UNANNOTATED

CHAPTER 38
Trials

ARTICLE 1
Process

38-1-1. 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 all courts of New Mexico 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 members of the bar of the state and to all applicants, and no rule shall become effective until thirty days after it has been so printed and distributed.

History: Laws 1933, ch. 84, § 1; 1941 Comp., § 19-301; 1953 Comp., § 21-3-1; Laws 1966, ch. 28, § 31.

38-1-2. [Practice statutes may be modified or suspended by rules.]

All statutes relating to pleading, practice and procedure, now existing, shall, from and after the passage of this act [38-1-1, 38-1-2 NMSA 1978], have force and effect only as rules of court and shall remain in effect unless and until modified or suspended by rules promulgated pursuant hereto.

History: Laws 1933, ch. 84, § 2; 1941 Comp., § 19-302; 1953 Comp., § 21-3-2.

38-1-3. [Common law is rule of practice and decision.]

In all the courts in this state the common law as recognized in the United States of America, shall be the rule of practice and decision.

History: Laws 1875-1876, ch. 2, § 2; C.L. 1884, § 1823; C.L. 1897, § 2871; Code 1915, § 1354; C.S. 1929, § 34-101; 1941 Comp., § 19-303; 1953 Comp., § 21-3-3.

38-1-4. [Equity rules prevail over common law.]

Generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail.

History: Laws 1897, ch. 73, § 178; C.L. 1897, § 2685 (178); Code 1915, § 4259; C.S. 1929, § 105-1006; 1941 Comp., § 19-304; 1953 Comp., § 21-3-4.

38-1-5. Service of process; failure to report.

A. In case any domestic corporation or any foreign corporation authorized to transact business in this state fails to file a report within the time required, or, in case the agent of any corporation, designated by the corporation as the agent upon whom process against the corporation may be served, dies, resigns or leaves the state, or the agent cannot with due diligence be found, it is lawful, while the default continues, to serve process against the corporation upon the secretary of state, and the service shall be as effective to all intents and purposes as if made upon an officer, director or the registered agent of the corporation. The plaintiff shall include an affidavit that the registered agent has died, resigned, left the state or cannot be found. The plaintiff shall provide, if known, the name upon whom the summons and complaint is to be served and the last known address and include two copies of every paper, including the summons, complaint, attachments and affidavits.

B. Within two days after service upon the secretary of state, the secretary shall notify the corporation of service of process by certified or registered mail directed to the corporation at its registered office and enclose a copy of the process or other paper served.

C. It is the duty of the plaintiff in any action in which the process is issued to pay to the secretary of state the sum of twenty-five dollars ($25.00), which sum shall be taxed as a part of the taxable costs in the suit if the plaintiff prevails in the suit.

D. The secretary of state shall keep a record of all summonses that have been presented for service to the secretary of state, along with a summary of all that occurred in regard to the service of each summons.

History: Laws 1905, ch. 79, § 48 (2); Code 1915, § 933; C.S. 1929, § 32-150; 1941 Comp., § 19-305; 1953 Comp., § 21-3-5; 1993, ch. 184, § 1.

38-1-5.1. Service of process on limited liability companies; death or removal of registered agent.

A. In case the agent of any limited liability company or foreign limited liability company registered to transact business in this state, designated by such company as the agent upon whom process against the company may be served, dies, resigns or leaves the state or the agent cannot with due diligence be found, it is lawful, while the circumstances continue, to serve process against the company upon the secretary of

state, and the service shall be as effective to all intents and purposes as if made upon any manager of the company.

B. Within two days after service upon the secretary of state, the secretary shall notify the company of service of process by certified or registered mail directed to the company at its registered office and enclose a copy of the process or other paper served. It is the duty of the plaintiff in any action in which the process is issued to pay to the secretary of state the sum of twenty-five dollars ($25.00), which shall be taxed as part of the taxable costs in the suit if the plaintiff prevails therein.

C. The secretary of state shall keep a record of all summons that have been presented for service to the secretary of state along with a summary of all occurrences with regard to the service of summons. The address of a foreign limited liability company's registered agent, as set forth in its application for registration or most recent amendment thereto, shall constitute such company's registered office for purposes of this section.

History: Laws 1993, ch. 280, § 75.

38-1-6. Process against foreign corporations.

A. In all personal actions brought in any court of this state against any foreign corporation, process may be served upon any officer, director or statutory agent of the corporation, either personally or by leaving a copy of the process at his residence or by leaving a copy at the office or usual place of business of the foreign corporation.

B. If no person has been designated by a foreign corporation doing business in this state as its statutory agent upon whom service of process can be made, or, if, upon diligent search, neither the agent so designated nor any of the officers or directors of the foreign corporation can be found in the state, then, upon the filing of an affidavit by the plaintiff to that effect, together with service upon the secretary of state of two copies of the process in the cause, the secretary of state shall accept service of process as the agent of the foreign corporation, but the service is not complete until a fee of twenty-five dollars ($25.00) is paid to the secretary of state by the plaintiff in the action. The plaintiff shall provide, if known, the name of the person upon whom summons and complaint is to be served and the last known address.

C. Within two days after receipt of the process and fee, the secretary of state shall give notice by certified or registered mail to the foreign corporation at its principal place of business outside the state of the service of the process. Where the secretary of state has no record of the principal office of the foreign corporation outside the state, he shall forward the copy of the process to the place designated as its principal office in an affidavit filed with the secretary of state by the plaintiff in the suit or by his attorney.

D. The foreign corporation served as provided in this section shall appear and answer within thirty days after the secretary of state gives the notice. The certificate of

service shall not be issued by the secretary of state until the defendant is served with the summons and complaint.

E. The secretary of state shall keep a record of all process served on him as provided for in this section, and of the time of the service and of his action in respect to the service.

F. Any foreign corporation engaging in business in this state, either in its corporate name or in the name of an agent, without having first procured a certificate of authority or otherwise become qualified to engage in business in this state shall be deemed to have consented to the provisions of this section.

History: Laws 1905, ch. 79, § 94; Code 1915, § 978; C.S. 1929, § 32-196; Laws 1935, ch. 113, § 1; 1941 Comp., § 19-306; 1953 Comp., § 21-3-6; Laws 1967, ch. 87, § 1; 1993, ch. 184, § 2.

38-1-6.1. Process against foreign limited liability companies.

A. In all personal actions brought in any court of this state against any foreign limited liability company, process may be served upon any manager or statutory agent of the company, either personally or by leaving a copy of the process at his residence, or by leaving a copy at the registered office of the foreign limited liability company in this state.

B. If no person has been designated by a foreign limited liability company doing business in this state as its statutory agent upon whom service of process can be made, or if upon diligent search neither the agent so designated nor any of the managers of the company can be found in this state, then, upon the filing of an affidavit by the plaintiff to that effect, together with service upon the secretary of state of two copies of the process in the cause, the secretary of state shall accept service of process as the agent of the foreign limited liability company, but the service is not complete until a fee of twenty-five dollars ($25.00) is paid to the secretary of state by the plaintiff in the action. The plaintiff shall provide the name of the person upon whom the summons and complaint is to be served and the last known address.

C. Within two days after receipt of the process and fee, the secretary of state shall give notice by certified or registered mail, to the foreign limited liability company at its principal place of business outside this state of the service of the process. Where the secretary of state has no record of the principal place of business of the foreign limited liability company outside this state, he shall forward the copy of the process to the place designated as such company's principal office or as the office required to be maintained in the state or other jurisdiction of its organization in its application for registration to transact business in this state, or the most recent amendment of such application, but if no such application for registration has been filed in this state, to the place designated as such company's principal office in an affidavit filed with the secretary of state by the plaintiff in the suit or by his attorney.

D. A foreign limited liability company served as provided in this section shall appear and answer within thirty days after the secretary of state gives the notice. The certificate of service shall not be issued by the secretary of state until the defendant is served with the summons and complaint.

E. The secretary of state shall keep a record of all process served on him as provided for in this section, and of the time of the service and of his action in respect to the service.

F. Any foreign limited liability company engaging in business in this state, either in its own name or in the name of an agent, without having first applied for registration or otherwise having become qualified to engage in business in this state shall be deemed to have consented to the provisions of this section.

History: Laws 1993, ch. 280, § 76.

38-1-7. Purpose of act.

The purpose of this act [38-1-7 to 38-1-11 NMSA 1978] is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340 [59 Stat. 33], which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

History: 1941 Comp., § 19-311, enacted by Laws 1951, ch. 172, § 1; 1953 Comp., § 21-3-7.

38-1-8. Service of process upon unauthorized insurer.

A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or (4) any other transaction of insurance business, is equivalent to and shall constitute an

irrevocable appointment by such insurer, binding upon him, his executor or administrator or successor in interest if a corporation, of the secretary of state to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the superintendent of insurance, through the attorney general, and upon whom may be served any notice, order, pleading or process in any proceeding before the superintendent of insurance and which arises out of transacting an insurance business in this state by such insurer, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

B. Such service of process shall be made by delivering to and leaving with the secretary of state, or some person in charge of his office, two copies thereof and the payment to him of a fee of two dollars ($2.00). The secretary of state shall forthwith mail by registered mail one of the copies of such process to the defendant at his last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by the superintendent of insurance or the attorney general in the court proceeding or by the superintendent of insurance in the administrative proceeding to the defendant at his last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the superintendent of insurance or the attorney general showing a compliance herewith are filed with the clerk of the court in which such action is pending, or with the superintendent in administrative proceedings, on or before the date the defendant is required to appear, or within such further time as the court may allow.

C. Service of process in any such action, suit or proceeding shall, in addition to the manner provided in Subsection B of this section, be valid if served upon any person within this state, who, in this state on behalf of such insurer, is (1) soliciting insurance; (2) making, issuing or delivering any contract of insurance; or (3) collecting or receiving any premium, membership fee, assessment or other consideration for insurance, and a copy of such process is sent within ten days thereafter by registered mail by the superintendent of insurance or the attorney general to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the superintendent of insurance or the attorney general showing a compliance herewith are filed with the clerk of the court in which such action is pending, or with the superintendent of insurance in administrative proceedings, on or before the date the defendant is required to appear, or within such further time as the court may allow in the case of court proceedings.

