunity to explain was afforded and that a hearing was held. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

**Summary contempt improper without disruption or disrespect of court.** — Where an attorney's actions do not constitute violent disruption of the proceedings of a court or blatant disrespect for a judge, the imposition of summary contempt is not proper. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

**Summary procedure does not violate due process.** — Due process rights were not violated by summary contempt proceeding because the trial court took great care to make sure that the witness understood the question posed by the prosecution and understood that a continued refusal to answer could result in being held in contempt, allowed conference with counsel, and the court made it clear that by answering the

questions in the presence of the jury the contempt could be purged. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Reassignment of contempt order warranted in mistrial.** — Because the judge, in declaring a mistrial, stated that he had become so involved in the case that he felt he could not fairly try it, the matter of the contempt order should have been left to another judge and not reassigned by the trial judge to himself. *In re Klecan*, 93 N.M. 637, 603 P.2d 1094 (1979).

**Evidence.** — Where a trial court's order enjoined the national steelworkers from violating state and local laws relating to picketing, and it subsequently cited the union for contempt after an organized demonstration, the appellate court reversed on the grounds that the trial record did not show substantial evidence that the organizer was the agent of the national steelworkers. The organizer testified about receipt of two expense checks from the local union and the organizer's assistance to the local union. However, this evidence was not sufficient to establish the existence of an agency relationship nor was there evidence that, as an entity, national steelworkers initiated, participated in, authorized or ratified any illegal acts charged against it. *City of Artesia v. United Steelworkers*, 87 N.M. 134, 529 P.2d 1255 (Ct. App. 1974).

Judicial sanctions may be employed in civil contempt for either or both of two purposes: to coerce the defendant into compliance with the court's order and to compensate the complainant for losses sustained. *State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc.*, 74 N.M. 201, 392 P.2d 347 (1964).

**Criminal contempt punishment.** — Commitments and fines for criminal contempt are imposed for the purpose of vindicating the authority of the court, are punitive in nature and intended as a deterrent to offenses against the public. *International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers*, 74 N.M. 195, 392 P.2d 343 (1964).

**Court may punish civil contempt by means of prison sentence** in particular proceedings. *Local 890 Int'l UMW v. New Jersey Zinc Co.*, 58 N.M. 416, 272 P.2d 322 (1954).

Imprisonment for civil contempt was ordered where a defendant had refused to do an affirmative act required by the provision of an order, which either in form or substance was mandatory in its character, such as an order by the court to answer certain questions. *State v. Pothier*, 104 N.M. 363, 721 P.2d 1294 (1986).

**Cease and desist order.** — Cease and desist order was proper contempt sanction against governor and executive agency that continued implementation of public assistance program for several months following issuance of writ of mandamus by Supreme Court ordering the cessation of the program. *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, 125 N.M. 343, 961 P.2d 768.



**Contempt sentence does not forfeit citizenship.** — A person found guilty of contempt of court for failing to pay alimony and sentenced to imprisonment is not guilty of a felony and does not lose citizenship for this is not a public offense. 1933-34 Op. Att'y Gen. 32.

**Factors in determining proper punishment for criminal contempt.** — In imposing punishment for criminal contempt, the seriousness of the consequences of the contumacious behavior, the public interest in enforcing a termination of defendant's defiance and the importance of deterring future defiance are all matters to be considered by the trial court. The trial court is accorded large discretion. *State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc.*, 74 N.M. 201, 392 P.2d 347 (1964).

In imposing punishment for a criminal contempt, the seriousness of the consequences of the contumacious behavior, the public interest in enforcing a termination of a defendant's defiance and the importance of deterring future defiance are all matters to be considered by the trial court. *State v. Pothier*, 104 N.M. 363, 721 P.2d 1294 (1986).

**Different fines for distinct offenses.** — Fact that the court, in proceedings for contempt for refusal to obey writ of injunction in mandamus proceedings, assessed several different fines for several distinct offenses in the same proceeding would not make the entire punishment void. *In re Sloan*, 5 N.M. 590, 25 P. 930 (1891).

**Abusive sentencing for failure to testify.** — A sentence of 10 years for one count of criminal contempt, imposed upon a defendant who was given use immunity against prosecution in exchange for testimony, but who refused to answer any questions regarding a homicide regardless of the sentence to be imposed for contempt, was an abuse of discretion. *Case v. State*, 103 N.M. 501, 709 P.2d 670 (1985).

**Court's discretion not abused.** — A witness's two consecutive 90-day sentences for contempt were not an abuse of the trial court's discretion where the court informed the witness of possible consequences if the witness persisted in a refusal to answer the prosecution's questions, and by withholding answers to the questions, the witness deprived the state of evidence which may have borne directly on the charge of first-degree murder. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Propriety of sentences must be raised in trial court.** — The propriety of a witness's sentences for contempt in refusing to answer questions put by the state was not before the court of appeals for review because the issue was not raised in the trial court. *State v. Sanchez*, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

**Judicial discretion to revoke suspended sentences.** — In a hearing to revoke suspended sentences in civil contempt, the type of hearing, the procedure in such a hearing and the weight to be given the evidence at the hearing are largely matters in the trial court's discretion; thus, in the absence of a clear showing of abuse of discretion, the trial court's action will not be disturbed. *Local 890 Int'l UMW v. New Jersey Zinc Co.*, 58 N.M. 416, 272 P.2d 322 (1954).

**Disruption of proceedings warranted contempt sanction.** — Trial judge properly invoked inherent power to issue a contempt sanction to preserve the decorum, respect and dignity of the court since defendant refused to obey the trial judge's order to button his top button and fix his tie and by disrupting the proceedings through disorderly attempts to leave. *Purpura v. Purpura*, 115 N.M. 80, 847 P.2d 314 (Ct. App. 1993).

**Attorney's violations of disbarment order** and failure to appear at court proceedings to explain why he should not be sanctioned warranted five months of incarceration. In re *Herkenhoff*, 1997-NMSC-007, 122 N.M. 766, 931 P.2d 1382.

**Law reviews.** — For annual survey of criminal procedure in New Mexico, see 18 N.M.L. Rev. 345 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 17 Am. Jur. 2d Contempt § 41 et seq.

Misconduct of officers in selection or summoning of jurors or grand jurors as contempt of court, 7 A.L.R. 345.

Procuring or attempting to procure witnesses to leave jurisdiction as contempt, 21 A.L.R. 247, 33 A.L.R. 607.

Communicating with grand jury as contempt, 29 A.L.R. 489.

Contempt for disobedience of mandamus, 30 A.L.R. 148.

Conduct of juror in respect of verdict as basis of charge of contempt, 32 A.L.R. 436.

Practicing or pretending to practice law without authority as contempt, 36 A.L.R. 533, 100 A.L.R. 236.

Subpoenaing unnecessary witnesses as contempt, 37 A.L.R. 1113.

Degree of proof necessary in contempt proceedings, 49 A.L.R. 975.

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

Necessity that hearing be allowed before imposition of punishment for contempt, 57 A.L.R. 545.

Shadowing, tampering or communicating with jurors as contempt, 63 A.L.R. 1269.

Refusal to keep promise to waive privilege against self-incrimination as contempt, 69 A.L.R. 855.

Criticism of attitude of the court or judge toward violations of liquor law as contempt, 97 A.L.R. 903.

Refusal of attorney to disclose identity of, whereabouts of, or other information relating to client as contempt, 101 A.L.R. 470.

Refusal or failure of clerk of court to comply with direction of court or judge on ground of its invalidity or supposed invalidity as contempt, 119 A.L.R. 1380.

Misconduct of jurors as contempt, 125 A.L.R. 1274.

Alteration, substitution, abstraction, withholding, or destruction of pleadings and papers by attorneys as criminal contempt, 151 A.L.R. 750.

Right to punish for contempt for failure to obey court order or decree that is either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.

Punishment of civil contempt in divorce cases by striking, pleading or entering default judgment or dismissal against contemnor, 14 A.L.R.2d 580.

Procuring perjury as contempt, 29 A.L.R.2d 1157.

Bail-jumping after conviction, failure to surrender or to appear for sentencing, and the like as contempt, 34 A.L.R.2d 1100.

Assaulting, threatening or intimidating witness as contempt of court, 52 A.L.R.2d 1297.

Accused's right to, and prosecution's privilege against, disclosure of identity of informer, 76 A.L.R.2d 262.

Court's power to punish for contempt, a child within the age group subject to the jurisdiction of juvenile court, 77 A.L.R.2d 1004.

Use of affidavits to establish contempt, 79 A.L.R.2d 657.

Perjury or false swearing as contempt, 89 A.L.R.2d 1258.

Separate contempt punishments on successive refusals to respond to same or similar questions, 94 A.L.R.2d 1246.

Circumstances under which one court can punish a contempt against another court, 99 A.L.R.2d 1100.

Delay in adjudication of contempt committed in the actual presence of court as affecting court's power to punish contemnor, 100 A.L.R.2d 439.

Effect of witness's violation of order of exclusion, 14 A.L.R.3d 16.

Prejudicial effect of holding accused in contempt of court in presence of jury, 29 A.L.R.3d 1399.

Attorney's refusal to accept appointment to defend indigent, or to proceed in such defense, is contempt, 36 A.L.R.3d 1221.

Allowance of attorney's fees in civil contempt proceedings, 43 A.L.R.3d 793.

Right to counsel in contempt proceedings, 52 A.L.R.3d 1002.

Power of court to control evidence or witnesses going before grand jury, 52 A.L.R.3d 1316.

Picketing court or judge as contempt, 58 A.L.R.3d 1297.

Assault on attorney as contempt, 61 A.L.R.3d 500.

Attorney addressing allegedly insulting remarks to court during course of trial as contempt, 68 A.L.R.3d 273.

Conduct of attorney in connection with making objections or taking exceptions during trial as contempt of court, 68 A.L.R.3d 314.

Refusal to answer questions before state grand jury as direct contempt of court, 69 A.L.R.3d 501.

Affidavit or motion for disqualification of judge as contempt, 70 A.L.R.3d 797.

Power of court to impose standard of personal appearance or attire, 73 A.L.R.3d 353.

Propriety of physically restraining defendant during trial, 90 A.L.R.3d 17.

Oral court order implementing prior written order or decree as independent basis of charge of contempt within contempt proceedings based on violation of written order, 100 A.L.R.3d 889.

Attorney's failure to attend court, or tardiness, as contempt, 13 A.L.R.4th 122.

Contempt finding as precluding substantive criminal charges relating to same transaction, 26 A.L.R.4th 950.

Authority of trial judge to impose costs or other sanctions against attorney who fails to appear at, or proceed with, scheduled trial, 29 A.L.R.4th 160.

Oral communications insulting to particular state judge, made to third party out of judge's physical presence, as criminal contempt, 30 A.L.R.4th 155.

Attorney's use of objectionable questions in examination of witness in state judicial proceeding as contempt of court, 31 A.L.R.4th 1279.

Failure to rise in state courtroom as constituting criminal contempt, 38 A.L.R.4th 563.

Intoxication of witness or attorney as contempt of court, 46 A.L.R.4th 238.

Validity and construction of state court's order precluding publicity or comment about pending civil case by counsel, parties, or witnesses, 56 A.L.R.4th 1214.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order - anticipatory contempt, 81 A.L.R.4th 1008.

Profane or obscene language by party, witness or observer during trial proceedings as basis for contempt citation, 29 A.L.R.5th 702.

Holding jurors in contempt under state law, 93 A.L.R.5th 493.

17 C.J.S. Contempt §§ 27, 43.

### **34-1-3. [Sworn answer in contempt proceedings; evidence.]**

In all proceedings for contempt of court in the state, the common-law rule discharging the contemnor upon the filing of a sworn answer denying the acts of contempt charged, shall hereafter not be in force, but in any such proceeding evidence may be introduced by both parties upon any controverted point, and the court shall decide such point upon the evidence.

**History:** Laws 1915, ch. 44, § 1; C.S. 1929, § 34-330; 1941 Comp., § 16-103; 1953 Comp., § 16-1-3.

### **ANNOTATIONS**

**Cross references.** — For applicability of Rules of Evidence to contempt proceedings, see Paragraph B of Rule 11-1101 NMRA.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 17 Am. Jur. 2d Contempt § 204 et seq.

Privilege of defendant in contempt proceeding as to testifying against himself, 54 A.L.R. 1436.

Sufficiency of notice to, or service upon, contemnor's attorney in civil contempt proceedings, 60 A.L.R.2d 1244.

Who may institute civil contempt proceedings, 61 A.L.R.2d 1083.

Admissibility, in contempt proceeding against witness, of evidence of incriminating nature of question as to which witness invoked privilege against self-incrimination, 88 A.L.R.2d 463.

Defense of entrapment in contempt proceedings, 41 A.L.R.3d 418.

17 C.J.S. Contempt § 83 et seq.

### **34-1-4. [Indirect criminal contempt proceedings; written publication out of court; jury trial; rules of procedure.]**

In all proceedings in the district courts for indirect criminal contempt arising out of written publications made out of court, the contemnor shall have the right to a trial by jury. The rules of procedure applicable to other criminal proceedings shall apply to these proceedings.

**History:** 1953 Comp., § 16-1-3.1, enacted by Laws 1965, ch. 165, § 1.

#### **ANNOTATIONS**

**Cross references.** — For freedom of speech and press, see N.M. Const., art. II, § 17.

For change of judge, see 38-3-9 NMSA 1978.

For applicability of Rules of Evidence to contempt proceedings, see Paragraph B of Rule 11-1101 NMRA.

**Necessity for summary procedure is far greater in case of direct contempt** than in the case of contempt outside the presence of the court. Summary measures may be the only effective means of defending the dignity of judicial tribunals and of insuring that they are able to accomplish the purpose of their existence. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**Venue.** — The service of a restraining order in Eddy county constituted a material element of the alleged offense of criminal contempt; thus, the venue properly laid in Eddy county. *Norton v. Reese*, 76 N.M. 602, 417 P.2d 205 (1966).

**Information and bill of particulars read together.** — An information charging a criminal contempt is a substitute for an indictment at common law. It serves the same purpose as the indictment in charging a criminal offense. The right of a defendant "to demand the nature and cause of the accusation" assured by N.M. Const., art. II, § 14, is

preserved by the right to a bill of particulars. The information and bill of particulars are to be read together as a single instrument constituting the accusation. *Norton v. Reese*, 76 N.M. 602, 417 P.2d 205 (1966).

**Affidavit disqualifying judge may be filed.** — Where defendants are accused of an indirect criminal contempt arising out of a written publication, the presiding judge may be disqualified from further action in the case by the timely filing of the affidavit provided for by 38-3-9 NMSA 1978. *Norton v. Reese*, 76 N.M. 602, 417 P.2d 205 (1966).

**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.** — 17 *Am. Jur. 2d Contempt* §§ 17 et seq., 120 et seq., 203.

Publication or broadcast, during course of trial, of matter prejudicial to criminal defendant as contempt, 33 *A.L.R.* 1116, 56 *A.L.R.* 1217.

Necessity of affidavit or sworn statement as foundation for constructive contempt, 41 *A.L.R.2d* 1263.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 *A.L.R.2d* 600, 37 *A.L.R.4th* 1004.

Published article or broadcast as direct contempt of court, 69 *A.L.R.2d* 676.

False or inaccurate report of judicial proceedings as contempt, 99 *A.L.R.2d* 440.

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.

Attack on judiciary as a whole as indirect contempt, 40 *A.L.R.3d* 1204.

Violation of state court order by one other than party as contempt, 7 *A.L.R.4th* 893.

Validity and construction of state court's order precluding publicity or comment about pending civil case by counsel, parties, or witnesses, 56 *A.L.R.4th* 1214.

17 *C.J.S. Contempt* §§ 4, 30.

**34-1-5. [Judge eligible to hear and determine contempt proceedings.]**

The resident judge when not disqualified in the original proceeding and the judge entering any order, judgment or decree shall have jurisdiction to hear and determine any proceeding for contempt arising out of such order, judgment or decree.

**History:** Laws 1941, ch. 106, § 1; 1941 Comp., § 16-104; 1953 Comp., § 16-1-4.

## ANNOTATIONS

**Judicial authority.** — One judge's prior oral interlocutory order staying discovery depositions pending decision on a motion to dismiss did not divest another judge of the same court of authority to enter a subsequent interlocutory order concerning depositions in the same case; and having authority as a judge of the district court to enter the orders concerning depositions, the second judge thus had authority to enter orders imposing sanctions when the discovery orders were violated. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 319, 540 P.2d 248 (1975).

**Attorney failing to produce deponents.** — Where defendant city's administrative officer directed certain deponents to comply with the directions of its attorney with regard to attendance or nonattendance, and the attorney failed to produce these deponents after proper notice and court order, there was nothing showing an abuse of discretion on the court's part in holding the attorney in contempt. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

**Rules of criminal law apply.** — Where proceeding was one for criminal contempt, it was governed by rules of criminal law, and proof of guilt had to be beyond a reasonable doubt. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**Merits of injunction are not open to question** in a contempt proceeding originating subsequent to final judgment. If a court has jurisdiction when it issues an injunction, then that order must be obeyed as long as it is in force. *State ex rel. Bliss v. Greenwood*, 63 N.M. 156, 315 P.2d 223 (1957).

**When different judge should conduct contempt hearing.** — A person cited for contempt, whether direct or indirect, is not automatically entitled to a hearing on the contempt charge in front of a different judge; it is only when a judge has become so embroiled in the controversy that he cannot fairly and objectively hear the case, or when he or his staff will necessarily be a witness in the proceeding, that the judge is precluded from hearing the case. *State v. Stout*, 100 N.M. 472, 672 P.2d 645 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 17 Am. Jur. 2d Contempt § 187 et seq.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600, 37 A.L.R.4th 1004.



Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence, 37 A.L.R.4th 1004.

Abuse or misuse of contempt power as ground for removal or discipline of judge, 76 A.L.R.4th 982.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order - anticipatory contempt, 81 A.L.R.4th 1008.

17 C.J.S. Contempt § 53.

### **34-1-6. [Clerks to record orders, make indexes, issue process and keep seal.]**

The clerks of the supreme and inferior courts, and of the probate judges, shall seasonably record the judgments, rules, orders and other proceedings of the respective courts and make a complete alphabetical index thereto, issue and attest all processes issuing from their respective offices, and affix the seal of office thereto; they shall preserve the seal and other property belonging to their respective offices.

**History:** Kearny Code, Clerks, § 3; C.L. 1865, ch. 39, § 3; C.L. 1884, § 642; C.L. 1897, § 1005; Code 1915, § 1357; C.S. 1929, § 34-104; 1941 Comp., § 16-105; 1953 Comp., § 16-1-5.

#### **ANNOTATIONS**

**Cross references.** — For adoption of design for supreme court seal, see 34-2-3 NMSA 1978.

For adoption of design for court of appeals seal, see 34-5-12 NMSA 1978.

For district court clerk keeping and using seal, see 34-6-25 NMSA 1978.

For keeping and authenticating record of orders of district court, see 34-6-26 NMSA 1978.

For notation of filing on first page of paper by district court clerk, see 34-6-30 NMSA 1978.

For dockets, records and indexes to be kept by district court clerks, see 34-6-33 NMSA 1978.

For probate court clerks, see 34-7-14 to 34-7-25 NMSA 1978.

For county clerk as district and probate court clerk, see N.M. Const., art. VI, § 22.

For supreme court clerk being member and secretary of compilation commission, see 12-1-2 NMSA 1978.

For supreme court clerk being secretary of board of trustees of supreme court law library, see 18-1-2 NMSA 1978.

For duties of supreme court clerk, see 12-310 and 23-102 NMRA.

For specifications of supreme court seal, see Rule 3, N.M. S. Ct. Misc. R.

**This section does not prescribe form or nature of book** in which records are to be kept. 1915-16 Op. Att'y Gen. 243.

**Decision not effective until entered.** — A decision of an issue by the probate court is not completely and effectively rendered until it has been entered of record. In re Montano's Estate, 38 N.M. 355, 33 P.2d 906 (1934).

**Decision not effective until filed with clerk.** — In determining the time within which a cost bond must be filed, an order in writing signed by the district judge, allowing an appeal, becomes effective as the judgment of the court when the same is filed with the clerk for entry in the record, and not on the date of the signing of the order. State v. Capital City Bank, 31 N.M. 430, 246 P. 899 (1926).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Clerks of Court § 21 et seq.; 20 Am. Jur. 2d Courts § 25 et seq.

Liability of clerk of court or his bond for money paid into his hands by virtue of his office, 59 A.L.R. 60.

Validity, construction, and application of statutes providing for entry of default judgment by clerk without intervention of court or judge, 158 A.L.R. 1091.

Misinformation by judge or clerk of court as to status of case or time of trial or bearing as ground for relief from judgment, 164 A.L.R. 537.

Liability of clerk of court or surety on bond for negligent or wrongful acts of deputies and assistants, 71 A.L.R.2d 1140.

Applicability of judicial immunity to acts of clerk of court under state law, 34 A.L.R.4th 1186.

Failure or refusal of state court judge to have record made of bench conference with counsel in criminal proceeding, 31 A.L.R.5th 704.

21 C.J.S. Courts § 249 et seq.

### **34-1-7. [Appointment of interpreters and translators.]**

The courts may, from time to time, appoint interpreters and translators to interpret the testimony of witnesses, and to translate any writing necessary to be translated in such courts or causes therein.

**History:** Kearny Code, Practice of Law in Civil Suits, § 17; C.L. 1865, ch. 29, § 15; C.L. 1884, § 1849; C.L. 1897, § 2898; Code 1915, § 1359; C.S. 1929, § 34-106; 1941 Comp., § 16-106; 1953 Comp., § 16-1-6.

#### **ANNOTATIONS**

**Cross references.** — For employment of interpreters in district courts, see 34-6-19 NMSA 1978.

For interpreter responsibilities, see 23-111 NMRA.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Competency of interpreter in court proceedings, 172 A.L.R. 923.

Disqualification, for bias, of one offered as interpreter of testimony, 6 A.L.R.4th 158.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment, 23 A.L.R.4th 397.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of foreign language speaking defendant, 79 A.L.R.4th 1102.

21 C.J.S. Courts § 110.

### **34-1-8. [Jurisdiction of courts to enforce federal law restricted.]**

No court of the state of New Mexico shall have jurisdiction of, or enter any order or decree of any character of any action instituted or attempted to be instituted in the courts of this state, seeking to enforce, directly or indirectly, any federal statute, or rule or regulation described in Section 1 hereof [Laws 1947, ch. 43, §1], where the congress of the United States has curtailed, withdrawn or denied the district courts of the United States the right to enforce such statutes, rules or regulations aforesaid.

**History:** 1941 Comp., § 16-107, enacted by Laws 1947, ch. 43, § 2; 1953 Comp., § 16-1-7.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1947, ch. 43, § 1, [referred to in 34-1-8 NMSA 1978] reads: "The legislature of the state of New Mexico hereby finds that: (a) the congress of the

United States has heretofore authorized, and may hereafter authorize, by congressional act, the courts of the several states to entertain jurisdiction of and enforce causes of action created by or arising from federal statutes, or by rules or regulations of federal regulating bodies or agencies, and

"(b) The congress has no power to require the state courts of the several states to take cognizance of such actions, and

"(c) The congress has from time to time, and may hereafter, withdraw from the courts of the United States jurisdiction to enforce such statutes or rules or regulations aforesaid or to entertain actions for such purpose or to enter judgments or decrees based thereupon, and

"(d) In such event actions to enforce such statutes or rules or regulations aforesaid, or rights or obligations arising therefrom may hereafter be instituted in the courts of this state, burdening and taxing such courts, and placing upon the courts and people of the state the burden and expense of enforcing such federal statutes, rules or regulations, or settling disputes arising therefrom."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 97.

21 C.J.S. Courts § 203 et seq.

### **34-1-9. Salaries of justices, judges and magistrates.**

A. Justices of the supreme court shall each receive an annual salary as provided by the legislature. The chief justice of the supreme court shall receive an annual salary that is two thousand dollars (\$2,000) more than the annual salary of a justice of the supreme court.

B. The chief judge of:

(1) the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of the chief justice of the supreme court;

(2) a district court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of the court of appeals; and

(3) a metropolitan court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of a district court.

C. The presiding magistrate of a magistrate district where three or more divisions operate as a single court shall receive an annual salary that is seventy-five percent of the annual salary of the chief judge of a metropolitan court.

D. Notwithstanding any other provision of law or any other provision of this section, the annual salaries of the following judges and magistrates shall be established as follows:

(1) a judge of the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of a justice of the supreme court;

(2) a district court judge shall receive an annual salary that is ninety-five percent of the annual salary of a judge of the court of appeals;

(3) a metropolitan court judge shall receive an annual salary that is ninety-five percent of the annual salary of a district court judge;

(4) a full-time magistrate shall receive an annual salary that is seventy-five percent of the annual salary of a metropolitan court judge;

(5) a half-time magistrate shall receive an annual salary that is fifty percent of the annual salary of a full-time magistrate; and

(6) a quarter-time magistrate shall receive an annual salary that is twenty-five percent of the annual salary of a full-time magistrate.

E. For fiscal year 1995 and all subsequent fiscal years, the annual salary for justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall be established by the legislature in an appropriations act.

F. No additional salaries shall be paid to justices, judges or magistrates on account of services rendered the state. Justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall receive per diem and mileage for necessary travel on official business of the court as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978].

History: 1978 Comp., § 34-1-9, enacted by Laws 1993, ch. 278, § 1; 2004, ch. 101, § 3; 2007, ch. 170, § 1.

## ANNOTATIONS

**Cross references.** — For provision that salaries of justices of supreme court are to be fixed by law, see N.M. Const., art. VI, § 11.

For legislature providing for compensation for district judges, see N.M. Const., art. VI, § 17.

For compensation of judges of court of appeals as provided by law, see N.M. Const., art. VI, § 28.

**The 2004 amendment**, effective July 1, 2004, amended Subsection A to delete \$77,250 and insert in its place "as provided by the legislature" and amended Subsection B to add the language in Paragraphs (2) through (4) relating to the annual salaries of district judges, metropolitan court judges and magistrate court judges.

**The 2007 amendment**, effective June 15, 2007, increased the salary of the chief judge of a metropolitan court to ninety-five percent of the salary of a chief judge of a district court, and increased the salary of a metropolitan court judge to ninety-five percent of the salary of a district court judge.

**Judicial salary increases.** — Subsection L(c) of Section 3 of Laws 1994, ch. 6, the General Appropriations Act of 1994, provides a 3% judicial salary increase effective July 1, 1994 as follows: justices of the supreme court seventy-nine thousand five hundred sixty-seven dollars (\$79,567); the chief justice of the supreme court, the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges shall also receive a salary and benefit increase pursuant to the provisions of Section 34-1-9 NMSA 1978.

Section 8 of ch. 3, Laws 1999, provides a judicial salary increase effective July 1, 1999 as follows: chief justice to eighty-seven thousand seven hundred seventy-three dollars (\$87,773) and the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges as provided by Section 34-1-9 NMSA 1978.

Section 10 of ch. 5, Laws 2000 (SS), provides a judicial salary increase effective July 1, 2000 as follows: chief justice to ninety thousand four hundred seven dollars (\$90,407) and the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges as provided by Section 34-1-9 NMSA 1978.

Section 8 of ch. 76, Laws 2003, provides a judicial salary increase effective July 1, 2003 as follows: chief justice to ninety-eight thousand two hundred nine dollars (\$98,220) and the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges as provided by Section 34-1-9 NMSA 1978 and hearing officers and special commissioners.

Section 9 of ch. 114, Laws 2004, provides a 6% judicial salary increase effective July 1, 2004 as follows: chief justice to one hundred five thousand, one hundred twenty dollars (\$105,120) and the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges as provided by Section 34-1-9 NMSA 1978 and hearing officers and special commissioners. Pursuant to Section 40-4B-4 NMSA domestic relations hearing officers receive a salary of 80% of the salary of a district court judge.

Section 8 of ch. 33, Laws 2005, provides a judicial salary increase of one and three quarter percent (1.75%) effective July 1, 2005 pursuant to Section 34-1-9 NMSA 1978

to the chief justice, the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges; and hearing officers and special commissioners. Pursuant to Section 34-1-9 NMSA child support hearing officers receive a salary of 80% of the salary of a district court judge. Pursuant to Rule 1-053.1 NMRA domestic violence special commissioners may receive a salary set by the chief judge of the district not exceeding 80% of the salary of a district judge.

Section 8, ch. 109, Laws 2006, provides a judicial salary increase effective July 1, 2006 as follows: justices to one hundred fifteen thousand forty dollars (\$115,040) and the chief justice of the supreme court, the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges, magistrate court judges, child support hearing officers and special commissioners an increase as provided by Section 34-1-9 NMSA 1978 and hearing officers and special commissioners.

Laws 2007, ch. 28, § 8 of the General Appropriation Act of 2007 appropriates \$998,500 from the general fund to increase the salaries of the justices, judges, child support hearing officers and special commissioners.

**It is not unconstitutionally unreasonable that different classes of judges receive different salaries.** 1979 Op. Att'y Gen. No. 79-27.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 46 Am. Jur. 2d Judges § 54 et seq.

48A C.J.S. Judges § 75 et seq.

### **34-1-10. Judicial compensation commission; creation; membership; duties.**

A. The "judicial compensation commission" is created to recommend salaries for judges of the magistrate courts, metropolitan courts, district courts and courts of appeals and justices of the supreme court.

B. The judicial compensation commission shall be composed of five members and one chairperson as follows:

- (1) the dean of the university of New Mexico school of law, who shall serve as chairperson and vote only in the event of a tie vote;
- (2) the president of the state bar of New Mexico, or the president's designee;
- (3) one member appointed by the governor;
- (4) one member appointed by the president pro tempore of the senate;

(5) one member appointed by the speaker of the house of representatives;  
and

(6) one member appointed by the chief justice of the supreme court.

C. The initial appointee of the governor shall serve for three years, the initial appointees of the president pro tempore and the speaker of the house shall serve for two years and the initial appointee of the chief justice shall serve for one year. All subsequent appointments shall be made for three-year terms.

D. The commission is administratively attached to the administrative office of the courts. Staff and meeting rooms shall be provided by the administrative office of the courts. The commission may employ experts to provide analysis and data upon which to base its recommendations.

E. The commission shall meet at the call of the chairperson not less than annually. The meetings shall be open to the public.

F. Members of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

G. On or before December 1 of each year, the commission shall report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices.

History: Laws 2005, ch. 85, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 85 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Cross references.** — For salaries of judges and justices, see annotations following 34-1-9 NMSA 1978.

### **34-1-11. Electronic services fund; created; purpose; electronic services fee established.**

A. The "electronic services fund" is created in the state treasury to be administered by the administrative office of the courts. The fund consists of electronic services fees, appropriations, gifts, grants and donations. Interest earned on money in the fund shall be credited to the fund. Balances in the fund shall not revert to the general fund at the end of a fiscal year.



