

# UNANNOTATED

## CHAPTER 35 Magistrate and Municipal Courts

### ARTICLE 1

### Magistrate Court; Establishment; Districts; Election

#### 35-1-1. Magistrate court; establishment.

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

**History:** 1953 Comp., § 36-1-1, enacted by Laws 1968, ch. 62, § 3.

#### 35-1-2. Magistrate court; districts.

The magistrate court consists of one magistrate district in each county excepting a class A county with a population of more than two hundred thousand persons in the last federal decennial census. The name of the magistrate district is the same as the name of the county in which it is located.

**History:** 1953 Comp., § 36-1-2, enacted by Laws 1968, ch. 62, § 4; 1979, ch. 346, § 10.

#### 35-1-3. Magistrate court; election; terms.

Except as otherwise provided by law, magistrates shall be nominated and elected at large within each magistrate district at the primary and general elections. In magistrate districts having more than one magistrate, the separate offices shall be designated by divisions and, in all appointments to fill vacancies and in all nominations and elections to these offices, candidates shall be designated as appointed or elected to the office of magistrate of a specific division. Magistrates shall be nominated and elected in the 1968 primary and general elections to serve terms from January 1, 1969 until December 31, 1970. Subsequent terms shall be for four years.

**History:** 1953 Comp., § 36-1-3, enacted by Laws 1968, ch. 62, § 5; 2000, ch. 99, § 1.

#### 35-1-4. Repealed.

#### 35-1-5. Magistrate court; Catron district.

There shall be one magistrate in Catron magistrate district whose principal court is in Reserve.

**History:** 1953 Comp., § 36-1-5, enacted by Laws 1968, ch. 62, § 7; 1977, ch. 153, § 1; 1985, ch. 145, § 1; 2017, ch. 8, § 1.

### **35-1-6. Magistrate court; Chaves district.**

There shall be two magistrates in Chaves magistrate district, divisions 1 and 2 operating as a single court in Roswell.

**History:** 1953 Comp., § 36-1-6, enacted by Laws 1968, ch. 62, § 8; 1982, ch. 101, § 1.

### **35-1-6.1. Magistrate court; Cibola district.**

There shall be two magistrates in Cibola magistrate district, divisions 1 and 2 operating as a single court in Grants.

**History:** 1978 Comp., § 35-1-6.1, enacted by Laws 1982, ch. 101, § 2; 1993, ch. 146, § 1.

### **35-1-7. Magistrate court; Colfax district.**

There shall be two magistrates in Colfax magistrate district, division 1 in Raton and division 2 in Springer.

**History:** 1953 Comp., § 36-1-7, enacted by Laws 1968, ch. 62, § 9; 1975 (S.S.), ch. 13, § 1; 1985, ch. 145, § 2; 1988, ch. 43, § 1; 2009, ch. 54, § 1.

### **35-1-8. Magistrate court; Curry district.**

There shall be two magistrates in Curry magistrate district, both divisions operating as a single court in Clovis.

**History:** 1953 Comp., § 36-1-8, enacted by Laws 1968, ch. 62, § 10.

### **35-1-9. Magistrate court; DeBaca district.**

There shall be one magistrate in DeBaca magistrate district with a court in Fort Sumner.

**History:** 1953 Comp., § 36-1-9, enacted by Laws 1968, ch. 62, § 11.

### **35-1-10. Magistrate court; Dona Ana district.**

There shall be seven magistrates in Dona Ana magistrate district. Divisions 1, 2, 3, 4, 5, 6 and 7 shall operate as a single court in Las Cruces and shall rotate riding circuit to Anthony and Hatch on a regularly scheduled basis.

**History:** 1953 Comp., § 36-1-10, enacted by Laws 1968, ch. 62, § 12; 1976 (S.S.), ch. 53, § 1; 1985, ch. 145, § 3; 1989, ch. 207, § 1; 1999 (1st S.S.), ch. 4, § 2; 2001, ch. 306, § 1; 2010, ch. 3, § 2; 2014, ch. 73, § 5.

### **35-1-11. Magistrate court; Eddy district.**

There shall be three magistrates in Eddy magistrate district, divisions 1 and 2 in Carlsbad operating as a single court and division 3 in Artesia.

**History:** 1953 Comp., § 36-1-11, enacted by Laws 1968, ch. 62, § 13; 1981, ch. 266, § 5; 1985, ch. 145, § 4.

### **35-1-12. Magistrate court; Grant district.**

There shall be two magistrates in Grant magistrate district, division 1 in Silver City and division 2 in Bayard.

**History:** 1953 Comp., § 36-1-12, enacted by Laws 1968, ch. 62, § 14.

### **35-1-13. Magistrate court; Guadalupe district.**

There shall be one magistrate in Guadalupe magistrate district whose principal court is in Santa Rosa.

**History:** 1953 Comp., § 36-1-13, enacted by Laws 1968, ch. 62, § 15; 1985, ch. 145, § 5; 2009, ch. 54, § 2.

### **35-1-14. Magistrate court; Harding district.**

There shall be one magistrate in Harding magistrate district with a court in Roy.

**History:** 1953 Comp., § 36-1-14, enacted by Laws 1968, ch. 62, § 16.

### **35-1-15. Magistrate court; Hidalgo district.**

There shall be one magistrate in Hidalgo magistrate district with a court in Lordsburg.

**History:** 1953 Comp., § 36-1-15, enacted by Laws 1968, ch. 62, § 17.

### **35-1-16. Magistrate court; Lea district.**

A. Through December 31, 2010, there shall be five magistrates in Lea magistrate district, division 1 in Lovington, divisions 2 and 5 operating as a single court in Hobbs, division 3 in Eunice and division 4. The division 3 magistrate shall ride circuit to Jal on a regularly scheduled basis and shall ride circuit to Hobbs as needed. The division 4 magistrate shall ride circuit to Lovington, Hobbs and Eunice.

B. On January 1, 2011, there shall be four magistrates in the Lea magistrate district, divisions 1 and 2 operating as a single court in Hobbs, division 3 in Eunice and division 4 in Lovington. The division 3 magistrate shall ride circuit to Jal on a regularly scheduled basis and shall ride circuit to Hobbs as needed.

C. Magistrate judges shall not be elected at large from the district but shall be elected by the voters of the division for which the magistrate sits. Magistrate judges shall reside in their divisions but shall have district-wide jurisdiction. For the 2010 and subsequent elections, the composition of the divisions for elections and residence purposes is as follows:

(1) division 1 is composed of Lea county precincts 23 through 30, 32 and 41 through 43;

(2) division 2 is composed of Lea county precincts 33 through 35, 44, 51 through 55 and 61;

(3) division 3 is composed of Lea county precincts 20, 22, 31, 36, 62 and 71 through 74; and

(4) division 4 is composed of Lea county precincts 2, 3, 10 through 18 and 21.

**History:** 1953 Comp., § 36-1-16, enacted by Laws 1968, ch. 62, § 18; 1985, ch. 145, § 6; 1992, ch. 71, § 1; 2009, ch. 54, § 3.

### **35-1-17. Magistrate court; Lincoln district.**

There shall be two magistrates in Lincoln magistrate district, division 1 in Carrizozo and division 2 in Ruidoso.

**History:** 1953 Comp., § 36-1-17, enacted by Laws 1968, ch. 62, § 19; 1985, ch. 145, § 7.

### **35-1-18. Magistrate court; Los Alamos district.**

There shall be one magistrate in Los Alamos magistrate district with a court in Los Alamos.

**History:** 1953 Comp., § 36-1-18, enacted by Laws 1968, ch. 62, § 20.

### **35-1-19. Magistrate court; Luna district.**

There shall be one magistrate in Luna magistrate district with a court in Deming.

**History:** 1953 Comp., § 36-1-19, enacted by Laws 1968, ch. 62, § 21.

### **35-1-20. Magistrate court; McKinley district.**

There shall be three magistrates in McKinley magistrate district, divisions 1, 2 and 3 operating as a single court in Gallup. The division 3 magistrate shall ride circuit to Thoreau.

**History:** 1953 Comp., § 36-1-20, enacted by Laws 1968, ch. 62, § 22; 1979, ch. 296, § 1; 2009, ch. 54, § 4.

### **35-1-21. Magistrate court; Mora district.**

There shall be one magistrate in Mora magistrate district with a court in Mora.

**History:** 1953 Comp., § 36-1-21, enacted by Laws 1968, ch. 62, § 23.

### **35-1-22. Magistrate court; Otero district.**

There shall be two magistrates in Otero magistrate district, divisions 1 and 2 operating as a single court in Alamogordo.

**History:** 1953 Comp., § 36-1-22, enacted by Laws 1968, ch. 62, § 24; 1985, ch. 145, § 8.

### **35-1-23. Magistrate court; Quay district.**

There shall be one magistrate in Quay magistrate district whose principal court is in Tucumcari.

**History:** 1953 Comp., § 36-1-23, enacted by Laws 1968, ch. 62, § 25; 1985, ch. 145, § 9; 2009, ch. 54, § 5.

### **35-1-24. Magistrate court; Rio Arriba district.**

There shall be two magistrates in Rio Arriba magistrate district, divisions 1 and 2 operating as a single court in Espanola. The magistrates shall rotate riding circuit to Chama as needed.

**History:** 1953 Comp., § 36-1-24, enacted by Laws 1968, ch. 62, § 26; 1985, ch. 145, § 10; 1993, ch. 345, § 1.

### **35-1-25. Magistrate court; Roosevelt district.**

There shall be one magistrate in Roosevelt magistrate district with a court in Portales.

**History:** 1953 Comp., § 36-1-25, enacted by Laws 1968, ch. 62, § 27.

### **35-1-26. Magistrate court; Sandoval district.**

There shall be three magistrates in Sandoval magistrate district, divisions 1 and 3 in Bernalillo and division 2 in Cuba.

**History:** 1953 Comp., § 36-1-26, enacted by Laws 1968, ch. 62, § 28; 2005, ch. 284, § 6.

### **35-1-27. Magistrate court; San Juan district election division precincts.**

A. There shall be six magistrate divisions in San Juan magistrate district, each division having its own magistrate. Divisions 1, 4 and 6 shall operate as a single court in Aztec and divisions 2, 3 and 5 shall operate as a single court in Farmington.

B. Magistrate judges shall not be elected at large from the district, but shall be elected by the voters of the division for which the magistrate sits. Magistrate judges may reside anywhere within the magistrate district and shall have district-wide jurisdiction. The composition of the divisions for elections purposes is:

(1) division 1 is composed of San Juan county precincts 41, 48, 55, 57, 58, 60 through 67 and 72;

(2) division 2 is composed of San Juan county precincts 1 through 7, 20, 21, 23, 24 and 50;

(3) division 3 is composed of San Juan county precincts 28, 31, 32, 38 through 40, 42 through 44, 46, 47, 49 and 59;

(4) division 4 is composed of San Juan county precincts 8 through 19, 52, 53, 71 and 77;

(5) division 5 is composed of San Juan county precincts 22, 25 through 27, 29, 30, 33 through 37, 45 and 51; and

(6) division 6 is composed of San Juan county precincts 54, 56, 68 through 70 and 73 through 76.

**History:** 1953 Comp., § 36-1-27, enacted by Laws 1968, ch. 62, § 29; 1982, ch. 101, § 3; 1999 (1st S.S.), ch. 4, § 3; 2000, ch. 99, § 2; 2001 (1st S.S.), ch. 2, § 1; 2005, ch. 284, § 7; 2007, ch. 140, § 4; 2013, ch. 89, § 1.

### **35-1-28. Magistrate court; San Miguel district.**

There shall be two magistrates in San Miguel magistrate district, divisions 1 and 2 operating as a single court in Las Vegas.

**History:** 1953 Comp., § 36-1-28, enacted by Laws 1968, ch. 62, § 30; 1985, ch. 145, § 11.

### **35-1-29. Magistrate court; Santa Fe district.**

There shall be four magistrates in the Santa Fe magistrate district, divisions 1, 2, 3 and 4 operating as a single court in Santa Fe; however, one magistrate shall ride circuit to Pojoaque on a regularly scheduled basis.

**History:** 1953 Comp., § 36-1-29, enacted by Laws 1968, ch. 62, § 31; 1969, ch. 231, § 1; 1985, ch. 145, § 12; 2005, ch. 284, § 8.

### **35-1-30. Magistrate court; Sierra district.**

There shall be one magistrate in Sierra magistrate district with a court in Truth or Consequences.

**History:** 1953 Comp., § 36-1-30, enacted by Laws 1968, ch. 62, § 32.

### **35-1-31. Magistrate court; Socorro district.**

There shall be one magistrate in Socorro magistrate district with a court in Socorro.

**History:** 1953 Comp., § 36-1-31, enacted by Laws 1968, ch. 62, § 33.

### **35-1-32. Magistrate court; Taos district.**

There shall be two magistrates in Taos magistrate district, divisions 1 and 2 operating as a single court in Taos.

