CHAPTER 34
COURT STRUCTURE AND ADMINISTRATION

ARTICLE 1
GENERAL PROVISIONS

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

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

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

Cross-references. - As to vesting of judicial power, see N.M. Const., art. VI, § 1.

Children's Code. - See 32-1-1 NMSA 1978 and note thereto.

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

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

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

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

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

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

Cross-references. - As to judges as conservators of peace, see N.M. Const., art. VI, § 21.

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

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

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

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

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

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

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

As statutory regulation must give court power to protect itself. - Statutory regulation of contempt power must preserve to the court sufficient power to protect itself from indignities and to enable it effectively to administer its judicial functions. The contempt power more than any other distinguishes the court from a mere board of arbitration. State ex rel. Bliss v. Greenwood, 63 N.M. 156, 315 P.2d 223 (1957).

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

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

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

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

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

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

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

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

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

Answering some questions may limit number of contempts. - Where, by answers to other questions, the witness held in contempt distinguished between questions directed to actions of the defendant toward herself and actions of defendant toward the deceased, consistently refusing to answer questions designed to establish whether the defendant had threatened her, but answering most questions directed to the relationship between defendant and the deceased, refusal to testify as to threats on her life and on

that of the deceased constituted two contempts, not three. State v. Sanchez, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

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

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

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

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

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

Violation of injunction or state as party not determinative. - Neither the fact alone that an injunctive order, alleged to have been violated, was issued in an action brought by a public official charged with enforcement of a statutory duty, nor that the state is a party to a contempt proceeding is determinative of whether it is a civil or criminal proceeding. The purpose for which the power is exercised is a major factor in determining its character. State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc., 74 N.M. 201, 392 P.2d 347 (1964).

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

Proceeding is criminal if punitive, not remedial. - Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt

is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. The polar concepts are "punitive" versus "remedial." State ex rel. Bliss v. Greenwood, 63 N.M. 156, 315 P.2d 223 (1957).

Nature of acts as crimes may be considered. - That the acts complained of are indictable crimes may be considered in determining the contempt proceedings "criminal." International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers, 74 N.M. 195, 392 P.2d 343 (1964).

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

Court need not label proceeding civil or criminal. - The failure of the trial court to label the contempt proceedings was not error; both civil and criminal contempt can be tried in the same proceedings. State v. Sanchez, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

Where a witness sentenced for contempt had notice that her refusal to answer would be a contempt and that sanctions in the form of a jail sentence or fine might be imposed, she was not deprived of due process on a theory of lack of notice because the court failed to label the contempt proceedings criminal. State v. Sanchez, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

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

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

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

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

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

Right to bill of particulars. - An information charging a criminal contempt is a substitute for an indictment at common law. It serves the same purpose as the indictment in charging a criminal offense. The right of a defendant "to demand the nature and cause of the accusation," assured by N.M. Const., art. II, § 14, is preserved by the right to a bill of particulars. The information and bill of particulars are to be read together as a single instrument constituting the accusation. Norton v. Reese, 76 N.M. 602, 417 P.2d 205 (1966).

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

There are two types of criminal contempt: Direct contempt is contemptuous conduct in the presence of the court, and indirect contempt is an act committed outside the presence of the court. State v. Pothier, 104 N.M. 363, 721 P.2d 1294 (1986).

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

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

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

Contemnor's right of allocution. - Even where summary punishment for contempt is imposed during trial, the contemnor is normally given an opportunity to speak in his own

behalf in the nature of a right of allocution. In re Klecan, 93 N.M. 637, 603 P.2d 1094 (1979).

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

Summary procedure proper for failure to answer questions. - A refusal to answer questions in the presence of the court is a proper matter to be dealt with summarily, particularly where the witness is given opportunity to explain the basis of her refusal to the court, and there was no violation of due process on the basis that the court proceeded summarily. State v. Sanchez, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

And does not violate due process. - Where the trial court took great care to make sure that a witness understood the question posed by the prosecution which she refused to answer and understood that she could be held in contempt if she persisted in her refusal to answer, even allowing her time to confer with her attorney, and made it clear that she could purge herself of the contempt by answering the questions in the presence of the jury, the summary contempt proceeding did not violate her right to due process. State v. Sanchez, 89 N.M. 673, 556 P.2d 359 (Ct. App. 1976).

Proper test for determining whether impartiality of judge has been affected by the acts of the contemnor is whether the act involves the personal feelings of the judge. In re Klecan, 93 N.M. 637, 603 P.2d 1094 (1979).

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

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

Punishment for civil contempt is remedial and for the benefit of the complainant; it is coercive rather than punitive and is made contingent upon the defendant's compliance with the order of the court; the defendant carries the keys to his prison in his own

pocket. International Minerals & Chem. Corp. v. Local 177 United Stone & Allied Prods. Workers, 74 N.M. 195, 392 P.2d 343 (1964).

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

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

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

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

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

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

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

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

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

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

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

Trial court has discretion as to procedure on revoking suspended sentences. - The court is free in contempt proceedings to draw both from criminal and civil law for the principles controlling the decision on a suspended sentence for contempt. Local 890 Int'l UMW v. New Jersey Zinc Co., 58 N.M. 416, 272 P.2d 322 (1954).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contempt proceedings against prosecution witness for failure to disclose identity of informer, 76 A.L.R.2d 306.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 C.J.S. Contempt §§ 27, 43.

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

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

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

Cross-references. - As to applicability of Rules of Evidence to contempt proceedings, see Paragraph B of Rule 11-1101.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contempt §§ 204 to 208.

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

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

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

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

Admissibility, in contempt proceedings against witness, of newspaper articles as evidence of incriminating nature of question as to which he invoked privilege against self-incrimination, 88 A.L.R.2d 466.

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

17 C.J.S. Contempt §§ 83 to 85.

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

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

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

Cross-references. - As to freedom of speech and press, see N.M. Const., art. II, § 17.

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

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

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

Venue lies in county where restraining order served. - The act of causing the service of a restraining order to be made in Eddy county constitutes a material element of the alleged offense of criminal contempt, and under those circumstances the venue properly lies in Eddy county. Norton v. Reese, 76 N.M. 602, 417 P.2d 205 (1966).

Information and bill of particulars read together. - An information charging a criminal contempt is a substitute for an indictment at common law. It serves the same purpose as the indictment in charging a criminal offense. The right of a defendant "to demand the nature and cause of the accusation" assured by N.M. Const., art. II, § 14, is preserved by the right to a bill of particulars. The information and bill of particulars are to be read together as a single instrument constituting the accusation. Norton v. Reese, 76 N.M. 602, 417 P.2d 205 (1966).

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contempt §§ 17 to 32, 120 to 129, 203.

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

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

Disqualification of judge in proceeding to punish contempt directed against himself or a court of which he was a member, 64 A.L.R.2d 600.

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

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

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

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

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

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

17 C.J.S. Contempt §§ 4, 30.

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

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

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

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

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

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

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

When different judge should conduct contempt hearing. - A person cited for contempt, whether direct or indirect, is not automatically entitled to a hearing on the

contempt charge in front of a different judge; it is only when a judge has become so embroiled in the controversy that he cannot fairly and objectively hear the case, or when he or his staff will necessarily be a witness in the proceeding, that the judge is precluded from hearing the case. State v. Stout, 100 N.M. 472, 672 P.2d 645 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contempt §§ 187 to 192.

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

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

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

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

17 C.J.S. Contempt § 53.

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

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

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

Cross-references. - As to adoption of design for supreme court seal, see 34-2-3 NMSA 1978.

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

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

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

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

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

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

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

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

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

As to duties of supreme court clerk, see Rules 12-310 and 23-102.

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

Compiler's note. - The compilers of the 1915 Code deleted "they shall provide suitable books, stationery and furniture for their respective offices, and keep a correct account thereof" from the end of this section.

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 15A Am. Jur. 2d Clerks of Court §§ 21 to 27; 20 Am. Jur. 2d Courts § 54.

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

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

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

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

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

21 C.J.S. Courts §§ 249 to 255.

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

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

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

Cross-references. - As to employment of interpreters in district courts, see 34-6-19 NMSA 1978.

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

Right of accused to have evidence of court proceedings interpreted, 36 A.L.R.3d 276.

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

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

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

21 C.J.S. Courts § 110.

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

No court of the state of New Mexico shall have jurisdiction of, or enter any order or decree of any character of any action instituted or attempted to be instituted in the courts of this state, seeking to enforce, directly or indirectly, any federal statute, or rule or regulation described in Section 1 hereof, where the congress of the United States

has curtailed, withdrawn or denied the district courts of the United States the right to enforce such statutes, rules or regulations aforesaid.

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

Compiler's note. - Laws 1947, ch. 43, § 1, reads: "The legislature of the state of New Mexico hereby finds that: (a) the congress of the United States has heretofore authorized, and may hereafter authorize, by congressional act, the courts of the several states to entertain jurisdiction of and enforce causes of action created by or arising from federal statutes, or by rules or regulations of federal regulating bodies or agencies, and

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 13.

21 C.J.S. Courts §§ 203 to 221.

ARTICLE 2
SUPREME COURT

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

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

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

C. At the first session of the supreme court in the month of January following the effective date of this act [section], and biennially in January thereafter, the justices of the supreme court shall, by a majority vote, designate one of their number, not appointed, to serve as chief justice. In the absence of the chief justice, the senior justice present at the seat of government shall exercise the powers of chief justice. Seniority shall be determined by the length of present continuous service on the supreme court. In the event of a vacancy in the office of chief justice, the justices shall, by majority vote, designate one of their eligible number to serve for the remainder of the term.

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

Cross-references. - As to appointment of supreme court building commission, see 34-3-1 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to supreme court justice setting as district judge, see N.M. Const., art. VI, § 15.

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

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

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

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

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

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

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

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

34-2-2. Salaries of justices.

Justices of the supreme court shall each receive an annual salary of seventy-five thousand dollars ($75,000), except that the chief justice shall receive seventy-six thousand fifty dollars ($76,050). No additional salaries shall be paid the justices on account of services rendered the state.

History: 1953 Comp., § 16-2-1.1, enacted by Laws 1955, ch. 52, § 1; 1959, ch. 60, § 1; 1963, ch. 130, § 1; 1965, ch. 163, § 1; 1968, ch. 69, § 4; 1969, ch. 193, § 1; 1972, ch. 67, § 1; 1975, ch. 310, § 1; 1976 (S.S.), ch. 15, § 1; 1977, ch. 263, § 1; 1978, ch. 172, § 1; 1980, ch. 138, § 1; 1981, ch. 276, § 1; 1982, ch. 32, § 1; 1984, ch. 116, § 1; 1986, ch. 49, § 3; 1988, ch. 136, § 1; 1989, ch. 283, § 1; 1990, ch. 115, § 1.

Cross-references. - For provision that salaries are to be fixed by law, see N.M. Const., art. VI, § 11.

The 1989 amendment, effective at the beginning of the first full pay period of the seventy-ninth fiscal year, substituted "sixty-eight thousand five hundred ninety-five dollars ($68,595)" for "sixty-two thousand one hundred eighty-six dollars ($62,186)" and "sixty-nine thousand six hundred sixty dollars ($69,660)" for "sixty-three thousand two hundred sixty-eight dollars ($63,268)".

The 1990 amendment, effective July 6, 1990, increased the salary of justices from $68,595 to $75,000 and of the chief justice from $69,660 to $76,050.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges §§ 62 to 71.

48A C.J.S. Judges §§ 75 to 85.

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

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

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

Cross-references. - As to affixing and preservation of seal by clerk, see 34-1-6 NMSA 1978.

For specifications of seal, see Rule 23-103.