B. Money in the fund is subject to appropriation by the legislature to the administrative office of the courts for the purpose of defraying the costs of operating and maintaining electronic filing services and providing public access to electronic documents in appellate, district, metropolitan and magistrate courts, consistent with rules promulgated by the supreme court.

C. The supreme court is authorized to establish by rule reasonable electronic services fees to cover the expense of providing electronic services to the public, including electronic document filing, access to electronic documents and ancillary services.

D. The administrative office of the courts is authorized to enter into agreements with electronic filing companies to provide electronic services, collect the electronic services fees and remit those fees to the administrative office of the courts. An agreement approved by the supreme court may further allow an electronic filing company to retain a portion of the electronic services fees collected and to remit the remainder of those fees to the administrative office of the courts for deposit in the electronic services fund.

E. Disbursements from the electronic services fund shall be made by warrants drawn by the secretary of finance and administration upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee.

History: Laws 2009, ch. 112, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **ARTICLE 2**

### **Supreme Court**

#### **34-2-1. Supreme court justices; number; election by position; election of chief justice.**

A. There shall be five justices of the supreme court.

B. In any election where more than one justice is to be nominated or elected for a term of the same length, the officer issuing the election proclamation shall designate as many positions, numbered consecutively, as there are places to be filled for terms of the same length. Each of these places shall be identified by the position number in all nominations and elections.

C. At their first meeting in April of each even-numbered year, the justices of the supreme court shall, by a majority vote, designate one of their number, not appointed, to serve as chief justice. In the absence of the chief justice, the senior justice present at the seat of government shall exercise the powers of chief justice. Seniority shall be determined by the length of present continuous service on the supreme court. In the event of a vacancy in the office of chief justice, the justices shall, by majority vote, designate one of their eligible number to serve for the remainder of the term.

History: Laws 1929, ch. 9, § 1; C.S. 1929, § 34-206; 1941 Comp., § 16-201; 1953 Comp., § 16-2-1; Laws 1969, ch. 115, § 1; 1977, ch. 225, § 1; 2008, ch. 19, § 1.

## ANNOTATIONS

**Cross references.** — For appointment of supreme court building commission, see 34-3-1 NMSA 1978.

For distribution and sale of supreme court reports, see 34-4-2 NMSA 1978.

For administrative office of the courts, see 34-9-1 to 34-9-8 NMSA 1978.

For the Uniform Certification of Questions of Law Act, see Chapter 39, Article 7 NMSA 1978.

For vesting of judicial powers, see N.M. Const., art. VI, § 1.

For appellate jurisdiction of supreme court, see N.M. Const., art. VI, § 2, 34-5-14, 39-3-2, 39-3-3, 39-3-4 NMSA 1978.

For original jurisdiction of supreme court, see N.M. Const., art. VI, § 3.

For supervisory control of inferior courts, see N.M. Const., art. VI, § 3.

For number of justices, see N.M. Const., art. VI, §§ 4, 10.

For selection and duty of chief justice, see N.M. Const., art. VI, § 4.

For election and terms of justices, see N.M. Const., art. VI, § 4.

For quorum for the supreme court, see N.M. Const., art. VI, § 5.

For necessity for majority of justices concurring in judgment, see N.M. Const., art. VI, § 5.

For district judge substituting for justice, see N.M. Const., art. VI, § 6.

For terms and sessions of supreme court, see N.M. Const., art. VI, § 7.

For qualifications of justices, see N.M. Const., art. VI, § 8.

For officers and employees of supreme court, see N.M. Const., art. VI, § 9.

For supreme court justice sitting as district judge, see N.M. Const., art. VI, § 15.

For disqualification of justice, see N.M. Const., art. VI, § 18.

For supreme court judges being ineligible for nonjudicial offices, see N.M. Const., art. VI, § 19.

For judge of court of appeals acting as supreme court justice, see N.M. Const., art. VI, § 28.

For chief justice being member and chairman of compilation commission, see 12-1-2 NMSA 1978.

For justices being board of trustees of supreme court law library, see 18-1-1 NMSA 1978.

For approval of bonds of district attorneys, see 36-1-1 NMSA 1978.

For continuing undecided cases from term to term, see 39-3-6 NMSA 1978.

**The 2008 amendment**, effective July 1, 2009, provided that the chief justice of the supreme court shall be elected in April of each even-numbered year.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 C.J.S. Courts § 123.

### **34-2-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 278, § 4 repeals 34-2-2 NMSA 1978, as amended by Laws 1990, ch. 115, § 1, concerning salaries of supreme court justices, effective January 1, 1994. For present comparable provisions, see 34-1-9 NMSA 1978.

### **34-2-3. [Seal; power to adopt design.]**

That the justices of the supreme court be and they are hereby authorized and empowered to adopt a design for the seal of said court.

**History:** Laws 1913, ch. 7, § 1; Code 1915, § 1361; C.S. 1929, § 34-201; 1941 Comp., § 16-202; 1953 Comp., § 16-2-2.

#### **ANNOTATIONS**

## **Supreme Court Seal — DOUBLE CLICK TO VIEW SUPREME COURT SEAL**

The seal above has not been amended or altered in any way.

**Cross references.** — For affixing and preservation of seal by clerk, see 34-1-6 NMSA 1978.

For specifications of seal, see Rule 23-103 NMRA.

### **34-2-4. [Depositing and recording facsimile and description of seal.]**

That upon adopting such design, the said justices shall cause a facsimile and description of said design to be deposited and recorded in the office of the secretary of state.

**History:** Laws 1913, ch. 7, § 2; Code 1915, § 1362; C.S. 1929, § 34-202; 1941 Comp., § 16-203; 1953 Comp., § 16-2-3.

### **34-2-5. Fees; collection by supreme court clerk.**

The clerk of the supreme court shall collect the following fees:

A. in all cases docketed in the court, except those in which statutory exemption exists and those in which the court on showing of poverty may, by order, waive the fee, one hundred twenty-five dollars (\$125), twenty-five dollars (\$25.00) of which shall be deposited in the court automation fund and ninety-six dollars (\$96.00) of which shall be deposited in the court facilities fund; provided that in cases in which a motion to docket and dismiss an appeal is filed for failure to file a statement of the issues, the fee shall be twenty dollars (\$20.00), ten dollars (\$10.00) of which shall be deposited in the court automation fund and ten dollars (\$10.00) of which shall be deposited in the court facilities fund;

B. for one copy of files or a record, ten cents (\$.10) per folio and for additional copies ordered at the same time five cents (\$.05) per folio;

C. for comparing copies of files or records tendered to him, five cents (\$.05) per folio; and

D. for each certificate, one dollar (\$1.00).

**History:** Laws 1933, ch. 81, § 1; 1941 Comp., § 16-204; 1953 Comp., § 16-2-4; Laws 1992, ch. 111, § 18; 1996, ch. 41, § 1; 1998 (1st S.S.), ch. 6, § 1; 2003, ch. 38, § 1.

## **ANNOTATIONS**

**Cross references.** — For the court automation fund, see § 34-9-10 NMSA 1978.

For penalty for public officer's demanding illegal fees, see 30-23-1 NMSA 1978.

For duties of clerk, see 12-310 and 23-102 NMRA.

**The 1992 amendment**, effective July 1, 1992, added the subsection designations, substituted "one hundred dollars (\$100)" for "\$20.00" in Subsection A, and made minor stylistic changes throughout the section.

**The 1996 amendment**, effective May 15, 1996, in Subsection A, substituted "one hundred twenty-five dollars (\$125), twenty-five dollars (\$25.00) of which shall be deposited in the court automation fund" for "one hundred dollars (\$100)", inserted "twenty dollars (\$20.00)", and added "of which shall be deposited in the court automation fund" at the end of the subsection.

**The 1998 amendment**, effective July 1, 1998, inserted "and ninety-six dollars (\$96.00) of which shall be deposited in the court facilities fund" and "and ten dollars (\$10.00) of which shall be deposited in the court facilities fund" in Subsection A.

**The 2003 amendment**, effective June 20, 2003, in Subsection A deleted "skeleton transcript may be filed for the purpose of a" following "cases in which a" and substituted "dismiss an appeal is filed for failure to file a statement of the issues" for "affirm" following "motion to docket and" near the middle.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Clerks of Courts § 26.

21 C.J.S. Courts § 242 et seq.

### **34-2-6. Disposition of fees.**

The clerk shall pay such fees into the state treasury to be retained as earnings of the state, except the sum of four dollars (\$4.00) in each case docketed, which shall be covered into a suspense fund and which shall be subject to disbursement by the clerk to defray the cost of binding final records in cases.

**History:** Laws 1933, ch. 81, § 2; 1941 Comp., § 16-205; 1953 Comp., § 16-2-5; Laws 1974, ch. 29, § 1.

### **34-2-7. Supreme court law clerks.**

Each justice of the supreme court may employ a law clerk who is a graduate of a law school which meets the standards of accreditation of the American Bar Association. Each law clerk shall serve at the pleasure of the justice who selected him. Supreme court law clerks shall:

- A. perform duties as provided by rule of the supreme court;

- B. not engage in the private practice of law; and
- C. not receive any additional salaries because of the services rendered to the state.

**History:** 1953 Comp., § 16-2-6, enacted by Laws 1961, ch. 122, § 1; 1973, ch. 187, § 1.

### **34-2-8. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 8, § 14 repeals 34-2-8 NMSA 1978, as amended by Laws 1993, ch. 154, § 1, relating to questions certified to the New Mexico supreme court, effective July 1, 1997. For provisions of former section, see New Mexico One Source of Law DVD. For present comparable provisions, see Rules 12-606, 12-607 and 12-608 NMRA, and 39-7-3 NMSA 1978.

### **34-2-9. Applicants for license to practice law; criminal history information.**

A. The supreme court shall require a background investigation of each applicant for admission to the state bar of New Mexico by means of fingerprint checks by the department of public safety and the federal bureau of investigation.

B. The director of the administrative office of the courts shall obtain from the department of public safety and the federal bureau of investigation, at the expense of an applicant for a license to practice law in the state of New Mexico, criminal history information concerning each applicant, using the applicant's fingerprints or other identifying information. The information shall be used only by the supreme court and the board of bar examiners in determining whether to grant the application, and shall not be disseminated to any other person or agency. The information shall be destroyed after the application is granted or denied.

**History:** Laws 1997, ch. 198, § 1.

#### **ANNOTATIONS**

**Cross references.** — For application for admission to the bar, see 15-104 NMRA.

### **34-2-10. Supreme court; electronic services fee.**

The clerk of the supreme court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund.

History: Laws 2009, ch. 112, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## ARTICLE 3

### Supreme Court Building

#### 34-3-1. Supreme court building commission; creation.

There is created within the judicial department the "supreme court building commission" consisting of three residents of the state appointed by the supreme court. Each member shall qualify by taking the oath prescribed by the constitution for state officers and shall hold office until his successor is appointed by the supreme court. Vacancies shall be filled in the same manner as the original appointment. Members shall receive reimbursement as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] but shall receive no other compensation, perquisite or allowance. No member shall be interested, directly or indirectly, in any contract relating to the construction, equipment or maintenance of the supreme court building, and any contract made in violation of this sentence is void.

**History:** 1953 Comp., § 6-10-1, enacted by Laws 1967, ch. 214, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional oath, see N.M. Const., art. XX, § 1.

**Appropriations.** — Laws 1994, ch. 148, § 57, effective March 9, 1994, appropriates \$46,000 from the supreme court building addition reserve fund and the supreme court building addition interest and retirement fund to the supreme court building commission construction fund.

Laws 1999, ch. 13, § 1, effective March 8, 1999, appropriates \$14,000 from the supreme court building addition reserve fund and the supreme court building addition interest and retirement fund to the supreme court building commission construction fund.

#### 34-3-2. Supreme court building commission; organization.

The supreme court building commission shall elect from its membership a chairman, vice chairman and secretary. The chairman shall preside at all meetings of the commission and shall sign on behalf of the commission all contracts and other

necessary papers authorized by the commission. In the absence of the chairman, the vice chairman shall exercise his duties. The secretary shall keep complete records of all commission business and shall approve all vouchers submitted to the department of finance and administration for the expenditure of funds available to the commission. Two members of the commission constitute a quorum for the transaction of business, and all actions of the commission shall be by a majority vote of the full commission.

**History:** 1953 Comp., § 6-10-2, enacted by Laws 1967, ch. 214, § 2.

### **34-3-3. Supreme court building commission; duties.**

The supreme court building commission has care, custody and control of the supreme court building and its grounds, along with all equipment, furniture and fixtures purchased or used by agencies of the judicial department housed therein. With respect to this property, the commission shall:

A. provide for the preservation, repair, care, cleaning, heating and lighting;  
and

B. subject to legislative appropriations, hire necessary employees for this purpose and fix their compensation and terms of employment, but no compensation shall be paid to any person who is paid compensation by any other agency of the state.

**History:** 1953 Comp., § 6-10-3, enacted by Laws 1967, ch. 214, § 3.

#### **ANNOTATIONS**

**Bond issue.** — Laws 1964 (1st S.S.), ch. 20, authorizes the supreme court building commission to issue debentures up to \$800,000 to mature not over 30 years from date for acquiring, constructing, furnishing, etc., buildings and lands for the supreme court and others, imposes additional fee upon civil action filed in district courts to pay the interest and principal for such debentures and authorizes refunding such debentures.

## **ARTICLE 3A**

### **Court of Appeals Building Commission**

#### **34-3A-1. Court of appeals building commission; creation; membership.**

A. The "court of appeals building commission" is created within the judicial branch. The court of appeals building commission shall be composed of the chief judge of the court of appeals; the chief clerk of the court of appeals; one member of the supreme court appointed by the chief justice of the supreme court; and two public members with architectural or engineering expertise appointed by the chief judge of the court of appeals.



B. Each member of the court of appeals building commission shall qualify by taking the oath prescribed by the constitution of New Mexico for state officers. An appointed member shall hold office until there is a change in the appointing authority and the member's successor is appointed. Vacancies shall be filled in the same manner as the original appointment. Members shall receive reimbursement as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance. No member shall be interested, directly or indirectly, in any contract relating to the construction, equipment or maintenance of the court of appeals building, and any contract made in violation of this sentence is void.

History: Laws 2007, ch. 147, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 147, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **34-3A-2. Court of appeals building commission; organization.**

The court of appeals building commission shall elect from its membership a chair, a vice chair and a secretary. The chair shall preside at all meetings of the commission and shall sign on behalf of the commission all contracts and necessary papers authorized by the commission. In the absence of the chair, the vice chair shall exercise the chair's duties. The secretary shall keep complete records of all commission business and shall approve all vouchers submitted to the department of finance and administration for the expenditure of funds available to the commission. Three members of the commission constitute a quorum for the transaction of business, and all actions of the commission shall be by a majority vote of members present.

History: Laws 2007, ch. 147, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 147, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **34-3A-3. Court of appeals building commission; duties.**

A. The court of appeals building commission has care, custody and control of the court of appeals building and its grounds, along with all court of appeals equipment, furniture and fixtures housed in the building. The court of appeals shall report and record all these assets as required by state audit rules.

B. With respect to the property under the care, custody and control of the court of appeals pursuant to Subsection A of this section, the court of appeals building commission shall:

(1) provide for the design, construction, maintenance, repair, cleaning, heating, cooling and lighting of that property; and

(2) subject to legislative appropriation, hire employees as necessary and fix their compensation and terms of employment; provided that no compensation shall be paid to a person who is compensated by another agency of the state.

History: Laws 2007, ch. 147, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 147, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## **ARTICLE 4**

### **Court Reports**

#### **34-4-1. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Section 34-4-1 NMSA 1978, relating to the distribution of session laws, has been recompiled as 8-4-6 NMSA 1978.

#### **34-4-2. Sale of court reports.**

A. The New Mexico compilation commission shall:

(1) receive all opinions of the supreme court and court of appeals;

(2) cause them to be published in bound volumes to be known as the New Mexico reports; and

(3) sell them to officers and agencies of the state and other individuals and entities at a price fixed by the secretary of the New Mexico compilation commission except for those volumes distributed free as provided by law. The price fixed by the secretary for volumes of the New Mexico reports shall not be less than the replacement cost of the volumes plus a markup of not less than twenty-five percent nor more than fifty percent of replacement costs.

B. All money received from the sales of the New Mexico reports shall be paid to the state treasurer for credit to the New Mexico compilation fund, no part of which shall revert at the end of any fiscal year.

C. The secretary of the New Mexico compilation commission may distribute without charge copies of the supreme court and court of appeals reports to officers and agencies of the federal government and other states, districts, territories or possessions of the United States, in exchange for similar materials needed by the supreme court law library.

D. Copies of the court reports supplied to officers and agencies of New Mexico remain the property of the state and shall be delivered to their successors.

**History:** 1953 Comp., § 10-1-14, enacted by Laws 1966, ch. 28, § 28; 1978, ch. 130, § 3; 1982, ch. 7, § 4.

### ANNOTATIONS

**Cross references.** — For the New Mexico Compilation Commission, see 12-1-2 NMSA 1978.

For the New Mexico reports, see 12-1-3.1 NMSA 1978.

**Repeals and reenactments.** — Laws 1966, ch. 28, § 28, repealed former 10-1-14, 1953 Comp., relating to sale of supreme court reports, and enacted a new 10-1-14, 1953 Comp.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 77 C.J.S. Reports § 4 et seq.

### **34-4-3. [Copies of reports of state officers, biennial budget and session laws transmitted to congressional library.]**

The officer or employee of this state having charge of the publication of the public documents hereinafter mentioned shall transmit the same to the librarian of congress for the use of members of congress from New Mexico and others interested, if and when printed, as follows: 2 [two] copies each of the biennial budget, of the reports and official opinions of the attorney general of the state, and of all separate compilations of laws issued by state officers; 1 [one] copy each of the legislative journals and other documents published by order of the state legislature or either house thereof and of all reports, bulletins, circulars, pamphlets, maps, charts and other official publications of any executive department, office, commission, bureau, board or state institution now existing or hereafter authorized by law.

**History:** Laws 1937, ch. 171, § 2; 1941 Comp., § 12-115; 1953 Comp., § 10-1-15.

### ANNOTATIONS

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

## **ARTICLE 5**

### **Court of Appeals**

#### **34-5-1. Court of appeals; judges; election for staggered terms.**

The "court of appeals" of New Mexico consists of ten judges who are nominated and elected in the same manner as justices of the supreme court. No judge of the court of appeals shall be nominated or elected to any other than a judicial office in this state.

**History:** 1953 Comp., § 16-7-1, enacted by Laws 1966, ch. 28, § 1; 1972, ch. 32, § 1; 1978, ch. 25, § 1; 1990, ch. 35, § 1.

#### **ANNOTATIONS**

**Cross references.** — For number, qualifications, election and terms of court of appeals judges, see N.M. Const., art. VI, § 28.

For court of appeals judge holding court in any district or acting as supreme court justice, see N.M. Const., art. VI, § 28.

For district judge acting as court of appeals judge, see N.M. Const., art. VI, § 28.

**1990 amendment.** — Laws 1990, ch. 35, § 1 amended 34-5-1 NMSA 1978 to provide for ten appellate judges. Laws 1990, ch. 35, § 2 provided for the appointment and election of three additional judges. However, Laws 1990, ch. 35, § 3 provided: "The provisions of this act shall not take effect unless seventy-ninth fiscal year funding for three additional court of appeals judges is provided in the General Appropriations Act of 1990".

**Compiler's notes.** — Laws 1991, ch. 168, §§ 1 to 4, effective April 4, 1991, repeals Laws 1990, ch. 35, § 3, which provided a contingency for the effectiveness of Laws 1990, ch. 35, §§ 1 and 2, provides that this repeal shall revive the provisions of Laws 1990, ch. 35, §§ 1 and 2, and further provides that subsequent terms for all judges of the court of appeals shall be for eight years.

Laws 1990, ch. 35, § 2, effective May 16, 1990, provides that the eighth, ninth, and tenth judges of the court of appeals shall be appointed effective April 1, 1991, and shall be nominated and elected at the next general election. The eighth judge shall run for an initial term of four years. The ninth judge shall run for an initial term of six years. The tenth judge shall run for an initial term of eight years.

**Law reviews.** — For article, "History of the New Mexico Court of Appeals" see 22 N.M.L. Rev. 595 (1992).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 C.J.S. Courts § 111 et seq.

### **34-5-2. Court of appeals; chief judge.**

At their first meeting in each odd-numbered year, the judges of the court of appeals shall, by majority vote, designate one of their number to serve as chief judge for a term of two years. In the absence of the chief judge, the senior judge present at the seat of government shall exercise the powers of the chief judge. Seniority shall be determined by the length of present continuous service on the court. In the event of a vacancy in the office of chief judge, the judges shall, by majority vote, designate one of their number to serve for the remainder of the term.

**History:** 1953 Comp., § 16-7-2, enacted by Laws 1966, ch. 28, § 2.

### **34-5-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 278, § 4 repeals 34-5-3 NMSA 1978, as amended by Laws 1990, ch. 115, § 2, concerning salaries of judges of the court of appeals, effective January 1, 1994. For provisions of former section, see New Mexico One Source of Law DVD. For present comparable provisions, see 34-1-9 NMSA 1978.

### **34-5-4. Court of appeals; vacancy in membership.**

If a vacancy in the membership of the court of appeals other than by expiration of a term shall occur, the governor shall fill the vacancy by appointment of a qualified person to serve until December 31 following the next general election, or for the remainder of the unexpired term, whichever is the longer period.

**History:** 1953 Comp., § 16-7-4, enacted by Laws 1966, ch. 28, § 4; 1973, ch. 136, § 1.

#### **ANNOTATIONS**

**Cross references.** — For filling vacancy, see N.M. Const., art. VI, § 28.

### **34-5-5. Court of appeals; personnel.**

A. The court of appeals shall employ a clerk and other necessary employees to serve at the pleasure of the court. Employees shall receive compensation established by the court, subject to legislative appropriations.

B. Before entering the duties of his office, the clerk shall take the oath prescribed by the constitution for state officers and file with the secretary of state a corporate surety bond in the amount of five thousand dollars (\$5,000). The bond shall be approved in writing on its face by the chief judge of the court of appeals and conditioned upon the clerk's faithful performance of the duties of his office and payment of all money received as clerk to the person entitled to receive it.

C. Subject to legislative appropriations, each judge of the court of appeals may select a law clerk who is a graduate of a law school which meets the standards of accreditation of the American Bar Association. Each law clerk shall serve at the pleasure of the judge who selected him.

D. Personnel of the court of appeals, including law clerks and other employees, shall:

- (1) perform duties as provided by rule of the court of appeals;
- (2) not engage in the private practice of law; and
- (3) not receive any additional salaries on account of services rendered the state.

**History:** 1953 Comp., § 16-7-5, enacted by laws 1966, ch. 28, § 5.

### ANNOTATIONS

**Cross references.** — For oath of office, see N.M. Const., art. XX, § 1.

For surety bonds, see 10-2-15 NMSA 1978.

### 34-5-6. Court of appeals; fees and costs.

A. The clerk of the court of appeals shall collect the following fees:

docket fee, twenty-five dollars (\$25.00) of which shall be deposited in the court automation fund and one hundred dollars (\$100) of which shall be deposited in the court facilities fund	\$125.00
.....	
docket fee for cases in which a motion to docket and dismiss the appeal is filed for failure to file a docketing statement, ten dollars (\$10.00) of which shall be deposited in the court automation fund and ten dollars (\$10.00) of which shall be deposited in the court facilities fund	20.00
.....	
single copy of records, per typewritten folio	.10

.....		
each additional copy of records ordered at same time, per typewritten folio ..		.05
copies of records reproduced by photographic process, per page		.10
.....		
comparing copies of records tendered to him, per folio		.05
.....		
each certificate		1.00.
.....		

B. No fees or costs shall be required in proceedings in forma pauperis, from state officers acting in their official capacity or in any other case where a statutory exemption exists.

C. Except as otherwise specifically provided by law, the clerk of the court of appeals shall pay all fees and costs to the state treasurer for credit to the state general fund.

**History:** 1953 Comp., § 16-7-6, enacted by Laws 1966, ch. 28, § 6; 1992, ch. 111, § 19; 1996, ch. 41, § 2; 1998 (1st S.S.), ch. 6, § 2; 2003, ch. 38, § 2.

### ANNOTATIONS

**Cross references.** — For collection of fees by district court clerks in civil matters docketing any cause, including appeals, see 34-6-40 NMSA 1978.

For the court automation fund, see 34-9-10 NMSA 1978.

For penalty for public officer's demanding illegal fees, see 30-23-1 NMSA 1978.

For amounts to be taxed as costs on appeals and writs of error, see 39-3-11 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, substituted "\$100.00" for "\$20.00" in Subsection A.

**The 1996 amendment,** effective May 15, 1996, in Subsection A, inserted "twenty-five dollars (\$25.00) of which shall be deposited in the court automation fund" following "docket fee", substituted "\$125.00" for "\$100.00", inserted "ten dollars (\$10.00) of which shall be deposited in the court automation fund" following "and affirm", substituted "\$20.00" for "\$10.00", and made minor stylistic changes; and, in Subsection C, added "Except as otherwise specifically provided by law" at the beginning.

**The 1998 amendment,** effective July 1, 1998, inserted "and one hundred dollars (\$100.00) of which shall be deposited in the court facilities fund" and "and ten dollars (\$10.00) of which shall be deposited in the court facilities fund" in Subsection A.

**The 2003 amendment**, effective June 20, 2003, in Subsection A deleted "skeleton transcript is filed for purpose of a" following "cases in which a", and substituted "dismiss the appeal is filed for failure to file a docketing statement" for "affirm" following "motion to docket and" near the middle of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes "fees" or "costs" within meaning of Federal Statutory Provision (28 USCS § 1915 and similar predecessor statutes) permitting party to proceed in forma pauperis without prepayment of fees and costs or security therefor, 142 A.L.R. Fed. 627.

### **34-5-7. Court of appeals; terms of court; location.**

The court of appeals shall hold one term each year beginning on the second Tuesday of January, and it shall always be in session. The headquarters of the court and the clerk's office shall be located at the seat of government. The court may convene at any location in the state.

**History:** 1953 Comp., § 16-7-7, enacted by Laws 1966, ch. 28, § 7.

## **ANNOTATIONS**

**Cross references.** — For continuing undecided cases from term to term, see 39-3-6 NMSA 1978.

### **34-5-8. Court of appeals; appellate jurisdiction.**

A. The appellate jurisdiction of the court of appeals is coextensive with the state, and the court has jurisdiction to review on appeal:

(1) any civil action not specifically reserved to the jurisdiction of the supreme court by the constitution or by law;

(2) all actions under the Workmen's Compensation Act [Workers' Compensation Act], the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978], the Subsequent Injury Act and the federal Employers' Liability Act[s];

(3) criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment;

(4) postconviction remedy proceedings, except where the sentence involved is death or life imprisonment;

(5) actions for violation of municipal or county ordinances where a fine or imprisonment is imposed;

(6) decisions of administrative agencies of the state; and



(7) decisions in any other action as may be provided by law.

B. The supreme court may provide for the transfer of any action or decision enumerated in this section from the court of appeals to the supreme court in addition to the transfers provided for in Section 34-5-10 and Subsection C of Section 34-5-14 NMSA 1978.

**History:** 1953 Comp., § 16-7-8, enacted by Laws 1966, ch. 28, § 8; 1967, ch. 24, § 1; 1983, ch. 333, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material in this section was inserted by the compiler to correct an apparently erroneous reference and is not a part of the law.

**Cross references.** — For Uniform Certification of Questions of Law Act, see Chapter 39, Article 7 NMSA 1978.

For appellate jurisdiction of court of appeals, see N.M. Const., art. VI, § 29; 34-5-8 NMSA 1978.

For jurisdiction of court of appeals, see N.M. Const., art. VI, § 29; 39-3-2, 39-3-3, 39-3-4, 39-3-6 NMSA 1978.

For appeals from action and order of director of revenue division, see 7-1-25 NMSA 1978.

For appeals under Children's Code, see 32A-1-17 NMSA 1978.

For appeals under Air Quality Control Act, see 74-2-12 NMSA 1978.

For appeals under Water Quality Act, see 74-6-7 NMSA 1978.

For procedure on certiorari to review decision of court of appeals, see 12-502 NMRA.

For procedure on certification from court of appeals, see 12-606 NMRA.

For the federal Employers' Liability Acts, see 45 U.S.C. §§ 51 to 60.

**Workers' Compensation Act.** — Laws 1987, ch. 235, § 1 amends 52-1-1 NMSA 1978 to cite Chapter 52, Article 1 NMSA 1978 as the "Workers' Compensation Act".

**Subsequent Injury Act.** — The Subsequent Injury Act, referred to in Subsection A(2), refers to Laws 1961, ch. 134, compiled as 52-2-1 to 52-2-13 NMSA 1978.

**A waiver in a plea agreement of the right of appeal** does not divest the court of appeals of jurisdiction to hear an appeal in a criminal proceeding. *State v. Rudy B.*, 2010-NMSC-045, 149 N.M. 22, 243 P.3d 726, overruling 2009-NMCA-104, 147 N.M. 45, 216 P.3d 810.

**Habeas corpus.** — An inmate may not resort to this section when the relief sought can be obtained directly by writ of habeas corpus and a habeas corpus petitioner is not required to first seek relief by a post-conviction remedy motion before seeking a writ of habeas corpus. *Cummings v. State*, 2007-NMSC-048, 142 N.M. 656, 168 P.3d 1080.

**Court of appeals is court of review only.** — Defendant's request to produce evidence in post-conviction proceeding before court of appeals was denied because the court of appeals is a court of review. Such review is limited to matters disclosed by the record, and that court cannot originally determine questions of fact. *State v. Hibbs*, 82 N.M. 722, 487 P.2d 150 (Ct. App. 1971).

**Pre-enforcement facial review of regulations unauthorized.** — The court of appeals was without authority to review the constitutionality of the New Mexico Mining Act (69-36-1 to 69-36-20 NMSA 1978) in the case of an appeal challenging regulations on their face. *Old Abe Co. v. New Mexico Mining Comm'n*, 121 N.M. 83, 908 P.2d 776 (Ct. App. 1995).

**Court of appeals not bound by trial court interpretations of statutes and rules;** rather, it reviews them to determine whether they are legally correct. *State v. Herrera*, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

**Jurisdiction over administrative agency decisions limited by statutes.** — This section does not automatically give court of appeals jurisdiction over all decisions of administrative agencies; rather, the jurisdiction of the court is limited to those appeals provided for by specific statutes. *State ex rel. Department of Human Servs. v. Manfre*, 102 N.M. 241, 693 P.2d 1273 (Ct. App. 1984); *State ex rel. Pilot Dev. N.W., Inc. v. State Health Planning & Dev. Bureau*, 102 N.M. 791, 701 P.2d 390 (Ct. App. 1985).

**Jurisdiction over mandamus.** — Where a mandamus proceeding is consolidated with a district court appeal from a decision of the personnel board, the court of appeals has jurisdiction over the mandamus parties. *State ex rel. New Mexico State Hwy. Dep't v. Silva*, 98 N.M. 549, 650 P.2d 833 (Ct. App. 1982).