**History:** 1953 Comp., § 36-1-32, enacted by Laws 1968, ch. 62, § 34; 1972, ch. 45, § 1; 1985, ch. 145, § 13; 2017, ch. 8, § 2.

### **35-1-33. Magistrate court; Torrance district.**

There shall be one magistrate in Torrance magistrate district whose principal court is in Moriarty. The magistrate shall ride circuit to Estancia on a regularly scheduled basis.

**History:** 1953 Comp., § 36-1-33, enacted by Laws 1968, ch. 62, § 35; 1972, ch. 45, § 2; 1985, ch. 145, § 14.

### **35-1-34. Magistrate court; Union district.**

There shall be one magistrate in Union magistrate district with a court in Clayton.

**History:** 1953 Comp., § 36-1-34, enacted by Laws 1968, ch. 62, § 36.

### **35-1-35. Magistrate court; Valencia district.**

There shall be three magistrates in Valencia magistrate district, division 1 and division 3 in Los Lunas and division 2 in Belen.

**History:** 1953 Comp., § 36-1-35, enacted by Laws 1968, ch. 62, § 37; 1972, ch. 45, § 3; 1982, ch. 101, § 4; 1992, ch. 30, § 1.

### **35-1-36. Repealed.**

#### **35-1-36.1. Magistrate court; compensation.**

A. All magistrates shall be full-time.

B. A full-time magistrate is defined as a magistrate who holds office hours a minimum of forty hours per week and who holds no other employment that may conflict with his full-time judicial duties.

**History:** 1978 Comp., § 35-1-36.1, enacted by Laws 1986, ch. 96, § 1; 1988, ch. 136, § 5; 1989, ch. 283, § 5; 1990, ch. 115, § 5; 1993, ch. 278, § 3; 1994, ch. 74, § 1.

#### **35-1-36.2. Repealed.**

#### **35-1-37. Magistrate court; presiding magistrate.**

In magistrate districts where two or more divisions operate as a single court, the chief district judge shall designate the magistrate of one of the divisions as "presiding magistrate" to perform administrative duties prescribed by the supreme court.

**History:** 1953 Comp., § 36-1-37, enacted by Laws 1968, ch. 62, § 39; 1999, ch. 95, § 1; 2021, ch. 95, § 1.

#### **35-1-38. Magistrate court; justices of the peace abolished; transfer.**



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

**History:** 1953 Comp., § 36-1-38, enacted by Laws 1968, ch. 62, § 40.

### **35-1-39. Deleted.**

## **ARTICLE 2 Magistrate Court; Qualification**

### **35-2-1. Qualification; personal qualifications.**

A. Each magistrate shall be a qualified elector of, and reside in, the magistrate district for which the magistrate is elected or appointed.

B. No person is eligible for election or appointment to the office of magistrate unless the person has graduated from high school or has attained the equivalent of a high school education as indicated by possession of a high school equivalency credential issued by the public education department based upon the record made on the high school equivalency credential test.

C. In magistrate districts with a population of more than two hundred thousand persons in the last federal decennial census, no person is eligible for election to the office of magistrate unless the person:

(1) is a member of the bar of this state and licensed to practice law in this state; or

(2) holds the office of magistrate in that district when the federal decennial census is published, as long as there is no break in service.

D. In magistrate districts with a population of more than two hundred thousand persons in the last federal decennial census, no person is eligible for appointment to the office of magistrate unless the person is a member of the bar of this state and licensed to practice law in this state.

E. A person holding the office of magistrate shall not engage in the private practice of law during tenure in office.

**History:** 1953 Comp., § 36-2-1, enacted by Laws 1968, ch. 62, § 41; 1979, ch. 7, § 1; 2013, ch. 26, § 1; 2015, ch. 122, § 19.

### **35-2-2. Qualification; vacancies.**

The governor shall fill vacancies in the office of magistrate by appointment of persons who possess the personal qualifications established by law to serve until the next general election.

**History:** 1953 Comp., § 36-2-2, enacted by Laws 1968, ch. 62, § 42.

### **35-2-3. Qualification; certificate of magistrate qualification.**

A. Within fifteen days after each general election, the administrative office of the courts shall notify each apparently successful candidate for the office of magistrate of the requirements for qualification. Within thirty days after election or appointment, each apparently successful candidate and each appointee shall file with the administrative office of the courts an application for certificate of magistrate qualification. The application shall be in a form prescribed by the administrative office of the courts and shall include:

- (1) the oath of office prescribed by the constitution for public officers subscribed to by the applicant;
- (2) the applicant's certificate of election or appointment; and
- (3) evidence of the applicant's possession of personal qualifications required by law.

B. Each applicant for a certificate of magistrate qualification who has not previously held such a certificate shall attend a qualification training program conducted by the administrative office of the courts as a prerequisite to the issuance of the applicant's first certificate. The administrative office of the courts shall prescribe the content of the qualification training program so as to inform applicants with reference to judicial powers and duties.

C. Upon approval of the application and, when required, upon the applicant's attendance at a qualification training program, the administrative office of the courts shall certify the applicant's initial qualification in accordance with the requirements of law by issuing to the applicant a "certificate of magistrate qualification". Each magistrate shall post the certificate in a conspicuous place in the magistrate's courtroom.

D. If not sooner suspended or revoked as provided by law, each certificate of magistrate qualification automatically expires at the end of the term to which the magistrate is elected or appointed or when the magistrate's successor in office is qualified, whichever is later.

E. Any magistrate who fails to complete the requirements for initial qualification within forty-five days of election or appointment shall be held to have resigned the magistrate's office. The chief district judge shall certify the existence of any magistrate vacancy to the governor and notify the administrative office of the courts.

**History:** 1953 Comp., § 36-2-3, enacted by Laws 1968, ch. 62, § 43; 2021, ch. 95, § 2.

### **35-2-4. Qualification; continuing in office; mandatory training program.**

A. As a qualification for continuing in office, each magistrate shall attend at least one magistrate training program each year unless excused in writing by the chief justice of the supreme court for good cause shown.

B. The administrative office of the courts shall prescribe and conduct annual magistrate training programs designed to inform magistrates with reference to judicial powers and duties and to improve the administration of justice, and shall notify each magistrate of times and places designated for such training programs each year. All officers, agencies and institutions of the state shall cooperate and assist with magistrate training programs upon request of the administrative office.

C. Any magistrate who fails to attend and remain present through all proceedings of at least one magistrate training program during any calendar year without being excused as provided in Subsection A shall be held to have resigned his office, and the administrative office shall revoke his certificate of magistrate qualification and certify the existence of the vacancy to the governor.

D. Magistrates shall be reimbursed per diem and mileage for one round trip to attend one magistrate training program each year. Per diem and mileage shall be paid as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 36-2-4, enacted by Laws 1968, ch. 62, § 44; 1971, ch. 7, § 3.

### **35-2-5. Qualification; failure to qualify.**

A. Any judicial act is void if performed by a magistrate prior to the issuance to him of a certificate of magistrate qualification or during any period of suspension or revocation of the certificate, and the magistrate is personally liable for any damages resulting from such act.

B. No compensation shall be paid to any magistrate for any period of time during which he did not hold a valid certificate of magistrate qualification.

**History:** 1953 Comp., § 36-2-5, enacted by Laws 1968, ch. 62, § 45.

### **35-2-6. Appointment as special master, arbitrator or magistrate judge pro tempore; compensation.**

A. A chief district court judge may appoint a retired magistrate judge, with the retired judge's consent, to serve as a magistrate judge pro tempore, subject to the money available to the judge pro tempore fund.

B. The retired magistrate judge shall be:

(1) compensated for his services in an amount equal to the hourly salary paid to magistrate judges; and

(2) reimbursed for his expenses in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] that apply to nonsalaried public officers.

**History:** Laws 1997, ch. 114, § 1; 2001, ch. 71, § 1.

### **35-2-7. Magistrate courts; authority to conduct a mediation program; training.**

A. If approved by the administrative office of the courts pursuant to Subsection B of this section, a probate judge shall have authority to conduct mediation programs in a magistrate court.

B. The director of the administrative office of the courts may approve a probate judge to exercise the authority conferred in Subsection A of this section if the judicial district for the county in which the magistrate court is located has certified that the probate judge is qualified, by training or experience, to conduct the mediation program.

C. The supreme court shall enact rules necessary for the implementation of this section.

**History:** Laws 1999, ch. 110, § 1.

## **ARTICLE 3 Magistrate Court; Jurisdiction**

### **35-3-1. Jurisdiction; administration of oaths.**

Magistrates may administer oaths and affirmations and take acknowledgments of instruments in writing, but shall charge no fee therefor. Magistrates may acquire appropriate seals for this purpose.

**History:** 1953 Comp., § 36-3-1, enacted by Laws 1968, ch. 62, § 46.

### **35-3-2. Authority; marriages.**

Magistrates may solemnize the contract of matrimony throughout the state but shall charge no fee for it.

**History:** 1953 Comp., § 36-3-2, enacted by Laws 1968, ch. 62, § 47; 1989, ch. 160, § 1.

### **35-3-3. Jurisdiction; civil actions.**

A. Magistrates have jurisdiction in civil actions in which the debt or sum claimed does not exceed ten thousand dollars (\$10,000), exclusive of interest and costs.

B. Except as provided in Subsection C of this section, civil jurisdiction extends to actions in contract, quasi-contract and tort and where expressly conferred by law.

C. A magistrate has no jurisdiction in a civil action:

- (1) for malicious prosecution, libel or slander;
- (2) against public officers for misconduct in office;
- (3) for specific performance of contracts for the sale of real property;
- (4) in which the title or boundaries of land may be in dispute or drawn into question;
- (5) affecting domestic relations, including divorce, annulment or separation or custody, support, guardianship, adoption or dependency of children;
- (6) to grant writs of injunction, habeas corpus or extraordinary writs; or
- (7) where jurisdiction is vested exclusively in another court.

**History:** 1953 Comp., § 36-3-3, enacted by Laws 1968, ch. 62, § 48; 1973, ch. 206, § 1; 1989, ch. 65, § 1; 1999, ch. 104, § 2; 2001, ch. 77, § 2.

### **35-3-4. Jurisdiction; criminal actions.**

A. Magistrates have jurisdiction in all cases of misdemeanors and petty misdemeanors, including offenses and complaints under ordinances of a county. Magistrates also have jurisdiction in any other criminal action where jurisdiction is specifically granted by law, and they may hold preliminary examinations in any criminal action where authorized by law.

B. Magistrates have jurisdiction over all offenses and complaints under ordinances of a municipality and may issue subpoenas and warrants and punish for contempt if that municipality has adopted an effective ordinance to provide for magistrate jurisdiction

over municipal ordinances pursuant to the provisions of Subsection B of Section 35-14-1 NMSA 1978.

C. In any criminal action in the magistrate court which is beyond the jurisdiction of the magistrate court, the magistrate may commit to jail, discharge or recognize the defendant to appear before the district court as provided by law. Whenever the defendant is bound over to the district court, the magistrate shall forthwith deliver to the clerk of the district court a transcript of all proceedings in the magistrate court in the action.

**History:** 1953 Comp., § 36-3-4, enacted by Laws 1968, ch. 62, § 49; 1973, ch. 206, § 2; 1984, ch. 30, § 2; 1985, ch. 59, § 1; 1985, ch. 147, § 1.

### **35-3-5. Jurisdiction; venue of actions.**

A. Venue of actions in the magistrate court lies:

(1) in civil actions, in any magistrate district where the plaintiff or defendant resides or may be found or where the cause of action arose; and

(2) in criminal actions, in the magistrate district where the crime is alleged to have been committed.

B. The provisions of Section 35-3-6 or 35-3-7 NMSA 1978, supersede this section whenever they become applicable.

**History:** 1953 Comp., § 36-3-5, enacted by Laws 1968, ch. 62, § 50.

### **35-3-6. Jurisdiction; territorial limits.**

A. The territorial jurisdiction of a magistrate is coextensive with the magistrate district in which the magistrate serves. A magistrate also has jurisdiction in any criminal action involving violation of a law relating to motor vehicles arising in a magistrate district adjoining at any point that in which the magistrate serves and within magistrate trial jurisdiction; provided that the defendant is entitled to a change of venue to the district where the cause of action arose if the defendant so moves at, or within fifteen days after, arraignment.

B. A magistrate has jurisdiction to sit in any action arising in any other magistrate district when designated for a specific period of time by a district judge because of the unavailability of a magistrate in that magistrate district. A magistrate acting in another magistrate district by designation pursuant to this subsection shall include the cases heard by designation in the magistrate's own reports to the administrative office of the courts, indicating on the reports that the magistrate's jurisdiction is by designation.

C. In a criminal action in which a magistrate has territorial jurisdiction over the offense pursuant to this section, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever the defendant resides or may be found within the state.

D. In a civil action arising within the magistrate's territorial jurisdiction, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever the defendant resides or may be found within the state.

E. The territorial limitations of magistrate court jurisdiction shall not apply to actions to enforce judgments entered in the magistrate district and writs issued in aid of those actions.