D. The superintendent of insurance or the attorney general shall not be entitled to a judgment by default in any court or administrative proceeding under this section until the expiration of thirty days from the date of the filing of the affidavit of compliance.

E. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

History: 1941 Comp., § 19-312, enacted by Laws 1951, ch. 172, § 2; 1953 Comp., § 21-3-8; Laws 1973, ch. 177, § 1.

38-1-9. Defense of action by unauthorized insurer.

A. Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall [(1)] deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or (2) procure a certificate of authority to transact the business of insurance in this state.

B. The court in any action, suit or proceeding, in which service is made in the manner provided in Subsections [Subsection] B or C of Section 2 [38-1-8 NMSA 1978] may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend such action.

C. Nothing in Subsection A of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in Subsections [Subsection] B or C of Section 2 [38-1-8 NMSA 1978] hereof on the ground either (1) that such unauthorized insurer has not done any of the acts enumerated in Subsection A of Section 2 [38-1-8 NMSA 1978], or (2) that the person on whom service was made pursuant to Subsection C of Section 2 [38-1-8 NMSA 1978] was not doing any of the acts therein enumerated.

History: 1941 Comp., § 19-313, enacted by Laws 1951, ch. 172, § 3; 1953 Comp., § 21-3-9.

38-1-10. Attorney fees.

In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars [($25.00)]. Failure of an insurer to defend any such action shall

be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

History: 1941 Comp., § 19-314, enacted by Laws 1951, ch. 172, § 4; 1953 Comp., § 21-3-10.

38-1-11. Short title.

This act [38-1-7 to 38-1-11 NMSA 1978] may be cited as the Unauthorized Insurers Process Act.

History: 1941 Comp., § 19-315, enacted by Laws 1951, ch. 172, § 6; 1953 Comp., § 21-3-11.

38-1-12. Service against incapacitated.

Whenever there is a guardian of the estate or a guardian of the person of an incapacitated person, duly appointed by a court of competent jurisdiction of this state, every process against the incapacitated person shall be served upon either of the guardians in the manner as may be provided by law for service of process, including service by publication. Service of process so made shall be considered as proper service upon the protected person. In all other cases, process shall be served upon the protected person in the same manner as upon competent or sane persons.

History: Laws 1935, ch. 60, § 10; 1939, ch. 40, § 1; 1941 Comp., § 19-307; 1953 Comp., § 21-3-12; 2009, ch. 159, § 12.

38-1-13. [Notice of proceedings occurring prior to service of summons or appearance.]

Whenever any proceeding is to be had prior to service of summons or appearance, at least five days' notice thereof shall be given, unless otherwise ordered by the court, and it shall be served on the party himself, and proof thereof made in the manner provided for service and return of summons.

History: Laws 1897, ch. 73, § 102; C.L. 1897, § 2685 (102); Code 1915, § 4184; C.S. 1929, § 105-706; 1941 Comp., § 19-308; 1953 Comp., § 21-3-13.

38-1-14. Notice of lis pendens; contents; recording; effect.

In all actions in the district court of this state or in the United States district court for the district of New Mexico affecting the title to real estate in this state, the plaintiff, at the time of filing his petition or complaint, or at any time thereafter before judgment or decree, may record with the county clerk of each county in which the property may be situate a notice of the pendency of the suit containing the names of the parties thereto,

the object of the action and the description of the property so affected and concerned, and, if the action is to foreclose a mortgage, the notice shall contain, in addition, the date of the mortgage, the parties thereto and the time and place of recording, and must be recorded five days before judgment, and the pendency of such action shall be only from the time of recording the notice, and shall be constructive notice to a purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to the said action.

The lis pendens notice need not be acknowledged to entitle it to be recorded.

History: Laws 1873-1874, ch. 19, § 1; C.L. 1884, § 1853; C.L. 1897, § 2902; Code 1915, § 4261; C.S. 1929, § 105-1101; 1941 Comp., § 19-309; 1953 Comp., § 21-3-14; Laws 1959, ch. 160, § 1; 1965, ch. 95, § 1.

38-1-15. [Pendency of suit; time within which process must be served; cancellation of lis pendens notice.]

For the purpose of the preceding section [38-1-14 NMSA 1978], it is considered that an action is pending from the time of filing such notice; provided, that such notice shall be of no value, unless it is followed by the service of such citations or process of citation, or by notice by publication to the defendant, as provided by law, within sixty days after such filing. And the court in which said action was commenced, may in its discretion, at any time after the action shall be settled, discontinue or revoke on application of any person injured, and for good cause shown, and under such notice as may be directed or approved by the court, order the notice authorized by the preceding section to be canceled by the county clerk of any county in whose office the same may have been filed, and such cancellation shall be made by an indorsement to that effect upon the filed notice which shall refer to the order.

History: Laws 1873-1874, ch. 19, § 2; C.L. 1884, § 1854; C.L. 1897, § 2903; Code 1915, § 4262; C.S. 1929, § 105-1102; 1941 Comp., § 19-310; 1953 Comp., § 21-3-15.

38-1-16. Personal service of process outside state.

A. Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts enumerated in this subsection thereby submits himself or his personal representative to the jurisdiction of the courts of this state as to any cause of action arising from:

(1) the transaction of any business within this state;

(2) the operation of a motor vehicle upon the highways of this state;

(3) the commission of a tortious act within this state;

(4) the contracting to insure any person, property or risk located within this state at the time of contracting;

(5) with respect to actions for divorce, separate maintenance or annulment, the circumstance of living in the marital relationship within the state, notwithstanding subsequent departure from the state, as to all obligations arising from alimony, child support or real or personal property settlements under Chapter 40, Article 4 NMSA 1978 if one party to the marital relationship continues to reside in the state.

B. Service of process may be made upon any person subject to the jurisdiction of the courts of this state under this section by personally serving the summons upon the defendant outside this state and such service has the same force and effect as though service had been personally made within this state.

C. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction is based upon this section.

D. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.

History: 1953 Comp., § 21-3-16, enacted by Laws 1959, ch. 153, § 1; 1971, ch. 103, § 1.

38-1-17. Service of process.

A. In any action in which the state of New Mexico is named as a party defendant, service of process shall be made by serving a copy of the summons and complaint on the governor and on the attorney general.

B. In any action in which a branch, agency, bureau, department, commission or institution of the state not specifically authorized by law to be sued is named as a party defendant, service of process shall be made by serving a copy of the summons and complaint on the attorney general and on the head of the branch, agency, bureau, department, commission or institution.

C. In any action in which a branch, agency, bureau, department, commission or institution of the state specifically authorized by law to be sued is named a party defendant, service of process shall be made on the head of the branch, agency, bureau, department, commission or institution and on the attorney general.

D. In any action in which an officer, official or employee of the state or one of its branches, agencies, bureaus, departments, commissions or institutions is named a party defendant, service of process shall be made on the officer, official or employee and on the attorney general.

E. For the purpose of this section:

(1) the governor shall be considered as the head of the state and the head of the executive branch of the state;

(2) the speaker of the house of representatives or the president pro tempore of the senate shall be considered as the head of the legislative branch of the state; and

(3) the chief justice of the supreme court shall be considered as the head of the judicial branch of the state.

F. Nothing contained in this section shall be construed as waiving any immunity or as authorizing any action against the state not otherwise specifically authorized by law.

G. In garnishment actions, service of writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau, department, commission or institution. A copy of the writ of garnishment shall be delivered by registered or certified mail to the defendant employee.

H. Service of process on the governor, attorney general, agency, bureau, department, commission or institution or head thereof shall be made either by handing a copy of the summons and complaint to the head or to his receptionist. Where an executive secretary is employed, he shall be considered as the head.

History: 1953 Comp., § 5-6-22, enacted by Laws 1969, ch. 62, § 1; 1970, ch. 23, § 1.

38-1-18. Agent for service of process.

Any foreign corporation, foreign bank or foreign real estate trust without being admitted to do business in this state, may loan money in this state only on real estate mortgages, deeds of trust and notes in connection therewith, and take, acquire, hold and enforce the notes, mortgages or deeds of trust given to represent or secure money so loaned or for other lawful consideration. All such notes, mortgages or deeds of trust taken, acquired or held are enforceable as though the foreign corporation, foreign bank or foreign real estate trust were an individual, including the right to acquire the mortgaged property upon foreclosure or under other provisions of the mortgage or deed of trust, and to dispose of the same. Any such corporation, bank or trust except banks and institutions whose shares, certificates or deposit accounts are insured by an agency or corporation of the United States government shall first file with the secretary of state a statement, signed by its president, secretary, treasurer or general manager, that it constitutes the secretary of state its agent for the service of process for cases limited to, and arising out of, such financial transactions, including therein the address of its principal place of business. Upon such service of process, the secretary of state shall forthwith forward all documents by registered or certified mail to the principal place of business of the corporation, bank or trust. Nothing in this section authorizes any such

corporation, bank or trust to transact the business of a bank or trust company in this state.

History: 1953 Comp., § 48-23-1, enacted by Laws 1967, ch. 87, § 2; 1969, ch. 98, § 1; 1973, ch. 390, § 7.

ARTICLE 2
Pleadings and Motions

38-2-1 to 38-2-5. Repealed.

38-2-6. [Name of defendant unknown.]

When the plaintiff shall be ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name or description, and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state in his complaint that he could not ascertain the true name, and the summons must contain the words, "real name unknown".

History: Laws 1897, ch. 73, § 84; C.L. 1897, § 2685 (84); Code 1915, § 4166; C.S. 1929, § 105-609; 1941 Comp., § 19-406; 1953 Comp., § 21-4-6.

38-2-7, 38-2-8. Repealed.

38-2-9. [Truth and mitigating circumstances in action for libel or slander.]

In the actions mentioned in the last preceding section [repealed], the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances admissible in evidence, to reduce the amount of damages, and whether he prove the justification or not, he may give mitigating circumstances in evidence.