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

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

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

34-2-5. [Fees; collection by supreme court clerk.]

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

in all cases docketed in said court, except those in which statutory exemption may now and hereafter exist, and those in which the court on showing of poverty may, by order, waive such fee, $20.00; provided, that in cases in which skeleton transcript may be filed for the purpose of a motion to docket and affirm, the fee shall be $10.00;

for one copy of files or records, 10› per folio, and for additional copies ordered at the same time, 5› per folio;

for comparing copies of files or records tendered to him, 5› per folio;

for each certificate, $1.00.

History: Laws 1933, ch. 81, § 1; 1941 Comp., § 16-204; 1953 Comp., § 16-2-4.

Cross-references. - As to penalty for public officer's demanding illegal fees, see 30-23-1 NMSA 1978.

As to duties of clerk, see Rules 12-310 and 23-102.

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

21 C.J.S. Courts §§ 242 to 255.

34-2-6. Disposition of fees.

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

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

34-2-7. Supreme court law clerks.

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

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

B. not engage in the private practice of law; and

C. not receive any additional salaries because of the services rendered to the state.

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

34-2-8. Certification; federal courts.

The supreme court may answer by written opinion questions certified to it by the supreme court of the United States, any circuit court of appeals of the United States, the court of appeals of the District of Columbia, any district court of the United States or the district court of the District of Columbia if:

A. the questions involve propositions of New Mexico law which are determinative of the cause before the federal court; and

B. there are no controlling precedents in decisions of the New Mexico supreme court or the New Mexico court of appeals. The supreme court may promulgate rules to govern the process of such certification which are not inconsistent with law.

History: 1953 Comp., § 16-2-7, enacted by Laws 1975, ch. 72, § 1.

Considerations in granting certification. - The degree of uncertainty in the law and prospects for judicial economy in the termination of litigation are considered in deciding whether to accept pretrial certification from federal court. These considerations, however, are appropriately weighed against the advantages of normal appellate review in determining whether to accept certification. Schlieter v. Carlos, 108 N.M. 507, 775 P.2d 709 (1989).

Avoidance of advisory opinions. - The intent of the certification of facts and determinative answer requirements is that the supreme court avoid rendering advisory opinions. Schlieter v. Carlos, 108 N.M. 507, 775 P.2d 709 (1989).

Requirements for certification. - It is sufficient if the certification of facts and the record contain the necessary factual predicates to the supreme court's resolution of the question certified, and it is clear that evidence admissible at trial may be resolved in a manner requiring application of the law in question. Schlieter v. Carlos, 108 N.M. 507, 775 P.2d 709 (1989).

Certification is a discretionary function of the federal court, to be utilized, when available, to determine unsettled questions of state law. Ormsbee Dev. Co. v. Grace, 668 F.2d 1140 (10th Cir.), cert. denied, 459 U.S. 838, 103 S. Ct. 84, 74 L. Ed. 2d 79 (1982).

Court's answer must be determinative. - The supreme court's answer must be determinative in that it resolves the issue in the case out of which the question arose, and the resolution of this issue materially advances the ultimate termination of the litigation. Schlieter v. Carlos, 108 N.M. 507, 775 P.2d 709 (1989).

Certification inappropriate where issue certified not determinative. - Certification to the supreme court of New Mexico is not appropriate when the issue certified would not be determinative of the issues before a federal court. Ormsbee Dev. Co. v. Grace, 668 F.2d 1140 (10th Cir.), cert. denied, 459 U.S. 838, 103 S. Ct. 84, 74 L. Ed. 2d 79 (1982).

Certification was declined, where certified questions regarding the constitutionality of the New Mexico Medical Malpractice Act were not accompanied by sufficient nonhypothetical evidentiary facts to allow the supreme court to adequately determine the constitutionality of the act, and even if the court were able to answer the questions certified, its answer would not be determinative of the issue out of which they arose. Schlieter v. Carlos, 108 N.M. 507, 775 P.2d 709 (1989).

Party's request for abstention and certification comes too late, where the case has been tried and the district court has made its decision, and where dismissal, abstention or certification would promote, not prevent, fragmentation of water adjudication proceedings. New Mexico ex rel. Reynolds v. Molybdenum Corp. of Am., 570 F.2d 1364 (10th Cir. 1978).

Law reviews. - For survey, "Civil Procedure in New Mexico in 1975," see 6 N.M. L. Rev. 367 (1976).

ARTICLE 3
SUPREME COURT BUILDING

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

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

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

Cross-references. - As to constitutional oath, see N.M. Const., art. XX, § 1.

Appropriations. - Laws 1990, ch. 132, § 9, effective March 7, 1990, appropriates $290,500 from the supreme court building addition reserve fund and supreme court building addition interest and retirement fund to the supreme court building commission for expenditure in the seventy-eighth through eighty-first fiscal years for specified purposes and further provides that any unexpended or unencumbered balances remaining at the end of the eighty-first fiscal year shall revert to the supreme court building addition reserve fund and supreme court building addition interest and retirement fund.

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

The supreme court building commission shall elect from its membership a chairman, vice chairman and secretary. The chairman shall preside at all meetings of the commission and shall sign on behalf of the commission all contracts and other necessary papers authorized by the commission. In the absence of the chairman, the vice chairman shall exercise his duties. The secretary shall keep complete records of all

commission business and shall approve all vouchers submitted to the department of finance and administration for the expenditure of funds available to the commission. Two members of the commission constitute a quorum for the transaction of business, and all actions of the commission shall be by a majority vote of the full commission.

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

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

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

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

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

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

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

ARTICLE 4
COURT REPORTS

34-4-1. Recompiled.

ANNOTATIONS

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

34-4-2. Sale of court reports.

A. The New Mexico compilation commission shall:

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

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

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

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

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

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 77 C.J.S. Reports § 7.

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

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

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

ARTICLE 5
COURT OF APPEALS

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

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

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

Cross-references. - As to number, qualifications, election and terms of court of appeals judges, see N.M. Const., art. VI, § 28.

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

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

1990 amendment. - Laws 1990, ch. 35, § 1 amended 34-5-1 NMSA 1978 to provide for ten appellate judges. Laws 1990, ch. 35, § 2 provided for the appointment and election of three additional judges. However, Laws 1990, ch. 35, § 3 provided: "The provisions of this act shall not take effect unless seventy-ninth fiscal year funding for three additional court of appeals judges is provided in the General Appropriations Act of 1990". No specific funding was found in the General Appropriations Act of 1990 and therefore Laws 1990, ch. 35, §§ 1 and 2 were not published.

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 C.J.S. Courts §§ 111 to 123.

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

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

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

34-5-3. Court of appeals; judges' salaries.

Each judge of the court of appeals shall receive an annual salary of seventy-one thousand two hundred fifty dollars ($71,250), except that the chief judge shall receive seventy-two thousand three hundred dollars ($72,300). No additional salaries shall be paid on account of services rendered the state. Judges of the court of appeals shall receive per diem and mileage for necessary travel on official business of the court as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1953 Comp., § 16-7-3, enacted by Laws 1966, ch. 28, § 3; 1968, ch. 69, § 48; 1969, ch. 193, § 4; 1971, ch. 7, § 1; 1972, ch. 67, § 3; 1975, ch. 310, § 2; 1976 (S.S.), ch. 15, § 3; 1977, ch. 263, § 3; 1978, ch. 172, § 3; 1980, ch. 138, § 2; 1981, ch. 276, § 2; 1982, ch. 32, § 2; 1984, ch. 116, § 2; 1986, ch. 49, § 4; 1988, ch. 136, § 2; 1989, ch. 283, § 2; 1990, ch. 115, § 2.

Cross-references. - As to compensation of judges being as provided by law, see N.M. Const., art. VI, § 28.

The 1989 amendment, effective at the beginning of the first full pay period of the seventy-ninth fiscal year, substituted "sixty-five thousand one hundred fifty dollars ($65,150)" for "fifty-nine thousand fifty dollars ($59,050)" and "sixty-six thousand two hundred forty dollars ($66,240)" for "sixty thousand one hundred eighty-five dollars ($60,185)".

The 1990 amendment, effective July 6, 1990, increased the salary of judges from $65,150 to $71,250 and of the chief judge from $66,240 to $72,300.

Severability clauses. - Laws 1976 (S.S.), ch. 15, § 5, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1977, ch. 263, § 5, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1978, ch. 172, § 5, provides for the severability of the act if any part or application thereof is held invalid.

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

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

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

Cross-references. - As to filling vacancy, see N.M. Const., art. VI, § 28.

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

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

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

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

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

(1) perform duties as provided by rule of the court of appeals;

(2) not engage in the private practice of law; and

(3) not receive any additional salaries on account of services rendered the state.

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

Cross-references. - As to oath of office, see N.M. Const., art. XX, § 1.

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

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

docket fee
..... $20.00

docket fee for cases in which skeleton transcript is filed for
purpose of motion to docket and affirm
..... 10.00

single copy of records, per typewritten folio
..... .10

each additional copy of records ordered at same time, per
typewritten folio
..... .05

copies of records reproduced by photographic process, per page
..... .10

comparing copies of records tendered to him, per folio
..... .05

each certificate
..... 1.00

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

C. The clerk of the court of appeals shall pay all fees and costs to the state treasurer for credit to the state general fund.

History: 1953 Comp., § 16-7-6, enacted by Laws 1966, ch. 28, § 6.

Cross-references. - As to penalty for public officer's demanding illegal fees, see 30-23-1 NMSA 1978.

As to collection of fees by district court clerks in civil matters docketing any cause, including appeals, see 34-6-40 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cross-references. - As to jurisdiction of court of appeals, see N.M. Const., art. VI, § 29, 39-3-2, 39-3-3, 39-3-6 NMSA 1978.

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

As to appeals under Children's Code, see 32-1-39 NMSA 1978.

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

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

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

Employers' Liability Acts. - For the federal Employers' Liability Acts, referred to in Subsection A(2), see 45 U.S.C. §§ 51 to 60.

Subsequent Injury Act. - The Subsequent Injury Act, referred to in Subsection A(2), refers to Laws 1961, ch. 134, compiled as 52-2-1 to 52-2-5, 52-2-7 to 52-2-13 NMSA 1978.

New Mexico Occupational Disease Disablement Law. - See 52-3-1 NMSA 1978 and notes thereto.

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

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

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

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

Court has jurisdiction if there are tort counts. - Although the first count of the complaint is for a declaratory judgment and injunctive relief prohibiting the enforcement

of portions of a city ordinance, alleging their unconstitutionality, where the second and third counts are for damages for false arrest, a tort action, jurisdiction in the matter is in the court of appeals. Balizer v. Shaver, 82 N.M. 53, 475 P.2d 319 (1970).

Such as count for insurer's bad faith in dismissing action. - The vast majority of the cases where judgments in excess of the policy limits have gone against insurance companies for their bad faith in defending or in refusing to settle have been held to be tort actions; thus, for the determination of jurisdiction on appeal, a civil action which includes a count seeking damages for moving to dismiss action against uninsured motorist is one in which one party seeks damages on an issue based on tort. Chacon v. Mountain States Mut. Cas. Co., 82 N.M. 54, 475 P.2d 320 (1970).

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

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

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

Workmen's compensation appeal only lies from final order or judgment. - See Johnson v. C & H Constr. Co., 78 N.M. 423, 432 P.2d 267 (Ct. App. 1967)commented on in 8 Nat. Resources J. 522 (1968).

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

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

Prior to 1967, court of appeals had no jurisdiction in post-conviction remedy proceedings. - See State v. Weedle, 77 N.M. 420, 423 P.2d 611 (1967)(holding post-conviction remedy proceedings not "criminal actions"); State v. Garlick, 80 N.M. 352, 456 P.2d 185 (1969).