**History:** 1953 Comp., § 36-3-6, enacted by Laws 1968, ch. 62, § 51; 1985, ch. 59, § 2; 1989, ch. 65, § 2; 1991, ch. 82, § 1; 1999, ch. 95, § 2; 2007, ch. 251, § 1.

### **35-3-7. Jurisdiction; disqualification of magistrate.**

A. Whenever a party to any civil or criminal action or proceeding of any kind files a statement of disqualification, the magistrate's jurisdiction over the cause terminates immediately. The statement is effective only if filed no later than fifteen days after the date the answer is filed in a civil action or no later than fifteen days after the date the defendant is arraigned in a criminal action.

B. Upon receipt of a notice of disqualification, the magistrate or clerk of the magistrate court shall give written notice to the other parties to the action. Upon failure of counsel for all parties to file a stipulation within ten days of the filing of a statement of disqualification naming another magistrate judge in the district to try the cause, the presiding magistrate judge of the district shall as chosen by random selection designate another judge to try the cause. In the event all magistrates in the district are disqualified under the provisions of this section the disqualified magistrate shall, on the eleventh day thereafter, certify the fact by letter to the district court of the county in which the action is pending, and the district court shall designate another magistrate to conduct any further proceedings. The district court shall send notice of its designation to the parties or their counsel, to the disqualified magistrate and to the designated magistrate.

C. Any magistrate who willfully attempts or presumes to act as magistrate in an action after disqualification is guilty of a petty misdemeanor and shall be removed from office.

**History:** 1953 Comp., § 36-3-7, enacted by Laws 1968, ch. 62, § 52; 1983, ch. 88, § 1.

### **35-3-8. Jurisdiction; recusal.**

A. Except by consent of all parties, no magistrate shall sit in any action in which:

(1) either of the parties is related to him by affinity or consanguinity within the degree of first cousin;

(2) he was counsel for either party in that action; or

(3) he has an interest.

B. Whenever one or more of the conditions of Subsection A exists, or whenever any other reason deemed sufficient by the magistrate exists, the magistrate before whom the action is pending shall recuse himself from sitting in the action by giving notice to all parties. Upon recusal, another magistrate shall be designated to conduct any further proceedings in the action in the same manner as provided in the case of disqualification.

**History:** 1953 Comp., § 36-3-8, enacted by Laws 1968, ch. 62, § 53.

### **35-3-9. Jurisdiction; contempt.**

A magistrate has jurisdiction to punish for contempt only for disorderly behavior or breach of the peace tending to interrupt or disturb a judicial proceeding in progress before the magistrate or for disobedience of any lawful order or process of his court. No person shall be punished for contempt of the magistrate court until given an opportunity to be heard in his defense. Any person convicted under this section may appeal to the district court in the same manner as in other criminal actions in the magistrate court.

**History:** 1953 Comp., § 36-3-9, enacted by Laws 1968, ch. 62, § 54; 1975, ch. 242, § 3; 1991, ch. 82, § 2.

### **35-3-10. Jurisdiction; failure to exercise; unlawful exercise; remedy.**

If a magistrate before whom an action is pending is for any reason unable, unavailable or unwilling to preside in an action, or fails to recognize a properly filed statement of disqualification or fails to recognize grounds for refusal [recusal], any party may proceed in the manner specified by the Rules of Civil Procedure or the Rules of Criminal Procedure for the Magistrate Courts. The district court of the county in which the action is pending shall thereafter take action as provided in those rules.

**History:** 1953 Comp., § 36-3-10, enacted by Laws 1975, ch. 242, § 2.

## **ARTICLE 4**

### **Magistrate Court; Civil Actions**

#### **35-4-1. Civil actions; receipts for money.**



Every magistrate shall, on a form prescribed by the administrative office of the courts:

A. immediately give a written itemized receipt to any person paying money to the court in connection with any civil action; and

B. require a written itemized receipt from the payee before making any disbursement authorized by law.

**History:** 1953 Comp., § 36-4-7, enacted by Laws 1968, ch. 62, § 61; 1991, ch. 82, § 3.

### **35-4-2. Civil actions; exemptions.**

A. Exemptions of personal property provided in Sections 24-5-1 through 24-5-13 New Mexico Statutes Annotated, 1953 Compilation, apply to all executions in civil actions in the magistrate court, and to attachment, garnishment, replevin and forcible entry or detainer. The person entitled to the exemption or his agent or attorney shall claim the exemption by filing as a part of the action pending in the magistrate court a list of the particular property claimed to be exempt and a statement of the grounds for the exemption. The list may be filed at any time before sale of the property or before money garnished is paid to the plaintiff.

B. Upon the filing of a list of claimed exemptions, the magistrate shall notify the plaintiff in the action that claim of exemption has been made for the property specified in the list, and notify both parties of a time set for hearing on the claim of exemption. At the time set for hearing, the magistrate shall receive evidence, determine the issues and enter judgment on the claim of exemption.

C. If judgment on the claim of exemption is rendered after expiration of the time for appeal on the main issue in the action, either party aggrieved by the judgment on the claim of exemption may appeal from that judgment to the district court in the same manner as other appeals from final judgments of the magistrate court are taken. If judgment on the claim of exemption is rendered before judgment on the main issue in the cause, the judgment on the claim of exemption shall be deemed interlocutory and included within any appeal taken on the main issue in the action.

**History:** 1953 Comp., § 36-4-12, enacted by Laws 1968, ch. 62, § 66.

### **35-4-3. Civil actions; distribution of supplies.**

The administrative office of the courts shall:

A. prescribe by regulation the form, size and content of civil dockets and other administrative forms for use in civil actions in the magistrate court; and

B. have all forms prescribed by law or by regulation of the administrative office for use in civil actions reproduced and distribute them to each magistrate court.

**History:** 1953 Comp., § 36-5-4, enacted by Laws 1968, ch. 62, § 71; 1991, ch. 82, § 4.

## **ARTICLE 5**

### **Magistrate Court; Criminal Actions**

#### **35-5-1. Criminal actions; arrest followed by complaint.**

Whenever a peace officer makes an arrest without warrant for a misdemeanor within magistrate trial jurisdiction, he shall take the arrested person to the nearest available magistrate court without unnecessary delay. In such cases, a complaint shall be filed forthwith by the peace officer and a copy given to the defendant at or before the time he is brought before the magistrate.

**History:** 1953 Comp., § 36-6-5, enacted by Laws 1968, ch. 62, § 76.

#### **35-5-2. Criminal actions; preparation of forms.**

The complaint, summons, warrant, final orders on complaints, receipt for fines and costs and receipt for bail in criminal actions in the magistrate court shall be executed on forms provided by the court administrator and approved by the supreme court.

**History:** 1953 Comp., § 36-7-6.1, enacted by Laws 1973, ch. 204, § 1.

#### **35-5-3. Criminal actions; disposition of complaint, summons and warrant.**

In every criminal action in the magistrate court, the original criminal complaint shall be served on the defendant along with the original summons or warrant in the action. Following service of a warrant, the arresting officer shall complete the returns on the other copies of the warrant. The magistrate shall file and retain the second copy of the complaint and summons or warrant with the completed return.

**History:** 1953 Comp., § 36-7-7, enacted by Laws 1968, ch. 62, § 87; 1991, ch. 82, § 5.

#### **35-5-4. Criminal actions; disposition of final order and fine receipt.**

A. Upon disposition of any criminal action in the magistrate court, the magistrate shall complete the final order on criminal complaint and deliver the original to the defendant. Whenever fines or costs are received by a magistrate in any criminal action, he shall complete the criminal fine receipt, require the defendant's acknowledgment of

receipt of the form on all copies and deliver the original to the defendant. The magistrate shall file and retain the second copies of the final order and fine receipt.

B. If any person refuses to accept the original fine receipt, the magistrate shall note the circumstances of the refusal on the form.

**History:** 1953 Comp., § 36-7-8, enacted by Laws 1968, ch. 62, § 88; 1991, ch. 82, § 6.

### **35-5-5. Criminal actions; disposition of bail receipt.**

Whenever bail is received in any criminal action, the magistrate or person designated by the magistrate to accept bail shall complete the criminal bail receipt, require the defendant's acknowledgment of receipt of the form on all copies and deliver the original to the defendant. The magistrate shall file the second copy of the bail receipt with his standardized monthly report, and the third copy shall be retained by the magistrate.

**History:** 1953 Comp., § 36-7-9, enacted by Laws 1968, ch. 62, § 89.

### **35-5-6. Criminal actions; distributions of supplies.**

The administrative office of the courts shall:

A. prescribe by regulation the form, size and content of criminal dockets and other forms for use in criminal actions in magistrate courts; and

B. have all forms prescribed by law or by regulation of the administrative office for use in criminal actions reproduced and distribute them to each magistrate court, obtaining receipts for them by serial number.

**History:** 1953 Comp., § 36-7-10, enacted by Laws 1968, ch. 62, § 90; 1973, ch. 204, § 2.

### **35-5-7. Repealed.**

### **35-5-8. Magistrate court; indigency standard; fee schedule; reimbursement.**

A. The magistrate 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 magistrate 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 magistrate court shall order reimbursement from each person who has received or desires to receive legal representation or another benefit under the Public Defender Act [Chapter 31, Article 15 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., § 35-5-8, enacted by Laws 1987, ch. 20, § 5.

## **ARTICLE 6**

### **Magistrate Court; Fees and Costs**

#### **35-6-1. Magistrate costs; schedule.**

A. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend the following costs:

docket fee, twenty dollars (\$20.00) of which shall be deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 72.00; and jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made . . . . .25.00.

copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process . . . . . 0.50.  
Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund; and

copying fee, for computer-generated or electronically transferred copies, per page. . . . . 1.00.  
Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund.

Except as otherwise specifically provided by law, docket fees shall be paid into the court facilities fund.

B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.

C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency.

The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.

D. Metropolitan court judges shall assess and collect and shall not waive, defer or suspend as costs a mediation fee not to exceed five dollars (\$5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund.

**History:** 1953 Comp., § 36-8-1, enacted by Laws 1968, ch. 62, § 92; 1977, ch. 164, § 1; 1983, ch. 134, § 2; 1984, ch. 118, § 1; 1986, ch. 16, § 2; 1987, ch. 32, § 1; 1987, ch. 251, § 2; 1988, ch. 121, § 2; 1989, ch. 245, § 2; 1990, ch. 57, § 4; 1991, ch. 82, § 7; 1992, ch. 118, § 17; 1993, ch. 273, § 3; 1996, ch. 41, § 5; 1997, ch. 242, § 3; 1997, ch. 247, § 1; 1998 (1st S.S.), ch. 6, § 3; 2000, ch. 5, § 6; 2001, ch. 277, § 2; 2001, ch. 279, § 2; 2003, ch. 424, § 2; 2009, ch. 245, § 2; 2011, ch. 173, § 2; 2023, ch. 184, § 12.

### **35-6-2. Magistrate costs; posting of schedule.**

The administrative office of the courts shall furnish, and each magistrate shall keep posted at all times in a conspicuous place in his courtroom, a plain and legible:

A. statement of costs required by law to be collected by magistrate courts; and

B. a notice in letters at least two inches high reading as follows: "NOTICE TO PUBLIC -- The magistrate court is required to forthwith give official receipts itemizing all money paid to the court. Secure your receipt when payment is made."

**History:** 1953 Comp., § 36-8-2, enacted by Laws 1968, ch. 62, § 93; 1991, ch. 82, § 8.

### **35-6-3. Magistrate costs; advance payment.**

Except for parties granted free process because of indigency, any party filing any civil action or requesting services from the magistrate court shall pay in advance the costs required by law to be collected by magistrates.

**History:** 1953 Comp., § 36-8-3, enacted by Laws, 1968, ch. 62, § 94; 1969, ch. 198, § 2; 1977, ch. 164, § 2; 1991, ch. 82, § 9; 1995, ch. 176, § 2; 2023, ch. 184, § 13.

### **35-6-4. Magistrate costs; witness fees; reimbursement.**

If the plaintiff prevails in a civil action in the magistrate court, the amount of costs collected by the magistrate in the action shall be added to the judgment entered against the defendant. Fees actually paid by the prevailing party in a civil action in the magistrate court for service of the complaint and summons and for service of subpoenas shall be taxed against the losing party. Witness fees as provided by law for proceedings in the district courts shall be taxed against the losing party in the action, subject to the limitations of the Rules of Civil Procedure for the Magistrate Courts.

**History:** 1953 Comp., § 36-8-4, enacted by Laws 1968, ch. 62, § 95; 1975, ch. 242, § 4; 1981, ch. 272, § 1; Laws 1983, ch. 134, § 3; 1988, ch. 121, § 3; 2023, ch. 184, § 14.