History: Laws 1897, ch. 73, § 75; C.L. 1897, § 2685 (75); Code 1915, § 4155; C.S. 1929, § 105-531; 1941 Comp., § 19-409; 1953 Comp., § 21-4-9.

38-2-9.1. Special motion to dismiss unwarranted or specious lawsuits; procedures; sanctions; severability.

A. Any action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the

pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

History: Laws 2001, ch. 218, § 2.

38-2-9.2. Findings and purpose.

The legislature declares that it is the public policy of New Mexico to protect the rights of its citizens to participate in quasi-judicial proceedings before local and state governmental tribunals. Baseless civil lawsuits seeking or claiming millions of dollars have been filed against persons for exercising their right to petition and to participate in quasi-judicial proceedings before governmental tribunals. Such lawsuits can be an abuse of the legal process and can impose an undue financial burden on those having to respond to and defend such lawsuits and may chill and punish participation in public affairs and the institutions of democratic government. These lawsuits should be subject to prompt dismissal or judgment to prevent the abuse of the legal process and avoid the burden imposed by such baseless lawsuits.

History: Laws 2001, ch. 218, § 1.

38-2-10 to 38-2-22. Repealed.

ARTICLE 3
Venue; Change of Judge

38-3-1. County in which civil action in district court may be commenced.

All civil actions commenced in the district courts shall be brought and shall be commenced in counties as follows and not otherwise:

A. First, except as provided in Subsection F of this section relating to foreign corporations, all transitory actions shall be brought in the county where either the plaintiff or defendant, or any one of them in case there is more than one of either, resides; or second, in the county where the contract sued on was made or is to be performed or where the cause of action originated or indebtedness sued on was incurred; or third, in any county in which the defendant or either of them may be found in the judicial district where the defendant resides.

B. When the defendant has rendered himself liable to a civil action by any criminal act, suit may be instituted against the defendant in the county in which the offense was committed or in which the defendant may be found or in the county where the plaintiff resides.

C. When suit is brought for the recovery of personal property other than money, it may be brought as provided in this section or in the county where the property may be found.

D. (1) When lands or any interest in lands are the object of any suit in whole or in part, the suit shall be brought in the county where the land or any portion of the land is situate.

(2) Provided that where such lands are located in more than one county and are contiguous, that suit may be brought as to all of the lands in any county in which a portion of the lands is situate, with the same force and effect as though the suit had been prosecuted in each county in which any of the lands are situate. In all such cases in which suit is prosecuted in one county as to contiguous lands in more than one county, notice of lis pendens shall be filed pursuant to Sections 38-1-14 and 38-1-15 NMSA 1978 in each county. For purposes of service of process pursuant to Rule 4 [Rule 1-004 NMRA] of the Rules of Civil Procedure for the District Courts, any such suit involving contiguous lands located in more than one county shall be deemed pending in each county in which any portion of the land is located from the date of filing of the lis pendens notice.

E. Suits for trespass on land shall be brought as provided in Subsection A of this section or in the county where the land or any portion of the land is situate.

F. Suits may be brought against transient persons or non-residents in any county of this state, except that suits against foreign corporations admitted to do business and which designate and maintain a statutory agent in this state upon whom service of process may be had shall only be brought in the county where the plaintiff, or any one of them in case there is more than one, resides or in the county where the contract sued on was made or is to be performed or where the cause of action originated or indebtedness sued on was incurred or in the county where the statutory agent designated by the foreign corporation resides.

G. Suits against any state officers as such shall be brought in the court of the county in which their offices are located, at the capital or in the county where a plaintiff, or any one of them in case there is more than one, resides, except that suits against the officers or employees of a state educational institution as defined in Article 12, Section 11 of the constitution of New Mexico, as such, shall be brought in the district court of the county in which the principal office of the state educational institution is located or the district court of the county where the plaintiff resides.

History: Laws 1875-1876, ch. 2, § 1; C.L. 1884, § 1893; C.L. 1897, § 2950; Laws 1899, ch. 80, § 16; Code 1915, § 5567; C.S. 1929, § 147-101; 1941 Comp., § 19-501; Laws 1951, ch. 121, § 1; 1953 Comp., § 21-5-1; Laws 1955, ch. 258, § 1; 1957, ch. 124, § 1; 1981, ch. 70, § 1; 1988, ch. 8, § 1.

38-3-1.1. Jurisdiction of district courts.

All district courts have jurisdiction to review the action of any executive branch, agency or department in those cases in which a statute provides for judicial review.

History: Laws 1988, ch. 8, § 2.

38-3-2. [Actions against municipality or board of county commissioners.]

All civil actions not otherwise required by law to be brought in the district court of Santa Fe county, wherein any municipality or board of county commissioners is a party defendant, shall be instituted only in the district court of the county in which such municipality is located, or for which such board of county commissioners is acting.

History: Laws 1939, ch. 85, § 1; 1941 Comp., § 19-502; 1953 Comp., § 21-5-2.

38-3-3. Change of venue in civil and criminal cases.

The venue in all civil and criminal cases shall be changed, upon motion, to another county free from exception:

A. whenever the judge is interested in the result of the case or is related to or has been counsel for any of the parties; or

B. when the party moving for a change files in the case an affidavit of himself, his agent or attorney, that he believes he cannot obtain a fair trial in the county in which the case is pending because:

(1) the adverse party has undue influence over the minds of the inhabitants of the county;

(2) the inhabitants of the county are prejudiced against the party;

(3) of public excitement or local prejudice in the county in regard to the case or the questions involved in the case, an impartial jury cannot be obtained in the county to try the case; or

(4) of any other cause stated in the affidavit.

History: Laws 1929, ch. 60, § 1; C.S. 1929, § 147-105; 1941 Comp., § 19-503; 1953 Comp., § 21-5-3; Laws 1965, ch. 187, § 1; 2003, ch. 52, § 1.

38-3-4. Change of venue by stipulation of parties.

In addition to the provisions for change of venue in Section 38-3-3 NMSA 1978, a change of venue from one county to another within the same judicial district may be ordered by a district judge in any civil or criminal proceeding in a district court if both parties stipulate in writing to that change.

History: 1953 Comp., § 21-5-3.1, enacted by Laws 1961, ch. 129, § 1.

38-3-5. [Evidence in support of application; findings; decision.]

Upon the filing of a motion for change of venue, the court may require evidence in support thereof, and upon hearing thereon shall make findings and either grant or overrule said motion.

History: Laws 1929, ch. 60, § 2; C.S. 1929, § 147-106; 1941 Comp., § 19-504; 1953 Comp., § 21-5-4.

38-3-6. [Second change of venue not matter of right.]

A second change of venue shall not be allowed in any civil or criminal case, as a matter of right, but shall be within the discretion of the court.

History: Laws 1880, ch. 6, § 10; C.L. 1884, § 1834; C.L. 1897, § 2880; Code 1915, § 5572; C.S. 1929, § 147-107; 1941 Comp., § 19-505; 1953 Comp., § 21-5-5.

38-3-7. County to which case may be removed.

In all cases where a change of venue is granted, the case shall be removed to another county within the same judicial district unless the remaining counties are subject to exception, or unless the change of venue is ordered upon any of the grounds relating to the judge. Under these circumstances, the case shall be removed to some county of the nearest judicial district which is free from exception.

History: Laws 1889, ch. 77, § 3; C.L. 1897, § 2883; Code 1915, § 5575; C.S. 1929, § 147-108; 1941 Comp., § 19-506; 1953 Comp., § 21-5-6; Laws 1965, ch. 187, § 2.

38-3-8. Repealed.

38-3-9. Peremptory challenge to a district judge.

A party to an action or proceeding, civil or criminal, including proceedings for indirect criminal contempt arising out of oral or written publications, except actions or proceedings for constructive and other indirect contempt or direct contempt shall have the right to exercise a peremptory challenge to the district judge before whom the action or proceeding is to be tried and heard, whether he be the resident district judge or a district judge designated by the resident district judge, except by consent of the parties or their counsel. After the exercise of a peremptory challenge, that district judge shall proceed no further. Each party to an action or proceeding may excuse only one district judge pursuant to the provisions of this statute. In all actions brought under the Workmen's Compensation Act (52-1-1 to 52-1-69 NMSA 1978) [Workers' Compensation Act (Chapter 52, Article 1 NMSA 1978)], the employer and the insurance carrier of the employer shall be treated as one party when exercising a peremptory challenge to the judge under this statute. The rights created by this section are in addition to any arising under Article 6 of the constitution of New Mexico.

History: 1978 Comp., § 38-3-9, enacted by Laws 1985, ch. 91, § 1.

38-3-10. Time for filing affidavit of disqualification.

The affidavit of disqualification shall be filed within ten days after the cause is at issue or within ten days after the time for filing a demand for jury trial has expired, or within ten days after the judge sought to be disqualified is assigned to the case, whichever is the later.

History: Laws 1933, ch. 184, § 2; 1941 Comp., § 19-509; 1953 Comp., § 21-5-9; Laws 1971, ch. 123, § 1; 1977, ch. 228, § 2.

38-3-11. Costs paid by county of origin.

Whenever a change of venue is granted, all costs in civil and criminal cases shall be paid from the court fund of the county in which the case originated.

History: 1953 Comp., § 21-5-10, enacted by Laws 1965, ch. 187, § 3.

ARTICLE 4
Parties

38-4-1. Repealed.

38-4-2. [Several persons liable on contract, judgment or statute; parties defendant.]

Where two or more persons are bound by contract or by judgment, decree or statute, whether jointly only, or jointly or severally, or severally only, and including the parties to negotiable paper, common orders and checks, and sureties on the same, or separate instruments, or by any liability growing out of the same, the action thereon may, at the option of the plaintiff, be brought against any or all of them; when any of these so bound are dead, the action may be brought against any or all of the survivors with any or all of the representatives of the decedents, or against any or all such representatives. An action or judgment against any one or more of several parties jointly bound, shall not be a bar to proceedings against the others.