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

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

No jurisdiction if sentence is death or life imprisonment. - Court of appeals does not have appellate jurisdiction over post-conviction remedy proceedings where the sentence involved is death or life imprisonment. Martinez v. State, 110 N.M. 357, 796 P.2d 250 (Ct. App. 1990).

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

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

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

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

Court of appeals has no jurisdiction to review discharge of writ of prohibition. - Appellants' claim in prohibition proceedings that a nonattorney police court judge was not constitutionally qualified to hear their criminal cases arising from violations of municipal ordinances was properly taken directly from the district court to the supreme

court; the appeal did not fall within the ambit of this section. Tsiosdia v. Rainaldi, 89 N.M. 70, 547 P.2d 553 (1976).

Supreme court precedents must be followed. - The court of appeals is to follow precedents of the supreme court; it is not free to abolish instructions approved by the supreme court, although in appropriate situations it may consider whether the supreme court precedent is applicable. State v. Scott, 90 N.M. 256, 561 P.2d 1349 (Ct. App.), cert. denied, 90 N.M. 637, 567 P.2d 486 (1977).

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

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

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

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

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

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

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

Cross-references. - For rules of appellate procedure, see Judicial Pamphlet 12.

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

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

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

Only some of counts need give court of appeals jurisdiction. - Where, although the first count of the complaint is for a declaratory judgment and injunctive relief prohibiting

the enforcement of portions of a city ordinance, alleging their unconstitutionality, the second and third counts are for damages for false arrest, a tort action, jurisdiction in this matter is in the court of appeals. Balizer v. Shaver, 82 N.M. 53, 475 P.2d 319 (1970).

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

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

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

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

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

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

Cross-references. - As to quorum of court of appeals, see N.M. Const., art. VI, § 28.

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

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

Case certified to supreme court where two judges concurred but on different grounds. - Where there are three separate proposed opinions of the court of appeals, the first of which would affirm the conviction of defendant on all counts, the second and third of which would reverse and remand for a new trial on two different issues, and it appears that the three proposed opinions, if filed as opinions of the court of appeals, would create uncertainty in the law in that, although there is a majority for reversal, there is no guidance for the future procedure of the case, and it further appears that the

court of appeals may not call in additional judges, and, because an uncertain state of law should not exist and because of this fact an issue of substantial public interest is created and should be determined by the supreme court, the case is properly certified to the New Mexico supreme court for decision. State v. Tijerina, 84 N.M. 432, 504 P.2d 642 (Ct. App. 1972)See; State v. Tijerina, 86 N.M. 31, 519 P.2d 127 (1973), cert. denied, 417 U.S. 956, 94 S. Ct. 3085, 41 L. Ed. 2d 674 (1974).

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

Experimental use of advisory committees. - An experimental plan pursuant to which cases would be assigned by the court of appeals to advisory committees of experienced attorneys was not an unconstitutional delegation of judicial power, where the judges reviewed the records and briefs and decided the cases. Thompson v. Ruidoso-Sunland, Inc., 105 N.M. 487, 734 P.2d 267 (Ct. App. 1987).

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

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

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

Cross-references. - As to custody and affixing of seal, see 34-1-6 NMSA 1978.

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

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

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

Cross-references. - As to sale and distribution of reports, see 8-4-6, 34-4-2 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cross-references. - As to certification of questions to supreme court by federal courts, see 34-2-8 NMSA 1978.

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

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

As to procedure on certiorari to review decision of court of appeals, see Rule 12-502.

As to procedure on certification from court of appeals, see Rule 12-606.

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

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

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

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

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

Certiorari may be issued in criminal cases. - The supreme court has the authority to issue writs of certiorari directed to the court of appeals in a criminal case where the conditions of this section are met, and the court's original jurisdiction to issue writs of

certiorari, as provided for in N.M. Const., art. VI, § 3, leaves no doubt as to the power of the court to issue such writs. State v. Gunzelman, 85 N.M. 295, 512 P.2d 55 (1973).

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

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

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

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

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

Instructions on intent in criminal cases held matter of substantial public interest. - The matter of instructions concerning the requisite intent is one of substantial public

interest that should be decided by the New Mexico supreme court. State v. Boyer, 84 N.M. 759, 508 P.2d 29 (Ct. App. 1973); State v. Vickery, 84 N.M. 758, 508 P.2d 28 (Ct. App. 1973); State v. Fuentes, 84 N.M. 757, 508 P.2d 27 (Ct. App. 1973); State v. Puga, 84 N.M. 756, 508 P.2d 26 (Ct. App. 1973).

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

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

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

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

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

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

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

ARTICLE 6
DISTRICT COURTS

34-6-1. Judicial districts.

The state shall be divided into judicial districts as follows:

A. first judicial district, the counties of Santa Fe, Rio Arriba and Los Alamos;

B. second judicial district, the county of Bernalillo;

C. third judicial district, the county of Dona Ana;

D. fourth judicial district, the counties of Guadalupe, San Miguel and Mora;

E. fifth judicial district, the counties of Eddy, Chaves and Lea;

F. sixth judicial district, the counties of Grant, Luna and Hidalgo;

G. seventh judicial district, the counties of Socorro, Torrance, Sierra and Catron;

H. eighth judicial district, the counties of Taos, Colfax and Union;

I. ninth judicial district, the counties of Curry and Roosevelt;

J. tenth judicial district, the counties of Quay, DeBaca, and Harding;

K. eleventh judicial district, the counties of McKinley and San Juan;

L. twelfth judicial district, the counties of Otero and Lincoln; and

M. thirteenth judicial district, the counties of Sandoval and Valencia.

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

Cross-references. - As to district judge serving on supreme court, see N.M. Const., art. VI, § 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to children's court division and optional family court division, see 32-1-4 NMSA 1978.

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

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

Temporary provisions. - Laws 1941, ch. 75, § 2, as amended by Laws 1951, ch. 177, § 1 (2), provided for the continuation in office of then district judges and district attorneys for the terms for which elected and that any additional judge appointed under an act of the twentieth legislature should serve for the term for which appointed and his elected successor should be a judge of the district.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 22.

21 C.J.S. Courts § 105.

34-6-2. District court terms.

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

and tried and all other business of the district court shall be conducted in any county at any time as directed by the district judge.

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

Cross-references. - As to terms of district courts, see N.M. Const., art. VI, § 13.

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

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

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

Trial cannot be conducted between terms. - Terms of courts for the several counties having been provided by statute for the trial of causes, the trial court, in the intervals between those terms, was, for the purpose of conducting trials, no longer a court. Staab v. Atlantic & P.R.R., 3 N.M. (Gild.) 606, 9 P. 381 (1886).

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

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

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

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

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

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

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

Duration of term. - A term of a district court, begun and held by any judge, continues its existence until the legal day for beginning another term, unless sooner adjourned, although another term of the same court for another county has been held, as required by law, in the meantime, by the same judge. Territory v. Barela, 15 N.M. 520, 110 P. 845 (1910); Territory ex rel. Hubbell v. Armijo, 14 N.M. 205, 89 P. 267 (1907).

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

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

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

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

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

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

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

Commitment hearings held at commitment facility not precluded. - Absent a showing by a "developmentally disabled" person that his substantive rights would in any way be abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. 79-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 44 to 48.

21 C.J.S. Courts §§ 111 to 123.

34-6-3. District judges; salaries.

Each district judge shall receive an annual salary of sixty-seven thousand five hundred dollars ($67,500). No additional salaries shall be paid on account of services rendered the state.

History: 1953 Comp., § 16-3-3, enacted by Laws 1968, ch. 69, § 6; 1969, ch. 193, § 2; 1972, ch. 67, § 2; 1975, ch. 310, § 3; 1976 (S.S.), ch. 15, § 2; 1977, ch. 263, § 2; 1978, ch. 172, § 2; 1980, ch. 138, § 3; 1981, ch. 276, § 3; 1982, ch. 32, § 3; 1984, ch. 116, § 3; 1986, ch. 49, § 5; 1988, ch. 136, § 3; 1989, ch. 283, § 3; 1990, ch. 115, § 3.

Cross-references. - As to legislature providing for compensation for district judges, see N.M. Const., art. VI, § 17.

Repeals and reenactments. - Laws 1957, ch. 222, § 2, repealed former 16-3-3, 1953 Comp., relating to duties and powers of senior or presiding judge of first district, and a new 16-3-3, 1953 Comp. was enacted by Laws 1968, ch. 69, § 6.

The 1989 amendment, effective at the beginning of the first full pay period of the seventy-ninth fiscal year, substituted "sixty-one thousand seven hundred forty dollars ($61,740)" for "fifty-five thousand nine hundred eighty-one dollars ($55,981)".

The 1990 amendment, effective July 6, 1990, increased the salary of district judges from $61,740 to $67,500.

Severability clauses. - Laws 1975, ch. 310, § 5, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1980, ch. 138, § 5, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1981, ch. 276, § 6, provides for the severability of the act if any part or application thereof is held invalid.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges §§ 62 to 71.

48A C.J.S. Judges §§ 75 to 85.

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

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

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

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

Temporary provisions. - Laws 1976 (S.S.), ch. 39, § 2, provides for the governor to appoint one additional district judge to serve in the first judicial district beginning January 1, 1977, and thereafter for the office to be filled by persons elected to office, and for the first election to such office to be held at the general election in 1978.

Compiler's note. - "Section 2 of this act," referred to at the end of the second sentence, is Laws 1981, ch. 330, § 2, which reads: "The governor shall appoint one additional

district judge to serve in the first judicial district beginning March 1, 1981 until July 1, 1983."

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

There shall be nineteen district judges in the second judicial district.

History: 1953 Comp., § 16-3-3.2, enacted by Laws 1968, ch. 69, § 8; 1969, ch. 228, § 1; 1973, ch. 301, § 1; 1977, ch. 310, § 1; 1978, ch. 23, § 1; 1980, ch. 143, § 1; 1984, ch. 111, § 1.

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

Compiler's note. - Laws 1977, ch. 310, § 3, makes § 1 of the act effective only upon the adoption by the voters in the second judicial district of a proposal to issue bonds for the construction of a juvenile justice center.

Bond Issue No. 2, providing for the sale of bonds for the construction of the juvenile justice center in the second judicial district, upon which the establishment of a fourteenth judge in that district is contingent, was passed at the general election held on November 7, 1978, with a vote of 44,288 for and 41,621 against.

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

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

History: 1953 Comp., § 16-3-3.3, enacted by Laws 1968, ch. 69, § 9; 1981, ch. 329, § 1; 1984, ch. 111, § 2.

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

Temporary provisions. - Laws 1971, ch. 52, § 4, provides that the governor appoint one district judge to serve the third judicial district until the next general election. It also redesignated the judge of division 2 of the third district as judge of the twelfth district and provided that he serve in that capacity for the remainder of his term.

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

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

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

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

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

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

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

Repeals and reenactments. - Laws 1961, ch. 188, § 12, repealed former 16-3-3.5, 1953 Comp., relating to initial appointment and election of additional judge for division four, first district, and a new 16-3-3.5, 1953 Comp., was enacted by Laws 1968, ch. 69, § 11.

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

There shall be two district judges in the sixth judicial district. The judge of division 1 shall reside and maintain his principal office in Grant county.

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

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

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

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

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

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

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

There shall be two district judges in the eighth judicial district. The judge of division one shall reside and maintain his principal office in Colfax county or Union county and the judge of division two shall reside and maintain his principal office in Taos county. The presiding judge of the district shall be the judge holding the longest term of office.

