

**October 5, 2010 Advisory Letter---Misdemeanor Prosecutions by Law
Enforcement Officers in Magistrate Court**

July 8, 2010

The Honorable Richard D. Flores
Fourth Judicial District Attorney
P.O. Box 2025
Las Vegas, NM 87701

Re: Opinion Request — Misdemeanor Prosecutions by Law Enforcement Officers in
Magistrate Court

Dear District Attorney Flores:

You requested our advice regarding the authority of law enforcement officers to prosecute misdemeanor cases in magistrate court. As discussed below, based on our review of the applicable law and on the information available to us at this time, we conclude that law enforcement officers have sufficient authority under rules promulgated by the New Mexico Supreme Court to prosecute misdemeanors in magistrate court.

There are two rules of construction that are applicable to this matter. First, the provisions of a law are interpreted to give them maximum effect and are read together as harmoniously as possible. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 126 N.M. 413, 415, 970 P. 2d 599 (1998). Second, a statute or rule should be read according to its plain, written meaning. See Wilson v. Denver, 125 N.M. 308, 314, 961 P.2d 153 (1998),

The Rules of Criminal Procedure for the Magistrate Courts permit prosecutions by people who are not attorneys in some circumstances. Rule 6-108(B) NMCRA states:

A governmental entity may appear and prosecute any misdemeanor proceeding if the appearance is by an employee of the governmental entity authorized by the governmental entity to institute or cause to be instituted an action on behalf of the governmental entity.

The term “employee” as used in Rule 6-108(B) is not defined or limited. Thus, the rule permits any employee of a governmental entity, including a law enforcement officer, to prosecute misdemeanors in magistrate court, as long as the employee has been authorized by the entity to institute actions on its behalf. See N.M. Att’y Gen. Op. No. 89-27 (1989) (concluding that court rules authorized a peace officer to prosecute misdemeanor cases in magistrate court but not in district court).

The court rules authorizing law enforcement officers to prosecute misdemeanors in magistrate court do not conflict with statutory provisions governing the responsibilities of district attorneys. NMSA 1978, Section 36-1-19(A)(1985) provides that “[n]o one shall

represent the state or any county thereof in any matter in which the state or county is interested except the attorney general or the district attorney. The apparent sweep of this language is limited by the immediately preceding provision, which states:

Each district attorney shall ... prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested....

NMSA 1978, § 36-1-18(A)(1) (2001) (emphasis added).

Read together, Sections 36-1-18 and 36-1-19 make clear that a district attorney is obligated to prosecute criminal cases in a court of record. The magistrate courts are not courts of record. See NMSA 1978, § 35-1-1 (1968). The legislature's intent to exclude prosecutions in magistrate court from a district attorney's mandatory duties is reinforced under Section 36-1-20, which provides:

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

(Bracketed items inserted by compiler.) Thus, a district attorney may, but is not required, to prosecute criminal cases in magistrate court.

In conclusion, state law does not limit authority to prosecute misdemeanors in magistrate court to the district attorneys. Under the applicable court rules, a law enforcement officer may prosecute misdemeanors in magistrate court if authorized by the governmental entity that employs the officer.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

DAVID TOUREK
Assistant Attorney General