History: Laws 1880, ch. 6, § 5; C.L. 1884, § 1885; C.L. 1897, § 2942; Code 1915, § 4076; C.S. 1929, § 105-110; 1941 Comp., § 19-602; 1953 Comp., § 21-6-2.

38-4-3. [Joint contracts create joint and several liability; assumption of debt; partners; parties defendant.]

All contracts, which by the common law are joint only, shall be held and construed to be joint and several; and in all cases of joint obligations or assumptions by partners and others, suit may be brought and prosecuted against any one or more of the parties liable thereon, and when more than one person is joined as defendant in any such suit, such suit may be prosecuted, and judgment rendered against any one or more of such defendants.

History: Laws 1878, ch. 4, § 3; C.L. 1884, § 1889; C.L. 1897, § 2946; Code 1915, § 4078; C.S. 1929, § 105-112; 1941 Comp., § 19-603; 1951 Comp., § 21-6-3.

38-4-4. Repealed.

38-4-5. [Suits against partners; joinder; enforcement of judgment; service of process.]

Suits may be brought by or against a partnership as such, or against all or either of the individual members thereof; and a judgment against the firm as such may be enforced against the partnership's property, or that of such members as have appeared or been served with summons; but a new action may be brought against the other members in the original cause of action. When the action is against the partnership as such, service of summons on one of the members, personally, shall be sufficient service on the firm.

History: Laws 1880, ch. 6, § 6; C.L. 1884, § 1886; C.L. 1897, § 2943; Code 1915, § 4077; C.S. 1929, § 105-111; 1941 Comp., § 19-605; 1953 Comp., § 21-6-5.

38-4-6. [Married woman.]

A married woman shall sue and be sued as if she were unmarried.

History: Laws 1897, ch. 73, § 8; C.L. 1897, § 2685 (8); Code 1915, § 4075; C.S. 1929, § 105-109; 1941 Comp., § 19-606; 1953 Comp., § 21-6-6.

38-4-7. Infant; suits between spouses.

An infant who has been lawfully married, may institute, prosecute to judgment or defend any action against his spouse in his own name without a guardian or next friend.

History: Laws 1897, ch. 73, § 9; C.L. 1897, § 2685 (9); Code 1915, § 4080; Laws 1921, ch. 34, § 1; C.S. 1929, § 105-201; 1941 Comp., § 19-607; 1953 Comp., § 21-6-7; Laws 1975, ch. 257, § 8-105.

38-4-8. [Infants; bond of next friend.]

Any person who acts as next friend for an infant in any suit to recover any personal property, debt or damages, shall, if required by the court, execute a bond to such infant in double the amount claimed in such suit, with such sureties as shall be approved by the court, conditioned that such next friend shall account to such infant for all money or property which may be recovered in such suit. Such bond shall be delivered to and filed in the office of the clerk of the court in which said suit is pending.

History: Laws 1897, ch. 73, § 11; C.L. 1897, § 2685 (11); Code 1915, § 4082; C.S. 1929, § 105-203; 1941 Comp., § 19-608; 1953 Comp., § 21-6-8.

38-4-9. Costs in suit brought by certain representatives of infant.

The guardian, conservator or next friend of any infant who commences or prosecutes a suit shall be responsible for the costs thereof, unless such infant be permitted by the court to sue as a poor person, as provided by law.

History: Laws 1897, ch. 73, § 12; C.L. 1897, § 2685 (12); Code 1915, § 4083; C.S. 1929, § 105-204; 1941 Comp., § 19-609; 1953 Comp., § 21-6-9; Laws 1975, ch. 257, § 8-106.

38-4-10. Guardian ad litem for infant defendant.

Appointment of a guardian ad litem may be made by the court in which the suit is pending, or by the judge thereof in vacation, upon the written request of the infant defendant, if the age of fourteen years or more, or, if said infant is under the age of fourteen, on the written request of a relative or friend of the infant, or on the written consent of any competent person proposed as guardian ad litem, and such request and consent shall be filed in the office of the clerk of the court before any answers by such infant shall be filed.

History: Laws 1897, ch. 73, § 14; C.L. 1897, § 2685 (14); Code 1915, § 4085; C.S. 1929, § 105-206; 1941 Comp., § 19-610; 1953 Comp., § 21-6-10; Laws 1975, ch. 257, § 8-107.

38-4-11. Failure to apply for appointment of guardian ad litem.

If an infant defendant, or a relative or friend of an infant under the age of fourteen, neglects for twenty days to procure the appointment of a guardian ad litem to defend the suit, the court shall appoint some competent person to be the guardian ad litem for such infant in the defense of such suit.

History: Laws 1897, ch. 73, § 15; C.L. 1897, § 2685 (15); Code 1915, § 4086; C.S. 1929, § 105-207; 1941 Comp., § 19-611; 1953 Comp., § 21-6-11; Laws 1975, ch. 257, § 8-108.

38-4-12. Liability of guardian ad litem for costs.

No person appointed guardian ad litem for an infant for the purpose of defending a suit against such infant shall be liable for the costs of such suit, unless especially charged by the court for some personal misconduct in such cause.

History: Laws 1897, ch. 73, § 16; C.L. 1897, § 2685 (16); Code 1915, § 4087; C.S. 1929, § 105-208; 1941 Comp., § 19-612; 1953 Comp., § 21-6-12; Laws 1975, ch. 257, § 8-109.

38-4-13. Definition of "infant" as used in Sections 38-4-7 through 38-4-12 NMSA 1978.

As used in Sections 38-4-7 through 38-4-12 NMSA 1978, "infant" means a person who has not reached the age of majority.

History: 1953 Comp., § 21-6-12.1, enacted by Laws 1973, ch. 64, § 1.

38-4-14. Incapacitated person; definition.

As used in the Probate Code [Chapter 45 NMSA 1978] the term "incapacitated person" means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he is unable to manage his personal care or he is unable to manage his property and financial affairs.

History: Laws 1925, ch. 22, § 1; C.S. 1929, § 85-301; 1941 Comp., § 19-613; 1953 Comp., § 21-6-13; Laws 1975, ch. 257, § 8-110; 1989, ch. 252, § 1.

38-4-15. Appointment of guardian ad litem to defend suit.

Appointment of a guardian ad litem shall be made by the court in which the suit is pending, or by the judge thereof in vacation, upon the written request and petition of a relative or friend of the incapacitated person. However, in the event no relative or friend of the incapacitated person makes application for the appointment of a guardian ad litem within twenty days after service of process upon the incapacitated person, then the court in which said action or proceeding is pending, may, upon the application of any other party to the action or proceeding, appoint some qualified person to act as guardian ad litem for the incapacitated person in said cause.

History: Laws 1925, ch. 22, § 4; C.S. 1929, § 85-304; 1941 Comp., § 19-614; 1953 Comp., § 21-6-14; Laws 1975, ch. 257, § 8-111.

38-4-16. Compromise by guardian ad litem.

The guardian ad litem so appearing in any action or proceeding for and on behalf of an incapacitated person shall have power to compromise the same and to agree to the judgment to be entered in the action or proceeding for or against the protected person, subject to the approval of the court in which the suit is pending.

History: Laws 1925, ch. 22, § 6; C.S. 1929, § 85-306; 1941 Comp., § 19-616; 1953 Comp., § 21-6-16; Laws 1975, ch. 257, § 8-112; 2009, ch. 159, § 13.

38-4-17. Costs paid by guardian ad litem.

No person appointed guardian ad litem for an incapacitated person, for the purpose of bringing a suit for or defending a suit against such incapacitated person, shall be

liable for the costs of such suit, unless especially charged by the court for some personal misconduct in such case.

History: Laws 1925, ch. 22, § 7; C.S. 1929, § 85-307; 1941 Comp., § 19-617; 1953 Comp., § 21-6-17; Laws 1975, ch. 257, § 8-113.

38-4-18. Partnerships and corporations may be represented by partner, officer or director in proceedings in magistrate and metropolitan court.

In any proceeding in the magistrate and metropolitan courts of this state, a partnership or a corporation that is a party may be represented by a partner, officer or director of the partnership or corporation even though the partner, officer or director is not an attorney.

History: Laws 1987, ch. 103, § 1.

ARTICLE 5
Drawing and Empaneling Jurors

38-5-1. Qualification of jurors.

A. A person who is at least eighteen years of age, a United States citizen, a resident of New Mexico residing in the county for which a jury may be convened is eligible and may be summoned for service as a juror by the courts, unless the person is incapable of rendering jury service because of:

(1) physical or mental illness or infirmity; or

(2) undue or extreme physical or financial hardship.

B. A person who was convicted of a felony and who meets all other requirements for eligibility may be summoned for jury service if the person has successfully completed all conditions of the sentence imposed for the felony, including conditions for probation or parole.

History: 1953 Comp., § 19-1-1, enacted by Laws 1969, ch. 222, § 1; 1991, ch. 71, § 1; 2005, ch. 107, § 4; 2006, ch. 101, § 1.

38-5-2. Exemption from jury service; excusals; service of disqualified juror.

A. A person who has served as a member of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from

sitting or serving as a juror in a court of this state when the person requests to be exempted from service by reason of the exemption granted by this subsection.

B. A person who is seventy-five years of age or older who requests exemption from jury service with a local court shall be permanently exempt from jury service.

C. A person may be excused from jury service at the discretion of the judge or the judge's designee, with or without the person's personal attendance upon the court, if:

(1) jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror's care or supervision;

(2) the person has an emergency that renders the person unable to perform jury service; or

(3) the person presents other satisfactory evidence to the judge or the judge's designee.

D. A person requesting an exemption or an excuse from jury service shall take all necessary action to obtain a ruling on the request no later than the date on which the person is scheduled to appear for jury duty.

E. The judge, in the judge's discretion, upon granting any excuse, may disallow the fees and mileage of the person excused.

F. The service upon a jury of a person disqualified shall, of itself, not vitiate any indictment found or any verdict rendered by that jury, unless actual injury to the person complaining of the injury is shown.