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

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

There shall be three district judges in the ninth judicial district. The judge of division three shall reside in Curry or Roosevelt county and maintain his principal office in Roosevelt county. As used in this section, "maintain his principal office" means holding court or being available to hold court no less than one hundred forty days during each calendar year.

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

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

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

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

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

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

History: 1953 Comp., § 16-3-3.11, enacted by Laws 1968, ch. 69, § 17; 1974, ch. 77, § 3; 1984, ch. 111, § 5.

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

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

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

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

There shall be four district judges in the thirteenth judicial district. The judge of division two shall reside and maintain his principal office in Sandoval county. The judge of division four shall reside and maintain his principal office in Cibola county.

History: 1953 Comp., § 16-3-3.13, enacted by Laws 1971, ch. 52, § 3; 1974, ch. 77, § 5; 1979, ch. 302, § 1; 1985, ch. 212, § 1.

Compiler's note. - Laws 1971, ch. 52, contains no § 5.

34-6-17. Judges; principal offices.

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

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

Cross-references. - See notes to 34-6-23 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-4, 1953 Comp., relating to process and expenditures in the first judicial district, and the above section was enacted by Laws 1968, ch. 69, § 18.

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

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

In judicial districts having more than one district judge:

A. the separate judicial positions shall be designated by divisions numbered consecutively from one through the total number of judges authorized for the district. Any additional judge authorized within a judicial district shall be designated as judge of the next consecutive division. In all appointments, nominations and elections of district judges, the particular judicial offices shall be identified by the division number;

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

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

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

Cross-references. - As to children's court division and optional family court division, see 32-1-4 NMSA 1978.

Repeals and reenactments. - Laws 1961, ch. 121, § 4, repealed former 16-3-5, 1953 Comp., relating to judges in the second judicial district, and a new 16-3-5, 1953 Comp., dealing with the same subject matter, was enacted by Laws 1961, ch. 121, § 1. However, Laws 1968, ch. 69, § 69, repeals 16-3-5, 1953 Comp., and Laws 1968, ch. 69, § 19, enacts the above section.

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

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

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

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

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

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

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

34-6-19. Personnel; designation.

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

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

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

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

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

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

Repeals and reenactments. - Laws 1961, ch. 121, § 4, repealed former 16-3-6, 1953 Comp., relating to powers of judges of the second judicial district, and a new 16-3-6, 1953 Comp., dealing with the same subject matter, was enacted by Laws 1961, ch. 121, § 2. However, Laws 1968, ch. 69, § 69, repeals 16-3-6, 1953 Comp., and Laws 1968, ch. 69, § 20, enacts the above section.

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

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

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

Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

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

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

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

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

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

21 C.J.S. Courts §§ 107 to 110, 236 to 241.

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

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

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

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

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

Cross-references. - As to requirement that clerk record proceedings, see 34-1-6 NMSA 1978.

As to appointment of stenographer by master, see Paragraph A of Rule 1-080.

As to use of transcript as evidence, see Paragraph B of Rule 1-080.

As to record on appeal, see Rules 12-209 and 12-211.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-7, 1953 Comp., relating to number of judges and divisions in the fifth judicial district, and Laws 1968, ch. 69, § 21, enacts the above section.

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

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

Testimony of stenographer held hearsay. - Testimony of a court stenographer concerning what a witness had stated at a former trial was but hearsay where stenographer's testimony was based on notes that he had taken on former trial and which he used to refresh his memory. Kirchner v. Laughlin, 5 N.M. 365, 23 P. 175 (1890).

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

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

34-6-21. Personnel; state employees.

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

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

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-8, 1953 Comp., relating to powers and duties of the senior or presiding judge of fifth districts, and Laws 1968, ch. 69, § 22, enacts the above section.

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

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

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

Cross-references. - As to oath of office, see N.M. Const., art. XX, § 1.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-9, 1953 Comp., relating to residence of judges in the fifth district, and Laws 1968, ch. 69, § 23, enacts the above section.

34-6-23. Personnel; travel expenses.

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

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

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

As to Per Diem and Mileage Act, see 10-8-1 to 10-8-8 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-10, 1953 Comp., relating to process and expenditures in the fifth district, and Laws 1968, ch. 69, § 24, enacts the above section.

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

An individual illegally receiving compensation both as a full-time district court reporter and as a deputy court clerk over the same period of time may be guilty of a petty misdemeanor under 30-23-1 NMSA 1978, and liable for restitution under 30-23-7 NMSA 1978. 1964 Op. Att'y Gen. No. 64-152.

Absence from principal office necessary for per diem or mileage. - This section establishes, as a condition precedent to the payment of either per diem or mileage to the district judge, that the district judge must be absent from his principal office. The principal office of the district judge is the county seat of one of the counties in his judicial district. 1975 Op. Att'y Gen. No. 75-12.

And for per diem, absence from duty post also necessary. - Per diem may be collected by an employee only where he is away from his home and away from his designated post of duty on official business. 1973 Op. Att'y Gen. No. 73-27.

Sole judge must select his duty station. - Where the sole district judge in a multi-county judicial district resides in the county seat of one of the counties of the district and approximately 60 to 80% of his time as a district judge must be spent at the county seat of the other county, with respect to per diem the judge must designate one city as his duty station. He must choose a courthouse where he performs a substantial portion of his duties as his duty station, but a majority of his duty is not required at a courthouse before he may choose it to be his duty station. 1973 Op. Att'y Gen. No. 73-27.

Necessary travel away from home reimbursable. - If the judge selects a county seat other than his residence as his principal office, when he is traveling to and from the city which is away from his home, if the travel is necessary to the discharge of his official duties, then he should be paid the mileage rate provided in the Per Diem and Mileage Act. 1973 Op. Att'y Gen. No. 73-27.

So judge entitled to mileage traveling between principal office and office at residence. - A district judge is entitled to mileage when he travels from the county seat to an additional office in the city of his residence in order to conduct official business in the additional office and when he is present at the additional office on official business and then travels from the additional office to the county seat. 1975 Op. Att'y Gen. No. 75-12.

But not per diem. - A judge cannot be eligible for per diem for travel between the city of his residence and the county seat which is his principal office, because such trips will not take him away from his home and his principal office at the same time. 1975 Op. Att'y Gen. No. 75-12.

Judge's and reporter's expenses must be paid from court funds. - Payment of the expenses incurred by the district judge and his court reporter from the funds of the district court is mandatory. Read v. Western Farm Bureau Mut. Ins. Co., 90 N.M. 369, 563 P.2d 1162 (Ct. App. 1977).

And may not be taxed as costs. - Costs are a creature of statutes and may not be imposed in the absence of clear legislative authorization, and thus since no statute or rule of court imposes upon litigants in a civil case the burden of paying per diem and travel expenses incurred by a district judge and his court reporter, such expenses could not be properly taxed as costs when plaintiff requested a continuance pending an appeal of one defendant's summary judgment. Read v. Western Farm Bureau Mut. Ins. Co., 90 N.M. 369, 563 P.2d 1162 (Ct. App. 1977).

34-6-24. Operation; location of court; facilities.

In each county, the district court shall be held at the county seat. Each board of county commissioners shall provide adequate quarters for the operation of the district court, including juvenile probation services, and provide necessary utilities and maintenance service for the operation and upkeep of district court facilities. From the funds of each judicial district, furniture, equipment, books and supplies shall be provided for the operation of each district court within the judicial district.

History: 1953 Comp., § 16-3-11, enacted by Laws 1968, ch. 69, § 25; 1988, ch. 101, § 45.

Cross-references. - As to terms to be held in each county at the county seat, see N.M. Const., art. VI, § 13.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-11, 1953 Comp., relating to failure of presiding judge to sign record because of death or disability, and Laws 1968, ch. 69, § 25, enacts the above section.

Failure to hold court at de jure county seat. - Judgment of district court would not be set aside by supreme court merely on ground that the term of court at which it was rendered was not held at the de jure county seat of the county for which the term was held, as required by former statute, if the term was held and judgment rendered at the de facto county seat, established by the act of the legislative assembly of the territory. Territory v. Clark, 15 N.M. 35, 99 P. 697 (1909).

Court funds used to purchase furniture and equipment. - Under this section the funds of the court are to be used in purchasing furniture and equipment, which items are not limited to use in any one county. 1969 Op. Att'y Gen. No. 69-46.

Under court's ownership and control. - Under this section the ownership and control of the furniture and equipment purchased are in the district court. 1969 Op. Att'y Gen. No. 69-46.

Responsibility for county courthouse security. - The board of county commissioners is responsible for providing security for the county courthouse on a 24-hour basis. 1979 Op. Att'y Gen. No. 79-4.

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

Services provided for juvenile probation facilities. - Counties are required to provide the services specified in this section for juvenile probation facilities operated by the youth authority. 1989 Op. Att'y Gen. No. 89-29.

34-6-25. Operation; seal.

The district court of each county shall have a seal with the name of the court on the margin. The seal shall be kept by the district court clerk and used to authenticate documents from his office.

History: 1953 Comp., § 16-3-12, enacted by Laws 1968, ch. 69, § 26.

Cross-references. - As to clerk affixing and preserving seal, see 34-1-6 NMSA 1978.

Repeals and reenactments. - Laws 1955, ch. 49, § 12, repeals former 16-3-12, 1953 Comp., related to regular terms of district courts, and Laws 1968, ch. 69, § 26, enacts the above section.

34-6-26. Operation; record; authentication.

The district court of each county shall keep a record containing orders entered by the court. Orders made orally by the court shall be entered upon the record by the district court clerk. The district judge shall review and sign the record following each term of the court, but if, for any cause, the district judge fails to sign the record, the district court clerk may certify the record as authentic.

History: 1953 Comp., § 16-3-13, enacted by Laws 1968, ch. 69, § 27.

Cross-references. - As to duty of clerk to record and index proceedings, see 34-1-6 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-13, 1953 Comp., relating to fixing terms in new counties, and Laws 1968, ch. 69, § 27, enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 51 to 63.

21 C.J.S. Courts §§ 178 to 185.

34-6-27. Operation; process.

A. Process of the district courts in each judicial district shall be under witness of the district judge. Unless otherwise provided by rule of the district court in judicial districts having more than one district judge, process shall be under witness of the presiding judge.

B. The district court may grant free process to any party in any civil or criminal action or special statutory proceeding upon a proper showing of indigency.

History: 1953 Comp., § 16-3-14, enacted by Laws 1968, ch. 69, § 28.

Cross-references. - As to free process for indigent in good faith appeal, see 39-3-12 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-14, 1953 Comp., relating to ordering special term when regular term not held, and Laws 1968, ch. 69, § 28, enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 62B Am. Jur. 2d Process § 8.

Who is "person of suitable age and discretion" under statutes or rules relating to substituted service of process, 91 A.L.R.3d 827.

72 C.J.S. Process § 21.

34-6-28. Operation; rules.

The district judge of each judicial district may adopt rules governing the administration of each district court. In judicial districts having more than one district judge, the power to adopt rules shall be exercised jointly by all judges of the district, with the decision of a majority of the judges of the district required for adoption of any rule. Rules adopted under this section shall not conflict with any statute, rule of the supreme court or regulation of the administrative office of the courts.

History: 1953 Comp., § 16-3-15, enacted by Laws 1968, ch. 69, § 29.

Cross-references. - As to local district court rules, see Rule 1-083.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-15, 1953 Comp., relating to authority to hold special term, and Laws 1968, ch. 69, § 29, enacts the above section.

Local rule as to assignment of cases. - A district court rule which provides in part that "the assignment of cases to the several judges of the district will be varied in accordance with the work load" does not conflict with any statute or rule of the supreme court. Atol v. Schifani, 83 N.M. 316, 491 P.2d 533 (Ct. App. 1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 82 to 86.