**Jurisdiction in tort counts.** — Although the first count of the complaint is for a declaratory judgment and injunctive relief prohibiting the enforcement of portions of a city ordinance, alleging their unconstitutionality, where the second and third counts are for damages for false arrest, a tort action, jurisdiction in the matter is in the court of appeals. *Balizer v. Shaver*, 82 N.M. 53, 475 P.2d 319 (1970).

**Jurisdiction in count for insurer's bad faith in dismissing action.** — The vast majority of the cases where judgments in excess of the policy limits have gone against

insurance companies for their bad faith in defending or in refusing to settle have been held to be tort actions; thus, for the determination of jurisdiction on appeal, a civil action which includes a count seeking damages for moving to dismiss action against uninsured motorist is one in which one party seeks damages on an issue based on tort. *Chacon v. Mountain States Mut. Cas. Co.*, 82 N.M. 54, 475 P.2d 320 (1970).

**Jurisdiction regarding damages for illegal and negligent actions.** — Where, among other claims, plaintiffs sought damages on the basis of asserted "illegal and negligent" actions on the part of defendants, the court of appeals had subject matter jurisdiction of the appeal, and a motion to transfer was properly denied. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 319, 540 P.2d 248 (1975).

**Jurisdiction in controversy involving uninsured motorist coverage.** — Although in one respect an action against an insurer is based on breach of contract, because an action against an insurer is inseparable from a tort action against a tortfeasor where a provision of the insurance policy clearly indicates that the liability of the insurer is contingent upon the liability of a tortfeasor, the court of appeals has jurisdiction of an appeal of an action involving uninsured motorist coverage under this section. *Sandoval v. Valdez*, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978).

**Jurisdiction may arise out of tort counterclaim.** — In a suit for reformation where the defendants denied the material allegations of the complaint and counterclaimed for damages as a result of alleged tortious acts on the part of the plaintiffs, the jurisdiction of the court of appeals arises out of the counterclaim based on tort. *Wright v. Brem*, 81 N.M. 410, 467 P.2d 736 (Ct. App. 1970).

**Criminal jurisdiction extends to review of bond order.** — Where court of appeals had jurisdiction over an appeal from defendant's conviction of rape but defendant's motion for review of the order fixing appeal bond was originally docketed in the supreme court and then was transferred to the court of appeals, the transfer of that motion was a final determination of jurisdiction. *State v. Lucero*, 81 N.M. 578, 469 P.2d 727 (Ct. App. 1970).

**Conviction of criminal contempt.** — Defendant had the right to appeal conviction for criminal contempt, and court of appeals has jurisdiction over that appeal. *State v. Watson*, 82 N.M. 769, 487 P.2d 197 (Ct. App. 1971).

**Prior to 1967, the court of appeals had no jurisdiction in post-conviction remedy proceedings.** — See *State v. Weedle*, 77 N.M. 420, 423 P.2d 611 (1967)(holding post-conviction remedy proceedings not "criminal actions"); 169 A.L.R. 1203.

**The court of appeals has jurisdiction if proceedings were commenced after effective date of 1967 amendment.** — See *State v. Garlick*, 80 N.M. 352, 456 P.2d 185 (1969)(proceedings not commenced before effective date).

**Including jurisdiction of sentence of not less than one nor more than 99 years. —**

A sentence of not less than one nor more than 99 years is an indeterminate sentence and not a sentence of life imprisonment; therefore, the court of appeals has jurisdiction of a motion for post-conviction relief. *Salazar v. State*, 82 N.M. 630, 485 P.2d 741 (Ct. App. 1971).

**No jurisdiction if sentence is death or life imprisonment. —**

Court of appeals does not have appellate jurisdiction over post-conviction remedy proceedings where the sentence involved is death or life imprisonment. *Martinez v. State*, 110 N.M. 357, 796 P.2d 250 (Ct. App. 1990).

**Court of appeals has jurisdiction to entertain defendant's probation revocation appeal. State v. Castillo, 94 N.M. 352, 610 P.2d 756 (Ct. App. 1980).**

**Jurisdiction has been given to review director of revenue division. —** The court of appeals has jurisdiction to review directly a decision of the director of the revenue division. Section 7-1-25 NMSA 1978 provides that a protestant dissatisfied with the director's order, after a hearing, may appeal directly to that court. *Union County Feedlot, Inc. v. Vigil*, 79 N.M. 684, 448 P.2d 485 (Ct. App. 1968).

**No jurisdiction to review personnel board or former alcoholism commission. —**

It has not been provided by law for the court of appeals to review the decision of the personnel board or the alcoholism commission (now abolished). The remedy for review of the administrative actions in such case is by a writ of certiorari from the district court. *Durand v. New Mexico Comm'n on Alcoholism*, 89 N.M. 434, 553 P.2d 714 (Ct. App. 1976).

**Order by director of workers' compensation administration** is not appealable to the court of appeals. *Sun Country Physical Therapy Assocs. v. New Mexico Self-Insurers' Fund*, 1996-NMCA-008, 121 N.M. 248, 910 P.2d 324.

**Standards adopted by agency as rules appealable. —** Since the standards for the evaluation of waste water to determine whether it is contaminated were adopted by an administrative agency as rules, they are appealable to the court of appeals. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**Court of appeals has no jurisdiction to review discharge of writ of prohibition. —**

Appellants' claim in prohibition proceedings that a nonattorney police court judge was not constitutionally qualified to hear their criminal cases arising from violations of municipal ordinances was properly taken directly from the district court to the supreme court. The appeal did not fall within the ambit of this section. *Tsiosdia v. Rainaldi*, 89 N.M. 70, 547 P.2d 553 (1976).

**Supreme court precedents must be followed. —** The court of appeals is to follow precedents of the supreme court; it is not free to abolish instructions approved by the

supreme court, although in appropriate situations it may consider whether the supreme court precedent is applicable. *State v. Scott*, 90 N.M. 256, 561 P.2d 1349 (Ct. App.), cert. denied, 90 N.M. 637, 567 P.2d 486 (1977).

**Including order approving criminal instructions.** — The court of appeals is bound by the supreme court order approving N.M.U.J.I. Crim. 2.10 and 2.20 (now see UJI 14-210 and 14-220) and has no authority to set the instructions aside. *State v. Scott*, 90 N.M. 256, 561 P.2d 1349 (Ct. App.), cert. denied, 90 N.M. 637, 567 P.2d 486 (1977).

**Jurisdiction to review jury instructions.** — The court of appeals is not precluded from considering error in jury instructions, but is precluded only from overruling those instructions that have been considered by the supreme court in actual cases and controversies that are controlling precedent. *State v. Wilson*, 116 N.M. 793, 867 P.2d 1175 (1994).

**Law reviews.** — For note, "Workmen's Compensation in New Mexico: Pre-Existing Conditions and the Subsequent Injury Act," see 7 Nat. Resources J. 632 (1967).

For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

For annual survey of New Mexico law relating to civil procedure, see 12 N.M.L. Rev. 97 (1982).

For article, "History of the New Mexico Court of Appeals," see 22 N.M.L. Rev. 595 (1992).

### **34-5-9. Court of appeals; procedure for appeals from district court.**

Unless otherwise provided by rule of procedure, appeals to the court of appeals shall be taken from the district court in the manner prescribed for appeals to the supreme court.

**History:** 1953 Comp., § 16-7-9, enacted by Laws 1966, ch. 28, § 9.

## **ANNOTATIONS**

### **34-5-10. Transfer of cases on appeal.**

No matter on appeal in the supreme court or the court of appeals shall be dismissed for the reason that it should have been docketed in the other court, but it shall be transferred by the court in which it is filed to the proper court. Any transfer under this section is a final determination of jurisdiction. Whenever either court determines it has jurisdiction in a case filed in that court and proceeds to decide the matter, that determination of jurisdiction is final. No additional fees or costs shall be charged when a case is transferred to another court under this section.

**History:** 1953 Comp., § 16-7-10, enacted by Laws 1966, ch. 28, § 10.

## ANNOTATIONS

**Cross references.** — For Uniform Certification of Questions of Law Act, see 39-7-1 NMSA 1978.

For appellate jurisdiction of supreme court, see N.M. Const., art. VI, § 2 and 39-3-2, 39-3-3, 39-3-4 NMSA 1978.

For appellate jurisdiction of court of appeals, see N.M. Const., art. VI, § 29 and 34-5-8 NMSA 1978.

For procedure on certiorari to review decision of court of appeals, see 12-502 NMRA.

For procedure on certification from court of appeals, see 12-606 NMRA.

**Review of transfer orders by the Supreme Court.** — The Supreme Court has inherent authority under Article VI, Section 3 of the New Mexico Constitution and Section 34-5-14 NMSA 1978 to review and reverse transfer orders of the Court of Appeals. *Martinez v. Chavez*, 2008-NMSC-021, 144 N.M. 1, 183 P.3d 145.

**Only some of counts need give court of appeals jurisdiction.** — Although the first count of the complaint is for a declaratory judgment and injunctive relief prohibiting the enforcement of portions of a city ordinance, alleging their unconstitutionality, and the second and third counts are for damages for false arrest, a tort action, jurisdiction in this matter is in the court of appeals. *Balizer v. Shaver*, 82 N.M. 53, 475 P.2d 319 (1970).

**Denial of motion to transfer proper.** — Where, among other claims, plaintiffs sought damages on the basis of asserted "illegal and negligent" actions on the part of defendants, the court of appeals had subject matter jurisdiction of the appeal, and a motion to transfer was properly denied. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 319, 540 P.2d 248 (1975).

**Transfer by supreme court final determination of jurisdiction of motion.** — Where the court of appeals had jurisdiction over an appeal from defendant's conviction of rape but defendant's motion for review of the order fixing appeal bond was originally docketed in the supreme court and then was transferred to the court of appeals, the transfer of that motion was a final determination of jurisdiction. *State v. Lucero*, 81 N.M. 578, 469 P.2d 727 (Ct. App. 1970).

**Law reviews.** — For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

For survey of 1990-91 appellate procedure, see 22 N.M.L. Rev. 623 (1992).

### **34-5-11. Court of appeals; quorum; decisions; rehearings.**

Three judges of the court of appeals constitute a quorum for the transaction of business, but not more than three judges shall sit in any matter on appeal. Decisions of the court shall be in writing with the grounds stated, and the result shall be concurred in by at least two judges. If any judge who participated in a hearing is unable for any reason to participate in a rehearing, or consideration of a motion for rehearing, of any matter, any other judge or acting judge of the court of appeals may participate in consideration of the motion or the case on rehearing.

**History:** 1953 Comp., § 16-7-11, enacted by Laws 1966, ch. 28, § 11.

#### **ANNOTATIONS**

**Cross references.** — For quorum of court of appeals, see N.M. Const., art. VI, § 28.

For concurrence of in opinion by majority of participating justices, see N.M. Const., art. VI, § 28.

For continuing undecided cases from term to term, see 39-3-6 NMSA 1978.

**Case certified to supreme court where two judges concurred but on different grounds.** — Where there are three separate proposed opinions of the court of appeals, the first of which would affirm the conviction of defendant on all counts, the second and third of which would reverse and remand for a new trial on two different issues, and it appears that the three proposed opinions, if filed as opinions of the court of appeals, would create uncertainty in the law in that, although there is a majority for reversal, there is no guidance for the future procedure of the case, and it further appears that the court of appeals may not call in additional judges, and, because an uncertain state of law should not exist and because of this fact an issue of substantial public interest is created and should be determined by the supreme court, the case is properly certified to the New Mexico supreme court for decision. *State v. Tijerina*, 84 N.M. 432, 504 P.2d 642 (Ct. App. 1972); See *State v. Tijerina*, 86 N.M. 31, 519 P.2d 127 (1973), cert. denied, 417 U.S. 956, 94 S. Ct. 3085, 41 L. Ed. 2d 674 (1974).

**Judge's opinion not concurred in is not "decision".** — Where a judge's opinion concerning escalating benefits under the Workmen's Compensation Act is not concurred in by another judge, that justice's view concerning escalating benefits is not a decision of the Court of Appeals, and a judgment on remand which does not provide for escalating benefits complies with the mandate and opinion of the court of appeals. *Casias v. Zia Co.*, 94 N.M. 723, 616 P.2d 436 (Ct. App. 1980).

**Experimental use of advisory committees.** — An experimental plan pursuant to which cases would be assigned by the court of appeals to advisory committees of experienced attorneys was not an unconstitutional delegation of judicial power, where

the judges reviewed the records and briefs and decided the cases. *Thompson v. Ruidoso-Sunland, Inc.*, 105 N.M. 487, 734 P.2d 267 (Ct. App. 1987).

### **34-5-12. Court of appeals; seal.**

The court of appeals may adopt a design for the seal of the court. Upon adoption, the clerk of the court shall file a facsimile and description of the design in the office of the secretary of state.

**History:** 1953 Comp., § 16-7-12, enacted by Laws 1966, ch. 28, § 12.

#### **ANNOTATIONS**

**Cross references.** — For custody and affixing of seal, see 34-1-6 NMSA 1978.

### **34-5-13. Court of appeals; publishing opinions.**

The judges of the court of appeals shall meet from time to time, select from opinions of the court of appeals and designate to the clerk of the court of appeals those which should be officially reported and published. The judges shall also supervise, amend and correct all syllabi or headnotes prefixed to the published opinions.

**History:** 1953 Comp., § 16-7-13, enacted by Laws 1966, ch. 28, § 13.

#### **ANNOTATIONS**

**Cross references.** — For sale and distribution of reports, see 12-1-3.1 and 34-4-2 NMSA 1978.

### **34-5-14. Supreme court; appellate jurisdiction; review by certiorari to court of appeals; certification of cases to supreme court.**

A. The appellate jurisdiction of the supreme court is coextensive with the state and extends to all cases where appellate jurisdiction is not specifically vested by law in the court of appeals.

B. In addition to its original appellate jurisdiction, the supreme court has jurisdiction to review by writ of certiorari to the court of appeals any civil or criminal matter in which the decision of the court of appeals:

- (1) is in conflict with a decision of the supreme court;
- (2) is in conflict with a decision of the court of appeals;



(3) involves a significant question of law under the constitution of New Mexico or the United States; or

(4) involves an issue of substantial public interest that should be determined by the supreme court.

Application to the supreme court for writ of certiorari to the court of appeals shall be filed with the clerk of the supreme court within twenty days after final action by the court of appeals. A copy of the application shall be filed by the clerk of the supreme court with the clerk of the court of appeals and the clerk of the court of appeals shall forthwith transmit the record in the case to the clerk of the supreme court. Upon filing of the application, the judgment and mandate of the court of appeals shall be stayed pending final action of the supreme court. No further briefs or oral argument in support of an application for writ of certiorari shall be filed or had in the supreme court unless so directed by the supreme court. If an application has not been acted upon within thirty days, it shall be deemed denied.

C. The supreme court has appellate jurisdiction in matters appealed to the court of appeals, but undecided by that court, if the court of appeals certifies to the supreme court that the matter involves:

(1) a significant question of law under the constitution of New Mexico or the United States; or

(2) an issue of substantial public interest that should be determined by the supreme court.

Any certification by the court of appeals under this subsection is a final determination of appellate jurisdiction.

D. The jurisdiction of the supreme court over the decisions of the court of appeals and over actions certified to it by the court of appeals is in addition to the jurisdiction of the supreme court in the issuance and determination of original writs directed to the court of appeals.

**History:** 1953 Comp., § 16-7-14, enacted by Laws 1966, ch. 28, § 14; 1972, ch. 71, § 1.

### **ANNOTATIONS**

**Cross references.** — For Uniform Certification of Questions of Law Act, see 39-7-1 NMSA 1978.

For appellate jurisdiction of supreme court, see N.M. Const., art. VI, § 2 and 39-3-2, 39-3-3, 39-3-4 NMSA 1978.

For appellate jurisdiction of court of appeals, see N.M. Const., art. VI, § 29 and 34-5-8 NMSA 1978.

For procedure on certiorari to review decision of court of appeals, see 12-502 NMRA.

For procedure on certification from court of appeals, see 12-606 NMRA.

**Significant question of constitutional law.** — Where defendant alleged in his petition for a writ of certiorari that the state violated his rights as provided under the Fifth, Sixth, and Fourteenth Amendments to the United State Constitution, and Article II, Section 14 of the New Mexico Constitution, the state supreme court had jurisdiction to review defendant's case by writ of certiorari because it involves a significant question of law under the constitution of New Mexico or the United States. *State v. Urban*, 2004-NMSC-007, 135 N.M. 279, 87 P.3d 1061.

**Establishing propriety of writ.** — Neither Rule 12-502 nor this section would require a defendant to establish the propriety of the writ of certiorari in his brief in chief. *State v. Urban*, 2004-NMSC-007, 135 N.M. 279, 87 P.3d 1061.

**Significant question of constitutional law.** — Where defendant alleged in his petition for a writ of certiorari that the state violated his rights as provided under the Fifth, Sixth, and Fourteenth Amendments to the United State Constitution, and Article II, Section 14 of the New Mexico Constitution, the state supreme court had jurisdiction to review defendant's case by writ of certiorari because it involves a significant question of law under the constitution of New Mexico or the United States. *State v. Urban*, 2004-NMSC-007, 135 N.M. 279, 87 P.3d 1061.

**Supreme court has appellate jurisdiction not given court of appeals.** — The appellate jurisdiction of the supreme court "extends to all cases where appellate jurisdiction is not specifically vested by law in the court of appeals." *State v. Weddle*, 77 N.M. 420, 423 P.2d 611 (1967).

Appellants' claim in prohibition proceedings that a nonattorney police court judge was not constitutionally qualified to hear their criminal cases arising from violations of municipal ordinances was properly taken directly from the district court to the supreme court; the appeal did not fall within the ambit of 16-7-8 NMSA 1978. *Tsiosdia v. Rainaldi*, 89 N.M. 70, 547 P.2d 553 (1976).

**Only supreme court may reverse its own precedent.** — Implicit in this section is the concept that the court of appeals is to be governed by the precedents of the supreme court, and although the supreme court, by abolishing the defense of unavoidable accident in negligence actions, affirmed the decision of the court of appeals, which had taken that same action, the supreme court made clear that it, not the court of appeals, had authority to reverse its own precedent. *Alexander v. Delgado*, 84 N.M. 717, 507 P.2d 778 (1973).

**Appeals and writs of error are in no sense to be compared to certiorari,** and the presence of the right to appeal makes inappropriate and unavailable the right to certiorari. *Roberson v. Board of Educ.*, 78 N.M. 297, 430 P.2d 868 (1967).

**Limitation on right of appeal does not extend to certiorari.** — There is no reason to assume that the legislature, in limiting the state's right to appeal in a criminal case, intended a like limitation in the granting of a writ of certiorari. On the contrary, this section indicates that these remedies are to be considered separately. *State v. Gunzelman*, 85 N.M. 295, 512 P.2d 55 (1973), overruled on other grounds, *State v. Orosco*, 113 N.M. 780, 833 P.2d 1146 (1992).

**Certiorari may be issued in criminal cases.** — The supreme court has the authority to issue writs of certiorari directed to the court of appeals in a criminal case where the conditions of this section are met, and the court's original jurisdiction to issue writs of certiorari, as provided for in N.M. Const., art. VI, § 3, leaves no doubt as to the power of the court to issue such writs. *State v. Gunzelman*, 85 N.M. 295, 512 P.2d 55 (1973), overruled on other grounds, *State v. Orosco*, 113 N.M. 780, 833 P.2d 1146 (1992).

**Claim of prosecutorial misconduct.** — The supreme court had jurisdiction by writ of certiorari to review defendant's claim he was denied a fair trial because of prosecutorial misconduct. *State v. Ashley*, 1997-NMSC-049, 124 N.M. 1, 946 P.2d 205.

**State may seek writ of certiorari.** — Although the reason for granting the writ of certiorari petitioned for by the state is based upon this section, it should be noted that N.M. Const., art. VI, § 3, in addition to the authority of N.M. Const., art. VI, § 2, and this section, states that this court "shall have a superintending control over all inferior courts; it shall also have power to issue writs of . . . certiorari . . . and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same." *State v. Gunzelman*, 85 N.M. 295, 512 P.2d 55 (1973), overruled on other grounds, *State v. Orosco*, 113 N.M. 780, 833 P.2d 1146 (1992).

**Rulings held not to raise issues of substantial public interest.** — Rulings of the court of appeals concerning statements by district attorney in closing argument held not to raise issues of substantial public interest which should be determined by the supreme court under Paragraph B(4). *Deats v. State*, 80 N.M. 77, 451 P.2d 981 (1969).

**Denial of certiorari not affirmance or precedent.** — The denial of a petition for writ of certiorari by the court of last resort to review a decision of a court of intermediate appeal is not regarded as an affirmance of such decision which raises it to the dignity of final authority. The denial cannot be utilized as precedent or authority for or against the propositions urged or defended in such proceedings, nor can it be urged as approval of the rule announced in the court of intermediate appeal. *State v. Cutnose*, 87 N.M. 300, 532 P.2d 889 (Ct. App. 1975), overruled on other grounds, *State v. McCormack*, 100 N.M. 657, 674 P.2d 1117 (1984).

**Writ of certiorari not properly granted.** — Jurisdiction by writ of certiorari was not appropriate since the issue in the case only involved a difference of opinion between the district court and the court of appeals and none of the conditions in Subsection B of this section were present. *State v. Conn*, 115 N.M. 99, 847 P.2d 744 (1993).

**Applicability of Subsection C.** — Subsection C extends to "matters appealed to the court of appeals, but undecided by that court," if the court makes the requisite certification. The word "matter" means the entire case in which the appeal is taken. *Collins ex rel. Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991).

**Cases certified where two court of appeals judges concurred but on different grounds.** — Where there are three separate opinions of the court of appeals, the first of which would affirm the conviction of defendant on all counts, the second and third of which would reverse and remand for a new trial on two different issues, and it appears that the three proposed opinions, if filed as opinions of the court of appeals, would create uncertainty in the law in that, although there is a majority for reversal, there is no guidance for the future procedure of the case, and it further appears that the court of appeals may not call in additional judges, and, because an uncertain state of law should not exist and because of this fact an issue of substantial public interest is created and should be determined by the supreme court, the case is properly certified to the New Mexico supreme court for decision. *State v. Tijerina*, 84 N.M. 432, 504 P.2d 642 (Ct. App. 1972). See *State v. Tijerina*, 86 N.M. 31, 519 P.2d 127 (1973), cert. denied, 417 U.S. 956, 94 S. Ct. 3085, 41 L. Ed. 2d 674 (1974).

**Instructions on intent in criminal cases.** — The matter of instructions concerning the requisite intent in criminal cases is one of substantial public interest that should be decided by the New Mexico supreme court. *State v. Boyer*, 84 N.M. 759, 508 P.2d 29 (Ct. App. 1973); *State v. Vickery*, 84 N.M. 758, 508 P.2d 28 (Ct. App. 1973); *State v. Fuentes*, 84 N.M. 757, 508 P.2d 27 (Ct. App. 1973); *State v. Puga*, 84 N.M. 756, 508 P.2d 26 (Ct. App. 1973).

**Interlocutory appeal granted to consider contributory negligence doctrine.** — The supreme court granted an interlocutory appeal from the court of appeals pursuant to this section to determine the current validity of contributory negligence in New Mexico law. *Syroid v. Albuquerque Gravel Prods. Co.*, 86 N.M. 235, 522 P.2d 570 (1974).

**Delay alone insufficient ground for certification.** — Delay by the court of appeals in deciding an appeal of a decision holding a statutory act unconstitutional was an insufficient ground for certification to the supreme court, where the delay occurred because primary consideration was given to priority cases and there was no showing that the assigned panel lacked authority to decide the issue, was unable to decide it, or felt it should not decide the issue because it was before the supreme court in other cases. *Deer Mesa Corp. v. Los Tres Valles Special Zoning Dist. Comm'n*, 103 N.M. 675, 712 P.2d 21 (Ct. App. 1985).

**Minimum procedural requirements must be met.** — Even where applications or petitions are required by statute which also provides for liberal interpretation, certain minimum requirements must be met. *Roberson v. Board of Educ.*, 78 N.M. 297, 430 P.2d 868 (1967).

**Court of appeals cannot review extensions of time after certification.** — The court of appeals is without authority to review supreme court orders granting extensions of time to commence trial, where defendant's cause, challenging the validity of the supreme court's ex parte order granting the state an extension of time in which to try defendant, was certified to that court. *State v. Carter*, 87 N.M. 41, 528 P.2d 1281 (Ct. App. 1974).

**Substantial public interest.** — The certified question of whether New Mexico should adopt the rule adopted in Arizona that, as a matter of law and public policy, the attractive nuisance doctrine should not be extended to flumes and irrigation ditches is an issue of substantial public interest. *Carmona v. Hagerman Irrigation Co.*, 1998-NMSC-007, 125 N.M. 59, 957 P.2d 44.

The application of the venue provisions of 38-3-1 NMSA 1978 to a national banking association presented an issue of "substantial public interest" so as to justify certification under Subsection D(2). *Sunwest Bank v. Nelson*, 1998-NMSC-012, 125 N.M. 170, 958 P.2d 740.

Supreme court had jurisdiction to hear appeal from the court of appeals' denial of municipal judge's Writ of Superintendent Control brought against a presiding judge who voided his DWI sentences; the question was one of "substantial public interest" and, therefore, properly before the supreme court under this section. *Sims v. Ryan*, 1998-NMSC-019, 125 N.M. 357, 961 P.2d 782.

**Law reviews.** — For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

For article, "Survey of New Mexico Law, 1982-83: Civil Procedure," see 14 N.M.L. Rev. 17 (1984).

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).

### **34-5-15. Court of appeals; electronic services fee.**

The clerk of the court of appeals may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund.

History: Laws 2009, ch. 112, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## ARTICLE 6 District Courts

### 34-6-1. Judicial districts.

The state shall be divided into judicial districts as follows:

- A. first judicial district, the counties of Santa Fe, Rio Arriba and Los Alamos;
- B. second judicial district, the county of Bernalillo;
- C. third judicial district, the county of Dona Ana;
- D. fourth judicial district, the counties of Guadalupe, San Miguel and Mora;
- E. fifth judicial district, the counties of Eddy, Chaves and Lea;
- F. sixth judicial district, the counties of Grant, Luna and Hidalgo;
- G. seventh judicial district, the counties of Socorro, Torrance, Sierra and Catron;
- H. eighth judicial district, the counties of Taos, Colfax and Union;
- I. ninth judicial district, the counties of Curry and Roosevelt;
- J. tenth judicial district, the counties of Quay, DeBaca and Harding;
- K. eleventh judicial district, the counties of McKinley and San Juan;
- L. twelfth judicial district, the counties of Otero and Lincoln; and
- M. thirteenth judicial district, the counties of Cibola, Sandoval and Valencia.

**History:** Laws 1941, ch. 75, § 1; 1941 Comp., § 16-301; Laws 1951, ch. 177, § 1 (1); 1953 Comp., § 16-3-1; Laws 1961, ch. 188, § 1; 1971, ch. 52, § 1; 1992, ch. 70, § 1.

## ANNOTATIONS

**Cross references.** — For district judge serving on supreme court, see N.M. Const., art. VI, § 6.

For election and term of office of district judges, see N.M. Const., art. VI, § 12.

For jurisdiction of district courts, see N.M. Const., art. VI, § 13.

For qualifications and residence of district court judges, see N.M. Const., art. VI, § 14.

For selection of substitute judges, see N.M. Const., art. VI, §§ 15, 28.

For increasing number of judges in district, see N.M. Const., art. VI, § 16.

For rearranging districts, see N.M. Const., art. VI, § 16.

For disqualification of judges, see N.M. Const., art. VI, § 18.

For ineligibility of district judges for nonjudicial offices, see N.M. Const., art. VI, § 19.

For original judicial districts, see N.M. Const., art. VI, § 25.

For district judge acting as judge of court of appeals, see N.M. Const., art. VI, § 28.

For powers of district judges being unaffected by city-county consolidation, see 3-16-11 NMSA 1978.

For power to revoke deputy sheriff 's commission, see 4-41-8 NMSA 1978.

For duty of sheriff to attend court, see 4-41-16C NMSA 1978.

For appointment of appraisers for sale of county property, see 4-47-4 NMSA 1978.

For children's court division, see 32A-1-5 NMSA 1978.

For trial de novo on appeal to district court, see 39-3-1 NMSA 1978.

For concurrent jurisdiction in matters of informal probate, see 45-1-302.1 NMSA 1978.

**The 1992 amendment**, effective March 9, 1992, inserted "Cibola," in Subsection M.

**Appropriations.** — Laws 2006, ch. 99, § 8, effective July 1, 2006, appropriates funds from the general fund for expenditure in fiscal year 2007 for salaries and benefits and furniture, supplies and equipment for additional district judges and support staff for the third, fifth, ninth, eleventh and thirteenth judicial districts and provides that any unexpended or unencumbered balance remaining at the end of the fiscal year 2007 shall revert to the general fund.

**Controlling statute.** — Laws 1951, ch. 177, represents a later expression of the legislative will than Laws 1951, ch. 176, and must control as to the terms of court in the third judicial district. *State v. Montiel*, 56 N.M. 181, 241 P.2d 844 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 5.

21 C.J.S. Courts § 105.

### **34-6-2. District court terms.**

The district court shall always be in session. At least two regular terms for each county within a judicial district shall be established by court rule. When for any reason a district judge is preventing from attending a regular term of the district court on the first day, he may, at any time during that term, enter an order fixing another return day for all process, bonds and recognizances returnable at that term. The order fixing the return day shall be filed with the district court clerk, who shall post a copy at the courthouse for at least ten days before the return day. Juries shall be empaneled, cases shall be set and tried and all other business of the district court shall be conducted in any county at any time as directed by the district judge.

**History:** 1953 Comp., § 16-3-2, enacted by Laws 1968, ch. 69, § 5.

### **ANNOTATIONS**

**Cross references.** — For terms of district courts, see N.M. Const., art. VI, § 13.

**Repeals and reenactments.** — Laws 1961, ch. 188, § 5, repealed former 16-3-2, 1953 Comp., relating to number of judges in first judicial district divisions, and enacted another 16-3-2, 1953 Comp., dealing with the same subject matter. Laws 1968, ch. 69, § 69, repeals 16-3-2, 1953 Comp., and the above section was enacted by Laws 1968, ch. 69, § 5.

**"Sessions" of court include only** that time during which a court actually conducts business. 1979 Op. Att'y Gen. No. 79-4.

**Determination at arraignment is determination of court.** — The determination by the judge at arraignment that defendant was not entitled to court-appointed counsel was a determination of the court. In this case, it was the court of the first judicial district. The trial judge who presided carried out judicial duties as the court of the district. There is only one court. It was the court that inquired into defendant's indigency. If defendant wished the court to reconsider the matter, he should have brought it to the attention of the court. *State v. Anaya*, 76 N.M. 572, 417 P.2d 58 (1966).