G. As used in this section and Section 38-5-1 NMSA 1978, "undue or extreme physical or financial hardship":

(1) means circumstances in which a person would:

(a) be required to abandon another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service;

(b) incur costs that would have a substantial adverse impact on the payment of necessary daily living expenses of the person or the person's dependent; or

(c) suffer physical hardship that would result in illness or disease; and

(2) does not exist solely because a prospective juror will be absent from employment.

History: 1953 Comp., § 19-1-2, enacted by Laws 1973, ch. 150, § 1; 1979, ch. 173, § 1; 2005, ch. 107, § 5; 2009, ch. 26, § 1; 2021, ch. 101, § 1.

38-5-3. Source for juror selection.

A. Each county clerk shall make available to the secretary of state a database of registered voters of the clerk's county. The secretary of state shall preserve and make available to the department of information technology, by electronic media, a database of New Mexico registered voters, by county, which shall be updated every six months. The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the department of information technology a database of driver's license holders in each county, which shall be updated every six months. The secretary of taxation and revenue shall make available to the department of information technology, by electronic media, a database of New Mexico personal income tax filers by county, which shall be updated every six months. The updates shall occur in June and December.

B. The department of information technology shall program the merger of the registered voter, driver's license and personal income tax filer databases from each county to form a master jury database and write a computer program so that a random selection of jurors can be made. A discrimination shall not be exercised except for the elimination of persons who are not eligible for jury service. The administrative office of the courts shall provide specifications for the merging of the registered voter, driver's license and personal income tax filer databases to form the master jury database. The master jury database shall be the database that produces the random jury list for the selection of petit or grand jurors for the state courts.

C. The secretary of veterans' services and the adjutant general of the department of military affairs shall make available, by electronic media, to the administrative office of the courts a database of service members who were killed or missing in action during military service, which shall be updated every six months. The administrative office of the courts shall remove the names of service members who were killed or missing in action during military service from the master jury database that produces the random jury list for the state courts.

D. The court shall, by order, designate the number of potential jurors to be selected and the date on which the jurors are to report for empaneling. Within fifteen days after receipt of a copy of the order, the administrative office of the courts shall provide the random jury list to the court. The department of information technology shall print the random jury list and jury summons mailer forms within ten days after receiving the request from the administrative office of the courts. Upon issuance of the order, the department of information technology shall draw from the most current registered voter, driver's license and personal income tax filer databases to create the random jury list.

E. The department of information technology may transfer the master jury database to a court that has compatible equipment to accept such a transfer. The court accepting

the master jury database shall transfer the information to a programmed computer used for the random selection of petit or grand jurors.

History: 1978 Comp., § 38-5-3, enacted by Laws 1991, ch. 71, § 2; 2005, ch. 107, § 6; 2007, ch. 290, § 25; 2009, ch. 157, § 1; 2011, ch. 26, § 1.

38-5-3.1. Repealed.

38-5-4. Repealed.

38-5-5. Jury tampering; penalties.

Jury tampering consists of:

A. the willful placing of names in a jury wheel or removal of the names other than in accordance with law;

B. the selection or drawing of jurors other than in accordance with law;

C. the attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment; or

D. the threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment.

Whoever violates the provisions of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Whoever violates the provisions of Subsection C of this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. Whoever violates the provisions of Subsection D of this section is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 19-1-5, enacted by Laws 1969, ch. 222, § 5; 1989, ch. 343, § 1; 1997, ch. 208, § 2.

38-5-5.1. Legislative declaration.

It is the policy of this state that all qualified citizens have an obligation to serve on juries and to give truthful information concerning attitudes, opinions and feelings about topics relevant to the proceeding for which they are called to serve when summoned by the courts of this state.

History: Laws 2005, ch. 107, § 2.

38-5-6 to 38-5-9. Repealed.

38-5-10. Summoning of jurors; claiming exemption.

Upon drawing a list of jurors for grand jury or petit jury service, the clerk shall issue a summons for each juror ordering his attendance at a time and place as fixed by the district judge or magistrate ordering the drawing. The summons may be served by first class mail or in a manner provided for the service of civil process. A willful failure to appear as ordered in the summons is a petty misdemeanor. Accompanying each summons, the clerk of the court shall submit for the information of the jurors the listing of those classes of persons or qualifications provided by law under which an exemption from jury service may be claimed. Jurors shall be provided a form upon which they may state the facts supporting their eligibility to claim exemption from jury service and to express a claim for exemption.

History: 1953 Comp., § 19-1-10, enacted by Laws 1969, ch. 222, § 10; 1991, ch. 71, § 3.

38-5-10.1. Postponement of petit jury service.

A. A person scheduled to appear for service on a petit jury may request a postponement of the date of initial appearance for jury service. The request for postponement shall be granted if the juror:

(1) has not previously been granted a postponement; and

(2) agrees to a future date, approved by the court, when the juror will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve.

B. A subsequent request to postpone jury service may be approved by the court only in the event of an emergency that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a subsequent postponement, the prospective juror must agree to a future date on which the juror will appear for jury service within six months of the postponement.

C. A court shall postpone and reschedule the service of a summoned juror, without affecting the summoned juror's right to request a postponement under Subsections A and B of this section, if the summoned juror is:

(1) employed by an employer with five or fewer full-time employees, or their equivalent, and another employee of the same employer is summoned to appear during the same period;

(2) the only person performing particular services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the

business, commercial or agricultural enterprise that the enterprise must close or cease to function if the person is required to perform jury duty; or

(3) required to attend to an emergency as determined by the judge.

History: Laws 2005, ch. 107, § 3.

38-5-11. Qualifying jury panels.

A. The court shall empanel jurors in a random manner. The judge or the judge's designee shall preside over the empaneling of a petit jury panel. The district judge or the judge's designee shall preside over the empaneling of the grand jury panel. Jurors who appear for service shall be questioned under oath as to their eligibility for jury service by the judge or the judge's designee. Claims of exemption, requests for excuse from service or postponement of service shall be ruled upon by the judge or the judge's designee.

B. The judge or the judge's designee shall submit questionnaires to prospective jurors to:

(1) obtain any information that will aid the court in ruling on requests for exemption or excuse from service or postponement of service;

(2) aid the court and the parties in voir dire examination of jurors or in determining a juror's qualifications to serve on a particular petit jury panel, trial jury or grand jury; or

(3) aid in the determination of challenges for cause and peremptory challenges.

C. The judge or the judge's designee shall certify a numbered list of the jury panel members' names when qualified. The certified list of jurors and the questionnaires obtained from jurors shall be made available for inspection and copying by a party to a pending proceeding or their attorney or to any person having good cause for access to the list and the questionnaires.

History: 1953 Comp., § 19-1-11, enacted by Laws 1969, ch. 222, § 11; 1970, ch. 40, § 1; 1991, ch. 71, § 4; 2005, ch. 107, § 7.

38-5-12. Petit jury panels; number to be qualified; period of service; time for summoning.

A. The judge shall determine the number of jurors to be summoned for service, the date and time for the appearance of jurors for qualification, the number of jurors to be qualified to provide panels of jurors for trial service and the size of trial jury panels. Procedures such as the use of alternate jury panels should be established where

appropriate to lessen the burden of jury service on persons retained on petit jury panels. Jurors may be drawn, summoned and qualified by the judge at any time to supplement jury panels requiring replacement or augmentation. Petit jury panels may be qualified and may serve as the trial needs of the court require without regard to court terms.

B. The supreme court shall establish, by rule, the appropriate length of jury terms. The court shall consider the number of trials held, the availability of jurors and the administrative and financial impact.

History: 1953 Comp., § 19-1-12, enacted by Laws 1969, ch. 222, § 12; 1970, ch. 40, § 2; 1971, ch. 136, § 1; 1977, ch. 382, § 1; 1979, ch. 173, § 2; 2005, ch. 107, § 8.

38-5-13. Drawing and qualifying trial jury.

The district court of each county shall maintain a list of the names of the jurors duly empaneled and present for the trial of a case. The judge shall cause the names to be randomly selected until sufficient names have been drawn to provide the number of jurors required for the trial. The name and number of each juror shall be announced. Twelve or six jurors shall compose a petit jury in the district courts for the trial of civil causes. Twelve jurors shall compose a petit jury in criminal and children's court cases. Magistrate and metropolitan jury court selection shall be conducted in accordance with supreme court rules.

History: 1953 Comp., § 19-1-13, enacted by Laws 1969, ch. 222, § 13; 1991, ch. 71, § 5; 2005, ch. 107, § 9.

38-5-14. Exercising challenges to jurors.

The court shall permit the parties to a case to express in the record of trial any challenge to a juror for good cause. The court shall rule upon the challenge and may excuse any juror for good cause. Challenges for good cause and peremptory challenges shall be made outside the hearing of the jury. The party making a challenge shall not be announced or disclosed to the jury panel, but each challenge shall be recorded by the clerk and placed in the case file. In civil trials, the opposing parties shall exercise peremptory challenges alternately. In juvenile or criminal cases, the state or prosecution shall pass or accept or make any peremptory challenge as to each juror before the defendant is called upon to pass, accept or exercise a peremptory challenge as to the juror. In civil cases, each party may challenge five jurors peremptorily. When there are two or more parties defendant or parties plaintiff, they shall exercise their peremptory challenges jointly, and if all cannot agree on a challenge desired by one party on a side, then the challenge is forfeited. However, if the relief sought by or against the parties on the same side of a civil case differs, or if their interests are diverse, or if cross-claims are to be tried, the court shall allow each party on that side of the suit five peremptory challenges.

History: 1953 Comp., § 19-1-14, enacted by Laws 1969, ch. 222, § 14; 1991, ch. 71, § 6.

38-5-15. Mileage and compensation for jurors.

Persons summoned for jury service and jurors shall be reimbursed for travel in excess of forty miles round trip from their place of actual residence to the courthouse when their attendance is ordered at the rate allowed public officers and employees per mile of necessary travel. Persons summoned for jury service and jurors shall be compensated for their time in attendance and service at the highest prevailing state minimum wage rate.