21 C.J.S. Courts §§ 124 to 134.

34-6-29. Operation; filing and service.

The parties are responsible for the filing and service of papers in the district court except in those instances where leave to file is required.

History: 1953 Comp., § 16-3-16, enacted by Laws 1968, ch. 69, § 30.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals 16-3-16, 1953 Comp., relating to discretion of judge to hold special term, and Laws 1968, ch. 69, § 30, enacts the above section.

34-6-30. Operation; notation of filing.

When any paper is filed in his office, the district court clerk shall immediately enter on the first page his notation of filing containing the date and time of filing and the court in which filed.

History: 1953 Comp., § 16-3-17, enacted by Laws 1968, ch. 69, § 31.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-17, 1953 Comp., relating to jurisdiction at and duration of special term, and Laws 1968, ch. 69, § 31, enacts the above section.

Using rubber signature stamp. - The county clerk's signature by rubber stamp to endorsement of filing paper was not inhibited by general principles nor by former statute relating to certificate of day of filing. Costilla Estates Dev. Co. v. Mascarenas, 33 N.M. 356, 267 P. 74 (1927).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 C.J.S. Courts §§ 249 to 255.

34-6-31. Operation; nunc pro tunc entries.

Whenever determined to be in the interest of justice, the district court may order any matter to be performed nunc pro tunc.

History: 1953 Comp., § 16-3-18, enacted by Laws 1968, ch. 69, § 32.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-18, 1953 Comp., relating to return of regular term process at special term, and Laws 1968, ch. 69, § 32, enacts the above section.

When power may be exercised. - Former statute permitting nunc pro tunc entries to be made whenever the ends of justice might require it was not confined to civil cases, and the period in which this power could be successfully invoked was not limited to the term when the transaction occurred. Borrego v. Territory, 8 N.M. 446, 46 P. 349 (1896).

No act should be done nunc pro tunc which would work injustice to a party in court. Waldo v. Beckwith, 1 N.M. 97 (1854); Secou v. Leroux, 1 N.M. 388 (1866).

Nunc pro tunc order as to time of filing pleading. - A nunc pro tunc order, reciting that the declaration was left with the clerk and the advance fee had been paid as required by law, where no averment to the contrary appears in the petition, could be made whether such declaration was marked "filed" or not, for the court had jurisdiction in its discretion to make such order, guided by the justice of the case. In re Lewisohn, 9 N.M. 101, 49 P. 909 (1897).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 21 C.J.S. Courts § 180.

34-6-32. Operation; return of filed papers.

Whenever any original documents are filed with the district court or introduced into evidence, upon application by the party filing or offering the same and upon approval of the court, the original document may be returned and a clearly legible copy substituted therefor. Similarly, objects in evidence of a nondocumentary nature may be withdrawn and photographs adequately illustrating the object or an adequate written description of the object may be substituted.

History: 1953 Comp., § 16-3-19, enacted by Laws 1968, ch. 69, § 33.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-19, 1953 Comp., relating to adjournments when judge is prevented from attending on first day of term, and Laws 1968, ch. 69, § 33, enacts the above section.

34-6-33. Operation; dockets and records.

A. The district court clerk shall keep for each county in indexed volumes:

(1) a civil docket;

(2) a criminal docket;

(3) an incapacitated person docket;

(4) an adoption docket;

(5) a probate docket;

(6) a children's docket;

(7) a judgment docket; and

(8) a record of the proceedings of the court.

In counties where the amount of business makes it desirable, separate criminal and civil records may be kept.

B. The dockets shall show in convenient form for each case:

(1) the names of the parties;

(2) the names of their attorneys;

(3) the nature of the case;

(4) the filing of each paper;

(5) a brief statement of every return, motion, rule, order, judgment or other proceeding, with reference to pages of the record where each entry can be found; and

(6) the costs taxes and all costs and fees received.

History: 1953 Comp., § 16-3-20, enacted by Laws 1968, ch. 69, § 34; 1972, ch. 97, § 47; 1975, ch. 257, § 8-101.

Cross-references. - As to duty of clerk to record and index proceedings, see 34-1-6, 34-6-26 NMSA 1978.

As to judgment docket book, see 39-1-8 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-20, 1953 Comp., relating to concurrent jurisdiction with probate court, and a new 16-3-20, 1953 Comp., was enacted by Laws 1968, ch. 69, § 34.

Entry of judgment essential. - A judgment does not become complete and effective until a proper entry thereof is made. Animas Consol. Mines Co. v. Frazier, 41 N.M. 389, 69 P.2d 927 (1937).

In determining the time within which a cost bond must be filed, an order in writing signed by the district judge, allowing an appeal, became effective as the judgment of the court

when the same was filed with the clerk for entry in the record, and not on the date of the signing of the order. State v. Capital City Bank, 31 N.M. 430, 246 P. 889 (1926).

Signature by rubber stamp. - The clerk's signature by rubber stamp to endorsement of filing paper in cause was not prohibited by general principles. Costilla Estates Dev. Co. v. Mascarenas, 33 N.M. 356, 267 P. 74 (1927).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 51 to 63.

21 C.J.S. Courts §§ 178 to 185.

34-6-34. Finance; statutory construction.

Whenever the term "court fund" or "county court fund" may be used in the laws, it shall be construed to refer to the appropriation to the district court of the proper judicial district.

History: 1953 Comp., § 16-3-22, enacted by Laws 1968, ch. 69, § 36.

Cross-references. - As to payment of change of venue costs from fund of county where case originated, see 38-3-11 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-22, 1953 Comp., relating to tax for district court maintenance and creation and disbursement of court fund, and Laws 1968, ch. 69, § 36, enacts the above section.

34-6-35. Finance; payment of expenses.

A. All money for the operation and maintenance of the district courts, including the children's and family court divisions, shall be paid by the state treasurer upon warrants of the secretary of finance and administration, supported by vouchers of the district judges and in accordance with budgets approved by the administrative office of the courts and the state budget division of the department of finance and administration. In judicial districts having more than one district judge, vouchers shall be approved by the presiding judge of the district or his authorized representative.

B. The district judge may authorize the establishment of a checking account, designated as the "District court special operations account," in a federally insured bank. In accordance with budgeting requirements, warrants of the secretary of finance and administration may be deposited to the district court special operations account, and checks on the account may be written by the district judge or his authorized representative for payment of:

(1) jury fees and expenses;

(2) witness fees and expenses; and

(3) petty cash expenses.

History: 1953 Comp., § 16-3-23, enacted by Laws 1968, ch. 69, § 37; 1972, ch. 97, § 48; 1977, ch. 247, § 146.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-23, 1953 Comp., relating to limitation on levy of tax for court maintenance, and a new 16-3-23, 1953 Comp., was enacted by Laws 1968, ch. 69, § 37.

Compiler's notes. - The attorney general's opinions noted below were issued under former provisions somewhat similar to this section; the notes have been placed here for the light they may shed on the present statutes.

Projected need is criterion for payments to counties from state. - Under former law, the criterion to be employed by the state board of finance in authorizing payments from the state court fund to counties making application for such funds was projected need. 1964 Op. Att'y Gen. No. 64-52-A.

Expenditures from court funds are in the jurisdiction of the various courts. 1957-58 Op. Att'y Gen. No. 58-110.

Meals and lodging for jury and deputies may be paid. - All expenses incurred in actual conduct of the court, including meals and lodging for jurors and extra deputies, are considered as court expenses which are payable from the court fund upon written allowance by the court. 1937-38 Op. Att'y Gen. 163. See now 34-6-41 NMSA 1978.

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

District attorney's office rent may be paid. - The legislature intended to give the court a wide discretion in the use of the fund for any purpose connected with the administration of justice. Though in a strict sense the district attorney is not a part of the court, he is a part of the judicial system of the state, and a state, not county, officer. Rent for his office space may properly be paid out of one or more of the various court funds in the district, in the discretion of the court. The discretion of the district judge is limited to purposes connected with the administration of justice. 1939-40 Op. Att'y Gen. 130.

And so may expense of attending out-of-state conference. - A district attorney may attend an out-of-state conference which is concerned with law enforcement problems,

financed out of district court funds, without the approval of the state comptroller. 1957-58 Op. Att'y Gen. No. 57-64.

And additional compensation to clerk. - In case it became necessary to the proper administration of the court to pay court clerks more than the budgeted salary, an additional payment could be made from the court fund, as the former statute places a wide discretion in the district judge in the expenditure of court funds. 1945-46 Op. Att'y Gen. No. 4708.

And court reporter's charge for workmen's compensation transcript. - Where the transcript of testimony is furnished without cost to a workmen in a workmen's compensation case, the district court, in its discretion, can pay the court reporter for the preparation of such transcript. 1969 Op. Att'y Gen. No. 69-37.

And retirement contributions for probation officers. - The court fund of each county in New Mexico is the probable source from which contributions for probation officers shall be paid to the public employees' retirement board, although there is no prohibition from paying from other funds. 1955-56 Op. Att'y Gen. No. 6291.

And post mortem expenses. - The expenses of post mortem examinations may be paid out of the court fund in cases where they are necessary to obtain evidence in homicide cases, if in the discretion of the court they should be so paid. 1937-38 Op. Att'y Gen. 174.

And expenses for transporting convicts. - Expenses of transportation of those sentenced to the reform school were chargeable to the court fund of the county committing such person. 1912-13 Op. Att'y Gen. 234, 293.

But expert witnesses' fees could not be paid from county fund. - No statutory provision authorized the payment of expert witnesses for their professional services from the county court funds. 1909-12 Op. Att'y Gen. 78.

Nor could criminal investigation expenses be paid from state court fund. - When it used the phrase "trial of criminal cases," the legislature contemplated the submission of the issues to a court, the proceedings in court, the hearing of evidence and the final determination of the cause. This does not include the preparatory or investigative phases of a criminal trial, such as audits, depositions, laboratory tests and the like, but it does include such expenses as witness fees and jury fees. To hold otherwise would open the state court fund to use for investigative acts that might never be used in a criminal trial. While investigation and preparation are essential to any trial, the state court fund may not be disbursed to pay for them, but may only be disbursed for expenses directly attributable to the presentation of a criminal trial at a hearing in court. 1959-60 Op. Att'y Gen. No. 60-224.

Nor could court fund be spent for juvenile court duties statutorily uncompensated. - The court fund may not be spent for juvenile court duties conferred

by statute when such duties are statutorily uncompensated. Faced with deciding whether the legislature intended not to compensate, or whether an unintentional commission was made, the failure to compensate was held purposeful. This does not apply to additional duties assumed by the court clerk at the court's request, for the proper administration of justice, when such duties are not statutorily conferred - and when such duties are performed, in the court's discretion, provision for payment out of the court fund may be made. 1957-58 Op. Att'y Gen. No. 57-181.

34-6-36. Finance; disposition of litigant money; court clerk trust account.

Each district court clerk shall open a trust fund checking account, designated as the "court clerk trust account," in a bank which is a member of the federal deposit insurance corporation. Not later than two working days after receipt, the district court clerk shall deposit to this account all money which belongs to a litigant and all money which might be refunded to a litigant. Whenever the district court, by written order filed with the clerk, authorizes payment of money to a litigant from the court clerk trust account, the district court clerk shall issue his check on the account in accordance with the order. As prescribed by regulation of the director of the administrative office of the courts, money in the court clerk trust account may be invested by the district court clerk in obligations of the United States or in federally insured bank or savings and loan association savings accounts.

History: 1953 Comp., § 16-3-24, enacted by Laws 1968, ch. 69, § 38.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-24, 1953 Comp., relating to disposition of court fund surplus, and Laws 1968, ch. 69, § 38, enacts the above section.