### **35-6-5. Magistrate court warrant enforcement fund; administration; use of money in fund.**

A. There is created in the state treasury the "magistrate court warrant enforcement fund" to be administered by the administrative office of the courts. The fund consists of gifts, grants, donations, appropriations and distributions to the fund made pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

B. All balances in the magistrate court warrant enforcement fund are appropriated to the administrative office of the courts for the primary purpose of employing personnel and promoting compliance with court orders. After satisfaction of the primary purpose, any money remaining in the fund may, to the extent deemed necessary by the director of the administrative office of the courts, be used for the secondary purpose of partially reimbursing law enforcement agencies for the expense of serving bench warrants issued by the magistrate courts, pursuant to an intergovernmental agreement entered into between the law enforcement agency and the administrative office of the courts.

C. Payments from the magistrate 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 director of the administrative office of the courts.

D. Any balance remaining in the magistrate court warrant enforcement fund at the end of a fiscal year shall not revert to the state general fund.

**History:** 1978 Comp., § 35-6-5, enacted by Laws 1993, ch. 261, § 7; 2023, ch. 184, § 15.

### **35-6-6. Collection of fines, fees or costs.**

A judgment and sentence issued by a magistrate 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., § 35-6-6, enacted by Laws 1993, ch. 261, § 8.

### **35-6-7. Magistrate court; drug court fee; monthly remittances.**

A magistrate court that has an adult drug court program 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. Proceeds from the drug court fee shall be deposited in the drug court fund of the judicial district established pursuant to Section 34-6-47 NMSA 1978.

**History:** Laws 2003, ch. 240, § 3; 2021, ch. 95, § 3.

### **35-6-8. Magistrate court mediation fund created; administration; distribution.**

A. The "magistrate court mediation fund" is created in the state treasury. The fund shall be administered by the administrative office of the courts.

B. All balances in the magistrate court mediation fund are subject to appropriation for payment to magistrate courts for the purpose of funding and administering voluntary mediation programs. The mediation programs shall be established by supreme court rule for the efficient disposition of civil complaints.

C. Payments from the magistrate court mediation fund shall be made upon vouchers signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

D. Any balance remaining in the magistrate court mediation fund at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2003, ch. 407, § 1.

### **35-6-9. Magistrate costs; mediation fee.**

A. Magistrate judges shall collect as costs a mediation fee not to exceed five dollars (\$5.00) for the docketing of civil actions, except as provided in Subsection A of Section 35-6-3 NMSA 1978.

B. The magistrate court shall pay to the administrative office of the courts the costs collected pursuant to this section in accordance with the procedures provided for in Section 35-7-4 NMSA 1978. The amount of costs collected shall be credited to the magistrate court mediation fund.

**History:** Laws 2003, ch. 407, § 2.

### **35-6-10. Magistrate court; electronic services fee.**

A magistrate 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, § 6.

## **ARTICLE 7**

### **Magistrate Court; Magistrate Administration**

#### **35-7-1. Magistrate courts; supervision by the supreme court and the district court in the judicial district in which the court is located.**

The magistrate courts shall operate under the direction and control of the supreme court and the district court of the judicial district in which the court is located. The district court shall provide administrative support to the magistrate courts, under the supervision of the supreme court.

**History:** 1978 Comp., § 35-7-1, enacted by Laws 1997, ch. 53, § 1; 2021, ch. 95, § 4.

#### **35-7-2. Repealed.**

#### **35-7-3. Magistrate administration; standardized monthly reports.**

Each magistrate court, under the supervision of the district court, shall file a standardized monthly report with the administrative office of the courts not later than the date each month established by the director of the administrative office of the courts. The report shall itemize all fines, forfeitures and costs imposed, received and disbursed by the magistrate during the previous month or indicate that none were imposed, received or disbursed. One copy of the report shall be retained by the magistrate court. The administrative office of the courts shall audit and adjust each report in accordance with the facts and file the reports in its office for a period of five years.

**History:** 1953 Comp., § 36-9-3, enacted by Laws 1968, ch. 62, § 98; 1979, ch. 160, § 1; 1991, ch. 82, § 10; 2021, ch. 95, § 5.

#### **35-7-4. Magistrate administration; monthly remittances.**

Each magistrate court shall pay to the administrative office of the courts, not later than the date each month established by regulation of the director of the administrative office, the amount of all fines, forfeitures and costs collected by the court during the previous month, except for amounts disbursed in accordance with law. The administrative office shall return to each magistrate court a written receipt itemizing all money received. The administrative office shall deposit the amount of all fines and forfeitures with the state treasurer for credit to the current school fund. The administrative office shall deposit the amount of all costs assessed prior to July 1, 2024 and collected on or after July 1, 2024, except all costs collected pursuant to Subsection E of Section 35-6-1 NMSA 1978, for credit to the general fund. The amount of all costs



collected pursuant to Subsection E of Section 35-6-1 NMSA 1978 shall be credited to the metropolitan court mediation fund.

**History:** 1953 Comp., § 36-9-4, enacted by Laws 1968, ch. 62, § 99; 1979, ch. 160, § 2; 1983, ch. 134, § 4; 1986, ch. 16, § 3; 1990, ch. 57, § 5; 1991, ch. 82, § 11; 1993, ch. 273, § 4; 2009, ch. 245, § 3; 2023, ch. 184, § 16.

### **35-7-5. Magistrate administration; public money; commingling; trust fund bank account.**

A. All money collected by a magistrate court in connection with civil and criminal actions is public money of the state held in trust by the district court within the same judicial district until disbursed in accordance with law. Public money shall not be commingled with personal funds of the magistrate or any other funds.

B. Every district court shall maintain a special trust fund checking account for the magistrate courts in its judicial district in a convenient bank insured by the federal deposit insurance corporation and shall deposit all public money into the account within two banking days after its receipt.

**History:** 1953 Comp., § 36-9-5, enacted by Laws 1968, ch. 62, § 100; 1979, ch. 160, § 3; 2021, ch. 95, § 6.

### **35-7-6. Repealed.**

**History:** 1953 Comp., § 36-9-6, enacted by Laws 1968, ch. 62, § 101; repealed by Laws 2019, ch. 74, § 10.

### **35-7-7. Magistrate administration; conflict of interest.**

No magistrate shall, directly or indirectly:

A. buy or be interested in buying any evidence of indebtedness or cause of action for the purpose of bringing any action before any court;

B. either before or after suit, lend or advance or procure to be lent or advanced any money or other valuable thing to any person in consideration of, or as a reward or inducement for, placing any cause of action for prosecution or collection in any court;

C. operate or be interested in a collection agency;

D. with or without suit, collect, attempt to collect or become interested in collecting any claim where he received any commission, percentage, fee or charge other than those allowed by law;

- E. institute or influence any other person to institute any suit in any magistrate court;
- F. publish advertising relating to his office;
- G. operate or be interested in a bail or appeal bond business; or
- H. serve as surety on any bond posted in any court.

**History:** 1953 Comp., § 36-9-7, enacted by Laws 1968, ch. 62, § 102; 1991, ch. 82, § 12.

### **35-7-8. Repealed.**

### **35-7-9. Magistrate administration; court facilities.**

The administrative office of the courts shall provide facilities for each magistrate court. Counties and municipalities shall cooperate and assist wherever possible.

**History:** 1953 Comp., § 36-9-9, enacted by Laws 1968, ch. 62, § 104.

### **35-7-10. Magistrate administration; clerical assistants.**

Within appropriations and budgetary limitations, the district court may employ and select clerical assistants for magistrates.

**History:** 1953 Comp., § 36-9-10, enacted by Laws 1968, ch. 62, § 105; 1972, ch. 45, § 5; 1979, ch. 160, § 4; 2021, ch. 95, § 7.

### **35-7-11. Magistrate administration; finances.**

Except as otherwise specifically provided by law, all salaries and expenses of the magistrate court shall be paid by the state treasurer upon warrants of the secretary of finance and administration, supported by vouchers approved by the chief district judge and in accordance with budgets approved by the state budget division of the department of finance and administration.

**History:** 1953 Comp., § 36-9-11, enacted by Laws 1968, ch. 62, § 106; 1977, ch. 247, § 149; 2021, ch. 95, § 8.

### **35-7-12. Magistrate administration; rules of pleading, practice and procedure.**

A. The supreme court of New Mexico shall, by rules promulgated by it from time to time, regulate pleading, practice and procedure in judicial proceedings in the magistrate court for the purpose of simplifying and promoting the speedy determination of litigation

upon its merits. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant.

B. The supreme court shall cause all rules to be printed and distributed to all magistrates and to all members of the bar and no rule shall become effective until thirty days after it has been so printed and distributed.

**History:** 1953 Comp., § 36-9-12, enacted by Laws 1968, ch. 62, § 107.

### **35-7-13. Repealed.**

**History:** Laws 2010, ch. 7, § 1; repealed by Laws 2010, ch. 7, § 4.

## **ARTICLE 8**

### **Magistrate Court; Juries and Jurors**

#### **35-8-1. Magistrate jury; right to trial by jury.**

Except for contempt of the magistrate court, penalty assessment misdemeanors or offenses that do not prescribe incarceration as a penalty, the right to trial by jury exists in all actions in the magistrate court that are within magistrate trial jurisdiction.

**History:** 1953 Comp., § 36-10-1, enacted by Laws 1968, ch. 62, § 108; 1975, ch. 242, § 5; 2009, ch. 133, § 1.

#### **35-8-2. Magistrate jury; demand.**

A. Either party to an action in the magistrate court within magistrate trial jurisdiction may demand trial by jury. Demand shall be made in the manner specified by the Rules of Civil Procedure or the Rules of Criminal Procedure for the Magistrate Courts.

B. In civil actions, the magistrate shall collect from the party demanding trial by jury the jury fee established by law, but no jury fee shall be assessed against the state. In criminal actions, the magistrate shall not collect a jury fee. If demand is not made as provided in this section, or if the jury fee in any civil action is not paid at the time demand is made, trial by jury is deemed waived.

**History:** 1953 Comp., § 36-10-2, enacted by Laws 1968, ch. 62, § 109; 1973, ch. 29, § 1; 1975, ch. 242, § 6.

#### **35-8-3. Magistrate jury; selecting and empaneling a jury.**

A. A jury in the magistrate court consists of six jurors with the same qualifications as jurors in the district court.

B. The magistrate shall direct the clerk of the district court to draw and assign to that court the number of qualified jurors the magistrate 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 magistrate jury service shall be forwarded to the magistrate who shall maintain a record of the names and addresses of the prospective jurors.

C. Whenever a jury is required, the magistrate 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 disqualifications, the magistrate shall direct the sheriff to summon others to complete the jury.

D. No person may be required to remain as a member of a magistrate jury panel for longer than six months following qualification as a juror in any year unless the panel is engaged in a trial.

**History:** 1953 Comp., § 36-10-3, enacted by Laws 1974, ch. 37, § 1.

#### **35-8-4. Magistrate jury; trial.**

Juries in the magistrate 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 magistrate, the members of the jury shall be kept together until:

A. in civil actions, five members shall agree upon a verdict;

B. in criminal actions, the members unanimously agree upon a verdict; or

C. the members are discharged by the magistrate. The magistrate shall give judgment upon any verdict.

**History:** 1953 Comp., § 36-10-4, enacted by Laws 1968, ch. 62, § 111; 1975, ch. 242, § 7.

#### **35-8-5. Magistrate jury; discharge upon failure to agree.**

Whenever the magistrate is satisfied that a jury cannot agree upon a verdict in the manner provided by law after a reasonable time, or, in the exercise of his discretion the magistrate determines that some necessity exists for discharge of the jury, he may discharge it and summon a new jury unless the parties agree that the magistrate may render judgment.

**History:** 1953 Comp., § 36-10-5, enacted by Laws 1968, ch. 62, § 112; 1975, ch. 242, § 8.

### **35-8-6. Repealed.**

### **35-8-7. Magistrate civil jury fees.**

A. In each action in the magistrate court in which a jury is summoned, persons summoned for jury service and jurors shall be compensated for their time in attendance and service at the highest prevailing minimum-wage rate.

B. Those persons shall also be reimbursed for travel in excess of forty miles round trip from their place of actual residence to the court, when their attendance is ordered, at the rate allowed public officers and employees per mile of necessary travel.

C. Those costs shall be charged against the party requesting the jury in a civil action, though no costs shall be charged against the state. All costs collected by the magistrate under this section shall be remitted to the administrative office of the courts, and all jurors shall be paid by the state treasurer in the same manner as other magistrate court expenses are paid."