**Trial cannot be conducted between terms.** — Terms of courts for the several counties having been provided by statute for the trial of causes, the trial court, in the



intervals between those terms, was, for the purpose of conducting trials, no longer a court. *Staab v. Atlantic & P.R.R.*, 3 N.M. (Gild.) 606, 9 P. 381 (1886).

**Arranging nonjury trials.** — Under former statute, no fixed terms were set for nonjury trials but they were arranged through court order and proper notice in adversary proceedings. *Peisker v. Chavez*, 46 N.M. 159, 123 P.2d 726 (1942).

**Authorizing vacation hearings on motions does not authorize final judgment.** — Terms of statute permitting judge to hear and determine motions in vacation could not be extended so as to authorize a decision in vacation in actions at law which amounts to final judgment in the case, or any branch of it, from which, if rendered in term, an appeal would lie, even though the parties should consent thereto. *Colter v. Marriage*, 3 N.M. (Gild.) 604, 9 P. 383 (1886).

**Vacation decrees proper where court is always in session.** — Since Comp. Laws 1884, § 1829, declared that the district courts should be in session at all times, with authority to render final decrees in equity, no action of the court at a regular term was required to give validity to decrees rendered in vacation. *United States v. Gwyn*, 4 N.M. (Gild.) 635, 42 P. 167 (1888).

**Proceedings at unauthorized term void.** — Where proceedings were tried at term not authorized by statute, they were coram non iudice and void. *Bumpers v. Wallace*, 56 N.M. 462, 245 P.2d 383 (1952).

Under former statute, if a term of court had failed for any cause, a special term might be called, but where a criminal conviction was had at a term not authorized by law, the proceedings were coram non iudice and the judgment was void. *State v. Montiel*, 56 N.M. 181, 241 P.2d 844 (1952).

**If term authorized, conviction not subject to attack.** — Under former statute, court rightly refused to sustain motion in arrest of judgment on asserted ground that term of court in which defendant was tried and convicted was a special term, that the special term was unauthorized by law and that the proceedings of the term were coram non iudice. *Territory v. Hicks*, 6 N.M. 596, 30 P. 872 (1892), overruled on other grounds, *Haynes v. United States*, 9 N.M. 519, 56 P. 282 (1899).

**Sentencing may be postponed to later term.** — Under former statute relating to special terms, postponement of a sentence from a special term at which a verdict of guilty was rendered to a regular term two weeks later, at defendant's request, did not render the proceedings void for want of jurisdiction. *Gonzales v. Cunningham*, 164 U.S. 612, 17 S. Ct. 182, 41 L. Ed. 572 (1896).

**Duration of term.** — A term of a district court, begun and held by any judge, continues its existence until the legal day for beginning another term, unless sooner adjourned, although another term of the same court for another county has been held, as required

by law, in the meantime, by the same judge. *Territory v. Barela*, 15 N.M. 520, 110 P. 845 (1910); *Territory ex rel. Hubbell v. Armijo*, 14 N.M. 205, 89 P. 267 (1907).

**Discretion to continue term.** — Compiled Laws 1884, § 543, which directed courts to be held in the different counties at the times fixed by law and authorized their continuance until adjourned by order of court, imposed a duty and conferred a discretion which should prevail if exercise of discretion rendered the discharge of the duty impracticable. *Borrego v. Territory*, 8 N.M. 446, 46 P. 349 (1896).

Former section, providing that special terms should not conflict with regular terms, merely declared against a conflict and did not declare the cessation or illegality of the proceedings of the seemingly conflicting special term; under the statute, length of special term was as absolutely in the control of the presiding judge as regular terms are without any condition or restrictions as to duration in furtherance of justice. *Borrego v. Territory*, 8 N.M. 446, 46 P. 349 (1896).

The discretion of the trial judge in continuing a special term to conclude a pending case, even if prolonged beyond the day fixed for the regular term, was not controlled by former statute. *Gonzales v. Cunningham*, 164 U.S. 612, 17 S. Ct. 182, 41 L. Ed. 572 (1896).

**Order held to adjourn court, not term.** — An order of adjournment, "It is ordered that the court do now adjourn until court in course," adjourns the court and not the term. *Henry v. Lincoln Lucky & Lee Mining Co.*, 13 N.M. 384, 85 P. 1043 (1906).

**Effect of elimination of term.** — Fact that Laws 1905, ch. 89, § 1, eliminated a March term of court did not disqualify the jury commissioners who would have served that term from serving for the new April term. *Territory v. Emilio*, 14 N.M. 147, 89 P. 239 (1907).

On appeal from justice of the peace (now magistrate) the clerk of the district court must docket the case on or prior to the second day of the next ensuing term, and the justice may do so (where the transcript is received and the docket fees are paid) before the first day of the term. *Reece v. Montano*, 48 N.M. 1, 144 P.2d 461 (1943).

**Failure to move for disqualification at term may lose right.** — Because the plaintiff failed to file an affidavit of disqualification after the first term had passed for hearing on motion by defendant for dismissing action on contention that over two years had transpired since anything had happened to bring the case to final judgment, defendant's right to do so had been lost. *Heron v. Gaylor*, 53 N.M. 50, 201 P.2d 370 (1948); *Heron v. Gaylor*, 53 N.M. 44, 201 P.2d 366 (1948). See 38-3-10 NMSA 1978.

**Commitment hearings held at commitment facility not precluded.** — Absent a showing by a "developmentally disabled" person that his substantive rights would in any way be abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at

the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. 79-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 21 et seq.

21 C.J.S. Courts § 111 et seq.

### **34-6-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 278, § 4 repeals 34-6-3 NMSA 1978, as amended by Laws 1990, ch. 115, § 3, concerning salaries of district judges, effective January 1, 1994. For provisions of former section, see New Mexico One Source of Law. For present comparable provisions, see 34-1-9 NMSA 1978.

### **34-6-4. Judges; first judicial district.**

There shall be eight district judges in the first judicial district.

History: 1953 Comp., § 16-3-3.1, enacted by Laws 1968, ch. 69, § 7; 1969, ch. 229, § 1; 1976 (S.S.), ch. 39, § 1; 1980, ch. 141, § 1; 1981, ch. 330, § 1; 1987, ch. 148, § 1; 1997, ch. 180, § 1; 2010, ch. 3, § 1.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1957, ch. 222, § 2, repealed former 16-3-3.1, 1953 Comp., relating to powers and duties of senior or presiding judge of the first district, and a new 16-3-3.1, 1953 Comp., was enacted by Laws 1968, ch. 69, § 7.

**The 1997 amendment,** effective July 1, 1997, increased the number of judges from six to seven.

**The 2010 amendment,** effective February 23, 2010, increased the number of district judges from seven judges to eight judges.

**Temporary provisions.** — Laws 2010, ch. 3, § 3 provided that the additional district judgeship provided for in Laws 2010, ch. 3 shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

**Compiler's notes.** — Laws 2010, ch. 3, § 5 provided that if Laws 2010, ch. 3, §§ 1 and 2 passed by less than a two-thirds vote of either house of the legislature, the effective date would be January 1, 2011. The legislation passed by a vote of 65-0 in the House of Representatives and 35-0 in the Senate.

### **34-6-5. Judges; second judicial district.**

There shall be twenty-six district judges in the second judicial district.

History: 1953 Comp., § 16-3-3.2, enacted by Laws 1968, ch. 69, § 8; 1969, ch. 228, § 1; 1973, ch. 301, § 1; 1977, ch. 310, § 1; 1978, ch. 23, § 1; 1980, ch. 143, § 1; 1984, ch. 111, § 1; 1993, ch. 256, § 1; 1995, ch. 66, § 1; 1997, ch. 180, § 2; 2005, ch. 284, § 1; 2007, ch. 140, § 1.

#### ANNOTATIONS

**Repeals and reenactments.** — Laws 1961, ch. 188, § 12, repealed former 16-3-3.2, 1953 Comp., relating to principal office of the judge of division three, first district, and a new 16-3-3.2, 1953 Comp., was enacted by Laws 1968, ch. 69, § 8.

**The 1993 amendment,** effective January 1, 1994, substituted "twenty" for "nineteen".

**The 1995 amendment,** effective January 1, 1996, substituted "twenty-one" for "twenty".

**The 1997 amendment,** effective July 1, 1997, substituted "twenty-three" for "twenty-one".

**The 2005 amendment,** effective July 1, 2005, changed the number of judges from twenty-three to twenty-four.

**The 2007 amendment,** effective July 1, 2007, increased the number of district judges from twenty-four to twenty-six.

**Temporary provision.** — Laws 2007, ch. 140, § 5 provided that the additional district judgeships shall be filled by appointment by the governor.

#### **34-6-6. Judges; third judicial district.**

There shall be eight district judges in the third judicial district.

History: 1953 Comp., § 16-3-3.3, enacted by Laws 1968, ch. 69, § 9; 1981, ch. 329, § 1; 1984, ch. 111, § 2; 1992, ch. 72, § 1; 1995, ch. 178, § 1; 2003, ch. 348, § 1; 2006, ch. 99, § 1.

#### ANNOTATIONS

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-3.3, 1953 Comp., relating to process and expenditures in the first district, and a new 16-3-3.3, 1953 Comp. was enacted by Laws 1968, ch. 69, § 9.

**The 1992 amendment,** effective March 9, 1992, substituted "five" for "four".

**The 1995 amendment**, effective January 1, 1996, increased the judges from five to six and provided the judge will be appointed for the purpose of handling domestic relations cases.

**The 2003 amendment**, effective June 20, 2003, increased the number of district judges from six to seven.

**The 2006 amendment**, effective July 1, 2006, increased the number of judges from seven to eight.

**Temporary provisions.** — Laws 2006, ch. 99, § 7, effective July 1, 2006, provided that additional judgeships shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

### **34-6-7. Judges; fourth judicial district.**

There shall be three district judges in the fourth judicial district.

History: 1953 Comp., § 16-3-3.4, enacted by Laws 1968, ch. 69, § 10; 1978, ch. 24, § 1; 2007, ch. 140, § 2.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1961, ch. 188, § 12, repealed former 16-3-3.4, 1953 Comp., relating to initial appointment and election of judge for division three, first district, and a new 16-3-3.4, 1953 Comp. was enacted by Laws 1968, ch. 69, § 10.

**The 2007 amendment**, effective July 1, 2007, increased the number of district judges from two to three.

**Temporary provision.** — Laws 2007, ch. 140, § 5 provided that the additional district judgeships shall be filled by appointment by the governor.

### **34-6-8. Judges; fifth judicial district.**

There shall be ten district judges in the fifth judicial district.

History: 1953 Comp., § 16-3-3.5, enacted by Laws 1968, ch. 69, § 11; 1973, ch. 301, § 2; 1976, ch. 52, § 1; 1979, ch. 208, § 1; 1984, ch. 111, § 3; 1994, ch. 65, § 1; 1994, ch. 77, § 1; 2006, ch. 99, § 2.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1961, ch. 188, § 12, repealed former 16-3-3.5, 1953 Comp., relating to initial appointment and election of additional judge for division

four, first district, and a new 16-3-3.5, 1953 Comp., was enacted by Laws 1968, ch. 69, § 11.

**1994 amendments.** — Identical amendments to this section were enacted by Laws 1994, ch. 65, § 1 and Laws 1994, ch. 77, § 1, both effective January 1, 1995 and both approved March 4, 1994, to increase the number of judges from seven to eight.

**The 2006 amendment,** effective July 1, 2006, increased the number of judges from eight to ten.

**Temporary provisions.** — Laws 2006, ch. 99, § 7, effective July 1, 2006, provided that additional judgeships shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

### **34-6-9. Judges; sixth judicial district.**

There shall be four district judges in the sixth judicial district. The judge of division 1 shall reside and maintain the judge's principal office in Grant county. The judge of division 4 shall reside and maintain the judge's principal office in Luna county.

History: 1953 Comp., § 16-3-3.6, enacted by Laws 1968, ch. 69, § 12; 1974, ch. 77, § 1; 1983, ch. 129, § 1; 2003, ch. 348, § 2; 2007, ch. 140, § 3.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1961, ch. 188, § 12, repealed former 16-3-3.6, 1953 Comp., relating to principal office of judge of division four, first district, and a new 16-3-3.6, 1953 Comp., was enacted by Laws 1968, ch. 69, § 12.

**The 2003 amendment,** effective June 20, 2003, increased the number of district judges from two to three.

**The 2007 amendment,** effective July 1, 2007, increased the number of district judges from three to four and requires the judge of Division 4 to reside in and maintain his office in Luna county.

**Temporary provision.** — Laws 2007, ch. 140, § 5 provided that the additional district judgeships shall be filled by appointment by the governor.

### **34-6-10. Judges; seventh judicial district.**

There shall be three district judges in the seventh judicial district.

**History:** 1953 Comp., § 16-3-3.7, enacted by Laws 1968, ch. 69, § 13; 1977, ch. 132, § 1; 1995, ch. 178, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1961, ch. 188, § 12, repealed former 16-3-3.7, 1953 Comp., relating to term of appointed judge for division four, first district, and a new 16-3-3.7, 1953 Comp., was enacted by Laws 1968, ch. 69, § 13.

**The 1995 amendment,** effective January 1, 1996, increased the number of judges from two to three.

**Temporary provisions.** — Laws 1995, ch. 178, § 4, effective January 1, 1996, provides that the additional judgeships provided for in the act shall be filled by appointment by the governor pursuant to Article 6, Section 36 of the constitution of New Mexico.

### **34-6-11. Judges; eighth judicial district.**

There shall be three district judges in the eighth judicial district. At least one of the judges shall maintain the judge's principal office in Colfax or Union county and at least one of the judges shall maintain the judge's principal office in Taos county.

History: 1953 Comp., § 16-3-3.8, enacted by Laws 1968, ch. 69, § 14; 1978, ch. 23, § 2; 1996, ch. 23, § 1; 2011, ch. 41, § 1.

## ANNOTATIONS

**The 1996 amendment,** effective March 4, 1996, rewrote the section.

**The 2011 amendment,** effective July 1, 2011, increased the number of judges from two to three; required that at least one judge maintain a principal office in Colfax or Union County and that at least one judge maintain a principal office in Taos County; and deleted the former provisions that provided the procedure for the selection of a chief judge by two judges.

**Temporary provisions.** — Laws 2011, ch. 41, § 2 provided that the additional district judgeship provided for in Laws 2011, ch. 41, § 1 shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

### **34-6-12. Judges; ninth judicial district.**

There shall be five district judges in the ninth judicial district. At least one of the district judges shall be designated to maintain a principal office in Roosevelt county. As used in this section, "maintain a principal office" means holding court or being available to hold court no less than one hundred forty days during each calendar year.

History: 1953 Comp., § 16-3-3.9, enacted by Laws 1968, ch. 69, § 15; 1974, ch. 77, § 2; 1984, ch. 111, § 4; 1985, ch. 138, § 1; 2005, ch. 284, § 2; 2006, ch. 99, § 3; 2011, ch. 20, § 1.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, increased the number of judges from three to four.

**The 2006 amendment**, effective July 1, 2006, increased the number of judges from four to five.

**The 2011 amendment**, effective June 17, 2011, required at least one of the judges in the ninth judicial district to maintain a principal office in Roosevelt county.

### **34-6-13. Judges; tenth judicial district.**

There shall be one district judge in the tenth judicial district.

**History:** 1953 Comp., § 16-3-3.10, enacted by Laws 1968, ch. 69, § 16.

### **34-6-14. Judges; eleventh judicial district.**

There shall be eight district judges in the eleventh judicial district. The judges of divisions one, three, four, six and eight shall reside and maintain their principal offices in San Juan county. The judges of divisions two, five and seven shall reside and maintain their principal offices in McKinley county.

History: 1953 Comp., § 16-3-3.11, enacted by Laws 1968, ch. 69, § 17; 1974, ch. 77, § 3; 1984, ch. 111, § 5; 1995, ch. 178, § 3; 1995, ch. 179, § 1; 2006, ch. 99, § 4.

## ANNOTATIONS

**1995 amendments.** — Laws 1995, ch. 178, § 3, effective January 1, 1996, increased the number of judges from four to five and added a last sentence providing that the judges of divisions two and five shall reside and maintain their offices in McKinley county and that the additional judge be appointed for the purpose of handling domestic relations cases.

Laws 1995, ch. 179, § 1, effective January 1, 1996, also amended this section to increase the number of judges from four to six.

**The 2005 amendment**, effective July 1, 2005, increased the number of judges from six to seven and provided that the judge in division seven shall reside and maintain a principal office in McKinley county.



**The 2006 amendment**, effective July 1, 2006, increased the number of judges from seven to eight.

**Appropriations.** — Laws 2005, ch. 34, § 3, effective June 17, 2005, appropriates \$125,000 from the general fund to the eleventh judicial district for expenses.

Laws 2005, ch. 284, § 11, effective July 1, 2005, appropriates \$312,429 from the general fund for expenditure in fiscal year 2006 to the eleventh judicial district for salaries and benefits and furniture, supplies and equipment for one additional district judge and support staff.

**Temporary provisions.** —Laws 2006, ch. 99, § 7, effective July 1, 2006, provides that additional judgeships shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

### **34-6-15. Judges; twelfth judicial district.**

There shall be four district judges in the twelfth judicial district. The judge of division three shall reside and maintain his principal office in Lincoln county.

**History:** 1953 Comp., § 16-3-3.12, enacted by Laws 1971, ch. 52, § 2; 1974, ch. 77, § 4; 1984, ch. 111, § 6; 1993, ch. 274, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective January 1, 1994, increased the number of judges from three to four.

**Appropriations.** — Laws 2005, ch. 34, § 3, effective June 17, 2005, appropriates \$127,800 from the general fund to the twelfth judicial district for expenses.

### **34-6-16. Judges; thirteenth judicial district.**

There shall be seven district judges in the thirteenth judicial district. The judges of divisions one, three and six shall reside and maintain their principal offices in Valencia county. The judges of divisions two, five and seven shall reside and maintain their principal offices in Sandoval county. The judge of division four shall reside and maintain the judge's principal offices in Cibola county.

**History:** 1953 Comp., § 16-3-3.13, enacted by Laws 1971, ch. 52, § 3; 1974, ch. 77, § 5; 1979, ch. 302, § 1; 1985, ch. 212, § 1; 1992, ch. 70, § 2; 2003, ch. 254, § 1; 2006, ch. 99, § 5.

#### **ANNOTATIONS**

**The 1992 amendment**, effective March 9, 1992, increased the number of judges from four to five; added the second sentence; and rewrote the third sentence, which formerly read: "The judge of division two shall reside and maintain his principal office in Sandoval county."

**The 2003 amendment**, effective July 1, 2003, increased the number of judges from five to six; and inserted "and six" following "three" in the second sentence.

**The 2006 amendment**, effective July 1, 2006, increased the number of judges from six to seven.

**Temporary provisions.** — Laws 2006, ch. 99, § 7, effective July 1, 2006, provides that additional judgeships shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

### **34-6-17. Judges; principal offices.**

The principal office of each district judge shall be at the county seat of a county within the judicial district as provided by rule of the district court. When the convenience of the public can be better served by establishment of an additional office within the county, this may be provided by rule of the district court.

**History:** 1953 Comp., § 16-3-4, enacted by Laws 1968, ch. 69, § 18.

## **ANNOTATIONS**

**Cross references.** — For personnel and travel expenses, see 34-6-23 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repeals former 16-3-4, 1953 Comp., relating to process and expenditures in the first judicial district.

**Commitment hearing held at commitment facility not precluded.** — Absent a showing by a "developmentally disabled" person that his substantive rights would in any way be abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. No. 79-20.

### **34-6-18. Judges; multiple-judge districts; divisions; presiding judges.**

In judicial districts having more than one district judge:

A. the separate judicial positions shall be designated by divisions numbered consecutively from one through the total number of judges authorized for the district. Any additional judge authorized within a judicial district shall be designated as judge of

the next consecutive division. In all appointments, nominations and elections of district judges, the particular judicial offices shall be identified by the division number;

B. there shall be no separation of the work of the district court clerk's office except for identification of each district judge by division. All judges of a judicial district have equal judicial authority, rank and precedence; and

C. unless otherwise designated by rule of the district court, the judge of division one shall be the presiding judge of the district.

**History:** 1953 Comp., § 16-3-5, enacted by Laws 1968, ch. 69, § 19.

## ANNOTATIONS

**Cross references.** — For children's court division, see 32A-1-5 NMSA 1978.

**Repeals and reenactments.** — Laws 1961, ch. 121, § 4, repealed former 16-3-5, 1953 Comp., relating to judges in the second judicial district, and a new 16-3-5, 1953 Comp., dealing with the same subject matter, was enacted by Laws 1961, ch. 121, § 1. Laws 1968, ch. 69, § 69, repealed 16-3-5, 1953 Comp.

**Void sentence may be vacated by judge of another division** of the same district; it is the same court that acts in each instance. *State v. Peters*, 69 N.M. 302, 366 P.2d 148 (1961), cert. denied, 369 U.S. 831, 82 S. Ct. 849, 7 L. Ed. 2d 796 (1962).

**Restrictions on second judge.** — The only restraint upon a second judge in passing upon an interlocutory issue decided by another judge in the same case is one of comity only, which in no way infringes upon the power of the second judge to act. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 319, 540 P.2d 248 (1975).

**Judge may impose sanctions for violations of subsequent orders.** — One judge's prior oral interlocutory order staying discovery depositions pending decision on a motion to dismiss did not divest another judge of the same court of authority to enter a subsequent interlocutory order concerning depositions in the same case; and having authority as a judge of the district court to enter the orders concerning depositions, the second judge thus had authority to enter orders imposing sanctions when his discovery orders were violated. *Miller v. City of Albuquerque*, 88 N.M. 324, 540 P.2d 254 (Ct. App.), cert. denied, 88 N.M. 319, 540 P.2d 248 (1975).

**Terms of additional judge begin and end with other judges.** — In order to preserve the uniformity written into the constitution in respect to the terms of district judges and district attorneys, such terms will begin and end at the same time, including the terms of additional judges appointed by the governor. 1974 Op. Att'y Gen. No. 74-9; 1974 Op. Att'y Gen. No. 74-31.

The term of office of an individual elected to a judgeship is to end on the same date as all other district judgeships. 1974 Op. Att'y Gen. No. 74-31.

**Judge must be reimbursed for expenses of successful defense of civil suit.** — A district judge should be reimbursed for expenses incurred in defending a civil suit brought against him for acts committed in his capacity as a district judge if he is successful in defending himself. If, however, he is not successful in defending himself, it follows that he must have acted through malice or other improper motive, or acted completely without jurisdiction; and in that case he should bear the costs of his action himself. 1957-58 Op. Att'y Gen. No. 57-128.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 C.J.S. Courts §§ 105, 123.

### **34-6-19. Personnel; designation.**

The district court shall appoint a district court clerk for each county of the judicial district. One person may be named as the clerk for more than one county. Deputy clerks and other personnel, including interpreters, bailiffs and secretaries as required, may be employed. The duties and place of employment shall be designated by the court.

**History:** 1953 Comp., § 16-3-6, enacted by Laws 1968, ch. 69, § 20.

### **ANNOTATIONS**

**Cross references.** — For clerks making records, issuing process and preserving and affixing seal, see 34-1-6 NMSA 1978.

For appointment of interpreters and translators, see 34-1-7 NMSA 1978.

For interpreter responsibilities, see 23-111 NMRA.

For county clerk performing district court clerk's duties unless otherwise provided, see N.M. Const., art. VI, § 22.

For clerks' duties in replevin actions, see 42-8-20 NMSA 1978.

**Repeals and reenactments.** — Laws 1961, ch. 121, § 4, repealed former 16-3-6, 1953 Comp., relating to powers of judges of the second judicial district, and a new 16-3-6, 1953 Comp., dealing with the same subject matter, was enacted by Laws 1961, ch. 121, § 2. Laws 1968, ch. 69, § 69, repealed 16-3-6, 1953 Comp.

**Clerk de facto.** — Where county clerk had presumably authorized another person to serve as her deputy and such person had been recognized in that capacity for some two years by the bench and bar and had signed and sealed court records during that time without objection, she would be deemed to be, at least, a clerk de facto. *Heron v. Gaylor*, 49 N.M. 62, 157 P.2d 239 (1945).

**Deputy may certify record in clerk's name.** — A certification of a record in the name of the clerk by the clerk's deputy was sufficient. *Territory v. Christman*, 9 N.M. 582, 58 P. 343 (1899).

**Commitment hearing at commitment facility not precluded.** — Absent a showing by a "developmentally disabled" person that his substantive rights would in any way be abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. No. 79-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Clerks of Court §§ 2, 39.

Validity, construction, and application of statutes providing for entry of default judgment by clerk without intervention of court or judge, 158 A.L.R. 1091.

Use of interpreter in court proceedings, 172 A.L.R. 923.

Liability of clerk of court or surety on bond for negligent or wrongful acts of deputies or assistants, 71 A.L.R.2d 1140.

21 C.J.S. Courts §§ 107 et seq., 236 et seq.

### **34-6-20. Personnel; official court reporters; secretaries.**

A. Each district judge shall select an official court reporter to record the proceedings of his court as required. All notes, records and evidence taken by the reporter shall be deposited with the district court clerk of the county in which the proceeding is docketed.

B. Each full-time official court reporter of the district court shall receive a salary fixed by the district court, exclusive of transcript fees, for court reporting, secretarial and other duties performed for the district court. Official court reporters employed on a part-time basis by the district court may be paid at a rate fixed by the district court not to exceed standard rates for such service in the area for all services required of them, exclusive of transcript fees.

C. Official court reporters shall, upon request, furnish typewritten transcripts of testimony and proceedings recorded by them in any cause at a maximum charge of one dollar sixty-five cents (\$1.65) a page for an original with three copies. A page of transcription consists of not less than twenty-five typewritten lines on a good grade of paper, eight and one-half inches by thirteen inches in size, prepared for binding at the top and having margins of not more than one and three-fourths inches at the left and one-half inch at the right. Type shall be pica size with ten letters to the inch. The supreme court may provide by rule for decreases in the maximum charge when transcripts are not furnished within time limits prescribed by the supreme court. In any

matter in which the district court has granted free process to the party requesting a transcript, payment of the charges shall be made from funds appropriated to the district court.

**History:** 1953 Comp., § 16-3-7, enacted by Laws 1968, ch. 69, § 21; 1969, ch. 45, § 1.

## ANNOTATIONS

**Cross references.** — For requirement that clerk record proceedings, see 34-1-6 NMSA 1978.

For appointment of stenographer by master, see Paragraph A of 1-080 NMRA.

For use of transcript as evidence, see Paragraph B of 1-080 NMRA.

For record on appeal, see 12-209 and 12-211 NMRA.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-7, 1953 Comp., relating to number of judges and divisions in the fifth judicial district.

**Section requires page to be not less than 25 lines,** and does not mean it cannot be more than 25 lines. *Four Hills Country Club v. Bernalillo County Property Tax Protest Bd.*, 94 N.M. 709, 616 P.2d 422 (Ct. App. 1979).

**New trial granted where record could not be reconstructed.** — Defendant, convicted of larceny, gave timely notice of appeal. However, due to unexplained technical difficulties, the court reporter was unable to prepare a transcript of proceedings in the cause. It was held that fault for the tapes' inaudibility could not be assessed against defendant and since it was impossible to reconstruct a record of the proceedings because of defendant's trial counsel's inability to recall the events at trial, to deny defendant a new trial would be to deny defendant the right of appeal guaranteed by the New Mexico constitution. *State v. Moore*, 87 N.M. 412, 534 P.2d 1124 (Ct. App. 1975).

**Testimony of stenographer held hearsay.** — Testimony of a court stenographer concerning what a witness said at a former trial was hearsay because the stenographer's testimony was based on notes taken during the former trial and which the stenographer used to refresh memory. *Kirchner v. Laughlin*, 5 N.M. 365, 23 P. 175 (1890).

**Reporter not entitled to additional compensation.** — The court reporter is paid a salary for full-time application to court reporting and such other duties as may be assigned by the judge, and the court reporter would not be entitled to receive any other compensation for performing duties in the clerk's office as a deputy clerk. 1964 Op. Att'y Gen. No. 64-152.

A district court reporter and a juvenile probation officer, full-time employees of the district court, are not entitled to additional compensation for services undertaken in magistrate court during regular working hours, aside from per diem and travel expenses authorized in 34-6-23 NMSA 1978. 1969 Op. Att'y Gen. No. 69-122.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Failure or refusal of state court judge to have record made of bench conference with counsel in criminal proceeding, 31 A.L.R.5th 704.

### **34-6-21. Personnel; state employees.**

The district courts are agencies of the judicial department of the state government. Personnel of the district court are subject to all laws and regulations applicable to state offices and agencies and state officers and employees except where otherwise specially provided by law.

**History:** 1953 Comp., § 16-3-8, enacted by Laws 1968, ch. 69, § 22.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-8, 1953 Comp., relating to powers and duties of the senior or presiding judge of the fifth judicial district.

### **34-6-22. Personnel; oaths and bonds.**

Before entering upon their duties, all district court personnel who receive or disburse money or have custody of property shall take the oath prescribed by the constitution for state officers and file with the secretary of state a corporate surety bond in an amount fixed by the director of the administrative office of the courts. Each bond shall be approved in writing on its face by the director of the administrative office of the courts and conditions upon faithful performance of duties and payment of all money received to the person entitled to receive it. In lieu of individual bond coverage, the director of the administrative office of the courts may prescribe schedule or blanket bond coverage in any judicial district. Bond premiums shall be paid from funds appropriated to the district courts.

**History:** 1953 Comp., § 16-3-9, enacted by Laws 1968, ch. 69, § 23.

#### **ANNOTATIONS**

**Cross references.** — For law governing surety bonds of state employees, see 10-2-15 NMSA 1978.

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

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-9, 1953 Comp., relating to residence of judges in the fifth judicial district.

### **34-6-23. Personnel; travel expenses.**

District judges and district court employees shall be allowed per diem and shall be reimbursed for their necessary travel expenses incurred while absent from their principal offices upon official business, at the same rates and under the same conditions as prescribe by law or regulation of the state board of finance for other employees of the state. These expenses shall be paid from the funds of the district court of the judicial district for which the business is transacted.

**History:** 1953 Comp., § 16-3-10, enacted by Laws 1968, ch. 69, § 24.

#### **ANNOTATIONS**

**Cross references.** — For principal office of judge being established at county seat by rule, see 34-6-17 NMSA 1978.

For Per Diem and Mileage Act, see 10-8-1 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-10, 1953 Comp., relating to process and expenditures in the fifth judicial district.

**Employees not entitled to additional compensation beyond expenses.** — A district court reporter and a juvenile probation officer, full-time employees of the district court, are not entitled to additional compensation for services undertaken in magistrate court during regular working hours, aside from per diem and travel expenses authorized in this section. 1969 Op. Att'y Gen. No. 69-122.