Interest should be awarded to owner of principal. - Due process may require regulations awarding the interest on the trust fund account to the owner of the principal. 1976 Op. Att'y Gen. No. 76-25.

And not used by court. - Litigant money is to be deposited in a "court clerk trust account." This is a trust account. Therefore, the income from this trust must inure to the benefit of the trust, and the income may not be retained by a district court for its use or benefit. 1968 Op. Att'y Gen. No. 68-77.

34-6-37. Finance; disposition of court income; state treasurer account.

Each district court clerk shall open an account in a bank which is a member of the federal deposit insurance corporation. The account shall be in the name of the state treasurer of New Mexico, and withdrawals may be made only by the state treasurer. All fines, fees, costs and other money received by the clerk, except money designated by law for deposit in the court clerk trust account, shall be deposited to this account not

later than two working days after receipt by the clerk. Deposit slips shall be prepared by the clerk to clearly distinguish between fines and forfeitures which the state treasurer will credit to the current school fund of the state, money designated by law for credit to other specific funds in the state treasury, and all other money. Duplicate deposit slips and all bank statements shall be forwarded immediately to the state treasurer by the clerk. No collateral securities shall be required of the bank for this account, but the state treasurer shall make withdrawals from each account at least quarterly, and, in any event, so that the balance remaining in any account never exceeds fifteen thousand dollars ($15,000). Money withdrawn shall be credited to the proper account in the state treasury, and any money not otherwise designated by law shall be credited to the state general fund.

History: 1953 Comp., § 16-3-25, enacted by Laws 1968, ch. 69, § 39.

Cross-references. - As to audit of accounts, see 12-6-1 to 12-6-14 NMSA 1978.

As to exemption of judicial branch from Procurement Code, see 13-1-99 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-25, 1953 Comp., relating to transfer of unclaimed money to court fund, and Laws 1968, ch. 69, § 39, enacts the above section.

Section applies to excess federal fees. - Fees collected under 34-6-42 NMSA 1978 which are in excess of those remitted to the federal government must be handled according to this section, and the district court clerk is precluded from retaining them. 1968 Op. Att'y Gen. No. 68-77.

Fines do not go in court fund. - Proceeds of fines collected for violation of the penal laws, whether paid over by justices of the peace (now magistrates), or paid to clerk of district court, should be distributed one-third to general school fund, and two-thirds to districts in which collections are made, and fines imposed by district court should not be paid to the court fund. 1909-12 Op. Att'y Gen. 70 (issued under former statutes).

Deposit of funds in reserve investment fund for 25 years. - See 1969 Op. Att'y Gen. No. 69-33.

34-6-38. Finance; disposition of unclaimed money.

When money is held in the court clerk trust account and the person entitled to it does not make claim within six years from the date when it became payable, the money is presumed abandoned and shall be disposed of in the manner provided in the Uniform Disposition of Unclaimed Property Act [7-8-1 to 7-8-34 NMSA 1978].

History: 1953 Comp., § 16-3-26, enacted by Laws 1968, ch. 69, § 40.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-26, 1953 Comp., relating to levy and collection of state court tax fund, and Laws 1968, ch. 69, § 40, enacts the above section.

34-6-39. Finance; improper disposition of money; penalty.

Any person who violates any provision of Sections 34-6-36 through 34-6-38 NMSA 1978, is guilty of a fourth degree felony.

History: 1953 Comp., § 16-3-27, enacted by Laws 1968, ch. 69, § 41.

Cross-references. - As to punishment for fourth degree felonies, see 31-18-15 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-27, 1953 Comp., relating to certification of amounts needed for criminal trials and duties in levying and collecting state court fund tax, and Laws 1968, ch. 69, § 41, enacts the above section.

34-6-40. Finance; fees.

A. District court clerks shall collect in civil matters docketing any cause, whether original or reopened or by appeal or transfer from any inferior court, a fee of sixty dollars ($60.00).

B. No fees or costs shall be taxed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978].

History: 1953 Comp., § 16-3-28, enacted by Laws 1968, ch. 69, § 42; 1969, ch. 193, § 3; 1980, ch. 137, § 1; 1981, ch. 320, § 1; 1982, ch. 7, § 5; 1984, ch. 120, § 6; 1987, ch. 123, § 1; 1989, ch. 90, § 1.

Cross-references. - As to free civil or criminal process for indigents, see 34-6-27, 39-3-12 NMSA 1978.

As to penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

As to docket fee in criminal appeal from magistrate court, see 35-13-2B NMSA 1978.

As to court of appeals fees and costs, see 34-5-6 NMSA 1978.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repealed former 16-3-28, 1953 Comp., relating to transfer of state funds to county court fund and disbursement thereof, and Laws 1968, ch. 69, § 42, enacted a new 16-3-28, 1953 Comp.

The 1989 amendment, effective June 16, 1989, substituting all of the present language of Subsection B following "state" for "or its political subdivisions".

Applicability. - Laws 1989, ch. 90, § 3 makes the provisions of the act applicable to actions filed in district court on and after June 16, 1989.

Fee must be paid before appeal docketed. - The clerk may not docket a case without payment of the statutory fee on an appeal from a justice of the peace (now magistrate), and it is the appellant's duty to see that the fee is paid and the case docketed. Reece v. Montano, 48 N.M. 1, 144 P.2d 461 (1943).

Costs may be recovered against state. - The legislature, in this section, gives express authority, without exception, to the recovery of costs against any losing party, including the state. Kirby v. New Mexico State Hwy. Dep't, 97 N.M. 692, 643 P.2d 256 (Ct. App. 1982).

Liability for docket fee upon transfer from small claims court. - A party instituting an action or causing it to be docketed in the small claims court (now, metropolitan court) must pay the district court docket fee on transfer to the district court under certain circumstances. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

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

Proper fees on appeal. - The total fee to be collected upon docketing a civil appeal in the district court from a magistrate court includes the $2.75 called for in 12-1-9 NMSA 1978 and is, therefore, $7.75. 1970 Op. Att'y Gen. No. 70-65; 1964 Op. Att'y Gen. No. 64-50.

The total fee to be collected by the district court clerk upon docketing a criminal appeal from a magistrate court is set by 35-13-2B NMSA 1978 at $2.50. 1970 Op. Att'y Gen. No. 70-65.

The total fee to be collected by the district court clerk upon docketing a civil appeal from the small claims court is $20.00. 1970 Op. Att'y Gen. No. 70-65.

The total fee to be collected by the district court clerk in docketing a criminal appeal from a small claims court is set by 41-21-3 NMSA 1953 at $2.00. 1970 Op. Att'y Gen. No. 70-65.

Except in instances where a municipality dockets an appeal pursuant to the provisions of 35-15-9 NMSA 1978 specifying that no costs shall be assessed against a

municipality, the total fee to be collected upon docketing any appeal from municipal court is $16.25. 1970 Op. Att'y Gen. No. 70-65; 1962 Op. Att'y Gen. No. 62-10.

A docket fee of $10.00 is applicable to appeals from the municipal court to the district court only when brought from an action enforcing ordinances under 35-15-1 NMSA 1978 et seq. 1980 Op. Att'y Gen. No. 80-18.

34-6-40.1. Civil action by state; filing fee assessed as costs.

In any civil action brought in the district court by the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], when judgment or stipulation for payment is rendered in favor of the state, political subdivision or corporation, the filing fee exempt from being paid by the state, political subdivision or corporation pursuant to Section 34-6-40 NMSA 1978 shall be taxed as costs against the nonprevailing party and paid to the district court clerk from the first money paid by the nonprevailing party on the judgement or stipulation for payment.

History: Laws 1981, ch. 307, § 1; 1989, ch. 90, § 2.

The 1989 amendment, effective June 16, 1989, substituted the present provisions for "In any civil action brought by the state or its political subdivisions in the district court when judgment is rendered in favor of the state or political subdivision, the filing fee exempt from being paid by the state or its political subdivision pursuant to section 34-6-40 NMSA 1978 shall be taxed as costs against the nonprevailing party and paid to the district court clerk".

Applicability. - Laws 1989, ch. 90, § 3 makes the provisions of the act applicable to actions filed in district court on and after June 16, 1989.

34-6-41. Finance; jury refreshments, meals and rooms.

A. The district court may provide suitable refreshments for prospective jurors summoned for jury service.

B. When district court juries are engaged in a trial, the court may provide suitable meals and necessary accommodations for them.

History: 1953 Comp., § 16-3-29, enacted by Laws 1968, ch. 69, § 43; 1989, ch. 116, § 1.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repealed former 16-3-29, 1953 Comp., relating to requirement that county levy one mill tax before sharing in state court fund, and Laws 1968, ch. 69, § 43, enacted a new 16-3-29, 1953 Comp.

The 1989 amendment, effective June 16, 1989, inserted "refreshments" in the catchline; designated the formerly undesignated provisions as Subsection B; and added Subsection A.

34-6-42. Finance; federal functions.

District court clerks shall collect fees required by federal law for services in connection with naturalization, passport applications and other matters.

History: 1953 Comp., § 16-3-30, enacted by Laws 1968, ch. 69, § 44.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-30, 1953 Comp., relating to renting suitable quarters for court business, and Laws 1968, ch. 69, § 44, enacts the above section.

Disposition of excess fees. - Fees collected under this section which are in excess of those remitted to the federal government must be handled according to 34-6-37 NMSA 1978, and the district court clerk is precluded from retaining them. 1968 Op. Att'y Gen. No. 68-77.

34-6-43. Finance; statutory fees exclusive.

Services required to be performed by district court clerks are without charge when no fee is prescribed by law.

History: 1953 Comp., § 16-3-31, enacted by Laws 1968, ch. 69, § 45.

Repeals and reenactments. - Laws 1968, ch. 69, § 69, repeals former 16-3-31, 1953 Comp., relating to payment of rentals from county court funds, and Laws 1968, ch. 69, § 45, enacts the above section.

34-6-44. District court arbitration fund created; administration; distribution.

A. There is created in the state treasury the "district court arbitration fund" to be administered by the administrative office of the courts.

B. All balances in the district court arbitration fund are appropriated to the administrative office of the courts for payment to judicial districts for the purpose of defraying the cost of compensating arbitrators and administering arbitration programs established by judicial district court rule approved by the supreme court for the efficient and inexpensive disposition of small claims. Payments shall be made quarterly upon certification by judicial districts of eligible amounts as provided in Subsection C of this section. No part of the fund shall revert at the end of any fiscal year.

C. Each judicial district shall be eligible for a payment in an amount equal to the arbitration user fees collected by that district and deposited for credit to the district court arbitration fund.

D. Payments from the district court arbitration fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

History: Laws 1986, ch. 26, § 1; 1989, ch. 324, § 27.

The 1989 amendment, effective April 7, 1989, deleted the former second sentence in Subsection B, which read "All interest earned on money in the fund shall be credited to the fund" and deleted "and the interest earned on that amount" from the end of Subsection C.

34-6-45. District courts; civil actions; arbitration user fee.

In addition to fees collected pursuant to, and subject to exceptions set forth in, Section 34-6-40 NMSA, 1978 [34-6-40 NMSA 1978] for docketing of civil cases, in any judicial district that has established an arbitration program by judicial district court rule as approved by the supreme court, for the efficient and inexpensive disposition of small claims, the district court clerk shall collect a user fee of fifteen dollars ($15.00) on all new and reopened civil cases except domestic relations and children's court cases. The fee shall be deposited for credit to the district court arbitration fund pursuant to the provisions of Section 34-6-37 NMSA 1978.

History: Laws 1986, ch. 26, § 2; 1990, ch. 56, § 1.