History: 1953 Comp., § 19-1-15, enacted by Laws 1969, ch. 222, § 15; 1970, ch. 40, § 3; 1976 (S.S.), ch. 16, § 1; 1979, ch. 285, § 1; 1991, ch. 71, § 7; 2017, ch. 61, § 2.

38-5-16. Challenge to jury array.

Any party to a civil action or defendant in a criminal action, at the opening of trial and before the empaneling of the jury is commenced, by motion to quash the jury array, may challenge the jury panel on the ground that the members thereof were not selected substantially in accordance with law. If the motion is sustained, then the trial will be stayed until a jury panel has been selected and qualified in accordance with law. Such a challenge is waived if not raised before the trial jury panel has been sworn and selection of the trial jury commenced.

History: 1953 Comp., § 19-1-16, enacted by Laws 1969, ch. 222, § 16.

38-5-17. [Verdict by ten or more jurors; polling jury.]

In civil causes when the jury, or as many as ten of them, have agreed upon a verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman; the verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict; if upon such inquiry or polling, more than two of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

History: 1978 Comp. § 38-5-17, enacted by Laws 1933, ch. 98, § 1.

38-5-18. Employer prohibited from penalizing employee for jury service.

A. An employer shall not deprive an employee of employment or threaten or otherwise coerce the employee because the employee receives a summons for jury

service, responds to the summons, serves as a juror or attends court for prospective jury service.

B. An employer shall not require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury service, participating in the jury selection process or serving on a jury. Nothing in this subsection requires an employer to provide annual, vacation or sick leave to employees who are not otherwise entitled to those benefits under company policies.

History: Laws 1979, ch. 47, § 1; 2005, ch. 107, § 10.

38-5-19. Penalty.

An employer, either individually or through his agent, who violates Section 1 [38-5-18 NMSA 1978] of this act is guilty of a petty misdemeanor.

History: Laws 1979, ch. 47, § 2.

ARTICLE 6
Witnesses and Their Competency

38-6-1 to 38-6-3. Repealed.

38-6-4. Per diem and mileage for witnesses.

A. Witnesses shall be allowed no fees for services, but shall receive per diem expense and mileage at the rate specified for nonsalaried public officers as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for that time in which attendance is required, with certification of the clerk of the court.

B. The district judge in any civil case pending in the district court may order the payment of a reasonable fee, to be taxed as costs, in addition to the per diem and mileage as provided for in Subsection A of this section, for any witness who qualifies as an expert and who testifies in the cause in person or by deposition. The additional compensation shall include a reasonable fee to compensate the witness for the time required in preparation or investigation prior to the giving of the witness's testimony. The expert witness fee which may be allowed by the court shall be limited to one expert regarding liability and one expert regarding damages unless the court finds that additional expert testimony was reasonably necessary to the prevailing party and the expert testimony was not cumulative.

C. The provisions of this section shall apply only to cases filed on or after its effective date.

History: Laws 1887, ch. 40, § 1; C.L. 1897, § 1810; Code 1915, § 5898; C.S. 1929, § 155-104; 1941 Comp., § 20-104; 1953 Comp., § 20-1-4; Laws 1959, ch. 62, § 1; 1971, ch. 139, § 1; 1975, ch. 105, § 1; 1983, ch. 189, § 1.

38-6-5. Repealed.

38-6-6. Privileged communications.

A. No husband shall be compelled to disclose any communication made by his wife during the marriage, and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.

B. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity.

C. In the courts of the state, no certified public accountant or public accountant shall be permitted to disclose information obtained in the conduct of any examination, audit or other investigation made in a professional capacity, or which may have been disclosed to said accountant by a client, without the consent in writing of such client or his, her or its successors or legal representatives.

D. If a person offers himself as a witness and voluntarily testifies with reference to the communications specified in this section, that is a consent to the examination of the person to whom the communications were made as above provided.

History: Laws 1880, ch. 12, § 7; C.L. 1884, § 2081; C.L. 1897, § 3020; Code 1915, § 2174; C.S. 1929, § 45-512; Laws 1933, ch. 33, § 1; 1939, ch. 235, § 1; 1941 Comp., § 20-112; 1953 Comp., § 20-1-12; Laws 1973, ch. 223, § 1.

38-6-7. News sources and information; mandatory disclosure prohibited; definitions; special procedure for prevention of injustice issue.

A. Unless disclosure be essential to prevent injustice, no journalist or newscaster, or working associates of a journalist or newscaster, shall be required to disclose before any proceeding or authority, either:

(1) the source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

(2) any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public.

B. For the purpose of this act [this section]:

(1) "proceeding or authority" includes any proceeding or investigation before, or by, any legislative, judicial, executive or administrative body or person;

(2) "medium of communication" means any newspaper, magazine, press association, news service, wire service, news or feature syndicate, broadcast or television station or network, or cable television system;

(3) "information" means any written, oral or pictorial news or other material;

(4) "published information" means any information disseminated to the public by the person from whom disclosure is sought;

(5) "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes but is not limited to, all notes, news copy, outtakes, photographs, films, recording tapes or other data of whatever sort not disseminated to the public through a medium of communication;

(6) "processing" includes compiling, storing and editing of information;

(7) "journalist" means any person who, for gain is engaged in gathering, preparing, editing, analyzing or commenting on news for a newspaper, magazine, news agency, news or feature syndicate, press association or wire service, or who was so engaged at the time a source or information was procured;

(8) "newscaster" means any person who, for gain is engaged in gathering, preparing, editing, analyzing, commenting on or broadcasting news for radio or television transmission, or who was so engaged at the time a source or information was procured; and

(9) "working associates [associate]" means any person who works for the person, in his capacity as a journalist or newscaster, from whom a source or information is sought and who was so engaged at the time a source or information was procured, or any person employed by the same individual or entity that employs the person, in his capacity as a journalist or newscaster, from whom a source or information is sought, and who was so engaged at the time a source or information was procured.

C. If the proceeding in which disclosure is sought is in the district court, that court will determine whether disclosure is essential to prevent injustice. In all other proceedings, application shall be made to the district court of the county in which the proceeding is being held for an order for disclosure. Disclosure shall, in no event, be

ordered except upon written order of the district court stating the reasons why disclosure is essential to prevent injustice. Such an order is appealable to the supreme court if the appeal is docketed in that court within ten days after its entry. The matter shall be considered as an extraordinary proceeding and shall be heard de novo and within twenty days from date of docketing. The taking of an appeal shall operate to stay proceedings as to the prevention of injustice issue only in the district court.

History: 1953 Comp., § 20-1-12.1, enacted by Laws 1973, ch. 31, § 1.

38-6-8. Witnesses with developmental or intellectual disability; competency evaluation.

A. As used in this section:

(1) "witness with a developmental or intellectual disability" means a witness in a proceeding whom the court has found after hearing, as provided in Subsection B of this section, to have a developmental or intellectual disability; and

(2) "developmental or intellectual disability" means a substantial limitation in present functioning characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

B. In any judicial proceeding wherein a witness with a developmental or intellectual disability may or will testify, the court on its own motion or on motion of the proponent of the witness with a developmental or intellectual disability, and after hearing, may order the use of one of the alternative procedures for determining competency to testify or for taking the testimony of the witness with a developmental or intellectual disability described below, provided that the court finds at the time of the order, by a preponderance of the evidence in the case, that the witness with a developmental or intellectual disability is likely, as a result of submitting to usual procedures for determining competency or as a result of testifying in open court:

(1) to suffer unreasonable and unnecessary mental or emotional harm; or

(2) to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities such that the witness's ability to testify will be significantly impaired.

C. If the court orders the use of an alternative procedure pursuant to this section, the court shall make and enter specific findings on the record describing the reasons for such order.

D. A court that makes findings in accordance with Subsection B of this section may order any of the following suitable alternative procedures for determining the

competency to testify or for taking the testimony of the witness with a developmental or intellectual disability:

(1) taking the testimony of the witness with a developmental or intellectual disability while permitting a person familiar to the witness such as a family member, clinician, counselor, social worker or friend to sit near or next to the witness;

(2) taking the testimony of the witness with a developmental or intellectual disability in court but off the witness stand;

(3) if the proceeding is a bench proceeding, taking the testimony of the witness with a developmental or intellectual disability in a setting familiar to the witness;

(4) if the proceeding is a jury trial, videotaping of testimony, out of the presence of the jury or in a location chosen by the court or by agreement of the parties; or

(5) the procedure set forth in Paragraph (1) in combination with Paragraph (2), (3) or (4) of this subsection.

E. Testimony taken by a videotape pursuant to an order issued as provided in Subsection B of this section shall be taken in the presence of the judge, counsel for all parties and such other persons as the court may allow. Counsel shall be given the opportunity to examine, confront or cross-examine the witness with a developmental or intellectual disability to the same extent as would be permitted if ordinary procedures had been followed, subject to such protection of the witness as the judge deems necessary.

F. An order issued pursuant to provisions of Subsection B of this section that the testimony of the witness with a developmental or intellectual disability be videotaped out of the presence of the jury shall provide that the videotape be shown in court to the jury in the presence of the judge, the parties and the parties' counsel. At such courtroom showing, the audio portion of the video shall be entered into the record as would any oral testimony and shall be treated in all respects as oral testimony to the jury.

G. The videotape or giving of testimony taken by an alternative procedure pursuant to an order issued as provided in Subsection B of this section shall be admissible as substantive evidence to the same extent as and in lieu of live testimony by the witness in any proceeding for which the order is issued or in any related proceeding against the same party when consistent with the interests of justice; provided that such an order is entered or re-entered based on current findings at the time when, or within a reasonable time before, the videotape or testimony is offered into evidence, and provided, in the case of a related criminal proceeding, that the requirements of Subsection E of this section were satisfied when the videotape was recorded or the alternative procedure was used.