**History:** 1978 Comp., § 35-8-6, enacted by Laws 1991, ch. 82, § 13; 2017, ch. 61, § 1.

## **ARTICLE 9**

### **Magistrate Court; Attachment**

#### **35-9-1. Attachment; affidavit and bond; grounds.**

A. An attachment may be issued in a civil action in the magistrate court only upon the filing of a civil complaint, accompanied by:

(1) a bond to the defendant in double the sum claimed in the complaint, with sufficient sureties, conditioned that the plaintiff will diligently prosecute the action to final judgment without delay and will pay the defendant all damages and costs sustained from the attachment if no judgment is recovered against the defendant in the action; and

(2) an affidavit of the plaintiff that one or more of the following facts exists:

(a) the defendant is not a resident of this state;

(b) the defendant has concealed himself or left his usual place of abode in this state so that ordinary civil process cannot be served on him;

(c) the defendant is about to remove his personal property out of this state or has concealed or disposed of his property fraudulently so as to defraud, hinder or delay his creditors;

(d) the defendant is about to convey or assign, conceal or dispose of his property fraudulently so as to hinder or delay his creditors;

(e) the debt that is the subject of the action was contracted out of this state, and the defendant has secretly removed his property into this state with the intent to hinder, delay or defraud his creditors;

(f) the defendant is a corporation whose principal office or place of business is out of the state, and the corporation has not designated an agent in this state for service of process against the corporation;

(g) the defendant fraudulently contracted the debt or incurred the obligation that is the subject of the action or obtained credit from the plaintiff by false pretenses; or

(h) the debt that is the subject of the action is for labor, for any services rendered by the plaintiff or his assignor at the instance of the defendant or was contracted for the necessities of life.

B. An attachment may issue upon a demand not yet due in any case where an attachment is authorized, in the same manner as upon demands already due.

**History:** 1953 Comp., § 36-11-1, enacted by Laws 1968, ch. 62, § 114; 1991, ch. 82, § 14.

### **35-9-2. Attachment; execution.**

A. The attachment shall order the sheriff or a full-time, salaried deputy sheriff to attach personal property of the defendant within the magistrate district having a value sufficient to satisfy the amount claimed in the complaint in the action, safely to keep the property to satisfy any judgment that might be recovered in the action and to make return of the attachment to the magistrate at the time specified therein not less than five days nor more than fifteen days from the date of issuance.

B. The sheriff or deputy shall comply with the order and:

(1) immediately make an inventory of the property seized; and

(2) serve on the defendant personally, or, if the defendant cannot be found, leave at the defendant's residence, or if the defendant has no residence, leave with the person in whose possession the property is found, the civil complaint and summons and form for answer to civil complaint, along with a copy of the attachment and his inventory.

C. No property attached by the sheriff or deputy shall be removed by him if the person in possession of, or claiming, the property gives him a bond to the plaintiff in double the sum claimed in the complaint in the action, or in double the value of the property attached, whichever is less, conditioned that such property will be produced to

satisfy any execution that might be issued upon any judgment which might be obtained by the plaintiff in the action.

**History:** 1953 Comp., § 36-11-2, enacted by Laws 1968, ch. 62, § 115.

### **35-9-3. Attachment; hearing; judgment.**

A. If the defendant was personally served as provided in Section 35-9-2B NMSA 1978, or if he appears as provided in the civil summons, the magistrate shall proceed to hear and determine the action on its merits as in other civil actions.

B. If the defendant was not personally served as provided in Section 35-9-2B NMSA 1978, but his personal property was seized under the attachment and he does not appear as provided in the summons, the magistrate shall order the sheriff to notify the defendant by newspaper publication or by posting in at least three of the most public places in the county that his property has been attached and that, unless he appears before the magistrate at a time and place mentioned in the notice, not less than twenty days or more than ninety days from the date of the notice, judgment will be rendered against him and his property sold to pay the debt. If the defendant appears when notified as provided in this subsection, the magistrate shall proceed to hear and determine the action on its merits as in other civil actions. If the defendant fails to appear when notified as provided in this subsection, the magistrate shall enter a default judgment against him in the action.

**History:** 1953 Comp., § 36-11-3, enacted by Laws 1968, ch. 62, § 116.

### **35-9-4. Attachment; dissolution.**

A. An attachment may be dissolved at any time before final judgment if the defendant appears and pleads to the action and posts bond to the plaintiff in double the sum claimed in the complaint, or double the value of the property attached, whichever is less, with sufficient sureties, conditioned that the property will be available to satisfy any judgment which might be entered against him in the action.

B. When an attachment is dissolved, all proceedings touching the property attached are vacated, and the action shall proceed as if the attachment had not been issued.

**History:** 1953 Comp., § 36-11-4, enacted by Laws 1968, ch. 62, § 117.

### **35-9-5. Attachment; suit on bond.**

The bond given by the plaintiff or other person in an attachment action in the magistrate court may be sued upon in the name of the state by any party injured, and shall proceed as in other civil actions.

**History:** 1953 Comp., § 36-11-5, enacted by Laws 1968, ch. 62, § 118.

**35-9-6. Attachment; special provisions.**

All laws and procedures governing magistrate courts apply to attachment actions in the magistrate court except as otherwise provided by law.

**History:** 1953 Comp., § 36-11-6, enacted by Laws 1968, ch. 62, § 119.

**35-9-7. Attachment; form of bond.**

Attachment bonds in civil actions in the magistrate court shall be in substantially the following form:

"STATE OF NEW MEXICO  
 \_\_\_\_\_ MAGISTRATE DISTRICT, DIVISION \_\_\_\_\_  
 (Name), Plaintiff                    )  
   )  
 v.    )           CIVIL DOCKET NO. \_\_\_\_\_  
   )  
 (Name), Defendant                 )

ATTACHMENT BOND

We bind ourselves, our heirs, executors and administrators to the state of New Mexico in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) on condition that the plaintiff will diligently prosecute this action to final judgment without delay, will pay to the defendant all money found due to him in the action, and will pay all damages that may accrue to the defendant by reason of the attachment, upon completion of which this obligation is void.

\_\_\_\_\_  
Plaintiff (Principal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Surety

Approved \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
Magistrate"

**History:** 1953 Comp., § 36-11-7, enacted by Laws 1968, ch. 62, § 120.

**35-9-8. Attachment; form of writ.**



Writs of attachment in civil actions in the magistrate court shall be in substantially the following form:

"STATE OF NEW MEXICO

\_\_\_\_\_ MAGISTRATE DISTRICT, DIVISION \_\_\_\_\_

(Name), Plaintiff )  
)

v. ) CIVIL DOCKET NO. \_\_\_\_\_

(Name), Defendant )  
)

WRIT OF ATTACHMENT

THE STATE OF NEW MEXICO

TO: The sheriff or a full-time, salaried deputy sheriff:

You are ordered to attach personal property of the defendant in this action having a value sufficient to satisfy the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), with interest and costs, wherever the same may be found in the county, safely to keep the property to satisfy any judgment that might be recovered by the plaintiff in this action, and to make return of this writ to me on \_\_\_\_\_, 19 \_\_\_\_, presenting with your return a copy of your inventory of property attached.

Dated \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
Magistrate"

**History:** 1953 Comp., § 36-11-8, enacted by Laws 1968, ch. 62, § 121.

## **ARTICLE 10**

### **Magistrate Court; Forcible Entry or Unlawful Detainer**

#### **35-10-1. Forcible entry or detainer; grounds.**

A. A civil action for forcible entry or unlawful detainer of real property is commenced by the filing of a civil complaint alleging that one or more of the following facts exists:

(1) the defendant entered and occupied the lands and tenements of another against the will or consent of the owner and refused to vacate the premises after notice by the owner or his agent or attorney;

(2) the defendant holds over after the termination, or contrary to the terms of, his lease or tenancy;

(3) the defendant fails to pay rent at the time stipulated for payment;

(4) the defendant continues in possession after a sale by foreclosure of mortgage or on execution unless the defendant claims by a title paramount to the mortgage under which the sale was made or by title derived from the purchaser at the sale; or

(5) the defendant is a tenant from month to month or a tenant at will and continues in possession of the premises after thirty days' written notice by the owner or his agent or attorney to vacate.

B. The district court of the county in which the real property is located has concurrent original jurisdiction in civil actions for forcible entry or unlawful detainer when the rent contracted for amounts to fifty dollars (\$50.00) or more a month or when the reasonable rental value of the premises is fifty dollars (\$50.00) or more a month.

**History:** 1953 Comp., § 36-12-1, enacted by Laws 1968, ch. 62, § 122.

### **35-10-2. Limitation of remedy.**

The provisions of Sections 35-10-1 through 35-10-6 NMSA 1978 shall not apply to actions by a landlord arising out of a residential tenancy governed by the Uniform Owner-Resident Relations Act [47-8-1 to 47-8-52 NMSA 1978].

**History:** 1953 Comp., § 36-12-1.1, enacted by Laws 1975, ch. 38, § 53.

### **35-10-3. Forcible entry or detainer; special provisions.**

A. Except as provided in Section 35-10-1 NMSA 1978, three days' notice in writing to quit must be given to the defendant before a civil action for forcible entry or unlawful detainer may be filed.

B. The return day of the summons in an action for forcible entry or unlawful detainer shall be not less than three, nor more than ten, days from the time of service of the civil complaint and summons on the defendant. Except by consent of the parties, no continuance shall be granted for more than ten days.

C. The questions of title or boundaries of land shall not be investigated in an action for forcible entry or unlawful detainer, but the action does not prevent a party from testing the right of property in any other manner. An action for forcible entry or unlawful detainer may not be brought in connection with any other action, nor may it be made the subject of setoff.

D. The right of a landlord in an action for forcible entry or unlawful detainer is not affected by the underleasing of his tenant.

E. When a lessee has been induced to take a lease by means of force, fraud or intimidation, he may plead a paramount title in himself, an outstanding title or the want of title in the lessor.

F. Legal representatives of a person who, if alive, might have brought an action for forcible entry or unlawful detainer may bring the action after his death.

G. All laws and procedures governing magistrate courts apply to actions for forcible entry or unlawful detainer in the magistrate court except as otherwise provided by law.

**History:** 1953 Comp., § 36-12-2, enacted by Laws 1968, ch. 62, § 123.

#### **35-10-4. Forcible entry or detainer; judgment.**

A. If the defendant is found guilty in a civil action for forcible entry or unlawful detainer, judgment shall be entered against him:

(1) for damages; and

(2) that he be removed from the premises and the plaintiff be put in possession.

B. Execution shall include an order that the sheriff or a full-time, salaried deputy sheriff remove the defendant from the premises.

**History:** 1953 Comp., § 36-12-3, enacted by Laws 1968, ch. 62, § 124.

#### **35-10-5. Forcible entry or detainer; damages on appeal.**

A. If the plaintiff recovers judgment in an action for forcible entry or unlawful detainer upon appeal:

(1) to the district court, the damages assessed shall be the actual value of the rent due until entry of judgment by the magistrate court and double the value of all rent accrued thereafter until entry of judgment in the district court; and

(2) to the supreme court or court of appeals, further damages at double the value of all rent accrued from the entry of judgment in the district court until delivery of possession to him.

B. The supersedeas bond required under Section 39-3-22 NMSA 1978, shall contain a condition requiring the defendant appealing or taking a writ of error to the supreme court or court of appeals to pay all damages prescribed in this section if the judgment of the district court is affirmed by the supreme court or court of appeals, and the amount of the bond shall be sufficient to cover all such damages. The bond operates as a supersedeas to the order of removal as well as to execution for damages



replevin actions, magistrate courts shall not issue any writs of replevin or any other orders providing for a seizure of property before judgment.

**History:** 1953 Comp., § 36-13-1, enacted by Laws 1968, ch. 62, § 127; 1975, ch. 249, § 8.

### **35-11-2. Replevin; special provisions.**

All laws and procedures governing magistrate courts apply to actions of replevin in the magistrate court except as otherwise provided by law.

**History:** 1953 Comp., § 36-13-4, enacted by Laws 1968, ch. 62, § 130.

### **35-11-3. Judgment.**

In any replevin action in the magistrate court, judgment may be entered for the plaintiff granting the plaintiff the property, or its fair market value in case a delivery cannot be made, and damages for the wrongful taking or detention of the property by the defendant.

**History:** 1953 Comp., § 36-13-7, enacted by Laws 1975, ch. 249, § 9.

## **ARTICLE 12**

### **Magistrate Court; Garnishment**

#### **35-12-1. Garnishment; affidavit and bond; grounds.**

A. Garnishment may be issued in advance of judgment in a civil action in the magistrate court only upon the filing of a civil complaint, accompanied by:

(1) a bond to the defendant, with sufficient sureties, in double the sum claimed in the complaint, conditioned that the plaintiff will diligently prosecute the action to final judgment without delay, will pay to the defendant all money found due to him in the action and will pay the defendant and the garnishee all damages and costs sustained from the garnishment if no judgment is recovered from the defendant in the action; and

(2) an affidavit of the plaintiff that one or more of the following facts exists:

(a) the defendant has no property in his possession within this state subject to execution to satisfy the amount claimed in the complaint; or

(b) one or more of the grounds for issuance of attachment in the magistrate court, the applicable grounds to be stated in the affidavit.

B. Garnishment may be issued in aid of execution of judgment entered in a civil action in the magistrate court only upon the filing in the action of an affidavit of the plaintiff that the defendant has no property in his possession within this state subject to execution to satisfy the judgment.

C. Garnishment may be issued in the magistrate court in aid of execution of judgment, which was entered in a civil action in some other court in this state and the unpaid balance of which does not exceed the jurisdictional amount of the magistrate court, only upon the filing of a civil complaint together with a certified copy of the judgment and an affidavit of the plaintiff that the defendant has no property in his possession within this state subject to execution to satisfy the judgment.