The 1990 amendment, effective March 2, 1990, substituted the present first sentence of the section for a sentence which read "Subject to approval of the supreme court, district court clerks may collect an arbitration user fee not to exceed fifty dollars ($50.00) from each party referred to arbitration pursuant to the requirements of an arbitration program established by judicial district court rule as approved by the supreme court for the efficient and inexpensive disposition of small claims".

34-6-46. District court; indigency standard; fee schedule; reimbursement.

A. The district court shall use a standard adopted by the public defender department to determine indigency of persons accused of crimes carrying a possible jail sentence.

B. The district court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent defendants who are financially unable to obtain private counsel.

C. The district court shall order reimbursement from each person who has received or desires to receive legal representation or another benefit under the Public Defender Act [31-15-1 to 31-15-12 NMSA 1978] after a determination is made that he was not indigent according to the standard for indigency adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund.

History: 1978 Comp., § 34-6-46, enacted by Laws 1987, ch. 20, § 3.

Cross-references. - Defense of indigents, see 31-16-1 to 31-16-10 NMSA 1978.

ARTICLE 7
PROBATE COURTS

34-7-1. Probate judge; authorized.

There shall be a probate judge in each county of this state. The position of probate judge shall be deemed a part-time position.

History: Kearny Code, Courts and Judicial Powers, § 19; C.L. 1865, ch. 21, § 1; C.L. 1884, § 407; C.L. 1897, § 745; Code 1915, § 1423; C.S. 1929, § 34-401; 1941 Comp., § 16-401; 1953 Comp., § 16-4-1; Laws 1987, ch. 224, § 1.

Cross-references. - As to title to townsites vesting in probate judge, see 19-4-4 NMSA 1978.

As to Probate Code, see 45-1-101 NMSA 1978 et seq.

Compiler's note. - The 1915 Code compilers deleted "who shall hold his office for two years, and until his successor be appointed and qualified" at the end.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 32.

21 C.J.S. Courts § 93 et seq.

34-7-2. [Probate judge and sheriff elected at each general election.]

At each general election held in this state there shall be elected in each county a probate judge and a sheriff.

History: Laws 1851-1852, p. 198; C.L. 1865, ch. 63, § 4; Code 1915, § 1245; C.S. 1929, § 33-4401; 1941 Comp., § 16-402; 1953 Comp., § 16-4-2.

Cross-references. - As to effect of city-county consolidation on probate judge, see 3-16-11 NMSA 1978.

Compiler's note. - This section is also compiled as 4-41-1 NMSA 1978, since it relates to both probate judges and sheriffs.

As it appeared in the 1865 Code, this section read: "On the first Monday in September of this year, 1851, and every two years thereafter, there shall be an election in each county of the territory, for the election of their respective probate judge and sheriff." The section was omitted from Comp. Laws 1884 and 1897. Its provisions were compiled as one note in the 1915 Code and 1929 Comp., but in the 1941 and 1953 Comps. they were compiled as two sections, with the reference to "a probate judge" omitted from one and "a sheriff" omitted from the other.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

34-7-3. [Seal of probate court.]

The probate courts shall procure and keep a seal with such emblems and devices as the courts shall think proper.

History: Kearny Code, Records and Seals, § 1; C.L. 1865, ch. 93, § 1; C.L. 1884, § 658; C.L. 1897, § 1033; Code 1915, § 1424; C.S. 1929, § 34-402; 1941 Comp., § 16-404; 1953 Comp., § 16-4-4.

Cross-references. - As to affixing and preservation of seal by clerk, see 34-1-6 NMSA 1978.

34-7-4. [Place of holding court and keeping clerk's office.]

The probate judges of this state are strictly required to hold their courts in the county seats of their counties, and the probate clerks shall also have their offices in the said county seat of the county at all times.

History: Laws 1869-1870, ch. 51, § 1; C.L. 1884, § 415; C.L. 1897, § 749; Code 1915, § 1426; C.S. 1929, § 34-404; 1941 Comp., § 16-405; 1953 Comp., § 16-4-5.

Cross-references. - As to county clerk serving as probate court clerk if no other provision is made, see N.M. Const., art. VI, § 22.

As to penalty for violating this section, see 34-7-5 NMSA 1978.

As to sheriff attending sessions, see 4-41-13, 4-41-16C NMSA 1978.

Office need not be in courthouse or designated space. - This section only requires that office of the probate judge be located within the county seat; hence, it need not necessarily be in the courthouse or within some space designated by the county commissioners. 1943-44 Op. Att'y Gen. No. 4406.

Removal to new county seat. - A county is authorized to remove to a properly selected new county seat all county offices and property pertaining thereto, if new courthouse and jail are ready for occupancy. Orchard v. Board of Comm'rs, 42 N.M. 172, 76 P.2d 41 (1938).

County clerk cannot be paid additional salary for serving as probate clerk. 1943-44 Op. Att'y Gen. No. 4365.

34-7-5. [Failure to hold court or keep clerk's office at county seat; penalty.]

For every neglect on the part of any probate judge, or clerk of any probate court of the state, in the discharge of their duties as prescribed in the previous section [34-7-4 NMSA 1978], the one so failing, upon conviction thereof in the district court, shall be fined in a sum not exceeding five thousand dollars [($5,000)].

History: Laws 1869-1870, ch. 51, § 2; 1882, ch. 82, § 1; C.L. 1884, § 16; C.L. 1897, § 750; Code 1915, § 1427; C.S. 1929, § 34-405; 1941 Comp., § 16-406; 1953 Comp., § 16-4-6.

Compiler's note. - The 1915 Code compilers, presumably under authority of Laws 1909, ch. 36, § 30 (compiled as 10-4-29 NMSA 1978), deleted, from the end of this section, the words "and the judge trying the cause, in addition to giving judgment against the guilty party, shall remove him from office and immediately appoint a capable person to hold said office, so vacated temporarily, and he shall officially notify the governor of the same, who shall at once order an election, which shall be held to fill such office in conformity with the election laws of the territory. The person appointed by any judge to fill any office shall have the qualifications now required by law for the office to which he has been appointed and shall be authorized to discharge all the duties of such office until his successor shall be elected and qualified: provided, that he shall be first qualified in the same manner as if he had been originally elected to such office."

Originally, under provisions of Laws 1887, ch. 8, § 1, the bond of the probate judge was set at $5,000, apparently to correspond with the maximum penalty provided under this section; however, the bond provision was reduced by Laws 1953, ch. 5, § 1 (16-4-3 1953 Comp., now repealed) from $5,000 to $500. See 10-1-13 NMSA 1978 for present provisions.

34-7-6. [County must furnish office and supplies for judge.]

That the county commissioners of each county in this state shall provide a suitable office for the accommodation of the probate judge of the county, and shall furnish all stationery, and such other things as may be necessary for the prompt discharge of the duties of said judges.

History: Laws 1887, ch. 66, § 3; C.L. 1897, § 754; Code 1915, § 1437; C.S. 1929, § 34-418; 1941 Comp., § 16-407; 1953 Comp., § 16-4-7.

Cross-references. - See 34-7-4 NMSA 1978 and notes thereto.

34-7-7. [Custody of archives, documents and books.]

The archives of said offices shall be under the charge of the clerks of said probate courts, and said clerks are prohibited from taking from said offices any document or book pertaining to said offices beyond six miles from said offices.

History: Law 1865-1866, ch. 41, § 2; C.L. 1884, § 411; C.L. 1897, § 747; Code 1915, § 1425; C.S. 1929, § 34-403; 1941 Comp., § 16-408; 1953 Comp., § 16-4-8.

Compiler's note. - The 1915 Code compilers deleted "The offices of the said probate courts shall be kept at the county seats of their respective counties, and" from the beginning of this section. See 34-7-4, 34-7-6 NMSA 1978.

34-7-8. Probate courts; hours of business; notice.

The probate courts of the state shall be in session and open at such times as are needed for the transaction of any business matters which may properly come before the courts under the laws of the state and upon notice thereof given as required under the laws of the state.

History: Laws 1935, ch. 63, § 1; 1941 Comp., § 16-409; 1953 Comp., § 16-4-9; Laws 1987, ch. 224, § 2.

Effective dates. - Laws 1935, ch. 63, contains no effective date provision, but was enacted at a session which adjourned on February 25, 1935. See N.M. Const., art. IV, § 23.

Validating clauses. - Laws 1935, ch. 63, § 2, reads: "All matters and business transacted, judgments and decrees heretofore legally entered by the probate courts of the state of New Mexico, whether the same were heard and determined and judgment entered at a time other than at a term time as may heretofore have been provided under the laws of the state of New Mexico, are hereby approved, ratified and confirmed."

34-7-9. [Probate judge interested or disqualified; transfer to district court.]

Whenever the probate judge shall, for any reason, be interested or disqualified from acting in any proceeding coming within the jurisdiction of the probate court, he shall upon his own motion or that of any interested party, forthwith enter an order transferring such proceeding to the district court having jurisdiction in that county and directing the probate clerk to deposit forthwith within the office of the clerk of said district court a certified copy of said order together with all original papers and records or certified copies of all original papers and records in the probate court relating to said proceeding.

History: Laws 1889, ch. 132, § 1; C.L. 1897, § 751; Code 1915, § 1433; C.S. 1929, § 34-414; Laws 1933, ch. 102, § 1; 1941 Comp., § 16-412; 1953 Comp., § 16-4-12.

Cross-references. - As to disqualification of judges, see N.M. Const., art. VI, § 18.

As to performance of acts and orders when probate judge is unable to act, see 45-1-307 NMSA 1978.

More than belief of partiality required. - In light of the provisions of this section, which requires an actual interest or disqualification, 38-3-9 NMSA 1978, which requires only a belief of partiality, does not apply to probate judges. Estate of Tarlton, 84 N.M. 95, 500 P.2d 180 (1972).

So disqualification not automatic on filing motions. - This section is merely a statutory declaration of N.M. Const., art. VI, § 18, which prohibits any judge from sitting in any cause in which he has an interest except by consent of the parties. A creditor's motion cannot act to automatically transfer the cause; it is necessary for her to direct the court's attention to the grounds for disqualification. Rush v. Strickland, 84 N.M. 95, 500 P.2d 180 (1972).

34-7-10. [Proceedings in district court after transfer.]

All proceedings thus transferred shall be docketed as other causes in the district court, which court shall thereupon exercise the same authority and take the same steps and proceedings as would have otherwise have [sic] been taken in the probate court.

History: Laws 1933, ch. 102, § 2; 1941 Comp., § 16-413; 1953 Comp., § 16-4-13.

Jurisdiction of district court. - Where a probate proceeding was removed from a probate court to a district court, the district court possessed only such jurisdiction in the premises as that enjoyed by the probate court. Conley v. Quinn, 58 N.M. 771, 276 P.2d 906 (1954).

34-7-11. [Probate judge absent or unable to attend to duties; powers of district judge.]

Whenever the probate judge shall be absent from the county wherein he was elected, or shall be incapacitated or unable to attend to his duties from any cause whatsoever, any

district judge, of said county, or any other district judge designated to hold court in said county for him, may do any and all things that could otherwise be done by said probate judge, without the necessity of having the matters or proceedings transferred from the docket of the probate court to the docket of the district court. The fact of such absence or incapacity shall be recited in every order of the district judge entered in accordance with this act [section].

History: Laws 1933, ch. 101, § 1; 1941 Comp., § 16-414; Laws 1943, ch. 65, § 1; 1953 Comp., § 16-4-14.

Cross-references. - As to performance of acts and orders when probate judge unable to act, see 45-1-307 NMSA 1978.

34-7-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1978, ch. 159, § 15, repeals 16-4-15, 1953 Comp. (34-7-12 NMSA 1978), relating to vacancy in the office of probate judge, effective March 6, 1978.