An individual illegally receiving compensation both as a full-time district court reporter and as a deputy court clerk over the same period of time may be guilty of a petty misdemeanor under 30-23-1 NMSA 1978, and liable for restitution under 30-23-7 NMSA 1978. 1964 Op. Att'y Gen. No. 64-152.

**Absence from principal office necessary for per diem or mileage.** — This section establishes, as a condition precedent to the payment of either per diem or mileage to the district judge, that the district judge must be absent from the principal office. The principal office of the district judge is the county seat of one of the counties in that justice's judicial district. 1975 Op. Att'y Gen. No. 75-12.

**For per diem, absence from duty post also necessary.** — Per diem may be collected by an employee only when away from home and away from designated post of duty on official business. 1973 Op. Att'y Gen. No. 73-27.



**Sole judge must select his duty station.** — Where the sole district judge in a multi-county judicial district resides in the county seat of one of the counties of the district and approximately 60 to 80% of the judge's time as a district judge must be spent at the county seat of the other county, with respect to per diem the judge must designate one city as duty station. If judge must choose a courthouse where a substantial portion of the duties are performed as the duty station, but a majority of that duty is not required at a courthouse before the judge may choose it to be the duty station. 1973 Op. Att'y Gen. No. 73-27.

**Necessary travel away from home reimbursable.** — If the judge selects a county seat other than county of residence as principal office, when the judge is traveling to and from the city which is away from home, if the travel is necessary to the discharge of official duties, then the judge should be paid the mileage rate provided in the Per Diem and Mileage Act. 1973 Op. Att'y Gen. No. 73-27.

**Judge entitled to mileage traveling between principal office and office at residence.** — A district judge is entitled to mileage when traveling from the county seat to an additional office in the city of residence in order to conduct official business in the additional office and when the judge is present at the additional office on official business and then travels from the additional office to the county seat. 1975 Op. Att'y Gen. No. 75-12.

**Per diem.** — A judge cannot be eligible for per diem for travel between the city of residence and the county seat which is the principal office, because such trips will not take the judge away from home and principal office at the same time. 1975 Op. Att'y Gen. No. 75-12.

**Judge's and reporter's expenses must be paid from court funds.** — Payment of the expenses incurred by the district judge and court reporter from the funds of the district court is mandatory. *Read v. Western Farm Bureau Mut. Ins. Co.*, 90 N.M. 369, 563 P.2d 1162 (Ct. App. 1977).

**Per diem and mileage may not be taxed as costs.** — Costs are a creature of statute and may not be imposed in the absence of clear legislative authorization, and thus since no statute or rule of court imposes upon litigants in a civil case the burden of paying per diem and travel expenses incurred by a district judge and court reporter, such expenses could not be properly taxed as costs when plaintiff requested a continuance pending an appeal of one defendant's summary judgment. *Read v. Western Farm Bureau Mut. Ins. Co.*, 90 N.M. 369, 563 P.2d 1162 (Ct. App. 1977).

#### **34-6-24. Operation; location of court; facilities.**

In each county, the district court shall be held at the county seat. Each board of county commissioners shall provide adequate quarters for the operation of the district court, including juvenile probation services, and provide necessary utilities and maintenance service for the operation and upkeep of district court facilities. From the

funds of each judicial district, furniture, equipment, books and supplies shall be provided for the operation of each district court within the judicial district.

**History:** 1953 Comp., § 16-3-11, enacted by Laws 1968, ch. 69, § 25; 1988, ch. 101, § 45.

## ANNOTATIONS

**Cross references.** — For terms to be held in each county at the county seat, see N.M. Const., art. VI, § 13.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-11, 1953 Comp., relating to failure of presiding judge to sign record because of death or disability.

**Failure to hold court at de jure county seat.** — Judgment of district court would not be set aside by supreme court merely on ground that the term of court at which it was rendered was not held at the de jure county seat of the county for which the term was held, as required by former statute, if the term was held and judgment rendered at the de facto county seat, established by the act of the legislative assembly of the territory. *Territory v. Clark*, 15 N.M. 35, 99 P. 697 (1909).

**Court funds used to purchase furniture and equipment.** — Under this section the funds of the court are to be used in purchasing furniture and equipment, which items are not limited to use in any one county. 1969 Op. Att'y Gen. No. 69-46.

**Under court's ownership and control.** — Under this section the ownership and control of the furniture and equipment purchased are in the district court. 1969 Op. Att'y Gen. No. 69-46.

**Responsibility for county courthouse security.** — The board of county commissioners is responsible for providing security for the county courthouse on a 24-hour basis. 1979 Op. Att'y Gen. No. 79-4.

**Commitment hearing at commitment facility not precluded.** — Absent a showing by a "developmentally disabled" person that his substantive rights would in any way be abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. No. 79-20.

**Services provided for juvenile probation facilities.** — Counties were required to provide the services specified in this section for juvenile probation facilities operated by the youth authority. 1989 Op. Att'y Gen. No. 89-29 (rendered prior to 1992 repeal of the Youth Authority Act).

### **34-6-25. Operation; seal.**

The district court of each county shall have a seal with the name of the court on the margin. The seal shall be kept by the district court clerk and used to authenticate documents from his office.

**History:** 1953 Comp., § 16-3-12, enacted by Laws 1968, ch. 69, § 26.

#### **ANNOTATIONS**

**Cross references.** — For clerk affixing and preserving seal, see 34-1-6 NMSA 1978.

**Repeals and reenactments.** — Laws 1955, ch. 49, § 12, repealed former 16-3-12, 1953 Comp., relating to regular terms of district courts.

### **34-6-26. Operation; record; authentication.**

The district court of each county shall keep a record containing orders entered by the court. Orders made orally by the court shall be entered upon the record by the district court clerk. The district judge shall review and sign the record following each term of the court, but if, for any cause, the district judge fails to sign the record, the district court clerk may certify the record as authentic.

**History:** 1953 Comp., § 16-3-13, enacted by Laws 1968, ch. 69, § 27.

#### **ANNOTATIONS**

**Cross references.** — For duty of clerk to record and index proceedings, see 34-1-6 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-13, 1953 Comp., relating to fixing terms in new counties.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 25 et seq.

21 C.J.S. Courts § 178 et seq.

### **34-6-27. Operation; process.**

A. Process of the district courts in each judicial district shall be under witness of the district judge. Unless otherwise provided by rule of the district court in judicial districts having more than one district judge, process shall be under witness of the presiding judge.

B. The district court may grant free process to any party in any civil or criminal action or special statutory proceeding upon a proper showing of indigency.

**History:** 1953 Comp., § 16-3-14, enacted by Laws 1968, ch. 69, § 28.

### ANNOTATIONS

**Cross references.** — For current procedure for issuing and serving process in the district courts, see Rule 1-004 NMRA.

For free process for indigent in good faith appeal, see 39-3-12 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-14, 1953 Comp., relating to ordering a special term when regular term not held.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 62B Am. Jur. 2d Process § 8.

Who is "person of suitable age and discretion" under statutes or rules relating to substituted service of process, 91 A.L.R.3d 827.

72 C.J.S. Process § 21.

### 34-6-28. Operation; rules.

The district judge of each judicial district may adopt rules governing the administration of each district court. In judicial districts having more than one district judge, the power to adopt rules shall be exercised jointly by all judges of the district, with the decision of a majority of the judges of the district required for adoption of any rule. Rules adopted under this section shall not conflict with any statute, rule of the supreme court or regulation of the administrative office of the courts.

**History:** 1953 Comp., § 16-3-15, enacted by Laws 1968, ch. 69, § 29.

### ANNOTATIONS

**Cross references.** — For rule governing the procedure for adoption of local district court rules, see Rule 1-083 NMRA.

For local rules, see the New Mexico Rules Annotated (NMRA) and New Mexico One Source of Law.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-15, 1953 Comp., relating to authority to hold special term.

**Local rule as to assignment of cases.** — A district court rule which provides in part that "the assignment of cases to the several judges of the district will be varied in accordance with the work load" does not conflict with any statute or rule of the supreme court. *Atol v. Schifani*, 83 N.M. 316, 491 P.2d 533 (Ct. App. 1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 48 et seq.  
21 C.J.S. Courts § 124 et seq.

### **34-6-29. Operation; filing and service.**

The parties are responsible for the filing and service of papers in the district court except in those instances where leave to file is required.

**History:** 1953 Comp., § 16-3-16, enacted by Laws 1968, ch. 69, § 30.

#### **ANNOTATIONS**

**Cross references.** — For rules governing the filing and service of papers and pleadings in the district courts, see Rules 1-004, 1-005, 1-005.1 and 1-005.2 NMRA.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed 16-3-16, 1953 Comp., relating to discretion of judge to hold special term.

### **34-6-30. Operation; notation of filing.**

When any paper is filed in his office, the district court clerk shall immediately enter on the first page his notation of filing containing the date and time of filing and the court in which filed.

**History:** 1953 Comp., § 16-3-17, enacted by Laws 1968, ch. 69, § 31.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-17, 1953 Comp., relating to jurisdiction at and duration of special term.

**Using rubber signature stamp.** — The county clerk's signature by rubber stamp to endorsement of filing paper was not inhibited by general principles nor by former statute relating to certificate of day of filing. *Costilla Estates Dev. Co. v. Mascarenas*, 33 N.M. 356, 267 P. 74 (1927).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 C.J.S. Courts § 249 et seq.

### **34-6-31. Operation; nunc pro tunc entries.**

Whenever determined to be in the interest of justice, the district court may order any matter to be performed nunc pro tunc.

**History:** 1953 Comp., § 16-3-18, enacted by Laws 1968, ch. 69, § 32.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-18, 1953 Comp., relating to return of regular term process at special term.

**When power may be exercised.** — Former statute permitting nunc pro tunc entries to be made whenever the ends of justice might require it was not confined to civil cases, and the period in which this power could be successfully invoked was not limited to the term when the transaction occurred. *Borrego v. Territory*, 8 N.M. 446, 46 P. 349 (1896).

**No act should be done nunc pro tunc which would work injustice** to a party in court. *Waldo v. Beckwith*, 1 N.M. 97 (1854); *Secou v. Leroux*, 1 N.M. 388 (1866).

**Nunc pro tunc order as to time of filing pleading.** — A nunc pro tunc order, reciting that the declaration was left with the clerk and the advance fee had been paid as required by law, where no averment to the contrary appears in the petition, could be made whether such declaration was marked "filed" or not, for the court had jurisdiction in its discretion to make such order, guided by the justice of the case. *In re Lewisohn*, 9 N.M. 101, 49 P. 909 (1897).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 C.J.S. Courts § 180.

### **34-6-32. Operation; return of filed papers.**

Whenever any original documents are filed with the district court or introduced into evidence, upon application by the party filing or offering the same and upon approval of the court, the original document may be returned and a clearly legible copy substituted therefor. Similarly, objects in evidence of a nondocumentary nature may be withdrawn and photographs adequately illustrating the object or an adequate written description of the object may be substituted.

**History:** 1953 Comp., § 16-3-19, enacted by Laws 1968, ch. 69, § 33.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-19, 1953 Comp., relating to adjournments when judge is prevented from attending on first day of term.

### **34-6-33. Operation; dockets and records.**

A. The district court clerk shall keep for each county in indexed volumes:

- (1) a civil docket;
- (2) a criminal docket;

- (3) an incapacitated person docket;
- (4) an adoption docket;
- (5) a probate docket;
- (6) a children's docket;
- (7) a judgment docket; and
- (8) a record of the proceedings of the court.

In counties where the amount of business makes it desirable, separate criminal and civil records may be kept.

B. The dockets shall show in convenient form for each case:

- (1) the names of the parties;
- (2) the names of their attorneys;
- (3) the nature of the case;
- (4) the filing of each paper;
- (5) a brief statement of every return, motion, rule, order, judgment or other proceeding, with reference to pages of the record where each entry can be found; and
- (6) the costs taxes and all costs and fees received.

**History:** 1953 Comp., § 16-3-20, enacted by Laws 1968, ch. 69, § 34; 1972, ch. 97, § 47; 1975, ch. 257, § 8-101.

## ANNOTATIONS

**Cross references.** — For duty of clerk to record and index proceedings, see 34-1-6, 34-6-26 NMSA 1978.

For judgment docket book, see 39-1-8 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-20, 1953 Comp., relating to concurrent jurisdiction with probate court.

**Entry of judgment essential.** — A judgment does not become complete and effective until a proper entry thereof is made. *Animas Consol. Mines Co. v. Frazier*, 41 N.M. 389, 69 P.2d 927 (1937).

In determining the time within which a cost bond must be filed, an order in writing signed by the district judge, allowing an appeal, became effective as the judgment of the court when filed with the clerk for entry in the record, and not on the date of the signing of the order. *State v. Capital City Bank*, 31 N.M. 430, 246 P. 889 (1926).

**Signature by rubber stamp.** — The clerk's signature by rubber stamp to endorsement of filing paper in cause was not prohibited by general principles. *Costilla Estates Dev. Co. v. Mascarenas*, 33 N.M. 356, 267 P. 74 (1927).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 25 et seq.

21 C.J.S. Courts § 178 et seq.

### **34-6-34. Finance; statutory construction.**

Whenever the term "court fund" or "county court fund" may be used in the laws, it shall be construed to refer to the appropriation to the district court of the proper judicial district.

**History:** 1953 Comp., § 16-3-22, enacted by Laws 1968, ch. 69, § 36.

## **ANNOTATIONS**

**Cross references.** — For payment of change of venue costs from fund of county where case originated, see 38-3-11 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-22, 1953 Comp., relating to tax for district court maintenance and creation and disbursement of court fund.

### **34-6-35. Finance; payment of expenses.**

A. All money for the operation and maintenance of the district courts, including the children's and family court divisions, shall be paid by the state treasurer upon warrants of the secretary of finance and administration, supported by vouchers of the district judges and in accordance with budgets approved by the administrative office of the courts and the state budget division of the department of finance and administration. In judicial districts having more than one district judge, vouchers shall be approved by the presiding judge of the district or his authorized representative.

B. The district judge may authorize the establishment of a checking account, designated as the "District court special operations account," in a federally insured bank. In accordance with budgeting requirements, warrants of the secretary of finance and administration may be deposited to the district court special operations account, and checks on the account may be written by the district judge or his authorized representative for payment of:



- (1) jury fees and expenses;
- (2) witness fees and expenses; and
- (3) petty cash expenses.

**History:** 1953 Comp., § 16-3-23, enacted by Laws 1968, ch. 69, § 37; 1972, ch. 97, § 48; 1977, ch. 247, § 146.

## ANNOTATIONS

**Cross references.** — For the jury and witness fee fund, see 34-9-11 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-23, 1953 Comp., relating to limitation on levy of tax for court maintenance.

**Compiler's notes.** — The attorney general's opinions noted below were issued under former provisions somewhat similar to this section; the notes have been placed here for the light they may shed on the present statutes.

**Projected need is criterion for payments to counties from state.** — Under former law, the criterion to be employed by the state board of finance in authorizing payments from the state court fund to counties making application for such funds was projected need. 1964 Op. Att'y Gen. No. 64-52-A.

**Expenditures from court funds are in the jurisdiction of the various courts.** 1957-58 Op. Att'y Gen. No. 58-110.

**Meals and lodging for jury and deputies may be paid.** — All expenses incurred in actual conduct of the court, including meals and lodging for jurors and extra deputies, are considered as court expenses which are payable from the court fund upon written allowance by the court. 1937-38 Op. Att'y Gen. 163. See now 34-6-41 NMSA 1978.

**Judge may be reimbursed for expenses of successful defense of civil action.** — A district judge should be reimbursed for expenses incurred in defending a civil suit brought against him for acts committed in his capacity as a district judge if he is successful in defending himself. If, however, he is not successful in defending himself, it follows that he must have acted through malice or other improper motive, or acted completely without jurisdiction, and in that case he should bear the costs of his action himself. 1957-58 Op. Att'y Gen. No. 57-128.

**District attorney's office rent may be paid.** — The legislature intended to give the court a wide discretion in the use of the fund for any purpose connected with the administration of justice. Though in a strict sense the district attorney is not a part of the court, he is a part of the judicial system of the state, and a state, not county, officer. Rent for his office space may properly be paid out of one or more of the various court

funds in the district, in the discretion of the court. The discretion of the district judge is limited to purposes connected with the administration of justice. 1939-40 Op. Att'y Gen. 130.

**Expense reimbursement for out-of-state conference.** — A district attorney may attend an out-of-state conference which is concerned with law enforcement problems, financed out of district court funds, without the approval of the state comptroller. 1957-58 Op. Att'y Gen. No. 57-64.

**Additional compensation to clerk.** — In case it became necessary to the proper administration of the court to pay court clerks more than the budgeted salary, an additional payment could be made from the court fund, as the former statute places a wide discretion in the district judge in the expenditure of court funds. 1945-46 Op. Att'y Gen. No. 4708.

**Court reporter's charge for workmen's compensation transcript.** — Where the transcript of testimony is furnished without cost to a workmen in a workmen's compensation case, the district court, in its discretion, can pay the court reporter for the preparation of such transcript. 1969 Op. Att'y Gen. No. 69-37.

**Retirement contributions for probation officers.** — The court fund of each county in New Mexico is the probable source from which contributions for probation officers shall be paid to the public employees' retirement board, although there is no prohibition from paying from other funds. 1955-56 Op. Att'y Gen. No. 6291.

**Post mortem expenses.** — The expenses of post mortem examinations may be paid out of the court fund in cases where they are necessary to obtain evidence in homicide cases, if in the discretion of the court they should be so paid. 1937-38 Op. Att'y Gen. 174.

**Expenses for transporting convicts.** — Expenses of transportation of those sentenced to the reform school were chargeable to the court fund of the county committing such person. 1912-13 Op. Att'y Gen. 234, 293.

**Expert witnesses' fees could not be paid from county fund.** — No statutory provision authorized the payment of expert witnesses for their professional services from the county court funds. 1909-12 Op. Att'y Gen. 78.

**Nor could criminal investigation expenses be paid from state court fund.** — When it used the phrase "trial of criminal cases," the legislature contemplated the submission of the issues to a court, the proceedings in court, the hearing of evidence and the final determination of the cause. This does not include the preparatory or investigative phases of a criminal trial, such as audits, depositions, laboratory tests and the like, but it does include such expenses as witness fees and jury fees. To hold otherwise would open the state court fund to use for investigative acts that might never be used in a criminal trial. While investigation and preparation are essential to any trial, the state

court fund may not be disbursed to pay for them, but may only be disbursed for expenses directly attributable to the presentation of a criminal trial at a hearing in court. 1959-60 Op. Att'y Gen. No. 60-224.

**Juvenile court duties statutorily uncompensated.** — The court fund may not be spent for juvenile court duties conferred by statute when such duties are statutorily uncompensated. Faced with deciding whether the legislature intended not to compensate, or whether an unintentional commission was made, the failure to compensate was held purposeful. This does not apply to additional duties assumed by the court clerk at the court's request, for the proper administration of justice, when such duties are not statutorily conferred - and when such duties are performed, in the court's discretion, provision for payment out of the court fund may be made. 1957-58 Op. Att'y Gen. No. 57-181.

### **34-6-36. Finance; disposition of litigant money; court clerk trust account.**

Each district court clerk shall open a trust fund checking account, designated as the "court clerk trust account," in a bank which is a member of the federal deposit insurance corporation. Not later than two working days after receipt, the district court clerk shall deposit to this account all money which belongs to a litigant and all money which might be refunded to a litigant. Whenever the district court, by written order filed with the clerk, authorizes payment of money to a litigant from the court clerk trust account, the district court clerk shall issue his check on the account in accordance with the order. As prescribed by regulation of the director of the administrative office of the courts, money in the court clerk trust account may be invested by the district court clerk in obligations of the United States or in federally insured bank or savings and loan association savings accounts.

**History:** 1953 Comp., § 16-3-24, enacted by Laws 1968, ch. 69, § 38.

#### **ANNOTATIONS**

**Cross references.** — For rule governing litigant funds, see 1-102 NMRA.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-24, 1953 Comp., relating to disposition of court fund surplus.

**Interest should be awarded to owner of principal.** — Due process may require regulations awarding the interest on the trust fund account to the owner of the principal. 1976 Op. Att'y Gen. No. 76-25.

**Court use of litigant money.** — Litigant money is to be deposited in a "court clerk trust account." This is a trust account. Therefore, the income from this trust must inure to the benefit of the trust, and the income may not be retained by a district court for its use or benefit. 1968 Op. Att'y Gen. No. 68-77.

### **34-6-37. Finance; disposition of court income; state treasurer account.**

Each district court clerk shall open an account in a bank which is a member of the federal deposit insurance corporation. The account shall be in the name of the state treasurer of New Mexico, and withdrawals may be made only by the state treasurer. All fines, fees, costs and other money received by the clerk, except money designated by law for deposit in the court clerk trust account, shall be deposited to this account not later than two working days after receipt by the clerk. Deposit slips shall be prepared by the clerk to clearly distinguish between fines and forfeitures which the state treasurer will credit to the current school fund of the state, money designated by law for credit to other specific funds in the state treasury, and all other money. Duplicate deposit slips and all bank statements shall be forwarded immediately to the state treasurer by the clerk. No collateral securities shall be required of the bank for this account, but the state treasurer shall make withdrawals from each account at least quarterly, and, in any event, so that the balance remaining in any account never exceeds fifteen thousand dollars (\$15,000). Money withdrawn shall be credited to the proper account in the state treasury, and any money not otherwise designated by law shall be credited to the state general fund.

**History:** 1953 Comp., § 16-3-25, enacted by Laws 1968, ch. 69, § 39.

#### **ANNOTATIONS**

**Cross references.** — For audit of accounts, see 12-6-1 NMSA 1978.

For the Procurement Code, see 13-1-99 NMSA 1978.

For the general fund, see 6-4-2 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repeals former 16-3-25, 1953 Comp., relating to transfer of unclaimed money to court fund, and Laws 1968, ch. 69, § 39, enacts the above section.

**Section applies to excess federal fees.** — Fees collected under 34-6-42 NMSA 1978 which are in excess of those remitted to the federal government must be handled according to this section, and the district court clerk is precluded from retaining them. 1968 Op. Att'y Gen. No. 68-77.

**Fines do not go in court fund.** — Proceeds of fines collected for violation of the penal laws, whether paid over by justices of the peace (now magistrates), or paid to clerk of district court, should be distributed one-third to general school fund, and two-thirds to districts in which collections are made, and fines imposed by district court should not be paid to the court fund. 1909-12 Op. Att'y Gen. 70 (issued under former statutes).

**Deposit of funds in reserve investment fund for 25 years.** — See 1969 Op. Att'y Gen. No. 69-33.

### **34-6-38. Finance; disposition of unclaimed money.**

When money is held in the court clerk trust account and the person entitled to it does not make claim within six years from the date when it became payable, the money is presumed abandoned and shall be disposed of in the manner provided in the Uniform Disposition of Unclaimed Property Act [Unclaimed Property Act (1995) (7-8A-30 NMSA 1978)].

**History:** 1953 Comp., § 16-3-26, enacted by Laws 1968, ch. 69, § 40.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-26, 1953 Comp., relating to levy and collection of state court tax fund.

**Compiler's notes.** — The Uniform Disposition of Unclaimed Property Act, referred to in this section, was repealed by Laws 1997, ch. 25, § 33. The Uniform Disposition of Unclaimed Property Act was replaced by the Uniform Unclaimed Property Act (1995). The bracketed insertion was added by the compiler and is not a part of the enacted law.

### **34-6-39. Finance; improper disposition of money; penalty.**

Any person who violates any provision of Sections 34-6-36 through 34-6-38 NMSA 1978, is guilty of a fourth degree felony.

**History:** 1953 Comp., § 16-3-27, enacted by Laws 1968, ch. 69, § 41.

#### **ANNOTATIONS**

**Cross references.** — For punishment for fourth degree felonies, see 31-18-15 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-27, 1953 Comp., relating to certification of amounts needed for criminal trials and duties in levying and collecting state court fund tax.

### **34-6-40. Finance; fees.**

A. Except as provided in Subsection B of this section, district court clerks shall collect in civil matters docketing any cause, whether original or reopened or by appeal or transfer from any inferior court, a fee of one hundred seventeen dollars (\$117), twenty dollars (\$20.00) of which shall be deposited in the court automation fund and twenty-five dollars (\$25.00) of which shall be deposited in the civil legal services fund.

B. In those matters where the fee provided for in Section 40-12-6 NMSA 1978 is collected, district court clerks shall collect a fee of one hundred seven dollars (\$107), ten dollars (\$10.00) of which shall be deposited in the court automation fund and twenty-five dollars (\$25.00) of which shall be deposited in the civil legal services fund.

C. No fees or costs shall be taxed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 NMSA 1978].

D. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund.

History: 1953 Comp., § 16-3-28, enacted by Laws 1968, ch. 69, § 42; 1969, ch. 193, § 3; 1980, ch. 137, § 1; 1981, ch. 320, § 1; 1982, ch. 7, § 5; 1984, ch. 120, § 6; 1987, ch. 123, § 1; 1989, ch. 90, § 1; 1992, ch. 111, § 20; 1996, ch. 41, § 3; 2001, ch. 277, § 1; 2001, ch. 279, § 1; 2009, ch. 245, § 1.

## ANNOTATIONS

**Cross references.** — For court of appeals fees and costs, see 34-5-6 NMSA 1978.

For free civil or criminal process for indigents, see 34-6-27, 39-3-12 NMSA 1978.

For the court automation fund, see 34-9-10 NMSA 1978.

For court fee deposited to domestic violence offender treatment fund, see 34-15-1 NMSA 1978.

For civil legal services fund, see 34-14-1 NMSA 1978.

For penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

For domestic violence offender treatment fund, see 31-12-12 NMSA 1978.

For court fee deposited to domestic violence offender treatment fund, see 34-15-1 NMSA 1978.

For docket fee in criminal appeal from magistrate court, see 35-13-2B NMSA 1978.

For costs of criminal processes associated with domestic abuse offenses, see 40-13-3.1 NMSA 1978.

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-28, 1953 Comp., relating to the transfer of state funds to the county court fund.

**The 1989 amendment**, effective June 16, 1989, revised Subsection B to add nonprofit corporations formed under the Educational Assistance Act.

**The 1992 amendment**, effective July 1, 1992, substituted "seventy-two dollars (\$72.00)" for "sixty dollars (\$60.00)" in Subsection A; and added Subsection C.

**The 1996 amendment**, effective May 15, 1996, substituted "eighty-two dollars (\$82.00), ten dollars (\$10.00) of which shall be deposited in the court automation fund" for "seventy-two dollars (\$72.00)" at the end of Subsection A, added Subsection B, and redesignated the remaining subsections accordingly.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch. 277, § 1 and Laws 2001, ch. 279, § 1, both effective July 1, 2001, and both approved April 4, 2001, substituting "one hundred seven dollars (\$107)" for "eighty-two dollars (\$82.00)" and inserting "and twenty-five dollars (\$25.00) of which shall be deposited in the civil legal services fund". This section is set out as amended by Laws 2001, ch. 279, § 1. See 12-1-8 NMSA 1978.

**The 2009 amendment**, effective July 1, 2009, in Subsection A, at the beginning of the sentence, added "Except as provided in Subsection B of this section" and after "a fee of", deleted "one hundred seven dollars (\$107), ten dollars (\$10.00)" and added "one hundred seventeen dollars (\$117), twenty dollars (\$20.00)"; and added Subsection B.

**Fee must be paid before appeal docketed.** — The clerk may not docket a case without payment of the statutory fee on an appeal from a justice of the peace (now magistrate), and it is the appellant's duty to see that the fee is paid and the case docketed. *Reece v. Montano*, 48 N.M. 1, 144 P.2d 461 (1943).

**Costs may be recovered against state.** — The legislature, in this section, gives express authority, without exception, to the recovery of costs against any losing party, including the state. *Kirby v. New Mexico State Hwy. Dep't*, 97 N.M. 692, 643 P.2d 256 (Ct. App. 1982).

**Liability for docket fee upon transfer from small claims court.** — A party instituting an action or causing it to be docketed in the small claims court (now, metropolitan court) must pay the district court docket fee on transfer to the district court under certain circumstances. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

**Condemnation actions.** — Where a district attorney or assistants have incurred actual expenses while engaged in carrying out their duties in participating in condemnation actions brought by a county to condemn the 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 (opinion rendered under former law).

**Proper fees on appeal.** — The total fee to be collected upon docketing a civil appeal in the district court from a magistrate court includes the amount called for in 12-1-9 NMSA 1978. 1970 Op. Att'y Gen. No. 70-65; 1964 Op. Att'y Gen. No. 64-50.

The total fee to be collected by the district court clerk upon docketing a criminal appeal from a magistrate court is set by 35-13-2B NMSA 1978. 1970 Op. Att'y Gen. No. 70-65.

A docket fee is applicable to appeals from the municipal court to the district court only when brought from an action enforcing ordinances under 35-15-1 NMSA 1978 et seq. 1980 Op. Att'y Gen. No. 80-18.

### **34-6-40.1. Civil action by state; filing fee assessed as costs.**

In any civil action brought in the district court by the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 NMSA 1978], when judgment or stipulation for payment is rendered in favor of the state, political subdivision or corporation, the filing fee exempt from being paid by the state, political subdivision or corporation pursuant to Section 34-6-40 NMSA 1978 shall be taxed as costs against the nonprevailing party and paid to the district court clerk from the first money paid by the nonprevailing party on the judgement or stipulation for payment.

**History:** Laws 1981, ch. 307, § 1; 1989, ch. 90, § 2.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, substituted the present provisions for "In any civil action brought by the state or its political subdivisions in the district court when judgment is rendered in favor of the state or political subdivision, the filing fee exempt from being paid by the state or its political subdivision pursuant to section 34-6-40 NMSA 1978 shall be taxed as costs against the nonprevailing party and paid to the district court clerk".

### **34-6-41. Finance; jury refreshments, meals and rooms.**

A. The district court may provide suitable refreshments for prospective jurors summoned for jury service.

B. When district court juries are engaged in a trial, the court may provide suitable meals and necessary accommodations for them.

**History:** 1953 Comp., § 16-3-29, enacted by Laws 1968, ch. 69, § 43; 1989, ch. 116, § 1.

#### **ANNOTATIONS**



**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-29, 1953 Comp., relating to requirement that county levy one mill tax before sharing in state court fund.

**The 1989 amendment,** effective June 16, 1989, inserted "refreshments" in the catchline; designated the formerly undesignated provisions as Subsection B; and added Subsection A.

### **34-6-42. Finance; federal functions.**

District court clerks shall collect fees required by federal law for services in connection with naturalization, passport applications and other matters.

**History:** 1953 Comp., § 16-3-30, enacted by Laws 1968, ch. 69, § 44.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-30, 1953 Comp., relating to renting suitable quarters for court business.

**Disposition of excess fees.** — Fees collected under this section which are in excess of those remitted to the federal government must be handled according to 34-6-37 NMSA 1978, and the district court clerk is precluded from retaining them. 1968 Op. Att'y Gen. No. 68-77.