H. Whenever, pursuant to an order issued as provided in Subsection B of this section, testimony is recorded on videotape, the court shall ensure that:

(1) the recording equipment is capable of making an accurate recording and is operated by a competent operator;

(2) the recording is in color and is taken in well-lit conditions;

(3) the presence of the presiding judge, the attorneys, the defendant or parties, if in the room, and all other persons present is stated on the recording;

(4) the witness with a developmental or intellectual disability is visible at all times and, to the extent reasonably possible, the recording shows all persons present in the room as a jury would perceive them in open court;

(5) every voice on the recording is audible and identifiable;

(6) the recording is accurate, undistorted in picture or sound quality and has not been altered except as ordered by the court; and

(7) each party is afforded the opportunity to view the recording before it is shown in the courtroom.

I. The fact that the witness with a developmental or intellectual disability has been found in a court proceeding to be incompetent to make informed decisions of a personal, medical or financial nature or is under a guardianship or conservatorship shall not preclude the witness from testifying if found competent to testify and, further, shall not preclude a determination of competency to testify.

J. The use of alternative procedures shall not be denied because they may take significantly more time than conventional procedures.

K. Expert opinion shall be admissible at any hearing held pursuant to this section, including hearings to determine the competency of a witness with a developmental or intellectual disability to testify.

L. Nothing in this section shall be deemed to prohibit the court from using other appropriate means, consistent with this section and other laws and with the defendant's rights, to protect a witness with a developmental or intellectual disability from trauma during a court proceeding.

History: Laws 1993, ch. 333, § 1; 2023, ch. 113, § 11.

ARTICLE 6A
Uniform Child Witness Protective Measures

38-6A-1. Short title.

This act [38-6A-1 to 38-6A-9 NMSA 1978] may be cited as the "Uniform Child Witness Protective Measures Act".

History: Laws 2011, ch. 98, § 1.

38-6A-2. Definitions.

As used in the Uniform Child Witness Protective Measures Act:

A. "alternative method" means:

(1) in a criminal proceeding in which a child witness does not give testimony in an open forum in full view of the finder of fact, a videotaped deposition of the child witness that complies with the following requirements:

(a) the deposition was presided over by a district judge;

(b) the defendant was represented by counsel at the deposition or waived counsel;

(c) the defendant was present at the deposition; and

(d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary;

(2) in a criminal proceeding in which a child witness does not give testimony face-to-face with the defendant, a videotaped deposition of the child witness that complies with the following requirements:

(a) the deposition was presided over by a district judge;

(b) the defendant was represented by counsel at the deposition or waived counsel;

(c) the defendant was able to view the deposition, including the child witness, through closed-circuit television or equivalent technology, and the defendant and counsel were able to communicate with each other during the deposition through headsets and microphones or equivalent technology; and

(d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary; or

(3) in a noncriminal proceeding, testimony by closed-circuit television, deposition, testimony in a closed forum or any other method of testimony that does not include one or more of the following:

(a) having the child testify in person in an open forum;

(b) having the child testify in the presence and full view of the finder of fact and presiding officer; and

(c) allowing all of the parties to be present, to participate and to view and be viewed by the child;

B. "child witness" means:

(1) an individual under the age of sixteen who has been or will be called to testify in a noncriminal proceeding; or

(2) an alleged victim under the age of sixteen who has been or will be called to testify in a criminal proceeding;

C. "criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of New Mexico or a delinquency proceeding pursuant to the Delinquency Act [Chapter 32A, Article 2 NMSA 1978] involving conduct that if engaged in by an adult would constitute a violation of a criminal law of New Mexico;

D. "noncriminal proceeding" means a trial or hearing before a court or an administrative agency of New Mexico having judicial or quasi-judicial powers in a civil case, an administrative proceeding or any other case or proceeding other than a criminal proceeding; and

E. "presiding officer" means the person under whose supervision and jurisdiction the proceeding is being conducted. "Presiding officer" includes a judge in whose court a case is being heard, a quasi-judicial officer or an administrative law judge or hearing officer.

History: Laws 2011, ch. 98, § 2.

38-6A-3. Applicability.

A. The Uniform Child Witness Protective Measures Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Protective Measures Act does not preclude, in a criminal or noncriminal proceeding, any other procedure permitted by law:

(1) for a child witness to testify by an alternative method, however denominated; or

(2) for protecting the interests of or reducing mental or emotional harm to a child witness.

B. The supreme court may adopt rules of procedure and evidence to implement the provisions of the Uniform Child Witness Protective Measures Act.

History: Laws 2011, ch. 98, § 3.

38-6A-4. Hearing whether to allow testimony by alternative method.

A. The presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, to any nonparty movant and to any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer.

History: Laws 2011, ch. 98, § 4.

38-6A-5. Standards for determining whether a child witness may testify by alternative method.

A. In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method in the following situations:

(1) the child may testify otherwise than in an open forum in the presence and full view of the finder of fact upon a showing that the child witness may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm; and

(2) the child may testify other than face-to-face with the defendant if the presiding officer makes specific findings that the child witness would be unable to testify face-to-face with the defendant without suffering unreasonable and unnecessary mental or emotional harm.

B. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or

enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(1) the nature of the proceeding;

(2) the age and maturity of the child;

(3) the relationship of the child to the parties in the proceeding;

(4) the nature and degree of mental or emotional harm that the child may suffer in testifying; and

(5) any other relevant factor.

History: Laws 2011, ch. 98, § 5.

38-6A-6. Factors for determining whether to permit alternative method.

If the presiding officer determines that a standard pursuant to Section 5 [38-6A-5 NMSA 1978] of the Uniform Child Witness Protective Measures Act has been met, the presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

A. alternative methods reasonably available for protecting the interests of or reducing mental or emotional harm to the child;

B. available means for protecting the interests of or reducing mental or emotional harm to the child without resort to an alternative method;

C. the nature of the case;

D. the relative rights of the parties;

E. the importance of the proposed testimony of the child;

F. the nature and degree of mental or emotional harm that the child may suffer if an alternative method is not used; and

G. any other relevant factor.

History: Laws 2011, ch. 98, § 6.

38-6A-7. Order regarding testimony by alternative method.

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the presiding officer's determination.

B. An order allowing a child witness to testify by an alternative method shall:

(1) state the method by which the child is to testify;

(2) list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

(3) state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(4) state any condition or limitation upon the participation of individuals present during the testimony of the child; and

(5) state any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the presiding officer shall be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order and shall be subject to the other provisions of the Uniform Child Witness Protective Measures Act.

History: Laws 2011, ch. 98, § 7.

38-6A-8. Right of party to examine child witness.

An alternative method ordered by the presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party, subject to such protection of the child witness as the presiding officer deems necessary.

History: Laws 2011, ch. 98, § 8.

38-6A-9. Uniformity of application and construction.

In applying and construing the Uniform Child Witness Protective Measures Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2011, ch. 98, § 9.

ARTICLE 7
Admissibility and Sufficiency of Evidence

38-7-1. Verified accounts; instruments in writing; denial under oath.

Except as provided in the Uniform Commercial Code [Chapter 55 NMSA 1978], accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing, not barred by law, are sufficient evidence in any suit to enable the plaintiff to recover judgment for the amount thereof, unless the defendant or his agent denies the same under oath.

History: Laws 1880, ch. 5, § 18; C.L. 1884, § 1878; C.L. 1897, § 2931; Code 1915, § 2176; C.S. 1929, § 45-603; 1941 Comp., § 20-207; 1953 Comp., § 20-2-7; Laws 1961, ch. 96, § 11-103.

38-7-2. [Consideration imported by written contract.]

Every contract in writing hereafter made shall import a consideration in the same manner and as fully as sealed instruments have heretofore done.

History: Laws 1901, ch. 62, § 12; Code 1915, § 2181; C.S. 1929, § 45-608; 1941 Comp., § 20-208; 1953 Comp., § 20-2-8.

38-7-3. [Abstracts of title; admissibility; explanation; contradiction.]

Any abstract of the title to real estate, located in the state of New Mexico, certified to as correct by the secretary, and under the seal of any title abstract company, incorporated and doing business under the laws of the state, or by an individual bonded abstracter, shall be received in all of the courts of this state as evidence of the things recited therein, in the same manner, and to a like extent, that the public records are now admitted, and such abstract may be explained or contradicted in the same manner and to the same extent as such records may now be.

History: Laws 1882, ch. 69, § 1; C.L. 1884, § 2744; C.L. 1897, § 3934; Code 1915, § 2188; C.S. 1929, § 45-615; Laws 1943, ch. 16, § 1; 1941 Comp., § 20-212; 1953 Comp., § 20-2-13.

38-7-4. [False or forged abstract; penalty.]

Any officer of such company, who shall certify to any such abstract that it is true and correct, knowing the same to be false, or any person who shall forge the name of any such officer, or the seal of any such company, shall, upon conviction, be deemed guilty of a felony, and be fined not more than five hundred dollars [($500)], or imprisonment in the penitentiary not more than three years, or both, in the discretion of the court.

History: Laws 1882, ch. 69, § 2; C.L. 1884, § 2745; C.L. 1897, § 3935; Code 1915, § 2189; C.S. 1929, § 45-616; 1941 Comp., § 20-213; 1953 Comp., § 20-2-14.

ARTICLE 8
Depositions for Use in Foreign State

38-8-1. [Order for appearance of witness and production of documents.]

Where an order has been made by the court or a judge in a foreign state, territory or country, or stipulation has been entered into, or a notice given pursuant to the practice in such state, territory or country for the taking of the deposition of a witness within this state for use in a legal proceeding or cause pending in such state, territory or country, any judge shall, upon proof of such facts, issue an order directing the witness or witnesses to attend before the judge, notary or commissioner therein named, and to testify under oath or affirmation, and to produce such books, papers and writings as may be deemed material, at a time and place certain, and upon such further day or days as the judge, notary or commissioner may appoint, but no witness shall be compelled to attend outside the judicial district in which he shall reside, or sojourn, nor unless served with a copy of such order ten days before the return day therein mentioned and is paid witness fees and mileage in the same manner as are required upon the service of a subpoena in a cause pending in the district court.