D. The affidavit under Subsections A through C shall include a statement that the plaintiff believes that a named garnishee:

(1) is indebted to the defendant and that the debt is not exempt from garnishment; or

(2) holds personal property belonging to the defendant.

E. Any magistrate who issues a garnishment in any civil action except in compliance with the provisions of this section is guilty of a petty misdemeanor and shall be removed from office.

**History:** 1953 Comp., § 36-14-1, enacted by Laws 1968, ch. 62, § 133; 1969, ch. 139, § 3.

### **35-12-2. Garnishment; service on garnishee.**

A. The garnishment shall be served on the garnishee within the magistrate district in the manner provided by law for service of a civil summons in the magistrate court and shall order the garnishee in the action to appear before the magistrate within twenty days from the date of service to answer under oath, as of the date the garnishment was served and also as of the date of the garnishee's answer:

(1) what, if anything, the garnishee is indebted to the defendant and on what account;

(2) what, if any, personal property of the defendant is in the garnishee's possession; and

(3) what other persons, if any, within the garnishee's knowledge are indebted to the defendant or have personal property of the defendant in their possession.

B. Return on the garnishment shall be made in the manner provided by law for return on a civil summons in the magistrate court.

C. At the same time as the garnishment is served on the garnishee, a copy of the garnishment shall be sent to the defendant's last known address.

**History:** 1953 Comp., § 36-14-2, enacted by Laws 1968, ch. 62, § 134; 1978 Comp., § 35-12-2; 2023, ch. 104, § 1.

### **35-12-3. Garnishment; effect on garnishee.**

A. Except as otherwise provided in this section, service of a garnishment on the garnishee has the effect of attaching all personal property, money, wages or salary in excess of the amount exempt under Section 35-12-7 NMSA 1978, rights, credits, bonds, bills, notes, drafts and other choses in action of the defendant in the garnishee's possession or under his control at the time of service of the garnishment or which may come into his possession or under his control or be owing by him between the time of service and the time of making his answer. The garnishee is not liable for any judgment in money on account of any bonds, bills, notes, drafts, checks or other choses in action unless they are converted into money after service of the garnishment or he fails to deliver them to the magistrate within the time prescribed by the magistrate.

B. Service of a garnishment issued in advance of judgment does not attach any wages or salary due the defendant from the garnishee.

C. After service of a garnishment on the garnishee, it is unlawful for the garnishee to pay to the defendant in the action any debt or to deliver to him any personal property attached by the garnishment.

**History:** 1953 Comp., § 36-14-3, enacted by Laws 1968, ch. 62, § 135; 1969, ch. 139, § 4.

### **35-12-4. Garnishment; answer by garnishee.**

A. If the garnishee answers under oath that he is not at the time of answer, and was not, at the time the garnishment was served on him, indebted to the defendant or in possession of any personal property of the defendant, and if the garnishee's answer is not controverted within twenty days after being made, the magistrate shall enter judgment discharging the garnishee.

B. If the garnishee fails to answer the garnishment under oath within twenty days from the date of its service on him, the magistrate may render judgment by default against the garnishee for the full amount of any judgment rendered against the defendant, together with all interest and costs.

C. If the garnishee answers under oath or it appears on trial of the issue that he was, at the time of answer or at the time the garnishment was served, indebted to the defendant or in possession of any personal property of the defendant, the magistrate shall render judgment for the plaintiff against the garnishee for the amount admitted or

found due to the defendant or so much thereof as equals the plaintiff's judgment against the defendant. If the garnishee is indebted to the defendant for wages or salary, the magistrate shall render judgment for the plaintiff against the garnishee only for the amount of wages or salary due the defendant in excess of the amount of wages or salary exempt from garnishment under Section 35-12-7 NMSA 1978 or so much thereof as equals the plaintiff's judgment against the defendant. The magistrate shall order the garnishee to deliver any personal property to the sheriff to be held by him subject to the order of the magistrate for the satisfaction of any judgment that may be rendered against the defendant. If the garnishee fails to deliver the personal property to the sheriff, the sheriff shall notify the magistrate, and, upon motion of the plaintiff, the garnishee shall be cited for contempt. If the garnishee fails to show good cause in the contempt hearing, he shall be punished for contempt, and the magistrate may render judgment against him for the full amount of the plaintiff's judgment against the defendant, together with all interest and costs.

D. If the defendant is employed by the garnishee, the magistrate shall render judgment for the plaintiff against the garnishee for the unpaid balance of the plaintiff's judgment against the defendant and order the garnishee to pay to the plaintiff each pay period the defendant's wages or salary, which are not exempt from garnishment under Section 35-12-7 NMSA 1978 and which come due subsequent to the time of answer, until the judgment is satisfied, or, if the employment relationship is terminated, until the garnishee gives the plaintiff written notice that the employment relationship [relationship] has terminated.

**History:** 1953 Comp., § 36-14-4, enacted by Laws 1968, ch. 62, § 136; 1969, ch. 139, § 5.

### **35-12-5. Garnishment; controverting garnishee's answer.**

A. If the plaintiff or defendant is not satisfied with the answer of any garnishee, he may controvert it by stating how he believes it is incorrect, and the issue shall be tried and determined by the magistrate court.

B. Any person claiming personal property, money or any chose in action garnished may intervene in the action, and no judgment shall be rendered against the garnishee until the intervention is tried and determined by the magistrate court.

**History:** 1953 Comp., § 36-14-5, enacted by Laws 1968, ch. 62, § 137.

### **35-12-6. Garnishment; unmatured debts.**

Debts not yet due to the defendant may be garnished, but no execution shall be awarded against the garnishee for such debts until they become due. The magistrate may order the defendant to deliver the evidence of such indebtedness to the court. If the defendant alleges an endorsement or delivery of the evidence before the court's order came to his knowledge, the court may inquire into the consideration and good faith of



the transfer and, if the court determines that the endorsee or transferee holds by fraudulent endorsement or delivery, it may order delivery of the evidence to the court. When any evidence of indebtedness is delivered to the court under this section, the court shall notify any endorsers of its nonpayment at maturity, and the garnishment proceedings shall remain open until it becomes due.

**History:** 1953 Comp., § 36-14-6, enacted by Laws 1968, ch. 62, § 138.

### **35-12-7. Garnishment; exemptions.**

A. Exempt from garnishment with respect to the enforcement of an order or decree for child support is fifty percent of the defendant's disposable earnings for any pay period. Exempt from garnishment in all other situations is the greater of the following portions of the defendant's disposable earnings:

- (1) seventy-five percent of the defendant's disposable earnings for any pay period; or
- (2) an amount each week equal to forty times the highest applicable minimum hourly wage rate at the place the wages were earned. The director of the financial institutions division of the regulation and licensing department shall provide a table giving equivalent exemptions for pay periods of other than one week.

B. As used in this section:

- (1) "disposable earnings" means that part of a defendant's wage or salary remaining after deducting the amounts that are required by law to be withheld; and
- (2) "highest applicable minimum hourly wage rate" means the highest federal, state or local minimum hourly wage rate for an eight-hour day and a forty-hour week applicable at the time the wages are payable. However, it is immaterial whether the garnishee is exempt under federal, state or local law from paying the highest applicable minimum hourly wage rate.

C. The maximum amount that may be taken from a spouse's disposable earnings under both the garnishment procedure and the wage deduction procedure for the enforcement of child support is fifty percent of the spouse's disposable earnings.

D. Amounts exempt under this section shall retain their exempt status when deposited into a personal bank account, provided that they are reasonably traceable.

**History:** 1953 Comp., § 36-14-7, enacted by Laws 1969, ch. 139, § 6; 1978 Comp., § 35-12-7; 1979, ch. 254, § 1; 2023, ch. 104, § 2.

### **35-12-8. Garnishment; payment of exempt wages and salary.**

Any employer charged as a garnishee in any civil action in the magistrate court shall pay to the defendant, when due, the amount of his wages or salary exempt from garnishment under Section 35-12-7 NMSA 1978.

**History:** 1953 Comp., § 36-14-7.1, enacted by Laws 1969, ch. 139, § 7.

### **35-12-9. Garnishment; wages and salary; lien; priority.**

A. A judgment entered against a garnishee under Section 35-12-4D NMSA 1978 is a lien on the defendant's wages or salary, which are not exempt from garnishment under Section 35-12-7 NMSA 1978 and which come due subsequent to the time of answer, until the judgment against the garnishee is paid or until the employment relationship is terminated.

B. If the defendant's wages or salary are subject to more than one judgment lien, the liens shall be satisfied in the order in which the garnishment is served on the garnishee.

**History:** 1953 Comp., § 36-14-7.2, enacted by Laws 1969, ch. 139, § 8.

### **35-12-10. Garnishment; public officer as garnishee.**

A. No public officer of the state or any of its political subdivisions shall be summoned in his official capacity as a garnishee in a civil action in the magistrate court to answer for wages or salaries due to a public officer or employee unless the plaintiff has a judgment in the action against the defendant. Under this condition, wages and salaries due public officials and employees are subject to garnishment.

B. This section does not prevent any available claim of exemption from garnishment.

C. As provided in this section, when any public officer is summoned as garnishee in a civil action in the magistrate court, his answer shall be by statement over his official signature of the amount due the defendant and the statement shall be filed in the action without cost.

**History:** 1953 Comp., § 36-14-8, enacted by Laws 1968, ch. 62, § 140.

### **35-12-11. Garnishment; execution against garnishee.**

Whenever judgment is rendered against the garnishee in any civil action in the magistrate court, execution shall be made as provided by law for executions in other civil actions in the magistrate court.

**History:** 1953 Comp., § 36-14-9, enacted by Laws 1968, ch. 62, § 141.

### **35-12-12. Garnishment; defense to claim against garnishee.**

In any action by a defendant against a garnishee based on any indebtedness of the garnishee or on possession of any personal property, it is a conclusive defense for the garnishee to show that the indebtedness was paid or the personal property delivered under judgment of the magistrate court in a garnishment proceeding.

**History:** 1953 Comp., § 36-14-10, enacted by Laws 1968, ch. 62, § 142.

### **35-12-13. Garnishment; dissolution.**

A. At any time before judgment in a civil action in the magistrate court in which a garnishment has been issued, the defendant in the action may obtain a dissolution of the garnishment by filing in the action a bond to the plaintiff in double the sum claimed in the complaint, or double the value of the indebtedness and personal property garnished, whichever is less, with sufficient sureties, conditioned for the payment of any judgment that may be rendered against the garnishee in the action.

B. When a garnishment is dissolved, all proceedings touching the garnished indebtedness or personal property are vacated.

**History:** 1953 Comp., § 36-14-11, enacted by Laws 1968, ch. 62, § 143.

### **35-12-14. Garnishment; suit on bond.**

The bond given by the plaintiff or other person in a garnishment proceeding in the magistrate court may be sued upon in the name of the state by any party injured, and shall proceed as in other civil actions.

**History:** 1953 Comp., § 36-14-12, enacted by Laws 1968, ch. 62, § 144.

### **35-12-15. Garnishment; special provisions.**

All laws and procedures governing magistrate courts apply to garnishment proceedings in the magistrate court except as otherwise provided by law.

**History:** 1953 Comp., § 36-14-13, enacted by Laws 1968, ch. 62, § 145.

### **35-12-16. Garnishment; costs; attorney fees.**

A. If the plaintiff prevails in a garnishment proceeding, he may be awarded either one or both of the following:

(1) the actual costs of the proceeding, not exceeding ten percent of the judgment entered against the garnishee; or

(2) a reasonable attorney fee not exceeding ten percent of the judgment entered against the garnishee.

B. If the garnishee answers as required by law, the court shall award the garnishee his actual costs and a reasonable attorney fee. The award shall be against the defendant if the plaintiff prevails and against the plaintiff if the garnishee prevails.

**History:** 1953 Comp., § 36-14-13.1, enacted by Laws 1977, ch. 84, § 1.

### **35-12-17. Garnishment; form of bond.**

Garnishment bonds in civil actions in the magistrate court shall be in substantially the following form:

"STATE OF NEW MEXICO  
\_\_\_\_\_ MAGISTRATE DISTRICT, DIVISION \_\_\_\_\_  
(Name), Plaintiff )  
)  
v. ) CIVIL DOCKET NO. \_\_\_\_\_  
(Name), Defendant )  
(Name), Garnishee )  
GARNISHMENT BOND

We bind ourselves, our heirs, executors and administrators to the state of New Mexico in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) on condition that the plaintiff will diligently prosecute this action to final judgment without delay, will pay to the defendant all money found due to him in the action, and will pay all damages and costs that may accrue to the defendant and the garnishee by reason of the garnishment or any process or judgment thereon, upon completion of which this obligation is void.