### **34-6-43. Finance; statutory fees exclusive.**

Services required to be performed by district court clerks are without charge when no fee is prescribed by law.

**History:** 1953 Comp., § 16-3-31, enacted by Laws 1968, ch. 69, § 45.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1968, ch. 69, § 69, repealed former 16-3-31, 1953 Comp., relating to payment of rentals from county court funds.

### **34-6-44. District court alternative dispute resolution fund; administration.**

A judicial district that collects an alternative dispute resolution fee pursuant to Section 34-6-45 NMSA 1978 shall create an "alternative dispute resolution fund" of the judicial district. Money in the fund shall be used to defray the cost of operating alternative dispute resolution programs established by judicial district court rule approved by the supreme court, including but not limited to arbitration, mediation and

settlement facilitation programs. No part of the fund shall revert at the end of any fiscal year.

**History:** Laws 1986, ch. 26, § 1; 1989, ch. 324, § 27; 1994, ch. 37, § 1.

### **ANNOTATIONS**

**The 1994 amendment**, effective May 18, 1994, rewrote the section heading, which formerly read: "District court arbitration fund created; administration; distribution"; and rewrote the section.

### **34-6-45. District courts; alternative dispute resolution; fee.**

In addition to fees collected pursuant to, and subject to exceptions set forth in, Section 34-6-40 NMSA 1978 for docketing of civil cases, in any judicial district that has established an alternative dispute resolution program by judicial district court rule approved by the supreme court, including but not limited to arbitration, mediation and settlement facilitation programs, the district court clerk shall collect a fee of fifteen dollars (\$15.00) on all new and reopened civil cases except domestic relations cases. The fee shall be deposited for credit to the district court alternative dispute resolution fund pursuant to the provisions of Section 34-6-37 NMSA 1978.

**History:** Laws 1986, ch. 26, § 2; 1990, ch. 56, § 1; 1994, ch. 37, § 2.

### **ANNOTATIONS**

**The 1990 amendment**, effective March 2, 1990, substituted the present first sentence of the section for a sentence which read "Subject to approval of the supreme court, district court clerks may collect an arbitration user fee not to exceed fifty dollars (\$50.00) from each party referred to arbitration pursuant to the requirements of an arbitration program established by judicial district court rule as approved by the supreme court for the efficient and inexpensive disposition of small claims".

**The 1994 amendment**, effective May 18, 1994, rewrote the section heading, which read: "District courts; civil actions arbitration user fee"; substituted "alternative dispute resolution" for "arbitration" in the second sentence; and, in the first sentence, substituted "alternative dispute resolution program by judicial district court rule approved by the supreme court, including but not limited to arbitration, mediation and settlement facilitation programs" for "arbitration program by judicial district court rule as approved by the supreme court for the efficient and inexpensive disposition of small claims", and deleted "user" preceding "fee" and "and children's court" following "relations".

### **34-6-46. District court; indigency standard; fee schedule; reimbursement.**

A. The district court shall use a standard adopted by the public defender department to determine indigency of persons accused of crimes carrying a possible jail sentence.

B. The district court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent defendants who are financially unable to obtain private counsel.

C. The district court shall order reimbursement from each person who has received or desires to receive legal representation or another benefit under the Public Defender Act [31-15-1 NMSA 1978] after a determination is made that he was not indigent according to the standard for indigency adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund.

**History:** 1978 Comp., § 34-6-46, enacted by Laws 1987, ch. 20, § 3.

### **ANNOTATIONS**

**Cross references.** — For defense of indigents, see 31-16-1 NMSA 1978.

### **34-6-47. Drug court fees; fund created.**

A. In addition to any other fees collected in the district court, a district court that has established an adult drug court may assess and collect from participants a "drug court fee" of fifty dollars (\$50.00) a month. Program fee requirements may be satisfied by community service at the federal minimum wage.

B. Drug court fees shall be deposited in the "drug court fund" of a specific judicial district in the state treasury. The judicial district shall administer money in the fund to offset client service costs of the drug court program, consistent with standards approved by the supreme court. Money in the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the court administrator or his authorized representative. Balances in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003, ch. 240, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 240, § 4 makes the act effective July 1, 2003.

**Appropriations.** — Laws 2006, ch. 110, § 1, appropriates \$257,000 to the administrative office of the courts for the drug court program and \$57,000 to the second judicial district for the drug court.

### **34-6-48. District court; electronic services fee.**

A district court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund.

History: Laws 2009, ch. 112, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **ARTICLE 7**

### **Probate Courts**

#### **34-7-1. Probate judge; authorized.**

There shall be a probate judge in each county of this state. The position of probate judge shall be deemed a part-time position.

**History:** Kearny Code, Courts and Judicial Powers, § 19; C.L. 1865, ch. 21, § 1; C.L. 1884, § 407; C.L. 1897, § 745; Code 1915, § 1423; C.S. 1929, § 34-401; 1941 Comp., § 16-401; 1953 Comp., § 16-4-1; Laws 1987, ch. 224, § 1.

#### **ANNOTATIONS**

**Cross references.** — For title to townsites vesting in probate judge, see 19-4-4 NMSA 1978.

For Probate Code, see 45-1-101 NMSA 1978.

For probate court forms, see 4B-001 NMRA.

**Compiler's notes.** — The 1915 Code compilers deleted "who shall hold his office for two years, and until his successor be appointed and qualified" at the end.

**Law reviews.** — For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 20 Am. Jur. 2d Courts § 14.

21 C.J.S. Courts § 93 et seq.

### **34-7-2. [Probate judge and sheriff elected at each general election.]**

At each general election held in this state there shall be elected in each county a probate judge and a sheriff.

**History:** Laws 1851-1852, p. 198; C.L. 1865, ch. 63, § 4; Code 1915, § 1245; C.S. 1929, § 33-4401; 1941 Comp., § 16-402; 1953 Comp., § 16-4-2.

#### **ANNOTATIONS**

**Cross references.** — For effect of city-county consolidation on probate judge, see 3-16-11 NMSA 1978.

**Compiler's notes.** — This section was also compiled as Chapter 4, Article 41 NMSA 1978, since it relates to both probate judges and sheriffs.

As it appeared in the 1865 Code, this section read: "On the first Monday in September of this year, 1851, and every two years thereafter, there shall be an election in each county of the territory, for the election of their respective probate judge and sheriff." The section was omitted from Comp. Laws 1884 and 1897. Its provisions were compiled as one note in the 1915 Code and 1929 Comp., but in the 1941 and 1953 Comps. they were compiled as two sections, with the reference to "a probate judge" omitted from one and "a sheriff " omitted from the other.

**Law reviews.** — For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

### **34-7-3. [Seal of probate court.]**

The probate courts shall procure and keep a seal with such emblems and devices as the courts shall think proper.

**History:** Kearny Code, Records and Seals, § 1; C.L. 1865, ch. 93, § 1; C.L. 1884, § 658; C.L. 1897, § 1033; Code 1915, § 1424; C.S. 1929, § 34-402; 1941 Comp., § 16-404; 1953 Comp., § 16-4-4.

#### **ANNOTATIONS**

**Cross references.** — For affixing and preservation of seal by clerk, see 34-1-6 NMSA 1978.

### **34-7-4. [Place of holding court and keeping clerk's office.]**

The probate judges of this state are strictly required to hold their courts in the county seats of their counties, and the probate clerks shall also have their offices in the said county seat of the county at all times.

**History:** Laws 1869-1870, ch. 51, § 1; C.L. 1884, § 415; C.L. 1897, § 749; Code 1915, § 1426; C.S. 1929, § 34-404; 1941 Comp., § 16-405; 1953 Comp., § 16-4-5.

## ANNOTATIONS

**Cross references.** — For penalty for violating this section, see 34-7-5 NMSA 1978.

For county clerk serving as probate court clerk if no other provision is made, see N.M. Const., art. VI, § 22.

For sheriff attending sessions, see 4-41-13, 4-41-16 NMSA 1978.

**Office need not be in courthouse or designated space.** — This section only requires that office of the probate judge be located within the county seat; hence, it need not necessarily be in the courthouse or within some space designated by the county commissioners. 1943-44 Op. Att'y Gen. No. 4406.

**Removal to new county seat.** — A county is authorized to remove to a properly selected new county seat all county offices and property pertaining thereto, if new courthouse and jail are ready for occupancy. *Orchard v. Board of Comm'rs*, 42 N.M. 172, 76 P.2d 41 (1938).

**County clerk cannot be paid additional salary for serving as probate clerk.** 1943-44 Op. Att'y Gen. No. 4365.

### **34-7-5. [Failure to hold court or keep clerk's office at county seat; penalty.]**

For every neglect on the part of any probate judge, or clerk of any probate court of the state, in the discharge of their duties as prescribed in the previous section [34-7-4 NMSA 1978], the one so failing, upon conviction thereof in the district court, shall be fined in a sum not exceeding five thousand dollars [(\$5,000)].

**History:** Laws 1869-1870, ch. 51, § 2; 1882, ch. 82, § 1; C.L. 1884, § 16; C.L. 1897, § 750; Code 1915, § 1427; C.S. 1929, § 34-405; 1941 Comp., § 16-406; 1953 Comp., § 16-4-6.

## ANNOTATIONS

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of law.

**Compiler's notes.** — The 1915 Code compilers, presumably under authority of Laws 1909, ch. 36, § 30 (compiled as 10-4-29 NMSA 1978), deleted, from the end of this section, the words "and the judge trying the cause, in addition to giving judgment against the guilty party, shall remove him from office and immediately appoint a capable

person to hold said office, so vacated temporarily, and he shall officially notify the governor of the same, who shall at once order an election, which shall be held to fill such office in conformity with the election laws of the territory. The person appointed by any judge to fill any office shall have the qualifications now required by law for the office to which he has been appointed and shall be authorized to discharge all the duties of such office until his successor shall be elected and qualified: provided, that he shall be first qualified in the same manner as if he had been originally elected to such office."

Originally, under provisions of Laws 1887, ch. 8, § 1, the bond of the probate judge was set at \$5,000, apparently to correspond with the maximum penalty provided under this section; however, the bond provision was reduced by Laws 1953, ch. 5, § 1 (16-4-3 1953 Comp., now repealed) from \$5,000 to \$500. See 10-1-13 NMSA 1978 for present provisions.

### **34-7-6. [County must furnish office and supplies for judge.]**

That the county commissioners of each county in this state shall provide a suitable office for the accommodation of the probate judge of the county, and shall furnish all stationery, and such other things as may be necessary for the prompt discharge of the duties of said judges.

**History:** Laws 1887, ch. 66, § 3; C.L. 1897, § 754; Code 1915, § 1437; C.S. 1929, § 34-418; 1941 Comp., § 16-407; 1953 Comp., § 16-4-7.

#### **ANNOTATIONS**

**Cross references.** — For place of holding court and clerk's office, see 34-7-4 NMSA 1978.

### **34-7-7. [Custody of archives, documents and books.]**

The archives of said offices shall be under the charge of the clerks of said probate courts, and said clerks are prohibited from taking from said offices any document or book pertaining to said offices beyond six miles from said offices.

**History:** Law 1865-1866, ch. 41, § 2; C.L. 1884, § 411; C.L. 1897, § 747; Code 1915, § 1425; C.S. 1929, § 34-403; 1941 Comp., § 16-408; 1953 Comp., § 16-4-8.

#### **ANNOTATIONS**

**Compiler's notes.** — The 1915 Code compilers deleted "The offices of the said probate courts shall be kept at the county seats of their respective counties, and" from the beginning of this section. See 34-7-4, 34-7-6 NMSA 1978.

### **34-7-8. Probate courts; hours of business; notice.**

The probate courts of the state shall be in session and open at such times as are needed for the transaction of any business matters which may properly come before the courts under the laws of the state and upon notice thereof given as required under the laws of the state.

**History:** Laws 1935, ch. 63, § 1; 1941 Comp., § 16-409; 1953 Comp., § 16-4-9; Laws 1987, ch. 224, § 2.

## ANNOTATIONS

**Validating clauses.** — Laws 1935, ch. 63, § 2, reads: "All matters and business transacted, judgments and decrees heretofore legally entered by the probate courts of the state of New Mexico, whether the same were heard and determined and judgment entered at a time other than at a term time as may heretofore have been provided under the laws of the state of New Mexico, are hereby approved, ratified and confirmed."

### **34-7-9. [Probate judge interested or disqualified; transfer to district court.]**

Whenever the probate judge shall, for any reason, be interested or disqualified from acting in any proceeding coming within the jurisdiction of the probate court, he shall upon his own motion or that of any interested party, forthwith enter an order transferring such proceeding to the district court having jurisdiction in that county and directing the probate clerk to deposit forthwith within the office of the clerk of said district court a certified copy of said order together with all original papers and records or certified copies of all original papers and records in the probate court relating to said proceeding.

**History:** Laws 1889, ch. 132, § 1; C.L. 1897, § 751; Code 1915, § 1433; C.S. 1929, § 34-414; Laws 1933, ch. 102, § 1; 1941 Comp., § 16-412; 1953 Comp., § 16-4-12.

## ANNOTATIONS

**Cross references.** — For disqualification of judges, see N.M. Const., art. VI, § 18.

For performance of acts and orders when probate judge is unable to act, see 45-1-307 NMSA 1978.

**More than belief of partiality required.** — In light of the provisions of this section, which requires an actual interest or disqualification, 38-3-9 NMSA 1978, which requires only a belief of partiality, does not apply to probate judges. Estate of Tarlton, 84 N.M. 95, 500 P.2d 180 (1972).

**Disqualification not automatic on filing motions.** — This section is merely a statutory declaration of N.M. Const., art. VI, § 18, which prohibits any judge from sitting in any cause in which the judge has an interest except by consent of the parties. A creditor's motion cannot act to automatically transfer the cause; it is necessary for the



creditor to direct the court's attention to the grounds for disqualification. *Rush v. Strickland*, 84 N.M. 95, 500 P.2d 180 (1972).

### **34-7-10. [Proceedings in district court after transfer.]**

All proceedings thus transferred shall be docketed as other causes in the district court, which court shall thereupon exercise the same authority and take the same steps and proceedings as would have otherwise have [sic] been taken in the probate court.

**History:** Laws 1933, ch. 102, § 2; 1941 Comp., § 16-413; 1953 Comp., § 16-4-13.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed word "sic" in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Jurisdiction of district court.** — Where a probate proceeding was removed from a probate court to a district court, the district court possessed only such jurisdiction in the premises as that enjoyed by the probate court. *Conley v. Quinn*, 58 N.M. 771, 276 P.2d 906 (1954).

### **34-7-11. [Probate judge absent or unable to attend to duties; powers of district judge.]**

Whenever the probate judge shall be absent from the county wherein he was elected, or shall be incapacitated or unable to attend to his duties from any cause whatsoever, any district judge, of said county, or any other district judge designated to hold court in said county for him, may do any and all things that could otherwise be done by said probate judge, without the necessity of having the matters or proceedings transferred from the docket of the probate court to the docket of the district court. The fact of such absence or incapacity shall be recited in every order of the district judge entered in accordance with this act [section].

**History:** Laws 1933, ch. 101, § 1; 1941 Comp., § 16-414; Laws 1943, ch. 65, § 1; 1953 Comp., § 16-4-14.

#### **ANNOTATIONS**

**Cross references.** — For performance of acts and orders when probate judge unable to act, see 45-1-307 NMSA 1978.

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of law.

### **34-7-12. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1978, ch. 159, § 15, effective March 6, 1978, repealed 16-4-15, 1953 Comp. (34-7-12 NMSA 1978), relating to vacancy in the office of probate judge.

### **34-7-13. [Judges may issue process and make rules.]**

That the judges of probate courts shall have full power and authority to issue whatever process may be necessary for the efficient discharge of their duties, and to make and publish rules and orders regulating the business and practice of their several courts, not inconsistent with the laws of this state.

**History:** Laws 1887, ch. 66, § 1; C.L. 1897, § 752; Code 1915, § 1435; C.S. 1929, § 34-416; 1941 Comp., § 16-416; 1953 Comp., § 16-4-16.

## ANNOTATIONS

**Cross references.** — For process being directed to sheriff, see 4-41-13 NMSA 1978.

For probate court forms, see Rule 4B-001 NMRA.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Who is "person of suitable age and discretion" under statutes or rules relating to substituted service of process, 91 A.L.R.3d 827.

### **34-7-14. Fees of probate court clerks.**

Clerks of the probate courts are entitled to receive the following docket fees in all matters:

A. for docketing each cause, to be paid by the party docketing the cause, thirty dollars (\$30.00), which shall include all costs of the clerks in any cause in the court; and

B. a fee of fifteen cents (\$.15) per folio in addition to the docket fee may be charged for any excess of twenty folios in cases where judgments or decrees or orders exceed twenty folios.

**History:** Laws 1923, ch. 29, § 1; C.S. 1929, § 34-406; Laws 1937, ch. 111, § 1; 1941 Comp., § 16-422; 1953 Comp., § 16-4-22; Laws 1961, ch. 16, § 1; 1975, ch. 257, § 8-102; 1993, ch. 132, § 1.

## ANNOTATIONS

**Cross references.** — For penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, substituted "thirty dollars (\$30.00)" for "twelve dollars fifty cents (\$12.50)" in Subsection A and made a minor stylistic change.

**Docket fee charged although no heirs.** — A probate court clerk should collect the docket fee provided for by this section though there are no heirs or beneficiaries. 1945-46 Op. Att'y Gen. No. 4923A.

### **34-7-15. [Additional fees of clerk.]**

In addition to the fees provided for in Section 1 [34-7-14 NMSA 1978] hereof, clerks of probate courts may charge the following fees:

for making an itemized bill of costs in any case, when demanded, fifty cents [(\$.50)];

for making and certifying to transcript of judgment, one dollar [(\$1.00)];

for taking an acknowledgment and affixing seal, fifty cents [(\$.50)], if but one person acknowledges, and twenty-five cents [(\$.25)] for each additional person;

for making copies of records or papers, ten cents [(\$.10)] per folio of one hundred words, for carbon copies three cents [(\$.03)] per folio;

for certificate and seal authenticating any paper as a true and correct copy, fifty cents [(\$.50)];

for making transcripts on appeal or certiorari to any court, and for certifying the same, such fees as are now provided by law; provided, however, that only fees for certification shall be charged where the transcript is prepared by the litigant himself.

**History:** Laws 1923, ch. 29, § 2; C.S. 1929, § 34-407; 1941 Comp., § 16-423; 1953 Comp., § 16-4-23.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Providing compensation, implies power to perform act.** — Under Kearny Code, Fees, § 2, Comp., Laws 1865, ch. 46, § 2, Comp. Laws 1884, § 1251, although the statute did not confer upon probate court clerks the authority to administer oaths, by providing compensation for this function, it impliedly gave them authority, at least in strictly probate matters, and since the probate court meets the common-law requirement of a court of record, and clerks of courts of record under the common law could administer oaths, the probate court clerk had authority to do so in the verification of a claim for mechanic's lien filed with him. *Bucher v. Thompson*, 7 N.M. 115, 32 P. 498 (1893).

### **34-7-16. [Fees exclusive.]**

No other or different fees than those above provided shall be made or received by clerks of probate courts, and any services required of them in any matter other than those for which fees are herein provided shall be without compensation.

**History:** Laws 1923, ch. 29, § 4; C.S. 1929, § 34-409; 1941 Comp., § 16-424; 1953 Comp., § 16-4-24.

### **ANNOTATIONS**

**Cross references.** — For penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

**Compiler's notes.** — Section 2308, Code 1915, which the present section is deemed to supersede, read: "The county clerk shall receive for granting testamentary letters, and of administration, and attesting the same, the sum of three dollars, and for each time that accounts are to be settled with an administrator or executor, he shall receive one dollar, and at the rate of ten cents for every hundred words he may have to write."

### **34-7-17. [Record of receipts and disbursements.]**

The probate clerks of the different counties of this state are hereby required to keep a separate book for the sole purpose of keeping an exact account, which shall show in a clear and distinct manner all the money received, specifying the object for which it was received; and that the same book shall also contain a distinct and clear list of all warrants issued against the county treasury, and for what purpose.

**History:** Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 20; C.L. 1884, § 417; C.L. 1897, § 755; Code 1915, § 1447; C.S. 1929, § 34-432; 1941 Comp., § 16-425; 1953 Comp., § 16-4-25.

### **34-7-18. [Current accounts; public inspection.]**

There shall also be kept in said book a full copy of the accounts current for the year, open to the inspection of any citizen who may wish to examine the same as often as he may desire so to do.

**History:** Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 21; C.L. 1884, § 418; C.L. 1897, § 756; Code 1915, § 1448; C.S. 1929, § 34-433; 1941 Comp., § 16-426; 1953 Comp., § 16-4-26.

### **34-7-19. [Penalty for violation of Sections 34-7-17 and 34-7-18 NMSA 1978.]**

All clerks who shall fail in the discharge of the duties required in the two foregoing sections [34-7-17, 34-7-18 NMSA 1978] shall be considered guilty of a misdemeanor, and on conviction before the district court shall be fined at the discretion of the court, in any sum not less than twenty-five dollars [(\$25.00)], nor more than one hundred dollars [(\$100)].

**History:** Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 24; C.L. 1884, § 419; C.L. 1897, § 757; Code 1915, § 1449; C.S. 1929, § 34-434; 1941 Comp., § 16-427; 1953 Comp., § 16-4-27.

## ANNOTATIONS

**Compiler's notes.** — The 1915 Code compilers substituted "the two foregoing sections" for "the foregoing sections." The latter presumably referred to the Comp. Laws 1865, ch. 39, §§ 20 to 23.

### **34-7-20. Record of decedent's [decedents'] estates.**

The county clerk shall keep a record or docket additional to the other records required by law, showing as follows:

- A. the name of every decedent whose estate is administered and the date of his death;
- B. the names of all the heirs, devisees and surviving spouse of the decedent and their ages and places of residence, so far as the same can be ascertained; and
- C. a note of every sale of real estate made under the order of the court, with a reference to the volume and page of the court record where a complete record thereof may be found.

**History:** Laws 1889, ch. 90, § 42; C.L. 1897, § 2011; Code 1915, § 2309; C.S. 1929, § 47-902; 1941 Comp., § 16-428; 1953 Comp., § 16-4-28; Laws 1975, ch. 257, § 8-103.

## ANNOTATIONS

**Cross references.** — For duty to record and index proceedings, see 34-1-6 NMSA 1978.

For records and certified copies under Probate Code, see 45-1-305 NMSA 1978.

**Entry of record necessary to "render" decision.** — Within meaning of former 16-4-20, 1953 Comp., authorizing trial de novo of issues decided by probate court in decisions rendered more than ninety days previous to removal of administration of a decedent's estate from probate court to district court, a decision was not "rendered" until entered of record. In re Montano's Estate, 38 N.M. 355, 33 P.2d 906 (1934).

### **34-7-21. Record of bonds and wills.**

The clerk shall also record at length in books kept for that purpose, all bonds given by personal representatives, conservators and guardians, and all wills admitted to probate.

**History:** Laws 1889, ch. 90, § 43; C.L. 1897, § 2012; Code 1915, § 2310; C.S. 1929, § 47-903; 1941 Comp., § 16-429; 1953 Comp., § 16-4-29; Laws 1975, ch. 257, § 8-104.

#### **ANNOTATIONS**

**Cross references.** — For duty to record and index proceedings, see 34-1-6 NMSA 1978.

For records and certified copies under Probate Code, see 45-1-305 NMSA 1978.

### **34-7-22. [Deputy clerks; appointment; powers.]**

The clerks of the probate courts of this state, with the consent of the probate judges, shall have power to appoint a deputy clerk of the probate court; each clerk shall appoint one, and such deputies when duly appointed and qualified shall have full power and shall be authorized to perform all the duties of the clerk of the said probate court.

**History:** Laws 1866-1867, ch. 24, § 1; C.L. 1884, § 421; C.L. 1897, § 759; Code 1915, § 1443; C.S. 1929, § 34-427; 1941 Comp., § 16-430; 1953 Comp., § 16-4-30.

### **34-7-23. [Oath of deputy clerks.]**

The said deputy clerk shall take the same oath of office as is or may be provided by law as to his duties, which oath of office and his appointment shall be recorded in the records of the probate court.

**History:** Laws 1866-1867, ch. 24, § 2; C.L. 1884, § 422; C.L. 1897, § 760; Code 1915, § 1444; C.S. 1929, § 34-429; 1941 Comp., § 16-431; 1953 Comp., § 16-4-31.

#### **ANNOTATIONS**

**Cross references.** — For oath of office, see N.M. Const., art. XX, § 1.

### **34-7-24. [Authority of deputies; responsibility; signing papers.]**

The clerks of the probate court shall be responsible, respectively, for the acts of their deputies, and for such purpose, all and every official act of the deputy shall be considered as an official act of the clerk who appointed him, and each deputy clerk shall

sign all the papers issued by himself with the name of the clerk, in this manner: A. B., clerk of the probate court, by C. D., deputy clerk.

**History:** Laws 1866-1867, ch. 24, § 3; C.L. 1884, § 423; C.L. 1897, § 761; Code 1915, § 1445; C.S. 1929, § 34-430; 1941 Comp., § 16-432; 1953 Comp., § 16-4-32.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of clerk of court or surety on bond for negligent or wrongful acts of deputies or assistants, 71 A.L.R.2d 1140.

### **34-7-25. [Compensation of deputies to be paid by clerk.]**

A deputy clerk of the probate court shall not receive any additional salary or pay of any kind for the performance of his duties, and his compensation shall be taken out from the pay and the fees of the clerk as allowed by law and as agreed upon between the deputy and the clerk who appoints him.

**History:** Laws 1866-1867, ch. 24, § 4; C.L. 1884, § 424; C.L. 1897, § 762; Code 1915, § 1446; C.S. 1929, § 34-431; 1941 Comp., § 16-433; 1953 Comp., § 16-4-33.

## **ARTICLE 8**

### **Small Claims Courts**

(Repealed by Laws 1979, ch. 346, § 13.)

### **34-8-1 to 34-8-13. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1979, ch. 346, § 13, repeals 34-8-1 to 34-8-13 NMSA 1978, as enacted by Laws 1953, ch. 137, §§ 1 to 12 and Laws 1955, ch. 104, § 3, relating to the small claims courts, effective July 1, 1980. For present provisions as to metropolitan courts, see 34-8A-1 to 34-8A-8 NMSA 1978.

## **ARTICLE 8A**

### **Metropolitan Courts**

### **34-8A-1. Metropolitan court; established.**

There is established within the boundaries of a class A county with a population of more than two hundred fifty thousand persons in the last federal decennial census the "metropolitan court". The name of the metropolitan district is the same as the name of the county in which it is located.

History: Laws 1979, ch. 346, § 1; 2010, ch. 99, § 1.

### **ANNOTATIONS**

**The 2010 amendment**, effective May 19, 2010, changed "two hundred thousand persons" to "two hundred fifty thousand persons".

**Law reviews.** — 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).

### **34-8A-2. Metropolitan court; constitution.**

With respect to the provisions of Sections 1 and 26 of Article 6 of the state constitution and all other provisions of law, the metropolitan court shall constitute a state magistrate court which is inferior to the district courts and is established by law pursuant to the provisions of Section 1 of Article 6 of the state constitution.

**History:** Laws 1979, ch. 346, § 2; 1980, ch. 142, § 1.

### **ANNOTATIONS**

**Appeal provisions for magistrate courts not applicable.** — Neither this section nor the constitutional provisions to which it refers have the effect of making appeal provisions for magistrate courts applicable to metropolitan court appeals. *State v. Crespin*, 96 N.M. 553, 632 P.2d 1191 (Ct. App. 1981).

**Duty of public defenders in metropolitan court.** — The public defender department's scope of representation is limited statutorily to the magistrate and the district courts; the legislature has designated the Albuquerque metropolitan court as a magistrate court. Therefore, the public defender department is obligated to represent all indigents in the Albuquerque metropolitan court who are charged with any violation that carries a possible penalty of imprisonment, including city code violations. 1987 Op. Att'y Gen. No. 87-43.

### **34-8A-3. Metropolitan court; jurisdiction.**

A. In addition to the jurisdiction provided by law for magistrate courts, a metropolitan court shall have jurisdiction within the county boundaries over all:

(1) offenses and complaints pursuant to ordinances of the county and of a municipality located within the county in which the court is located except municipalities with a population of more than two thousand five hundred but less than five thousand persons in the 1980 federal decennial census; provided that the metropolitan court shall not have jurisdiction over uncontested municipal parking violations;



(2) civil actions in which the debt or sum claimed does not exceed ten thousand dollars (\$10,000), exclusive of interest and costs; and

(3) contested violations of parking or operation of vehicle rules promulgated by a board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico located within the county in which the court is located.

B. For the purposes of this section, "uncontested violation" is a violation for which a citation has been issued and the person has paid the citation by mail or in person to the appropriate issuing authority; and "contested violation" is a violation for which a citation has been issued and the person has indicated his intent to contest the citation or the person has not paid or answered the citation.

C. The issuing authority shall provide to the metropolitan court on a mutually agreed schedule the unpaid citations and a listing in a manner mutually agreed upon of unpaid citations.

D. The municipality shall retain as reimbursement for its expenses all revenues from uncontested municipal parking violations.

**History:** Laws 1979, ch. 346, § 3; 1980, ch. 142, § 2; 1981, ch. 304, § 2; 1985, ch. 128, § 1; 1987, ch. 111, § 2; 1999, ch. 104, § 1; 2001, ch. 77, § 1.

## ANNOTATIONS

**Cross references.** — For domestic violence offender treatment fund, see 31-12-12 NMSA 1978.

For costs of criminal processes associated with domestic abuse offenses, see 40-13-3.1 NMSA 1978.

**The 2001 amendment**, effective July 1, 2001, substituted "ten thousand dollars (\$10,000)" for "seven thousand five hundred dollars (\$7,500)" in Paragraph A(2); and substituted "rules" for "regulations" in Paragraph A(3).

**The 1999 amendment**, effective, July 1, 1999, substituted "seven thousand five hundred dollars (\$7,500)" for "five thousand dollars (\$5,000)" in Paragraph A(2).

**Delay in enforcing sentence.** — Where the court delayed enforcing defendant's sentence for thirteen months due to a mistake as to whether defendant was serving the sentence during and after an appeal, the court did not lose jurisdiction to enforce the sentence. *State v. Calabaza*, 2011-NMCA-053, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_.

**Service of writ of execution.** — A writ of execution on a judgment of the former small claims court may be served outside of the county where the court is created. 1963-64 Op. Att'y Gen. No. 63-18 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Small claims: jurisdictional limits as binding on appellate court, 67 A.L.R.4th 1117.

### **34-8A-4. Metropolitan court; judges.**

A. Metropolitan judges shall be elected as provided in Section 34-8A-4.1 NMSA 1978. The governor shall fill vacancies in the office of metropolitan judge, by appointment of persons who possess the personal qualifications established by law, until the next general election.