History: Laws 1907, ch. 84, § 1; Code 1915, § 2160; C.S. 1929, § 45-301; 1941 Comp., § 20-301; 1953 Comp., § 20-3-1.

38-8-2. [Disobedience of witness; use of copies of documents.]

In case any witness shall refuse or fail to appear, be sworn or affirmed, and answer such questions as may be put to him, he may be proceeded against in the same manner and to the same extent as if such witness were testifying in a cause being tried before the district court; but no witness shall be required to deliver up any book, paper or writing to be annexed to the said deposition and taken out of this state, but a copy of the same may be annexed to such deposition.

History: Laws 1907, ch. 84, § 2; Code 1915, § 2161; C.S. 1929, § 45-302; 1941 Comp., § 20-302; 1953 Comp., § 20-3-2.

38-8-3. [False testimony punishable as perjury.]

The giving of false testimony before such judge, commissioner or notary shall be punished in the same manner and to the same extent as if given before the court upon the trial of a cause in the district court.

History: Laws 1907, ch. 84, § 3; Code 1915, § 2162; C.S. 1929, § 45-303; 1941 Comp., § 20-303; 1953 Comp., § 20-3-3.

ARTICLE 9
Interpreters for Deaf

38-9-1. Short title.

Chapter 38, Article 9 NMSA 1978 may be cited as the "Deaf Interpreter Act".

History: Laws 1979, ch. 263, § 1; 2007, ch. 23, § 1.

38-9-2. Definitions.

As used in the Deaf Interpreter Act:

A. "appointing authority" means the presiding judge or magistrate of any court and the hearing officer or other person authorized to administer oaths in any administrative proceeding before a board, commission, agency, institution, department or licensing authority of the state or any of its political subdivisions wherein an interpreter is required pursuant to the provisions of the Deaf Interpreter Act;

B. "deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him from understanding voice communications;

C. "principal party in interest" means a person in any judicial or administrative proceeding in which he is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding; and

D. "interpreter" means a person who may through sign language, manual spelling or orally, through lip reading, as required, translate and communicate between a principal party in interest and other parties.

History: Laws 1979, ch. 263, § 2.

38-9-3. Interpreter required.

If a deaf person who is a principal party in interest has provided notice and proof of disability, if required, pursuant to Section 38-9-6 NMSA 1978, the appointing authority shall appoint an interpreter, after consultation with the deaf person, to interpret or to translate the proceedings to the person and to interpret or translate the person's testimony. Interpreters may be selected from current lists of interpreters provided by the commission for deaf and hard-of-hearing persons for:

A. interpreters certified by the national registry of interpreters for the deaf; or

B. other interpreters qualified through action of the commission for deaf and hard-of-hearing persons.

History: Laws 1979, ch. 263, § 3; 2007, ch. 23, § 2.

38-9-4. Interpreter waiver.

A deaf person who is a principal party in interest may at any point in any proceeding waive the right to the services of an interpreter.

History: Laws 1979, ch. 263, § 4.

38-9-5. Interpreter; services.

Whenever any deaf person is requesting or receiving services from any health, welfare or educational agency under the authority of the state or any political subdivision of the state or municipality, an interpreter may be appointed to interpret or translate the actions of any personnel providing the services and to assist the deaf person in communicating with the personnel.

History: Laws 1979, ch. 263, § 5.

38-9-6. Notice; proof of disability.

Every deaf person whose appearance at a proceeding entitles the person to an interpreter shall notify the appointing authority of the person's disability at least two weeks prior to any appearance and shall request the services of an interpreter. An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of the person's disability when the appointing authority has reason to believe that the person is not so disabled. Reasonable proof shall include but not be limited to a statement from a doctor, an audiologist, the vocational rehabilitation division of the public education department, the commission for deaf and hard-of-hearing persons or a school nurse that identifies the person as deaf or as having hearing so seriously impaired as to prohibit the person from understanding voice communications.

History: Laws 1979, ch. 263, § 6; 2007, ch. 23, § 3.

38-9-7. Coordination of interpreter requests.

A. Whenever an appointing authority receives a valid request for the services of an interpreter, the appointing authority shall request the commission for deaf and hard-of-hearing persons to furnish a list of interpreters.

B. The New Mexico association of the deaf and the New Mexico registry of interpreters for the deaf are authorized to assist the commission to prepare and continually update a listing of available interpreters. When requested by an appointing authority to provide assistance in providing an interpreter, the commission shall supply a list of available interpreters.

C. An interpreter who has been appointed shall be reimbursed by the appointing authority at a fixed rate reflecting a current approved fee schedule as established by the commission and the administrative office of the courts. Nothing in this section shall be construed to prevent any state department, board, institution, commission, agency or licensing authority or any political subdivision of the state from employing an interpreter on a full-time basis or under contract at a mutually agreed upon compensation rate.

History: Laws 1979, ch. 263, § 7; 2007, ch. 23, § 4.

38-9-8. Interpreter permitted.

Whenever a deaf person is interested in any administrative or judicial proceeding in which an interpreter would be required for a principal party in interest, he shall be entitled to utilize an interpreter to translate the proceeding for him and to assist him in presenting his testimony or comment.

History: Laws 1979, ch. 263, § 8.

38-9-9. Oath of interpreter.

Every interpreter appointed pursuant to the provisions of the Deaf Interpreter Act, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the deaf person for whom he is appointed.

History: Laws 1979, ch. 263, § 9.

38-9-10. Privileged communication.

Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and the deaf person could not be compelled to testify as to the communications, the privilege shall apply to the interpreter as well.

History: Laws 1979, ch. 263, § 10.

ARTICLE 10
Court Interpreters

38-10-1. Short title.

This act [38-10-1 to 38-10-8 NMSA 1978] may be cited as the "Court Interpreters Act".

History: Laws 1985, ch. 209, § 1.

38-10-2. Definitions.

As used in the Court Interpreters Act:

A. "appointing authority" means the presiding judge of a court in which an interpreter is required pursuant to the provisions of the Court Interpreters Act;

B. "interpreter" means a person who has a sufficient range of formal and informal language skills in English and another language so that he is readily able to interpret, translate and communicate simultaneously and consecutively in either direction between a non-English speaking person and other parties;

C. "non-English speaking person" means a person who:

(1) cannot speak or understand the English language;

(2) speaks only or primarily a language other than the English language; or

(3) has a dominant language other than English, which inhibits that person's comprehension of the proceedings or communication with counsel or the presiding judicial officer;

D. "principal party in interest" means a person in a judicial proceeding who is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding; and

E. "witness" means a witness in any judicial proceeding.

History: Laws 1985, ch. 209, § 2.

38-10-3. Certified interpreter required; compensation.

A. After July 1, 1986, if a non-English speaking person who is a principal party in interest or a witness has requested an interpreter, the appointing authority shall appoint, after consultation with the non-English speaking person or his attorney, an interpreter certified pursuant to the Court Interpreters Act to interpret or to translate the proceedings to him and to interpret or translate his testimony. The appointing authority shall select the interpreter from the current list of certified interpreters provided by the administrative office of the courts, except as provided in Subsection B of this section.

B. The appointing authority may appoint an interpreter pursuant to Subsection A of this section who is not certified but who is otherwise competent only when the appointing authority has made diligent efforts to obtain a certified interpreter and has found none to be reasonably available in the judicial district.

C. The appointing authority shall reimburse the interpreter at a fixed rate according to a current approved fee schedule established by the administrative office of the courts.

D. Nothing in this section shall be construed to prevent any court from employing a certified interpreter on a full-time basis or under contract at a mutually agreed upon compensation rate.

History: Laws 1985, ch. 209, § 3.

38-10-4. Court interpreters advisory committee created; duties.

There is created the "court interpreters advisory committee" which consists of the director of the administrative office of the courts and four persons appointed by the chief justice of the New Mexico supreme court, who are a justice of the New Mexico supreme court, a district court judge, a district court clerk and a professional in foreign languages or linguistics. The court interpreters advisory committee shall provide advice and recommendations to the administrative office of the courts on the development of an interpreters training and certification program. The advisory committee shall meet initially no later than August 1, 1985, to organize and elect a chairman. Thereafter, the committee shall meet as necessary at the call of the chairman or the request of a majority of committee members. Advisory committee members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1985, ch. 209, § 4.

38-10-5. Certification; administration.

The administrative office of the courts shall:

A. develop and administer a certification program for interpreters;

B. identify or provide for the development of and certify the examinations, courses and training required for certification of interpreters pursuant to the Court Interpreters Act;

C. develop and maintain a current list of available certified interpreters and provide to each court a list of certified interpreters available within that judicial district;

D. set such certification fees as may be necessary;

E. adopt and disseminate to each court an approved fee schedule for certified interpreters; and

F. adopt and promulgate rules and regulations necessary to carry out the provisions of the Court Interpreters Act.

History: Laws 1985, ch. 209, § 5.

38-10-6. Interpreter waiver.

A. A non-English speaking person who is a principal party in interest or a witness may at any point in any proceeding waive the right to the services of an interpreter, but only when such waiver is:

(1) approved by the appointing authority after he has explained the nature and effect of the waiver to the non-English speaking person through an interpreter; and

(2) made on the record after the non-English speaking person has consulted with his attorney.

B. At any point in any proceeding, a non-English speaking person may retract his waiver pursuant to Subsection A of this section and request an interpreter.

History: Laws 1985, ch. 209, § 6.

38-10-7. Interpreter permitted.

Whenever a non-English speaking person is interested in any judicial proceeding in which an interpreter would be required for a principal party in interest or a witness, he shall be entitled to utilize a certified interpreter to interpret the proceedings for him and to assist him in presenting his testimony or comment.

History: Laws 1985, ch. 209, § 7.

38-10-8. Oath of interpreter.

Every interpreter appointed pursuant to the provisions of the Court Interpreters Act, before entering upon his duties, shall take an oath that he will make a true and impartial interpretation or translation in an understandable manner using his best skills and judgment in accordance with the standards and ethics of the interpreter profession.

History: Laws 1985, ch. 209, § 8.