\_\_\_\_\_  
Plaintiff (Principal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Surety

Approved \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
Magistrate"

**History:** 1953 Comp., § 36-14-14, enacted by Laws 1968, ch. 62, § 146.

**35-12-18. Garnishment; form of writ.**

Writs of garnishment in civil actions in the magistrate court shall state whether the writ is issued in advance of or in aid of execution of judgment and shall be in substantially the following form:

"STATE OF NEW MEXICO  
 \_\_\_\_\_MAGISTRATE DISTRICT, DIVISION \_\_\_\_\_  
 (Name), Plaintiff )  
 )  
 v. ) CIVIL DOCKET NO. \_\_\_\_\_  
 )  
 (Name), Defendant )  
 )  
 (Name), Garnishee )

**WRIT OF GARNISHMENT**

THE STATE OF NEW MEXICO to the above-named garnishee:

You are ordered to appear before the magistrate court located at \_\_\_\_\_ within twenty days from the service of this writ upon you to answer under oath the following questions, as of the date of service and as of the date of your answer:

1. What, if anything, are you indebted to the defendant in this action and on what account?
2. What, if any, personal property of the defendant is in your possession or under your control?
3. What other persons, if any, within your knowledge are indebted to the defendant or have personal property of the defendant in their possession?

Service of this writ upon you has the effect of attaching all nonexempt personal property, money, rights, credits, bonds, bills, notes, drafts and other choses in action of the defendant in your possession or under your control at the time of service and that may come into your possession or under your control or be owing by you between the time of service and the time of making your answer.

This writ was issued in (advance) (aid of execution) of judgment against the defendant. If this writ was issued in advance of judgment, it does not attach any wages or salary due from you to the defendant. If this writ was issued in aid of execution of judgment, it attaches wages or salary due from you to the defendant in excess of the greater of the following portions of the defendant's disposable earnings:

A. seventy-five percent of the defendant's disposable earnings for any pay period;  
or

B. an amount each week equal to forty times the highest applicable minimum hourly wage rate at the place the wages were earned. A table giving equivalent exemptions for pay periods of other than one week may be obtained from the director of the financial institutions division of the regulation and licensing department. "Disposable earnings" means that part of the defendant's wage or salary remaining after deducting the amounts that are required by law to be withheld. "Highest applicable minimum hourly wage rate" means the highest federal, state or local minimum hourly wage rate for an eight-hour day or a forty-hour week. It is immaterial whether you are exempt under federal, state or local law from paying the highest applicable minimum hourly wage rate.

## FINANCIAL INSTITUTION WRITS

If you are a financial institution, the defendant who is an individual or sole proprietor has an exemption totaling two thousand four hundred dollars (\$2,400) in depository and investment accounts. This writ attaches only to money in excess of two thousand four hundred dollars (\$2,400). You may rely on the representations of the person executing this writ as to whether the exemption amount has already been satisfied with other accounts held by other financial institutions. This provision shall not prevent the individual or sole proprietor from claiming that additional money in depository or investment accounts is exempt under any other available exemption provided by law.

Any wages you owe the employee in excess of two thousand four hundred dollars (\$2,400) or that you may come to owe the employee in excess of that amount must be kept by you until further order of this court. This means that you shall not pay the non-exempt amounts to the plaintiff until further order from this court requiring payment.

It is unlawful to pay or deliver to the defendant any item attached by this writ. If you fail to appear and answer as directed, or if you unlawfully dispose of any item attached by this writ, judgment may be rendered against you for the full amount of the plaintiff's claim against the defendant in this action.

Dated \_\_\_\_\_, 20 \_\_\_\_\_  
Magistrate".

**History:** 1953 Comp., § 36-14-15, enacted by Laws 1968, ch. 62, § 147; 1969, ch. 139, § 9; 1978 Comp., § 35-12-18; 2023, ch. 104, § 3.

### **35-12-19. Garnishment; district court; magistrate court; small claims court.**

Garnishment may be issued in the district court, magistrate court or small claims court. Sections 35-12-1 through 35-12-18 NMSA 1978 apply to the issuance of

garnishment in the district court, magistrate court or small claims court; provided, however, that in the event the district court has jurisdiction, the district court clerk may issue the writ of garnishment. In those cases filed in small claims court, the small claims court may issue the writ of garnishment.

**History:** 1953 Comp., § 36-14-16, enacted by Laws 1969, ch. 139, § 10; 1973, ch. 24, § 1; 1979, ch. 183, § 1.

## **ARTICLE 13**

### **Magistrate Court; Appeals**

#### **35-13-1. Appeals; right of appeal.**

Any party aggrieved by any judgment rendered or final order issued by the magistrate court in any civil action or special statutory proceeding, or the defendant aggrieved by any judgment rendered or final order issued by the magistrate court in any criminal action, may appeal to the district court within fifteen days after judgment is rendered or the final order is issued in the magistrate court.

**History:** 1953 Comp., § 36-15-1, enacted by Laws 1968, ch. 62, § 148; 1975, ch. 242, § 9.

#### **35-13-2. Appeals; district court proceedings; docket fees; judgment.**

A. Appeals from the magistrate courts shall be tried de novo in the district court.

B. The district court docket fee in any criminal appeal is thirty-five dollars (\$35.00), ten dollars (\$10.00) of which shall be deposited in the court automation fund.

C. If the judgment of the magistrate court in a criminal action is affirmed or rendered against the appellant on appeal or if the appellant fails to appear at the time fixed for hearing in the district court, the district court shall enter judgment imposing the same, a greater or a lesser penalty as that imposed in the magistrate court in the action.

**History:** 1953 Comp., § 36-15-3, enacted by Laws 1975, ch. 242, § 10; 1981, ch. 271, § 1; 1987, ch. 123, § 2; 1996, ch. 41, § 6.

#### **35-13-3. Appeals; amendments on trial de novo.**

Upon trial de novo in the district court upon appeal from the magistrate court, the district court shall allow all amendments necessary to the furtherance of justice.

**History:** 1953 Comp., § 36-15-4, enacted by Laws 1968, ch. 62, § 151.

# ARTICLE 14

## Municipal Courts

### 35-14-1. Municipal court; creation.

A. Except for municipalities with a population of fewer than two thousand five hundred or more than five thousand persons in the most recent federal decennial census lying within the boundaries of a class A county with a population of more than two hundred thousand persons in the most recent federal decennial census and municipalities that have adopted an effective ordinance pursuant to Subsection D of this section, there is established a municipal court in each incorporated municipality. The municipal courts shall be presided over by municipal judges. As used in Chapter 35, Articles 14 and 15 NMSA 1978, "municipality" includes H class counties.

B. The governing body of a municipality that is not governed by home rule, territorial or special charter and having a population fewer than ten thousand persons in the most recent federal decennial census, where the municipal court is located twenty-five or fewer miles from the nearest magistrate court, may by resolution express its intent to designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. Within fifteen days from the adoption of a resolution pursuant to this section, the governing body of the municipality shall create a "municipal ordinance jurisdiction advisory committee". The municipal ordinance jurisdiction advisory committee shall be composed of the following members, who shall be residents of the municipality:

- (1) the mayor;
- (2) a member of the governing body;
- (3) a municipal judge;
- (4) the chief of police; and
- (5) three members of the public, each selected by the mayor, the governing body and the municipal judge.

C. A municipal ordinance jurisdiction advisory committee shall:

- (1) hold at least one public hearing on the question of designating the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances;
- (2) hear testimony from all interested persons, including the mayor, the governing body and the municipal judge; and



(3) submit a report, including recommendations directly to the governing body of the municipality, with copies to the mayor and municipal judge.

D. Following receipt of a report from the municipal ordinance jurisdiction advisory committee, the governing body of a municipality may, subject to approval by the supreme court, adopt an ordinance upon a three-fourths' majority vote to designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. An ordinance adopted shall become effective only upon supreme court approval and the expiration of the term of the municipal judge in office on the date of the supreme court's approval of the ordinance.

E. Within five days after the effective date of an ordinance adopted pursuant to Subsection D of this section, the governing body of the municipality shall:

(1) forward a copy of the ordinance to the magistrate court and to the administrative office of the courts; and

(2) provide to the magistrate court copies of all municipal ordinances over which the magistrate court will have jurisdiction.

F. A magistrate court designated pursuant to Subsection D of this section shall, with respect to ordinances of the municipality:

(1) follow the rules of procedure for the municipal courts and the procedures provided by Chapter 35, Article 15 NMSA 1978; and

(2) impose no fine or sentence greater than that permitted for municipalities.

G. Any municipality that has passed an ordinance designating the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances may re-establish the municipal court as the court having jurisdiction over municipal ordinances through the following procedures:

(1) the governing body of the municipality may pass an ordinance rescinding the designation that was made pursuant to Subsection B of this section; or

(2) following receipt of a petition signed by at least twenty percent of the registered voters who voted in the last municipal election for the office of mayor:

(a) convene a municipal ordinance jurisdiction advisory committee pursuant to Subsection B of this section that shall make a report and recommendation, if any, to the governing body of the municipality; and

(b) the governing body shall indicate its assent to re-establishment of the municipal court by ordinance.

H. After July 1, 2024, no court shall assess post-adjudication fees previously authorized by statute and now repealed.

**History:** 1953 Comp., § 37-1-1, enacted by Laws 1961, ch. 208, § 1; 1967, ch. 215, § 1; 1968, ch. 62, § 152; 1979, ch. 346, § 12; 1984, ch. 30, § 3; 1985, ch. 128, § 2; 1993, ch. 143, § 1; 2019, ch. 246, § 1; 2023, ch. 184, § 17.

### **35-14-2. Jurisdiction.**

A. Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality and may issue subpoenas and warrants and punish for contempt.

B. Upon written agreement between the board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico and the governing body of a municipality contiguous to land under control of the board of regents or within which any portion of such land is located, the municipal court has jurisdiction over violations of campus traffic regulations adopted under Section 29-5-1 NMSA 1978 as to areas under control of the board of regents. Fines and forfeitures collected by the municipal court under campus traffic regulations may be credited to the state educational institution on whose campus the violation occurred.

C. Upon written agreement between a post-secondary educational institution and the governing body of a municipality contiguous to land under control of the institution or within which any portion of such land is located, the municipal court has jurisdiction over violations of campus traffic regulations adopted pursuant to Section 29-5-4 NMSA 1978 as to areas under control of the institution. Fines and forfeitures collected by the municipal court for violations of campus traffic regulations may be credited to the municipality or to the post-secondary educational institution on whose campus the violation occurred.

D. Each municipal court's personal jurisdiction extends to any defendant who has been properly served with criminal process of the court anywhere in the state if that criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs.

**History:** 1953 Comp., § 37-1-2, enacted by Laws 1961, ch. 208, § 2; 1969, ch. 131, § 1; 1975, ch. 167, § 1; 1988, ch. 88, § 3; 2011, ch. 53, § 2.

### **35-14-3. Judges; qualifications; bond; salary.**

The qualifications of municipal judges, bond required and salary received shall be provided by ordinance of the municipality.

**History:** 1953 Comp., § 37-1-3, enacted by Laws 1961, ch. 208, § 3.

#### **35-14-4. Election; term; vacancy.**

A. Municipal judges shall be elected, for terms of four years, at a regular municipal election.

B. In municipalities with a population of thirty thousand persons or more, additional judges may be elected if the municipal governing body determines the workload of the court requires more than one judge. Municipalities with a population of less than thirty thousand persons shall have only one municipal judge.

C. The governing body of any municipality may fill vacancies by appointment of a municipal judge to serve until the next regular municipal election.

**History:** 1953 Comp., § 37-1-4, enacted by Laws 1961, ch. 208, § 4; 1967, ch. 215, § 2; 1973, ch. 208, § 2; 1993, ch. 222, § 1.

#### **35-14-5. Temporary incapacity or absence of a municipal judge.**

Any registered voter of a municipality in which a municipal judge is incapacitated or absent may be appointed to the office of the municipal judge during his temporary incapacity or absence, and he shall hear and determine cases arising under municipal ordinances while sitting as municipal judge. The governing body may establish a procedure by ordinance for appointment.

**History:** 1953 Comp., § 37-1-5, enacted by Laws 1961, ch. 208, § 5; 1973, ch. 88, § 1.

#### **35-14-6. Duties of temporary municipal judge.**

The requirements of law relating to money collected, monthly reports, itemized statements and penalties apply to temporary municipal judges.

**History:** 1953 Comp., § 37-1-6, enacted by Laws 1961, ch. 208, § 6.

#### **35-14-7. Monthly reports and remittances.**

Each municipal judge shall make monthly written reports to the governing body of all money collected by him; provided he shall account separately for costs collected pursuant to Section 35-14-11 NMSA 1978 [repealed]. The reports shall be filed and the money collected shall be paid to the municipality not later than the tenth day of the month following collection.

**History:** 1953 Comp., § 37-1-7, enacted by Laws 1961, ch. 208, § 7; 1983, ch. 134, § 5.

#### **35-14-8. Itemized statement.**

All required reports shall include an itemized statement showing the different amounts collected, the purpose of collection, the name of the person paying and the date of payment.