B. No person shall be eligible for election or appointment to the office of metropolitan judge unless he is a member of the bar of and has practiced in this state for a period of three years. There shall be a chief metropolitan judge of a metropolitan court. The chief metropolitan judge shall designate each metropolitan judge position as a separate and consecutively numbered division, and any additional metropolitan judge authorized within a metropolitan court shall be designated as metropolitan judge of the next consecutive division. A district court judge may designate a metropolitan judge as a special master.

**History:** Laws 1979, ch. 346, § 4; 1980, ch. 142, § 3; 1981, ch. 11, § 1; 1981, ch. 318, § 1; 1983, ch. 171, § 1; 1984, ch. 115, § 1; 1986, ch. 49, § 6; 1988, ch. 136, § 4; 1989, ch. 283, § 4; 1990, ch. 115, § 4; 1993, ch. 278, § 2.

### **ANNOTATIONS**

**Cross references.** — For classification of counties, see 4-44-1 NMSA 1978.

For selection of metropolitan court judges, see N.M. Const., art. VI, § 37.

For chief judge of metropolitan court, see N.M. Const., art. VI, § 38.

**The 1993 amendment,** effective January 1, 1994, substituted "chief" for "presiding" in the second and third sentences of Subsection B; and deleted former Subsection C, which specified the salary of each metropolitan judge and stated that the provisions of the Judicial Retirement Act [10-12B-1 to 10-12B-17 NMSA 1978] shall not apply to metropolitan judges.

**The 1990 amendment,** effective July 6, 1990, in Subsection A, deleted the former first sentence which read "The magistrates of the magistrate court and the judges of the small claims court and of any municipal courts within a class A county shall continue to hold their offices as metropolitan judges of the metropolitan court for the balance of the terms for which they were elected or appointed" and deleted "Thereafter" at the

beginning of the present first sentence and, in Subsection C, increased the salary of metropolitan judges from \$48,632 to \$52,500.

**Time for meeting eligibility requirements.** — A candidate for metropolitan court judge had to meet the eligibility requirements under former Subsection B at the time of taking the oath of office. *Chavez v. Yontz*, 104 N.M. 265, 720 P.2d 300 (1986).

**Prohibition against private practice of law constitutionally permissible.** — A lawyer is constitutionally denied the privilege of engaging in the private practice of law while serving as a small claims court judge. In prohibiting a small claims court judge from practicing law while in office, the legislature is attaching a lawful condition to the holding of the office. This in no way interferes with the class of persons who are eligible to be chosen to hold public office as prescribed by N.M. Const., art. VII, § 2. 1963-64 Op. Att'y Gen. No. 63-58 (opinion rendered under former law).

### **34-8A-4.1. Metropolitan court judges; terms of office.**

The term of office for each judge of the metropolitan court is four years. Judges shall be appointed, elected and retained in accordance with Article 6 of the constitution of New Mexico.

**History:** 1978 Comp., § 34-8A-4.1, enacted by Laws 1981, ch. 318, § 2; 1988, ch. 115, § 1; 1990, ch. 114, § 1; 1997, ch. 180, § 3; 1999 (1st S.S.), ch. 4, § 1; 2005, ch. 284, § 4.

## **ANNOTATIONS**

**Cross references.** — For selection and retention of metropolitan court judges, see N.M. Const., art. VI, § 33.

**The 2005 amendment**, effective July 1, 2005, changes "elected term" to "term"; provides that judges shall be appointed, elected and retained in accordance with the N.M. Const., art. VI; deletes former Subsection B which provided for the election of a person appointed to fill a vacancy on the metropolitan court; deletes former Subsection C which provided for the appointment, term of service and election of the Bernalillo county metropolitan judges in divisions thirteen, fourteen and fifteen; and deletes former Subsection D which provided for the appointment, term of service and election of the Bernalillo county metropolitan judge for division 16.

**The 1999 amendment**, effective May 21, 1999, deleted Subsection B, which read "Judges of the metropolitan court who have been previously elected in a partisan election or who were serving as metropolitan judges on January 1, 1989 in divisions one through twelve shall be subject to retention or rejection on a nonpartisan ballot at the 1990 general election for a four-year term ending December 31, 1994", redesignated subsequent subsections accordingly, and added present Subsection D.

**The 1997 amendment**, effective July 1, 1997, added the last sentence of Subsection D.

**The 1990 amendment**, effective January 1, 1991, rewrote this section to the extent that a detailed comparison is impracticable.

### **34-8A-4.2. Appointment as special master, arbitrator or metropolitan court judge pro tempore; compensation.**

A. The chief metropolitan court judge may appoint a retired metropolitan court judge, with the retired judge's consent, to serve as a special master, an arbitrator or a metropolitan court judge pro tempore, subject to money available in the metropolitan court operating budget.

B. A retired metropolitan court judge shall be compensated for his services in an amount equal to ninety percent of the compensation provided to a district court judge pro tempore.

**History:** Laws 2002, ch. 40, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 40, § 2 made the act effective July 1, 2002.

### **34-8A-5. Metropolitan court; jury trial.**

A. With respect to civil actions, except for contempt of the metropolitan court, the right to trial by jury exists in all actions in the metropolitan court which are within metropolitan court jurisdiction. Either party to an action may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the defendant, and the metropolitan clerk shall collect from the demanding party the jury fee established by law for magistrate juries. If demand is not made pursuant to this subsection, or if the jury fee is not paid at the time demand is made, trial by jury is deemed waived.

B. With respect to criminal actions:

(1) if the penalty does not exceed ninety days' imprisonment or if the penalty is a fine or forfeiture of a license, the action shall be tried by the judge without a jury;

(2) if the penalty exceeds ninety days' but does not exceed six months' imprisonment, either party to the action may demand a trial by jury. The demand shall be made orally or in writing to the court at or before the time of entering a plea or in writing to the court within ten days after the time of entering a plea. If demand is not made pursuant to this subsection, trial by jury is deemed waived; or

(3) if the penalty exceeds six months' imprisonment, the case shall be tried by jury unless the defendant waives a jury trial with the approval of the court and the consent of the state.

C. Juries in the metropolitan court shall hear the evidence in the action which shall be delivered in public in its presence. After hearing the evidence and being duly charged by the judge, the members of the jury shall be kept together until:

- (1) in civil actions, five members shall agree upon a verdict;
- (2) in criminal actions, the members unanimously agree upon a verdict; or
- (3) the members are discharged by the judge.

The judge shall give judgment upon any verdict.

D. A jury in the metropolitan court consists of six jurors with the same qualifications as jurors in the district court.

E. The presiding judge of the metropolitan court shall direct the clerk of the district court to draw and assign to that court the number of qualified jurors the judge deems necessary for one or more jury panels. Upon the receipt of the direction and in the manner prescribed for the selection of district court jurors, the clerk of the district court shall draw at random from the master jury wheel the number of qualified jurors specified. The names of jurors drawn for metropolitan jury service shall be forwarded to the metropolitan court clerk who shall maintain a record of the names and addresses of the prospective jurors.

F. Whenever a jury is required, the presiding judge of the metropolitan court shall order the sheriff or a responsible person to summon the persons named on the jury list to appear at the time and place set for trial of the action. If a jury is left incomplete because of failure of jurors to appear, excused absences or disqualification of jurors, a metropolitan judge shall direct the sheriff to summon others to complete the jury.

G. No person may be required to remain as a member of a metropolitan court jury panel for longer than six months following qualification as a juror in any year unless the panel is engaged in a trial.

**History:** Laws 1979, ch. 346, § 5; 1981, ch. 304, § 3.

### **ANNOTATIONS**

**Cross references.** — For right to jury trial, see N.M. Const., art. II, § 12.

For jury and witness fee fund, see 34-9-11 NMSA 1978.

**Constitutionality.** — Because of the legislature's requirement that magistrate judges in metropolitan court be attorneys and magistrates elsewhere throughout the state do not have to meet that qualification, the disallowance of juries in metropolitan court for petty criminal offenses is not arbitrary, unreasonable nor unrelated to a legitimate legislative purpose. *Meyer v. Jones*, 106 N.M. 708, 749 P.2d 93 (1988).

**"The penalty" in Subsection B refers to potential aggregate penalty** of all offenses being tried at a single time. *Vallejos v. Barnhart*, 102 N.M. 438, 697 P.2d 121 (1985).

### **34-8A-6. Metropolitan court; rules; appeal.**

A. The supreme court shall adopt separate rules of procedure for the metropolitan courts. The rules shall provide simple procedures for the just, speedy and inexpensive determination of any metropolitan court action.

B. The metropolitan court is a court of record for civil actions. Any party aggrieved by a judgment rendered by the metropolitan court in a civil action may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method for the appeal shall be set forth by supreme court rule.

C. The metropolitan court is a court of record for criminal actions involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence. A criminal action involving domestic violence means an assault or battery under any state law or municipal or county ordinance in which the alleged victim is a household member as defined in the Family Violence Protection Act [40-13-1 NMSA 1978]. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method of appeal shall be set forth by supreme court rule.

D. The metropolitan court is not a court of record for criminal actions other than driving while under the influence of intoxicating liquors or drugs or domestic violence actions. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action, other than driving while under the influence of intoxicating liquors or drugs or domestic violence action, may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The appeal shall be de novo.

E. All judgments rendered in civil actions in the metropolitan court shall be subject to the same provisions of law as those rendered in district court.

**History:** Laws 1979, ch. 346, § 6; 1980, ch. 142, § 4; 1981, ch. 304, § 4; 1993, ch. 67, § 1.

## ANNOTATIONS

**Cross references.** — For court automation fund, see 34-9-10 NMSA 1978.

For crime laboratory fee, see 31-12-7 NMSA 1978.

For crime laboratory fund, see 31-12-9 NMSA 1978.

For domestic violence offender treatment fund, see 31-12-12 NMSA 1978.

For court automation fee, see 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

For metropolitan court mediation fee, see 35-6-1 NMSA 1978.

For corrections fee to be imposed for all persons found guilty in the magistrate and metropolitan court, see 35-6-1 NMSA 1978.

For costs of criminal processes associated with domestic abuse offenses, see 40-13-3.1 NMSA 1978.

For payment of costs of any court ordered screening and treatment program, see 66-8-102 NMSA 1978.

For funding of local government corrections fund by penalty assessment fees, see 66-8-116 NMSA 1978 and 66-8-119 NMSA 1978.

For procedures governing appeals to the district court from metropolitan courts on the record, see 1-073 NMRA.

**The 1993 amendment**, effective January 1, 1994, rewrote this section to the extent that a detailed comparison is impracticable.

**A defendant may not attack the validity of a metropolitan court plea** for the first time in an on-the-record appeal to the district court. *State v. Spillman*, 2010-NMCA-019, 147 N.M. 676, 227 P.3d 1058, cert. denied, 2010-NMCERT-001.

**Attack on the validity of a plea for the first time on appeal.** — Where defendant pled no contest in metropolitan court to a charge of battery against a household member pursuant to a plea and disposition agreement, and defendant appealed the sentence to district court, the district court, sitting as an appellate court, was without authority to address defendant's contention that defendant did not fully understand the basis of the plea. *State v. Spillman*, 2010-NMCA-019, 147 N.M. 676, 227 P.3d 1058, cert. denied, 2010-NMCERT-001.

**No appeal will lie from anything other than an actual written order or judgment** signed by a judge and filed with the clerk of the court. *State v. Lohberger*, 2008-NMSC-033, 144 N.M. 297, 187 P.3d 162.

**On-record trial of domestic abuse.** — All acts of domestic abuse as defined in 40-13-2 NMSA 1978 of the Family Violence Protection Act should be tried on-record in metropolitan court. *State ex rel. Schwartz v. Sanchez*, 1997-NMSC-021, 123 N.M. 165, 936 P.2d 334.

**Subsection C does not unconstitutionally abridge right of appeal** guaranteed by N.M. Const. art. VI, § 27. *State v. Ball*, 104 N.M. 176, 718 P.2d 686 (1986).

**"Aggrieved" party for purposes of appeal.** — A defendant who properly has entered a plea of guilty or nolo contendere in metropolitan court is not an "aggrieved" party entitled, under Subsection C, to appeal to the district court for a trial de novo. *State v. Ball*, 104 N.M. 176, 718 P.2d 686 (1986).

Although defendant stipulated to all the essential elements of the crime with which he was charged without reservation, the court declined to hold that the defendant was not an aggrieved party and therefore had no right to appeal; defendant's stipulation as to the essential elements of the crime is not the functional equivalent of a guilty or no contest plea where there is no showing that when defendant made his stipulations he understood that such action amounted to a guilty or no contest plea and that he would forego his right to appeal to the district court for a trial de novo. *State v. Romero*, 114 N.M. 320, 838 P.2d 474 (Ct. App. 1992).

**One who agrees not to be aggrieved** by entering into a plea and disposition agreement in the metropolitan court, who alleges no constitutional invalidity in the agreement, and who does not seek to have the plea and agreement withdrawn, is not an "aggrieved" party and cannot appeal to the district court. *State v. Bazan*, 97 N.M. 531, 641 P.2d 1078 (Ct. App. 1982).

**Appeal governed by nature of offense.** — Appeal from the metropolitan court is governed by the crime of which defendants are convicted rather than the type of trial, thus, defendant convicted of eluding an officer and reckless driving was entitled to a trial de novo, even though the trial was on the record. *State v. Krause*, 1998-NMCA-013, 124 N.M. 415, 951 P.2d 1076, cert. denied, 125 N.M. 146, 958 P.2d 104 (1998).

Where defendant was convicted in metropolitan court of battery against a household member in violation of 30-3-4 NMSA 1978, because the state did not prosecute the battery under 30-3-15 NMSA, state could not contend, under Subsection D of this section, that defendant was convicted of a crime involving domestic violence; defendant was, thus, entitled to a de novo appeal in district court rather than just an on-record review of the proceeding. *State v. Trujillo*, 1999-NMCA-003, 126 N.M. 603, 973 P.2d 855.



**Prosecution is not a "person" within the meaning of Subsection C.** State v. Giraudo, 99 N.M. 634, 661 P.2d 1333 (Ct. App. 1983).

**Liability for district court docket fee upon transfer.** — A party instituting an action or causing it to be docketed in the former small claims court must pay the district court docket fee on transfer to the district court under certain circumstances. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

**Limited authority to impose jail time on appeal.** — In a criminal trial de novo, on appeal from the metropolitan court, the district court lacks the authority to impose jail time greater than the jail time imposed by the metropolitan court. State v. Haar, 100 N.M. 609, 673 P.2d 1342 (Ct. App. 1983).

**No change in sentence allowed in de novo trial upon an appeal.** — In a de novo trial upon an appeal from a metropolitan court, there is no statutory authority empowering the district court to impose a lesser or greater penalty than that imposed by the metropolitan court. State v. Lyon, 103 N.M. 305, 706 P.2d 516 (Ct. App. 1985).

**State can reduce charge in de novo trial even though effect is to avoid jury trial.** — At a trial de novo on an appeal of a metropolitan court jury conviction, the state may reduce the charge against the defendant with the effect that the defendant would not be exposed to a term of confinement which would require a jury trial. State v. Lyon, 103 N.M. 305, 706 P.2d 516 (Ct. App. 1985).

**Standard of review to be applied by district court in a civil appeal** from the metropolitan court to the district court is one of "substantial evidence" to support the finding of the metropolitan court. Johnson v. Southwestern Catering Corp., 99 N.M. 564, 661 P.2d 56 (Ct. App. 1983).

**Extent of retention of jurisdiction by district court.** — A district court may retain jurisdiction of an action filed in the former small claims court to the same extent as if originally filed in the district court. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

**Law reviews.** — For annual survey of New Mexico law relating to criminal procedure, see 12 N.M.L. Rev. 271 (1982).

### **34-8A-7. Metropolitan court; administration.**

A. The metropolitan judges of a metropolitan court shall select and appoint a court administrator who shall supervise all matters relating to the administration of the metropolitan court. The court administrator shall, after his appointment, be directly responsible to and work at the direction of the presiding judge of the metropolitan court.

B. The metropolitan court administrator shall annually prepare and submit a proposed budget approved by the presiding judge of the metropolitan court to the

administrative office of the courts. The metropolitan court shall make monthly written reports to the administrative office of the courts as is currently required of all magistrates and shall otherwise comply with the rules and statutes regarding administration except as provided by this act.

C. All money for the operation and maintenance of the metropolitan court shall be paid by the state treasurer upon warrants of the secretary of finance and administration, supported by vouchers of the presiding judge of the metropolitan court and in accordance with budgets approved by the administrative office of the courts and the state budget division of the department of finance and administration.

**History:** Laws 1979, ch. 346, § 7; 1980, ch. 142, § 5.

### ANNOTATIONS

**Compiler's notes.** — The term "this act," referred to at the end of Subsection B, means Laws 1980, ch. 142, which is compiled as 34-8A-2 to 34-8A-4 and 34-8A-6 to 34-8A-8 NMSA 1978.

**Supreme court control over metropolitan courts.** — The supreme court has ultimate authority over administrative matters of the courts. *Russillo v. Scarborough*, 935 F.2d 1167 (10th Cir. 1991).

The supreme court's power of superintending control includes the authority to order the metropolitan court to terminate its court administrator. *Russillo v. Scarborough*, 935 F.2d 1167 (10th Cir. 1991).

**Metropolitan court administrator was an "at-will" employee** who could have been terminated with or without cause, and was not entitled to any grievance procedures or to notice or hearing at termination. *Russillo v. Scarborough*, 727 F. Supp. 1402 (D.N.M. 1989), *aff'd*, 935 F.2d 1167 (10th Cir. 1991).

### **34-8A-8. Metropolitan court; Bernalillo district.**

A. The name of the metropolitan court in the Bernalillo metropolitan district shall be the "Bernalillo county metropolitan court".

B. The metropolitan court is an agency of the judicial department of state government. Personnel of the metropolitan court are subject to all laws and regulations applicable to state officers and agencies and state officers and employees, except where otherwise specifically provided by law.

C. There shall be nineteen judges of the Bernalillo county metropolitan court.

History: Laws 1979, ch. 346, § 8; 1980, ch. 142, § 6; 1981, ch. 308, § 1; 1983, ch. 70, § 1; 1988, ch. 115, § 2; 1990, ch. 114, § 2; 1997, ch. 180, § 4; 2005, ch. 284, § 5; 2006, ch. 99, § 6.

## ANNOTATIONS

**Cross references.** — For revenue bonds to finance new Bernalillo county metropolitan court building, see Appendix B to Chapter 6, Article 12 NMSA 1978.

**The 2006 amendment**, effective July 1, 2006, changed "eighteen" to "nineteen".

**Temporary provisions.** — Laws 2006, ch. 99, § 7, effective July 1, 2006, provided that additional judgeships shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

**The 2005 amendment**, effective July 1, 2005, added Subsection C to provide that there shall be eighteen judges of the Bernalillo county metropolitan court.

**The 1997 amendment** would have increased the metropolitan court judges from fifteen to eighteen, however, it was vetoed by the governor on April 17, 1997. As vetoed by the governor, Subsection C would have read: "There shall be eighteen judges of the Bernalillo county metropolitan court."

**The 1990 amendment**, effective January 1, 1991, substituted "fifteen judges" for "twelve judges" in Subsection C.

### **34-8A-9. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1980, ch. 142, § 11, repealed 34-8A-9 NMSA 1978, as enacted by Laws 1979, ch. 346, § 9, relating to the metropolitan court commission, effective July 1, 1980.

### **34-8A-10. Metropolitan court mediation fund created; administration; distribution.**

A. There is created in the state treasury the "metropolitan court mediation fund" to be administered by the Bernalillo county metropolitan court.

B. All balances in the metropolitan court mediation fund are appropriated to the Bernalillo county metropolitan court for payment to metropolitan courts for the purpose of funding and administering voluntary mediation programs established by court rule for the efficient disposition of small claims and specified criminal complaints. Payments shall be made upon certification by the metropolitan courts of eligible amounts as provided in Subsection C of this section.

C. Each metropolitan court shall be eligible for a payment in an amount equal to the mediation fees collected by that court and deposited in the metropolitan court mediation fund.

D. Payments from the metropolitan court mediation fund shall be made upon vouchers issued and signed by the Bernalillo county metropolitan court administrator upon warrants drawn by the secretary of finance and administration.

**History:** Laws 1986, ch. 16, § 1; 1989, ch. 245, § 1.

### **ANNOTATIONS**

**Cross references.** — For domestic violence offender treatment fund, see 31-12-12 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, deleted "quarterly" following "made" in the second sentence of Subsection B.

### **34-8A-11. Metropolitan court; indigency standard; fee schedule; reimbursement.**

A. The metropolitan court shall use a standard adopted by the public defender department to determine indigency of persons accused of crimes carrying a possible jail sentence.

B. The metropolitan court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent defendants who are financially unable to obtain private counsel.

C. The metropolitan court shall order reimbursement from each person who has received or desires to receive legal representation or another benefit under the Public Defender Act [31-15-1 NMSA 1978] after a determination is made that he was not indigent according to the standard for indigency adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund.

**History:** 1978 Comp., § 34-8A-11, enacted by Laws 1987, ch. 20, § 4.

### **ANNOTATIONS**

**Cross references.** — For defense of indigents, see 31-16-1 NMSA 1978.

### **34-8A-12. Metropolitan court warrant enforcement fund; fee; administration; use of money in fund.**

A. There is created in the state treasury the "metropolitan court warrant enforcement fund" to be administered by the Bernalillo county metropolitan court.

B. Upon issuance of a bench warrant, the Bernalillo county metropolitan court shall assess an administrative fee of one hundred dollars (\$100) against the individual whose arrest is commanded by the bench warrant. Money collected pursuant to the fee assessment authorized by this subsection shall be deposited in the metropolitan court warrant enforcement fund.

C. All balances in the metropolitan court warrant enforcement fund are appropriated to the Bernalillo county metropolitan court for the primary purpose of employing personnel and purchasing equipment and services to aid in the collection of fines, fees or costs owed to the Bernalillo county metropolitan court. After satisfaction of the primary purpose, any money remaining in the fund may, to the extent deemed necessary by the court, be used for the secondary purpose of partially reimbursing law enforcement agencies for the expense of serving bench warrants issued by the court, pursuant to an intergovernmental agreement entered into between the law enforcement agency and the court.

D. Payments from the metropolitan court warrant enforcement fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers issued and signed by the Bernalillo county metropolitan court administrator.

E. Any balance remaining in the metropolitan court warrant enforcement fund at the end of a fiscal year shall not revert to the state general fund.

**History:** 1978 Comp., § 34-8A-12, enacted by Laws 1993, ch. 261, § 5.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1993, ch. 261, § 5 repealed former 34-8A-12 NMSA 1978, as enacted by Laws 1987, ch. 110, § 1, relating to the metropolitan court pilot program for the service of warrants, and enacted the above section, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on New Mexico One Source of Law DVD.

### **34-8A-13. Collection of fines, fees or costs.**

A judgment and sentence issued by the Bernalillo county metropolitan court that includes an assessment of fines, fees or costs shall constitute a money judgment that may be enforced in the same manner as a civil judgment in the district court. The money judgment may be assigned by the court to a public or private agency or business

for collection purposes, pursuant to the terms and conditions of a written agreement entered into by the court and the agency or business.

**History:** 1978 Comp., § 34-8A-13, enacted by Laws 1993, ch. 261, § 6.

### **34-8A-14. Use of parking facility near Bernalillo county metropolitan court.**

The Bernalillo county metropolitan court shall administer and manage a parking facility adjacent to the Bernalillo county metropolitan court in Albuquerque in accordance with the following provisions:

A. parking fees or the rents charged by the Bernalillo county metropolitan court to any public or private tenant or user of the parking facility shall be at rates comparable to parking fees charged in the downtown Albuquerque area for similar parking privileges or rents charged in the downtown Albuquerque area for similar space;

B. after payment of all fixed costs related to the parking facility and all costs of operating and maintaining the parking facility, all rents, parking fees and charges collected by the Bernalillo county metropolitan court for the parking facility shall be deposited in the court facilities fund;

C. the Bernalillo county metropolitan court shall provide a certified long-term user list and parking fee or rent schedule for the parking facility to the New Mexico finance authority at the end of each fiscal year;

D. with the prior written consent of the New Mexico finance authority, the Bernalillo county metropolitan court may sell or otherwise dispose of the parking facility; provided that no sale or disposition of the parking facility shall be for less than the fair market value of the parking facility as determined by an independent real estate appraiser; and

E. any money received from the sale or other disposition of the parking facility shall be deposited in the court facilities fund and used for the early redemption of any outstanding bonds issued by the New Mexico finance authority for financing the parking facility adjacent to the Bernalillo county metropolitan court building in Albuquerque.

**History:** Laws 2000, ch. 5, § 1.

### **ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

**Emergency clauses.** — Laws 2000, ch. 5, § 9 makes the act effective immediately. Approved February 15, 2000.

### **34-8A-15. Metropolitan court; electronic services fee.**

A metropolitan court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund.

History: Laws 2009, ch. 112, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **ARTICLE 9**

### **Administrative Office of the Courts**

#### **34-9-1. [Maintenance at seat of government; supervision; appointment and removal of director by supreme court.]**

The administrative office of the courts of New Mexico shall be maintained at the seat of the government. It shall be supervised by a director who shall be appointed and subject to removal by the supreme court of New Mexico.

**History:** 1953 Comp., § 16-6-1, enacted by Laws 1959, ch. 162, § 1.

#### **ANNOTATIONS**

**Cross references.** — For contracting for services of counsel to act under Indigent Defense Act, see 31-16-9 NMSA 1978.

**Supreme court control over courts.** — The supreme court has ultimate authority over administrative matters of the courts. *Russillo v. Scarborough*, 935 F.2d 1167 (10th Cir. 1991).

#### **34-9-2. [Appointment and removal of employees by director; approval of supreme court.]**

The director may appoint necessary employees, subject to the approval of the supreme court, who shall be subject to removal by him with the approval of the supreme court.

**History:** 1953 Comp., § 16-6-2, enacted by Laws 1959, ch. 162, § 2.

## ANNOTATIONS

### 34-9-3. Director; duties.

The director of the administrative office of the courts shall, under the supervision and direction of the supreme court:

- A. supervise all matters relating to administration of the courts;
- B. examine fiscal matters and the state of the dockets of the courts, secure information as to the courts' need of assistance and prepare and transmit to the supreme court statistical data and reports as to the business of the courts;
- C. submit to the supreme court and to the legislature by January 30 of each year a report of the activities of the administrative office of the courts and of the state of business of the courts, including the statistical data submitted to the supreme court pursuant to Subsection B of this section, and the director's recommendations. This report is a public document;
- D. deal with the problems of finance of those courts supported by legislative appropriation and be concerned with adequate but economical financing of each of these courts and the equitable distribution of available funds among them. For this purpose, the director shall receive, adjust and approve proposed budgets submitted by these courts prior to submission of the budgets to the state budget division of the department of finance and administration for inclusion in the executive budget. The district courts of all counties within a judicial district shall be included within a single budget. Budget proposals shall be submitted by the courts at the time and in the form prescribed by the director;
- E. perform other duties in aid of the administration of justice and the administration and dispatch of the business of the courts as directed by the supreme court. The courts shall comply with all requests of the director for information; and
- F. encourage that any behavioral health services, including mental health and substance abuse services, funded, provided, contracted for or approved by the office be in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: 1953 Comp., § 16-6-3, enacted by Laws 1959, ch. 162, § 3; 1963, ch. 66, § 2; 1968, ch. 69, § 46; 2004, ch. 46, § 12.

## ANNOTATIONS

**Cross references.** — For approving bonds for district court personnel, see 34-6-22 NMSA 1978.

For law governing surety bonds of state employees, see 10-2-15 NMSA 1978.



For finances of district courts generally, see 34-6-34 NMSA 1978.

For administering and distributing money from the local government corrections fund, see 33-3-25 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, deleted in Subsection D "for the fifty-eighth and subsequent fiscal years" and added Subsection F.

**Supreme court control over courts.** — The supreme court has ultimate authority over administrative matters of the courts. *Russillo v. Scarborough*, 935 F.2d 1167 (10th Cir. 1991).

#### **34-9-4. [Officer or employee prohibited from practicing law.]**

No officer or employee of the administrative office shall engage directly or indirectly in the practice of law.

**History:** 1953 Comp., § 16-6-4, enacted by Laws 1959, ch. 162, § 4.

#### **34-9-5. [Seal of director; approval by supreme court; judicial notice.]**

The director may use a seal approved by the supreme court. Judicial notice shall be given of such seal.

**History:** 1953 Comp., § 16-6-5, enacted by Laws 1959, ch. 162, § 5.

#### **34-9-6. [Authority of courts to appoint personnel unaffected by Sections 34-9-1 to 34-9-7 NMSA 1978.]**

The authority of the courts to appoint administrative or clerical personnel shall not be limited by any provisions of this act [34-9-1 to 34-9-7 NMSA 1978].

**History:** 1953 Comp., § 16-6-6, enacted by Laws 1959, ch. 162, § 6.

#### **34-9-7. Courts defined.**

As used with reference to the duties of the director of the administrative office of the courts the word "courts" includes the supreme court, the court of appeals, the district courts, the children's and family court divisions of the district courts, the probate courts and the magistrate courts.

**History:** 1953 Comp., § 16-6-7, enacted by Laws 1959, ch. 162, § 7; 1963, ch. 66, § 3; 1966, ch. 28, § 29; 1968, ch. 62, § 2; 1972, ch. 97, § 50.

### **34-9-8. Courts; records; manuals.**

A. The director of the administrative office of the courts shall compile manuals prescribing detailed requirements for uniform systems of records and forms for use by courts. Following approval by the supreme court, the manuals shall be reproduced by the administrative office of the courts and a copy filed with the supreme court law librarian. Upon the filing, any manual then constitutes a set of rules of the supreme court having the effect of law.

B. Sections of any manual may be revised or amended from time to time by the director, and the revisions or amendments become effective following approval by the supreme court, reproduction by the administrative office of the courts and filing with the supreme court law librarian.

C. The director of the administrative office of the courts shall distribute copies of each manual to each court concerned and, upon request, to other courts and to interested members of the public.

D. Each court shall comply with all the requirements contained in the applicable manual, submit reports to the director as requested and furnish additional information the director may consider expedient.

**History:** 1953 Comp., § 16-6-8, enacted by Laws 1963, ch. 66, § 1; 1968, ch. 69, § 47.

### **34-9-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 51, § 1, effective March 19, 1983, repealed 34-9-9 NMSA 1978, relating to district court dockets.

### **34-9-10. Court automation fund created; administration; distribution.**

A. There is created in the state treasury a "court automation fund" to be administered by the administrative office of the courts.

B. All balances in the court automation fund are appropriated and may be expended for service contracts related to court automation systems or for the purchase, lease-purchase, financing, refinancing and maintenance of court automation systems in the judiciary. The New Mexico finance authority may pledge irrevocably all distributions to the authority from the court automation fund for the payment of the principal, interest and any other expenses or obligations related to the bonds issued by the authority for financing court automation systems. Any balance remaining, after all principal, interest

and any other expenses or obligations related to the bonds in each fiscal year are fully paid, may be appropriated by the legislature to the administrative office of the courts.

C. Payments from the court automation fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration. Any purchase or lease-purchase agreement entered into pursuant to this section shall be entered into in accordance with the Procurement Code [13-1-28 NMSA 1978].

**History:** 1978 Comp., § 33-3-25.1, enacted by Laws 1987, ch. 32, § 2; 1988, ch. 121, § 1; 1991, ch. 70, § 1; 1996, ch. 41, § 4.

### ANNOTATIONS

**Cross references.** — For the secretary of finance and administration, see 9-6-4 NMSA 1978.

For payment of jury and witness fees, see 34-6-35 NMSA 1978.

For court automation fee, see 35-6-1, 66-8-116.3, 66-8-119 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, in Subsection B, deleted "for expenditure in the seventy-sixth through the eightieth fiscal years" following "courts" and deleted a second sentence which read "The balance in the court automation fund shall revert to the general fund at the end of the eightieth fiscal year" and, in Subsection C, deleted "quarterly" following "shall be made" in the first sentence and "and shall be approved by the secretary of finance and administration" at the end of the second sentence.

**The 1996 amendment**, in Subsection B, rewrote the first sentence and added the second and third sentences. Laws 1996, ch. 41 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Appropriations.** — Laws 1993, ch. 366, § 2B, effective June 18, 1993, appropriates \$4,500,000 from the computer systems enhancement fund to the supreme court for expenditure in the eighty-first through eighty-third fiscal years to provide for eight full-time equivalent positions and to purchase hardware, software and implementation services for statewide automation of the metropolitan, magistrate and district courts to establish a uniform statewide judicial information system, contingent upon establishment of a judicial information system council by New Mexico supreme court order.

Laws 1993, ch. 366, § 3B, effective June 18, 1993, appropriates \$1,000,000 from the court automation fund to the supreme court in the eighty-second fiscal year to pay for

maintenance and operation costs associated with implementation of statewide court automation and existing court automation system, contingent upon establishment of the judicial information system council by New Mexico supreme court order. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the court automation fund.

Laws 1993, ch. 366, § 5 provides for the severability of the act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 2B, effective March 9, 1994, appropriates \$2,050,000 from the computer systems enhancement fund to the supreme court for expenditure in the eighty-third and eighty-fourth fiscal years to provide for the existing eight full-time equivalent positions and to purchase hardware, software and implementation services for statewide automation of the metropolitan, magistrate and district courts. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the computer systems enhancement fund.

Laws 1995, ch. 223, § 2, effective June 16, 1995, appropriates \$4,500,000 from the general fund to the supreme court for expenditure in fiscal year 1996 for the purpose of providing for eight existing full-time equivalent positions and to purchase hardware, software and implementation services for statewide automation of the district and magistrate courts, including on-line search services.

**Extension of expenditure period.** — Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

**Compiler's notes.** — The provisions of this section were enacted as 33-3-25.1 NMSA 1978, but the section was renumbered for more logical placement as Chapter 33 relates to corrections.

### **34-9-11. Jury and witness fee fund created; administration; distribution.**

A. There is created in the state treasury the "jury and witness fee fund" to be administered by the administrative office of the courts.

B. All balances in the jury and witness fee fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purpose of paying the costs of:

- (1) jurors and prospective jurors;
- (2) witnesses of fact or character subpoenaed by the court, the prosecution or the defense;

- (3) expert witnesses for grand juries and magistrate courts;
- (4) court interpreters; and
- (5) defending persons whom the court has ordered the public defender to represent, when those persons do not meet the public defender's indigency standards.

C. All jury fees that the courts collect from parties requesting civil juries, except for jury demand fees as set forth in Section 35-6-1 NMSA 1978, and interest earned on money in the jury and witness fee fund shall be credited to the fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the jury and witness fee fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or his designee upon warrants drawn by the secretary of finance and administration.

**History:** Laws 1993, ch. 106, § 1; 1994, ch. 36, § 1.

### ANNOTATIONS

**Cross references.** — For jury trials in metropolitan court, see 34-8A-5 NMSA 1978 and Rule 3-602 NMRA.

For the contribution of civil case docket fees and civil jury fees to the magistrate retirement fund, see 10-12C-11 NMSA 1978.

For Indigent Defense Act, see 31-16-1 to 31-16-10 NMSA 1978.

For determination of indigency under the Indigent Defense Act, see 31-16-5 NMSA 1978.

For schedule of magistrate costs, see 35-6-1 NMSA 1978.

For the payment of jury fees in district court civil actions, see Rule 1-038 NMRA.

For the payment of jury fees in magistrate courts, see Rule 2-602 NMRA.

For the payment of jury fees in the metropolitan court, see Rule 3-602 NMRA.

**The 1994 amendment**, effective May 18, 1994, in Subsection B, deleted "and" at the end of Paragraph (3), added "and" at the end of Paragraph (4) and added Paragraph (5).

**Court determination obligates public defender.** — The legislature, understanding that courts determine indigence under the Indigent Defense Act (IDA), enacted 31-15-

10 NMSA 1978 of the Public Defender Act (PDA) intending "every person without counsel who is financially unable to obtain counsel" to include all persons who courts determine are "needy" under the 31-16-5 NMSA 1978 of the IDA. Therefore, under the administrative system of the PDA and IDA, when a court determines that a defendant is "needy," the defendant is "financially unable to obtain counsel" under the PDA, and the Department "shall represent" the defendant pursuant to 31-15-10 NMSA 1978, assuming the defendant is charged with a crime carrying a possible sentence of imprisonment. *State ex rel. Quintana v. Schnedar*, 115 N.M. 573, 855 P.2d 562 (1993).

**Determination of indigency.** — The Indigent Defense Act and the Public Defender Act are consistent as amended; the IDA obligates courts to determine indigence, the PDA directs the department to adopt standards for determining indigence. *State ex rel. Quintana v. Schnedar*, 115 N.M. 573, 855 P.2d 562 (1993).

**Attorney not liable for costs.** — Defense counsel's failure to notify witness and interpreter of his decision to vacate a scheduled hearing did not make him responsible under the Witness Fee Payment Guidelines for the fees incurred in bringing them to the hearing; while counsel could have made his decision earlier and given more notice, he was not required by the Guidelines to do so. *State v. Rivera*, 1998-NMSC-024, 125 N.M. 532, 964 P.2d 93.

### **34-9-12. Municipal court automation fund created; administration; distribution.**

A. There is created in the state treasury the "municipal court automation fund" to be administered by the administrative office of the courts.

B. All balances in the municipal court automation fund may be expended only upon application by a municipality to the administrative office of the courts for the purpose of purchasing, maintaining and operating a court automation system in that municipality's courts. Operation includes staff expenses, temporary or otherwise, and costs as needed to comply with Section 35-14-12 NMSA 1978.

C. Payments from the municipal court automation fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts. Any purchase or lease purchase agreement entered into by a municipality for a court automation system shall be in accordance with the provisions of the Procurement Code [13-1-28 NMSA 1978].

History: Laws 1994, ch. 69, § 3; 2006, ch. 28, § 1.

### **ANNOTATIONS**

**Cross references.** — For municipal ordinances requiring assessment and collection of corrections fees, judicial education fees, and court automation fees, see 35-14-11 NMSA 1978.

**The 2006 amendment**, effective May 17, 2006, provides in Subsection B that the municipal court automation fund may be used to operate a court automation system and that operation includes staff expenses and costs as needed to comply with 35-14-12 NMSA 1978.

### **34-9-13. Magistrate and metropolitan court capital fund created; purpose.**

The "magistrate and metropolitan court capital fund" is created in the state treasury and shall be administered by the administrative office of the courts. The fund shall consist of money transferred to the fund by the New Mexico finance authority or from the court facilities fund. Money in the fund shall be available for appropriation by the legislature for leasing or purchasing, renovating, maintaining, securing, furnishing or equipping magistrate or metropolitan court facilities.

**History:** Laws 1998 (1st S.S.), ch. 6, § 6.

### **ANNOTATIONS**

**Appropriations.** — Laws 2000, ch. 5, § 8 appropriates \$8,100,000 from the magistrate and metropolitan court capital fund for expenditure in fiscal years 2000 through 2004 for acquisition of real property for and the design, construction, furnishing and equipping of a new court building for the Bernalillo county metropolitan court in Albuquerque and of a parking facility adjacent to the new Bernalillo county metropolitan court building or to repay a loan from the New Mexico finance authority for any of these purposes. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the magistrate and metropolitan court capital fund. It also appropriates \$1,000,000 from the magistrate and metropolitan court capital fund to the administrative office of the courts for expenditure in fiscal year 2001 for securing, equipping and studying the costs and benefits of leasing and purchasing magistrate court facilities.

### **34-9-14. Court facilities fund created; administration; distribution.**

A. The "court facilities fund" is created in the state treasury and shall be administered by the administrative office of the courts. The fund shall consist of court fees and lease and rental revenues transferred to or deposited in the fund.

B. All court facilities fees and other revenues deposited in the fund shall be distributed monthly to the New Mexico finance authority for deposit in a special bond fund or account of the authority. The New Mexico finance authority may pledge irrevocably all of these distributions to the authority for the payment of principal, interest and any other expenses or obligations related to the bonds issued by the authority for financing the acquisition of real property and for the design, construction, furnishing and equipping of a new court building for the Bernalillo county metropolitan court in Albuquerque and of a parking facility adjacent to the court building.

C. Distributions from the court facilities fund to the New Mexico finance authority shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

**History:** Laws 1998 (1st S.S.), ch. 6, § 7; 2000, ch. 5, § 5.

### **ANNOTATIONS**

**Cross references.** — For New Mexico finance authority, see 6-21-1 NMSA 1978.

**The 2000 amendment,** effective February 15, 2000, inserted "and of a parking facility adjacent to the court building" at the end of Subsection B.

### **34-9-14.1. Magistrate drug court fund; created.**

The "magistrate drug court fund" is created in the state treasury. The administrative office of the courts shall administer money in the fund to offset client service costs of drug court programs in magistrate courts, consistent with standards approved by the supreme court. Money in the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the court administrator or his authorized representative. Balances in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003, ch. 240, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 240, § 4 makes the act effective on July 1, 2003.

### **34-9-15. Use of Bernalillo county metropolitan court facilities.**

The administrative office of the courts, as holder of record title to the existing Bernalillo county metropolitan court building located on the northwest corner of Fourth street and Roma avenue northwest in Albuquerque, shall administer and manage the building in accordance with the following provisions:

A. after completion of a new Bernalillo county metropolitan court facility with proceeds of bonds issued by the New Mexico finance authority, the entire operations, judges, staff and personnel associated with the Bernalillo county metropolitan court shall be relocated to the new facility and the existing facility shall be vacated; and

B. after completion of a new Bernalillo county metropolitan court facility, the administrative office of the courts shall then transfer the record title of the vacated facility to the general services department for the express purpose of housing the district public defender or other state agencies.



**History:** Laws 1998 (1st S.S.), ch. 6, § 8; 2001, ch. 95, § 1.

## ANNOTATIONS

**The 2001 amendment**, effective June 15, 2001, rewrote Subsection B, which formerly provided for the facility to be vacated and made available for lease to public or private tenants; and deleted former Subsections C through G, which provided for the management of the facility and any funds acquired through leasing, selling, or mortgaging the facility.

### **34-9-16. New Mexico finance authority revenue bonds; purpose; appropriation.**

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act [6-21-1 NMSA 1978] in installments or at one time in an amount not exceeding forty-six million five hundred thousand dollars (\$46,500,000), and an additional three million nine hundred thousand dollars (\$3,900,000) after January 1, 2003, for the purpose of financing the acquisition of real property for and the design, construction, furnishing and equipping of a new court building for the Bernalillo county metropolitan court in Albuquerque.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the chief judge of the Bernalillo county metropolitan court and the court administrator of the Bernalillo county metropolitan court certify the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the Bernalillo county metropolitan court for the purpose described in Subsection A of this section.

C. The money distributed from the court facilities fund to the New Mexico finance authority shall be pledged irrevocably for the payment of the principal, interest and other expenses or obligations related to the bonds.

D. Until all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, any money remaining in the special bond fund or account, after all principal, interest and other expenses or obligations related to the bonds in that fiscal year are fully met, shall be transferred to the magistrate and metropolitan court capital fund. After all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, up to one million five hundred thousand dollars (\$1,500,000) of any money on deposit in the special bond fund or account in excess of the combined total of the principal, interest and other expenses or obligations related to the bonds coming due in that fiscal year shall be transferred annually to the magistrate and metropolitan court capital fund. After all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, any amount in the special bond fund or account at the end of each fiscal year not transferred to the magistrate and metropolitan court capital fund shall be used during the succeeding fiscal year for early redemption, defeasance or retirement of bonds selected at the discretion of the New Mexico finance authority. Upon payment of

all principal, interest and other expenses or obligations related to the bonds, the authority shall certify to the administrative office of the courts that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the administrative office of the courts and the state treasurer to cease distributing money from the court facilities fund to the authority and to transfer the money from the court facilities fund to the magistrate and metropolitan court capital fund.

E. Any law imposing court facilities fees, authorizing the collection of court facilities fees or directing deposits into the court facilities fund or distribution of the money in the court facilities fund to the New Mexico finance authority shall not be amended, repealed or otherwise directly or indirectly modified so as to impair outstanding revenue bonds that may be secured by a pledge of the distributions from the court facilities fund to the New Mexico finance authority, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

**History:** Laws 1998 (1st S.S.), ch. 6, § 9; 2001, ch. 95, § 2; 2003, ch. 45, § 1.

## ANNOTATIONS

**The 2001 amendment,** effective June 15, 2001, updated internal references and deleted "and all distributions to the court facilities fund provided in this act become law" following "are imposed by law" in Subsection A; and rewrote Subsection D, which formerly provided that the remainder of funds in the special bond fund or account, after principal, interest and expenses were fully paid, would be transferred to the magistrate and metropolitan court capital fund.

**The 2003 amendment,** effective March 19, 2003, in Subsection A, deleted "If the fourteen dollar (\$14.00) metropolitan court facilities fees and the ten-dollar (\$10.00) magistrate court facilities fees provided in Sections 35-6-1 and 66-8-116.3 NMSA 1978 are imposed by law" at the beginning and inserted "and an additional three million nine hundred thousand dollars (\$3,900,000) after January 1, 2003".

**Compiler's notes.** — Laws 2000, ch. 5, § 2, appropriated \$11,400,000 to the design, construction, furnishing and equipping of a parking facility adjacent to the Bernalillo county metropolitan court building. See also Chapter 6, Article 12, Appendix B and 7-27-5.25 NMSA 1978.

### **34-9-17. Consolidation study committee; composition; duties.**

A. With the approval and direction of the supreme court, the administrative office of the courts shall create a "consolidation study committee" to study the potential

consolidation of the magistrate and municipal courts in Dona Ana county. The committee shall consist of fifteen members as follows:

- (1) a district judge from the third judicial district, appointed by the chief judge of the district;
- (2) a Dona Ana county magistrate judge, appointed by the director of the administrative office of the courts;
- (3) a municipal judge from the city of Las Cruces, appointed by the director of the administrative office of the courts;
- (4) three attorneys who commonly practice in the Dona Ana county magistrate court or the city of Las Cruces municipal court, appointed by the third judicial district bar association;
- (5) one public member appointed by the mayor of the city of Las Cruces;
- (6) one public member appointed by the board of county commissioners for Dona Ana county;
- (7) one administrative employee from the Dona Ana county magistrate court, appointed by the magistrates;
- (8) one administrative employee from the city of Las Cruces municipal court, appointed by the municipal judges;
- (9) one administrative employee from the third judicial district court, appointed by the district court judges;
- (10) a designee of the director of the administrative office of the courts;
- (11) the district attorney for the third judicial district;
- (12) the district public defender for the third judicial district; and
- (13) a member of the city council of the city of Las Cruces, appointed by the city council.

B. The committee shall elect a chair and such other officers as it deems necessary. The committee shall meet at the call of the chair but no less than once per month. The committee may contract with a part-time individual to assist the committee with its administrative functions.

C. The committee shall investigate and evaluate the effectiveness and judicial efficiency of community-based judicial systems in other areas and determine the

feasibility of creating a consolidated system in the Dona Ana county court system. The committee shall report its findings and recommendation to the city council, the board of county commissioners and the legislature by December 1, 2005.

History: Laws 2005, ch. 297, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 297 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

### **34-9-18. Judicial performance evaluation fund; created.**

A. The "judicial performance evaluation fund" is created in the state treasury to be administered by the administrative office of the courts. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund. Balances in the fund shall not revert to the general fund at the end of any fiscal year.

B. Money in the judicial performance evaluation fund is subject to appropriation by the legislature to the administrative office of the courts for the operation and costs of the judicial performance evaluation commission to perform the duties required by the supreme court to evaluate appellate, district and metropolitan court judges.

C. Payments from the judicial performance evaluation fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee upon warrants drawn by the secretary of finance and administration.

History: Laws 2008, ch. 36, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2008, ch. 36 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

## **ARTICLE 10**

### **Judicial Standards Commission**

### **34-10-1. Judicial standards commission; selection; terms.**

The judicial standards commission consists of eleven positions:

A. positions 1 through 5 and position 10, each of which shall be filled by a person who is a qualified elector of this state, who is not a justice, judge or magistrate of any court and who is not licensed to practice law in this state. The governor shall fill each of these positions by appointment of qualified persons. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for five years or less, in such manner that at least one term expires on June 30 each year, and so that not more than four of the six positions are occupied by persons from the same political party. The initial terms for positions 1 through 5 begin on July 1, 1968. The initial term for position 10 begins on July 1, 1999. The terms expire as follows:

- (1) position 1 on June 30, 1969;
- (2) position 2 on June 30, 1970;
- (3) position 3 on June 30, 1971;
- (4) position 4 on June 30, 1972;
- (5) position 5 on June 30, 1973; and
- (6) position 10 on June 30, 2004;

B. positions 6 and 7, each of which shall be filled by a person who is licensed to practice law in this state. These positions shall be filled by appointment of qualified persons by majority vote of all members of the board of commissioners of the state bar of New Mexico, but no member of the board of commissioners shall be appointed. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 of each even-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

- (1) position 6 on June 30, 1970; and
- (2) position 7 on June 30, 1972; and

C. positions 8 and 9, each of which shall be filled by a person who is a justice of the supreme court or a judge of the court of appeals or district court and position 11, which shall be filled by a person who is a magistrate court judge. These positions shall be filled by appointment of qualified persons by the supreme court. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that at least one of the terms expires on June 30 of each odd-numbered year. The initial terms for positions 8 and 9 begin on July 1, 1968. The initial term for position 11 begins on July 1, 1999. The terms expire as follows:

- (1) position 8 on June 30, 1971;
- (2) position 9 on June 30, 1973; and
- (3) position 11 on June 30, 2003.

**History:** 1953 Comp., § 16-8-1, enacted by Laws 1968, ch. 48, § 1; 1999, ch. 109, § 1.

## ANNOTATIONS

**Cross references.** — For creation and powers of judicial standards commission relating to discipline and removal of judicial officers, see N.M. Const., art. VI, § 32.

For board of commissioners of the state bar, see 24-101 NMRA.

**The 1999 amendment**, effective, June 18, 1999, substituted "eleven positions" for "nine positions" in the introductory language; in Subsection A, inserted "and position 10" in the first sentence, in the third sentence inserted "at least" and substituted "four of the six positions" for "three of the five positions", in the next-to-last sentence inserted "for positions 1 through 5", deleted "and expire as follows" following "July 1, 1968", added the last sentence, and added Paragraph (6); in Subsection C, added the language beginning "and position" to the end of the first sentence, inserted "at least" in the fourth sentence, in the fifth sentence inserted "for positions 8 and 9" and deleted "and expire as follows" following "July 1, 1968", added the next-to-last sentence and "The terms expire as follows" at the beginning of the last sentence, and added Paragraph (3).

**Compiler's notes.** — H. J. R. No. 12 (Laws 2009), which would have provided for a municipal judge to sit on the judicial standards commission and for an additional public member, was not passed by the forty-ninth legislature.

**Right of appointment does not carry implied right of removal**, because the commissioners have designated terms. State ex rel. New Mexico Judicial Standards Comm'n v. Espinosa, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

**Staggered terms.** — The use of staggered terms is not sufficient to limit the governor's removal power under N.M. Const., art. V, § 5. While policies underlying staggered terms are important, such policies cannot override the governor's express removal authority. State ex. rel. New Mexico Judicial Standards Comm'n v. Espinosa, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

**Law reviews.** — For article, "State ex rel. New Mexico Judicial Standards Commission v. Espinosa : Can Judicial Integrity Survive Executive Control?", see 34 N.M.L. Rev. 489 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 46 Am. Jur. 2d Judges § 17 et seq.

48A C.J.S. Judges § 40 et seq.

### **34-10-2. Judicial standards commission; vacancies.**

Whenever any member of the judicial standards commission dies, resigns or no longer has the qualifications required for his original selection, his position on the commission becomes vacant. The remaining members of the commission shall certify the existence of the vacancy to the original appointing authority for the vacant position, which authority shall select a successor in the same manner as the original selection was made.

**History:** 1953 Comp., § 16-8-2, enacted by Laws 1968, ch. 48, § 2.

#### **ANNOTATIONS**

**Creation of vacancies.** — None of the appointing authorities has the power to create a vacancy by removing one of the commissioners from his or her position. *State ex rel. New Mexico Judicial Standards Comm'n v. Espinosa*, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

### **34-10-2.1. Judicial standards commission; duties; subpoena power.**

A. The judicial standards commission shall:

(1) investigate all charges, complaints and allegations as to willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance of any justice, judge or magistrate of any court, and when the commission deems necessary hold a hearing on the charges, complaints or allegations concerning the discipline or removal of such judicial officer;

(2) investigate and, if the commission deems necessary, hold hearings on any charge, complaint or allegation that a justice, judge or magistrate has suffered a disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character;

(3) if the commission deems it necessary or convenient, appoint three masters, who are justices or judges of courts of record, to hear and take evidence in any matter arising under Paragraph (1) or (2) of this subsection who shall report their findings to the commission; and

(4) after a hearing deemed necessary pursuant to Paragraph (2) of this subsection, or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

B. In any investigation or hearing held under the provisions of this section, the commission shall have the power to administer oaths and with the concurrence of a majority of the members of the commission, it may petition a district court to subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation upon a showing of probable cause.

**History:** 1953 Comp., § 16-8-2.1, enacted by Laws 1977, ch. 289, § 1.

### **34-10-3. Judicial standards commission; executive director.**

The judicial standards commission shall employ an executive director.

**History:** 1953 Comp., § 16-8-3, enacted by Laws 1974, ch. 4, § 1.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1974, ch. 4, § 1, repeals former 16-8-3, 1953 Comp., relating to the supreme court clerk serving as staff for the commission, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Confidentiality of proceedings or reports of judicial inquiry board or commission, 5 A.L.R.4th 730.

### **34-10-4. Judicial standards commission; director's duties.**

The executive director of the judicial standards commission shall:

A. perform, or cause to be performed, all investigations as may be deemed necessary or desirable by the commission or masters appointed by the commission;

B. enter into such contracts as may be necessary to carry out the responsibilities of the commission;

C. hire such other personnel as may be necessary to carry out the responsibilities of the commission; and

D. perform such other duties as may be delegated to him by the commission.

**History:** 1953 Comp., § 16-8-4, enacted by Laws 1974, ch. 4, § 2.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1969, ch. 209, § 7, recompiled former 16-8-4, 1953 Comp., relating to the judicial conference, as 16-9-1, 1953 Comp., which was compiled as 34-11-1 NMSA 1978. That section was repealed by Laws 1987, ch. 29, § 1.



## **ARTICLE 11**

### **Judicial Conference**

(Repealed by Laws 1987, ch. 29, § 1.)

#### **34-11-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 29, § 1 repeals 34-11-1, as amended by Laws 1980, ch. 144, § 1, concerning creation and duties of the judicial conference, effective March 16, 1987. For provisions of former section, see New Mexico One Source of Law DVD.

## **ARTICLE 12**

### **Judicial Council**

(Repealed by Laws 1981, ch. 305, § 8; Laws 1986, ch. 66, § 2.)

#### **34-12-1 to 34-12-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 305, § 8, repeals 34-12-1 to 34-12-6 NMSA 1978, as enacted by Laws 1969, ch. 209, §§ 1 to 6, and as amended by Laws 1973, ch. 212, § 1, Laws 1977, ch. 247, § 147, and Laws 1979, ch. 103, § 1, relating to the judicial council, effective July 1, 1981.

#### **34-12-7 to 34-12-12. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 66, § 2 repeals 34-12-7 to 34-12-12 NMSA 1978, as enacted by Laws 1981, ch. 305, § 2 and as amended by Laws 1983, ch. 71, § 1, relating to the judicial council, effective July 1, 1986.

## **ARTICLE 13**

### **Judicial Education Fund**

**34-13-1. Judicial education fund created; administration; income to the fund.**

A. The "judicial education fund" is created in the state treasury and shall be administered by the institute of public law at the university of New Mexico law school. Money in the fund shall be invested by the state treasurer as provided by law and earnings of the fund shall be credited to the fund. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert.

B. Money from the fund may only be expended upon appropriation by the legislature.

C. The judicial education fund consists of judicial education fees levied and collected pursuant to Sections 35-6-1, 35-7-4, 35-14-11, 66-8-116.3 and 66-8-119 NMSA 1978.

**History:** Laws 1993, ch. 273, § 1.

### **34-13-2. Judicial education center created; purpose.**

A. The "judicial education center" is created at the institute of public law at the university of New Mexico law school.

B. The judicial education center shall provide education, training and instruction for the justices, judges, magistrates and court personnel of the state, municipalities and counties, with an appropriate amount of time to be devoted each year to training and instruction on the disposition of driving while under the influence cases.

**History:** Laws 1993, ch. 273, § 2.

## **ARTICLE 14**

### **Civil Legal Services Commission**

#### **34-14-1. Civil legal services; commission; fund; disbursement.**

A. The "civil legal services commission" is created. The commission shall be composed of five members, all of whom have experience with the civil legal matters affecting low-income persons. The members shall be appointed as follows:

- (1) two members appointed by the governor;
- (2) two members, both of whom shall be attorneys, appointed by the supreme court; and
- (3) one member, who shall be an attorney, appointed by the state bar of New Mexico.

B. The initial appointee of the state bar shall serve for three years. One of the initial members appointed by the governor and one of the initial members appointed by the supreme court shall serve for one year and the other initial members appointed by the governor and by the supreme court shall serve for two years. Thereafter, the terms of all members shall be for three years.

C. Staff and meeting space for the commission shall be provided by the local government division of the department of finance and administration. The commission shall elect a chair and such other officers as it deems appropriate and shall meet at the call of the chair. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation.

D. The commission shall:

(1) pursuant to the Procurement Code [13-1-28 NMSA 1978], solicit proposals for disbursements from the civil legal services fund;

(2) enter into contracts for the expenditure of the civil legal services fund, less administrative costs as provided in Subsection E of this section, for the purpose of improving civil legal services for low-income persons. The contracts shall be entered into with nonprofit organizations:

(a) whose mission is to provide a range of free legal services to New Mexicans living in poverty and who demonstrate the capacity to cooperate with state and local bar associations, pro bono programs and private attorneys to increase the availability of free legal services to impoverished New Mexicans; or

(b) whose programs increase and coordinate statewide access to and provisions of civil legal services for persons living in poverty through the use of technology; provided that no more than fifty percent of the annual expenditures from the civil legal services fund shall be used for purposes of this subparagraph; and

(3) adopt such rules as are necessary to carry out the provisions of this section.

E. The local government division of the department of finance and administration, pursuant to rules of the commission, shall administer the contracts and programs provided for in this section; provided that no more than five percent of the annual expenditures from the civil legal services fund shall be for administrative costs. The division shall require an annual accounting from each organization receiving funds pursuant to this section.

F. Money disbursed pursuant to this section shall not be used by a recipient to:

(1) support lobbying, as defined in the Lobbyist Regulation Act [2-11-1 NMSA 1978]; or

(2) bring suit against the state.

G. The "civil legal services fund" is created in the state treasury. All earnings of the fund shall be credited to the fund, and any unexpended or unencumbered balance in the fund shall not revert to another fund at the end of a fiscal year. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the local government division of the department of finance and administration. Money in the fund is appropriated to the local government division and the civil legal services commission for the purposes of carrying out the provisions of this section.

H. As used in this section, "civil legal services" means a full range of free legal services provided by attorneys or attorney-supervised staff in noncriminal matters to low-income persons living in New Mexico.

**History:** Laws 2001, ch. 277, § 3 and Laws 2001, ch. 279, § 3.

#### **ANNOTATIONS**

**Cross references.** — For the district court docket fee imposed for the civil legal services fund, see 34-6-40 NMSA 1978.

For the magistrate and metropolitan court docket fee imposed for the legal services fund, see 35-6-1 NMSA 1978.

For attorney's duty to perform pro bono legal service, see 16-601 NMRA.

**Duplicate laws.** — Laws 2001, ch. 277, § 3, and Laws 2001, ch. 279, § 3 enact identical new sections of the law, effective July 1, 2001. Both have been compiled as 34-14-1 NMSA 1978.

## **ARTICLE 15**

### **Domestic Violence Offender Treatment Fund**

#### **34-15-1. Repealed.**

#### **ANNOTATIONS**

**Repealed.** — Laws 2008, ch. 7, § 4, repealed 34-15-1 NMSA 1978, as enacted by Laws 2003, ch. 94, § 1, relating to the domestic violence offender treatment fund, effective July 1, 2008. For provisions of former section, see the 2007 NMSA 1978 on New Mexico One Source of Law DVD.

## **34-15-2. Repealed.**

### **ANNOTATIONS**

**Repealed.** — Laws 2008, ch. 7, § 4, repealed 34-15-2 NMSA 1978, as enacted by Laws 2003, ch. 94, § 2, relating to the domestic violence offender treatment fund, effective July 1, 2008. For provisions of former section, see the 2007 NMSA 1978 on New Mexico One Source of Law DVD.

## **ARTICLE 16**

### **Juvenile Adjudication Fund**

#### **34-16-1. Juvenile adjudication fund created.**

The "juvenile adjudication fund" is created in the state treasury to provide an alternative procedure of adjudication for juveniles charged with misdemeanor offenses to help alleviate the docket of the juvenile judicial system. The fund consists of juvenile adjudication fees levied and collected pursuant to Section 66-8-116.3 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The department of finance and administration shall administer the fund, and money in the fund is appropriated to the department of finance and administration to administer the fund and to provide an alternative adjudication process for juveniles charged with traffic offenses and other misdemeanors. Money expended to administer the fund shall not exceed five percent of the money credited to the fund in each fiscal year. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

History: Laws 2009, ch. 244, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.