**History:** 1953 Comp., § 37-1-8, enacted by Laws 1961, ch. 208, § 8.

### **35-14-9. Penalty.**

Any municipal judge violating any provision relating to making reports or remitting money collected is guilty of a misdemeanor and shall be fined not more than two hundred dollars (\$200) or imprisoned not more than ninety days, or both.

**History:** 1953 Comp., § 37-1-9, enacted by Laws 1961, ch. 208, § 9.

### **35-14-10. Municipal judges; training required.**

Each municipal judge shall annually as a condition of discharging the duties of that office, successfully complete a judicial training program conducted under the authority, or with the approval of, the court administrator, unless exempted from this requirement by the chief justice of the supreme court. No municipal judge holding office after December 31, 1973 shall receive any salary until he has successfully completed, or been exempted from, the required judicial training program.

**History:** 1953 Comp., § 37-1-10, enacted by Laws 1973, ch. 157, § 1.

### **35-14-11. Repealed.**

**History:** 1978 Comp., § 35-14-11, enacted by Laws 1983, ch. 134, § 6; 1987, ch. 251, § 3; 1988, ch. 121, § 4; 1989, ch. 133, § 1; 1993, ch. 273, § 5; 1994, ch. 69, § 1; 1998, ch. 103, § 1; 2003, ch. 424, § 3; 2006, ch. 28, § 2; 2009, ch. 245, § 4; 2013, ch. 192, § 1; 2015, ch. 87, § 1; repealed by Laws 2023, ch. 184, § 19.

### **35-14-12. Municipal courts; automation required.**

By July 1, 1996, each municipal court shall have the capability of providing on a timely basis electronic records in a format specified by the judicial information system council tracking convictions of violations of municipal ordinances prohibiting driving while under the influence of intoxicating liquor or drugs and prohibiting domestic violence.

**History:** Laws 1993, ch. 67, § 2.

## **ARTICLE 15**

### **Violations of Municipal Ordinances**

### **35-15-1. Proceedings to enforce ordinances; plaintiff; appeals.**

A. All actions to enforce any ordinance of any municipality shall be brought in the name of the municipality as plaintiff. No prosecution, conviction or acquittal for the violation of an ordinance is a defense to any other prosecution of the same party for any other violation of an ordinance, although different causes of action existed at the same time and, if united, would have exceeded the jurisdiction of the court.

B. The plaintiff or defendant may appeal to the district court from the judgment of any municipal court within fifteen days after judgment and sentence rendered in the municipal court. Failure of either party to appeal within the prescribed time is jurisdictional and an appeal not timely filed shall not be entertained by the district court.

**History:** Laws 1884, ch. 39, § 17; C.L. 1884, § 1625; C.L. 1897, § 2405; Code 1915, § 3627; C.S. 1929, § 90-907; 1941 Comp., § 39-201; 1953 Comp., § 38-1-1; Laws 1959, ch. 169, § 1; 1961, ch. 208, § 10; 1963, ch. 10, § 1; 1969, ch. 35, § 1.

### **35-15-2. Pleading existence of ordinance provisions violated.**

In all actions brought to enforce any ordinance, it shall be sufficient to state in the complaint or affidavit the number of the section and title of the ordinance violated without stating said section or ordinance in full or the substance thereof.

**History:** Laws 1884, ch. 39, § 104; C.L. 1884, § 1712; C.L. 1897, § 2517; Code 1915, § 3629; C.S. 1929, § 90-909; 1941 Comp., § 39-202; 1953 Comp., § 38-1-2; Laws 1959, ch. 169, § 2; 1975, ch. 87, § 1.

### **35-15-3. Procedure; commitment.**

A. In any action for the violation of any ordinance in which an arrest has not been made, a warrant for the arrest of the defendant may issue in the first instance upon the affidavit of any person making a complaint that he has reasonable grounds to believe the party charged is guilty. Any person arrested upon such warrant shall, without unnecessary delay, be taken before the proper officer to be tried for the alleged offense or be allowed to post an appropriate bond.

B. Any municipality may provide by ordinance that the first process shall be a citation or summons in cases involving violations of any municipal ordinance not amounting to a breach of the peace, requiring the party charged to appear before the municipal court at a time fixed in the citation or summons. The ordinance may also provide that, upon the failure of the party charged to appear, a warrant for his arrest shall immediately issue by the municipal judge for the offense specified in the citation or summons, commanding that the party charged shall be arrested and proceedings had as in the case when arrest is made upon a warrant issued upon affidavit as provided in Subsection A of this section.

C. Any person upon whom any fine or penalty is imposed may, upon order of the court convicting him, be committed to the county jail, municipal jail, detention facility or other place provided by the municipality for the incarceration of offenders until the fine or penalty is fully paid. The period of incarceration shall not exceed sixty days for any one offense except as authorized in Subsection C of Section 3-17-1 NMSA 1978. The municipal governing body may provide by ordinance that every person so committed shall work for the municipal corporation, at such labor as his strength will permit, within or without the jail or other place provided for the incarceration, not exceeding ten hours each working day. Each offender shall be credited with eight times the federal hourly minimum wage per day in reduction of any fine.

**History:** Laws 1884, ch. 39, § 19; C.L. 1884, § 1627; C.L. 1897, § 2407; Code 1915, § 3628; C.S. 1929, § 90-908; 1941 Comp., § 39-203; 1953 Comp., § 38-1-3; Laws 1959, ch. 169, § 3; 1961, ch. 209, § 1; 1963, ch. 11, § 1; 1987, ch. 92, § 2; 2001, ch. 170, § 2.

#### **35-15-4. Service of process.**

A. In the county in which the municipality whose ordinances are alleged to have been violated is located, a law enforcement officer with jurisdiction in that county may serve any municipal court process or make any arrests authorized by law to be made.

B. In counties adjacent to the county in which the municipality whose ordinances are alleged to have been violated is located, a law enforcement officer with jurisdiction in that county may serve any municipal court process or make any arrests authorized by law to be made, except for any service or arrest emanating from parking violations alleged to have occurred in a municipality located in another county.

**History:** Laws 1884, ch. 39, § 21; C.L. 1884, § 1629; C.L. 1897, § 2409; Code 1915, § 3631; C.S. 1929, § 90-911; 1941 Comp., § 39-204; 1953 Comp., § 38-1-4; 2017, ch. 27, § 1.

#### **35-15-5. Maximum time for commencing proceeding for enforcement or [of] ordinances.**

All prosecutions for the commission of any offense made punishable by ordinance shall be commenced within one year after the violation and shall be barred thereafter.

**History:** Laws 1884, ch. 39, § 22; C.L. 1884, § 1630; C.L. 1897, § 2410; Code 1915, § 3632; C.S. 1929, § 90-912; 1941 Comp., § 39-205; 1953 Comp., § 38-1-5; Laws 1959, ch. 169, § 4.

#### **35-15-6. Custody of prisoners.**

In case any such person shall be confined in any county jail it shall be the duty of the sheriff or jailer to deliver him to the appropriate municipal officer whenever such

prisoner is to work for such municipality but such prisoner shall be returned to such county jail each night.

**History:** Laws 1905, ch. 84, § 2; Code 1915, § 3634; C.S. 1929, § 90-914; 1941 Comp., § 39-207; 1953 Comp., § 38-1-7; Laws 1959, ch. 169, § 6.

### **35-15-7. Appeals; notice of appeals.**

A. An appeal from the municipal court is taken by filing with the clerk of the district court a notice of appeal. When the defendant takes an appeal, the notice of appeal shall be accompanied by a bond to the municipality in the sum, and with conditions, fixed by the municipal judge as sufficient to secure the appearance of the defendant, and the judgment and sentence of the municipal court.

B. The clerk of the district court shall docket the appeal on the civil docket upon payment of a docket fee of twenty dollars (\$20.00), ten dollars (\$10.00) of which shall be deposited in the court automation fund, and shall transmit a copy of the notice of appeal to the municipal court from which the action is appealed and to the municipal attorney.

C. Within ten days after receipt of the notice of appeal from the clerk of the district court under Subsection B of this section, the municipal judge shall file with the clerk of the district court a transcript of all municipal court docket entries in the action, together with all pleadings and other documents relating to the action. After the transcript has been filed, the action may be called for trial in the district court as in other civil actions. The appeal shall be governed by the Rules of Civil Procedure for the District Courts, except that the municipality has the burden of proving violation of an ordinance beyond a reasonable doubt.

D. The docketing of an appeal operates as a supersedeas and stay of execution upon the judgment of the municipal court in the action until final disposition of the appeal.

**History:** 1953 Comp., § 38-1-8, enacted by Laws 1969, ch. 35, § 2; 1996, ch. 41, § 7.

### **35-15-8. Judgment on appeal; recovery on bond.**

If the judgment of the municipal court in the action is affirmed or rendered against the defendant on appeal, the district court shall enter judgment imposing the same, a greater or a lesser penalty as that imposed in the municipal court in the action. If the defendant fails to appear at the time set for hearing of the appeal in the district court without a sufficient showing for a continuance, the district court shall affirm the judgment and sentence of the municipal court and render judgment against the defendant and his sureties on the appeal bond. When the municipal court has imposed a jail sentence upon the defendant, the district court shall issue a bench warrant for the immediate arrest and confinement of the defendant.

**History:** Laws 1919, ch. 112, § 4; C.S. 1929, § 79-525; 1941 Comp., § 39-211; 1953 Comp., § 38-1-11; Laws 1969, ch. 35, § 3; 1975, ch. 212, § 2.

### **35-15-9. [Municipality to have free process; no costs charged to municipality.]**

That the municipality shall have free process in the district court in all cases of appeals for violations of municipal ordinances, and in no case shall any costs be assessed against the municipality in such cases.

**History:** Laws 1919, ch. 112, § 5; C.S. 1929, § 79-526; 1941 Comp., § 39-212; 1953 Comp., § 38-1-12.

### **35-15-10. Trial de novo without jury.**

All trials upon appeals by a defendant from the municipal court to the district court for violations of municipal ordinances shall be de novo and shall be tried before the court without a jury.

**History:** Laws 1919, ch. 112, § 6; C.S. 1929, § 79-527; 1941 Comp., § 39-213; 1953 Comp., § 38-1-13; Laws 1959, ch. 169, § 8.

### **35-15-11. Municipality may appeal.**

The municipality shall have the right to appeal to the district court from the municipal court and to the supreme court from any decision of the district court in every case brought for the violation of an ordinance of said municipality. The municipality shall be allowed an appeal from the municipal court to the district court only when the municipal court has held an ordinance or section thereof invalid or unconstitutional or that the complaint is not legally sufficient.

**History:** Laws 1935, ch. 28, § 1; 1941 Comp., § 39-214; 1953 Comp., § 38-1-14; Laws 1959, ch. 169, § 9.

### **35-15-12. Fines and forfeitures in justice court [magistrate court]; collections go to municipal treasury.**

Justices of the peace [magistrates] in municipalities of the state of New Mexico, when sitting as municipal judges, shall turn into [in to] the municipality all fines collected for the violation of such municipal ordinances and all moneys collected from forfeited bonds or recognizances in such justice of the peace courts [magistrate courts] when being held as municipal courts shall be turned into [in to] the municipality.

**History:** Laws 1921, ch. 42, § 1; C.S. 1929, § 79-216; 1941 Comp., § 39-216; 1953 Comp., § 38-1-16; Laws 1959, ch. 169, § 11.



### **35-15-13. Fines and forfeitures assessed on appeal; collections go to municipal treasury.**

All fines assessed in the district court upon appeals from the municipal courts, including such moneys as may be paid into the said district court upon forfeited bonds or recognizances for defendants charged with municipal offenses, shall be turned over to the municipality.

**History:** Laws 1921, ch. 42, § 2; C.S. 1929, § 79-217; 1941 Comp., § 39-217; 1953 Comp., § 38-1-17; Laws 1959, ch. 169, § 12.

### **35-15-14. Suspension of sentence; probation.**

A. The governing body of any municipality may provide by ordinance that the municipal court may, upon entry of a plea of guilty or judgment of conviction:

(1) suspend in whole or part the execution of sentence; or

(2) place the defendant on probation for a period not exceeding one year on terms and conditions the court deems best; or both. The ordinance shall provide that the court may as a condition of probation require the defendant to serve a period of time in volunteer labor to be known as community service. The type of labor and period of service shall be at the sole discretion of the court; provided that any person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and any person who performs community service pursuant to court order or any criminal diversion program shall not be entitled to any wages, shall not be considered an employee for any purpose and shall not be entitled to workmen's compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this paragraph, "community service" means any labor that benefits the public at large or any public, charitable or educational entity or institution.

B. The ordinance shall provide that suspension of execution of the sentence or probation, or both, shall be granted only when the municipal judge is satisfied it will serve the ends of justice and of the public, and that the defendant's liability for any fine or other punishment imposed is fully discharged upon successful completion of the terms and conditions of probation.

**History:** 1953 Comp., § 38-1-18, enacted by Laws 1961, ch. 55, § 1; 1987, ch. 56, § 1.