34-7-13. [Judges may issue process and make rules.]

That the judges of probate courts shall have full power and authority to issue whatever process may be necessary for the efficient discharge of their duties, and to make and publish rules and orders regulating the business and practice of their several courts, not inconsistent with the laws of this state.

History: Laws 1887, ch. 66, § 1; C.L. 1897, § 752; Code 1915, § 1435; C.S. 1929, § 34-416; 1941 Comp., § 16-416; 1953 Comp., § 16-4-16.

Cross-references. - As to process being directed to sheriff, see 4-41-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Who is "person of suitable age and discretion" under statutes or rules relating to substituted service of process, 91 A.L.R.3d 827.

34-7-14. Fees of probate court clerks.

Clerks of the probate courts shall be entitled to receive the following docket fees in all matters:

A. for docketing each cause, to be paid by the party docketing the cause twelve dollars fifty cents ($12.50) which shall include all costs of the clerks in any cause in the court; and

B. a fee of fifteen cents ($.15) per folio in addition to the docket fee may be charged for any excess of twenty folios in cases where judgments or decrees or orders exceed twenty folios.

History: Laws 1923, ch. 29, § 1; C.S. 1929, § 34-406; Laws 1937, ch. 111, § 1; 1941 Comp., § 16-422; 1953 Comp., § 16-4-22; Laws 1961, ch. 16, § 1; 1975, ch. 257, § 8-102.

Cross-references. - As to penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

Docket fee charged although no heirs. - A probate court clerk should collect the docket fee provided for by this section though there are no heirs or beneficiaries. 1945-46 Op. Att'y Gen. No. 4923A.

34-7-15. [Additional fees of clerk.]

In addition to the fees provided for in Section 1 [34-7-14 NMSA 1978] hereof, clerks of probate courts may charge the following fees:

for making an itemized bill of costs in any case, when demanded, fifty cents [($.50)];

for making and certifying to transcript of judgment, one dollar [($1.00)];

for taking an acknowledgment and affixing seal, fifty cents [($.50)], if but one person acknowledges, and twenty-five cents [($.25)] for each additional person;

for making copies of records or papers, ten cents [($.10)] per folio of one hundred words, for carbon copies three cents [($.03)] per folio;

for certificate and seal authenticating any paper as a true and correct copy, fifty cents [($.50)];

for making transcripts on appeal or certiorari to any court, and for certifying the same, such fees as are now provided by law; provided, however, that only fees for certification shall be charged where the transcript is prepared by the litigant himself.

History: Laws 1923, ch. 29, § 2; C.S. 1929, § 34-407; 1941 Comp., § 16-423; 1953 Comp., § 16-4-23.

Applicability. - Laws 1923, ch. 29, § 3, makes the act applicable to all pending litigation, provided, where cases have been docketed, no additional charge can be made on account of docket fee.

Providing compensation, implies power to perform act. - Under Kearny Code, Fees, § 2, Comp., Laws 1865, ch. 46, § 2, Comp. Laws 1884, § 1251, although the statute did

not confer upon probate court clerks the authority to administer oaths, by providing compensation for this function, it impliedly gave them authority, at least in strictly probate matters, and since the probate court meets the common-law requirement of a court of record, and clerks of courts of record under the common law could administer oaths, the probate court clerk had authority to do so in the verification of a claim for mechanic's lien filed with him. Bucher v. Thompson, 7 N.M. 115, 32 P. 498 (1893).

34-7-16. [Fees exclusive.]

No other or different fees than those above provided shall be made or received by clerks of probate courts, and any services required of them in any matter other than those for which fees are herein provided shall be without compensation.

History: Laws 1923, ch. 29, § 4; C.S. 1929, § 34-409; 1941 Comp., § 16-424; 1953 Comp., § 16-4-24.

Cross-references. - As to penalty for public officer demanding illegal fees, see 30-23-1 NMSA 1978.

Compiler's note. - Section 2308, Code 1915, which the present section is deemed to supersede, read: "The county clerk shall receive for granting testamentary letters, and of administration, and attesting the same, the sum of three dollars, and for each time that accounts are to be settled with an administrator or executor, he shall receive one dollar, and at the rate of ten cents for every hundred words he may have to write."

34-7-17. [Record of receipts and disbursements.]

The probate clerks of the different counties of this state are hereby required to keep a separate book for the sole purpose of keeping an exact account, which shall show in a clear and distinct manner all the money received, specifying the object for which it was received; and that the same book shall also contain a distinct and clear list of all warrants issued against the county treasury, and for what purpose.

History: Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 20; C.L. 1884, § 417; C.L. 1897, § 755; Code 1915, § 1447; C.S. 1929, § 34-432; 1941 Comp., § 16-425; 1953 Comp., § 16-4-25.

34-7-18. [Current accounts; public inspection.]

There shall also be kept in said book a full copy of the accounts current for the year, open to the inspection of any citizen who may wish to examine the same as often as he may desire so to do.

History: Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 21; C.L. 1884, § 418; C.L. 1897, § 756; Code 1915, § 1448; C.S. 1929, § 34-433; 1941 Comp., § 16-426; 1953 Comp., § 16-4-26.

34-7-19. [Penalty for violation of Sections 34-7-17 and 34-7-18 NMSA 1978.]

All clerks who shall fail in the discharge of the duties required in the two foregoing sections [34-7-17, 34-7-18 NMSA 1978] shall be considered guilty of a misdemeanor, and on conviction before the district court shall be fined at the discretion of the court, in any sum not less than twenty-five dollars [($25.00)], nor more than one hundred dollars [($100)].

History: Laws 1860-1861, p. 80; C.L. 1865, ch. 39, § 24; C.L. 1884, § 419; C.L. 1897, § 757; Code 1915, § 1449; C.S. 1929, § 34-434; 1941 Comp., § 16-427; 1953 Comp., § 16-4-27.

Compiler's note. - The 1915 Code compilers substituted "the two foregoing sections" for "the foregoing sections." The latter presumably referred to the Comp. Laws 1865, ch. 39, §§ 20 to 23.

34-7-20. Record of decedent's [decedents'] estates.

The county clerk shall keep a record or docket additional to the other records required by law, showing as follows:

A. the name of every decedent whose estate is administered and the date of his death;

B. the names of all the heirs, devisees and surviving spouse of the decedent and their ages and places of residence, so far as the same can be ascertained; and

C. a note of every sale of real estate made under the order of the court, with a reference to the volume and page of the court record where a complete record thereof may be found.

History: Laws 1889, ch. 90, § 42; C.L. 1897, § 2011; Code 1915, § 2309; C.S. 1929, § 47-902; 1941 Comp., § 16-428; 1953 Comp., § 16-4-28; Laws 1975, ch. 257, § 8-103.

Cross-references. - As to duty to record and index proceedings, see 34-1-6 NMSA 1978.

As to records and certified copies under Probate Code, see 45-1-305 NMSA 1978.

Entry of record necessary to "render" decision. - Within meaning of former 16-4-20, 1953 Comp., authorizing trial de novo of issues decided by probate court in decisions rendered more than ninety days previous to removal of administration of a decedent's estate from probate court to district court, a decision was not "rendered" until entered of record. In re Montano's Estate, 38 N.M. 355, 33 P.2d 906 (1934).

34-7-21. Record of bonds and wills.

The clerk shall also record at length in books kept for that purpose, all bonds given by personal representatives, conservators and guardians, and all wills admitted to probate.

History: Laws 1889, ch. 90, § 43; C.L. 1897, § 2012; Code 1915, § 2310; C.S. 1929, § 47-903; 1941 Comp., § 16-429; 1953 Comp., § 16-4-29; Laws 1975, ch. 257, § 8-104.

Cross-references. - As to duty to record and index proceedings, see 34-1-6 NMSA 1978.

As to records and certified copies under Probate Code, see 45-1-305 NMSA 1978.

34-7-22. [Deputy clerks; appointment; powers.]

The clerks of the probate courts of this state, with the consent of the probate judges, shall have power to appoint a deputy clerk of the probate court; each clerk shall appoint one, and such deputies when duly appointed and qualified shall have full power and shall be authorized to perform all the duties of the clerk of the said probate court.

History: Laws 1866-1867, ch. 24, § 1; C.L. 1884, § 421; C.L. 1897, § 759; Code 1915, § 1443; C.S. 1929, § 34-427; 1941 Comp., § 16-430; 1953 Comp., § 16-4-30.

34-7-23. [Oath of deputy clerks.]

The said deputy clerk shall take the same oath of office as is or may be provided by law as to his duties, which oath of office and his appointment shall be recorded in the records of the probate court.

History: Laws 1866-1867, ch. 24, § 2; C.L. 1884, § 422; C.L. 1897, § 760; Code 1915, § 1444; C.S. 1929, § 34-429; 1941 Comp., § 16-431; 1953 Comp., § 16-4-31.

Cross-references. - As to oath of office, see N.M. Const., art. XX, § 1.

34-7-24. [Authority of deputies; responsibility; signing papers.]

The clerks of the probate court shall be responsible, respectively, for the acts of their deputies, and for such purpose, all and every official act of the deputy shall be considered as an official act of the clerk who appointed him, and each deputy clerk shall sign all the papers issued by himself with the name of the clerk, in this manner: A. B., clerk of the probate court, by C. D., deputy clerk.

History: Laws 1866-1867, ch. 24, § 3; C.L. 1884, § 423; C.L. 1897, § 761; Code 1915, § 1445; C.S. 1929, § 34-430; 1941 Comp., § 16-432; 1953 Comp., § 16-4-32.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of clerk of court or surety on bond for negligent or wrongful acts of deputies or assistants, 71 A.L.R.2d 1140.

34-7-25. [Compensation of deputies to be paid by clerk.]

A deputy clerk of the probate court shall not receive any additional salary or pay of any kind for the performance of his duties, and his compensation shall be taken out from the pay and the fees of the clerk as allowed by law and as agreed upon between the deputy and the clerk who appoints him.

History: Laws 1866-1867, ch. 24, § 4; C.L. 1884, § 424; C.L. 1897, § 762; Code 1915, § 1446; C.S. 1929, § 34-431; 1941 Comp., § 16-433; 1953 Comp., § 16-4-33.

ARTICLE 8
SMALL CLAIMS COURTS

34-8-1 to 34-8-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 346, § 13, repeals 34-8-1 to 34-8-13 NMSA 1978, relating to the small claims courts, effective July 1, 1980. For present provisions as to metropolitan courts, see 34-8A-1 to 34-8A-8 NMSA 1978.

ARTICLE 8A
METROPOLITAN COURTS

34-8A-1. Metropolitan court; established.

There is established within the boundaries of a class A county with a population of more than two hundred thousand persons in the last federal decennial census the "metropolitan court." The name of the metropolitan district is the same as the name of the county in which it is located.

History: Laws 1979, ch. 346, § 1.

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

34-8A-2. Metropolitan court; constitution.

With respect to the provisions of Sections 1 and 26 of Article 6 of the state constitution and all other provisions of law, the metropolitan court shall constitute a state magistrate

court which is inferior to the district courts and is established by law pursuant to the provisions of Section 1 of Article 6 of the state constitution.

History: Laws 1979, ch. 346, § 2; 1980, ch. 142, § 1.

Appeal provisions for magistrate courts not applicable. - Neither this section nor the constitutional provisions to which it refers have the effect of making appeal provisions for magistrate courts applicable to metropolitan court appeals. State v. Crespin, 96 N.M. 553, 632 P.2d 1191 (Ct. App. 1981).

Duty of Public Defenders in metropolitan court. - The public defender department's scope of representation is limited statutorily to the magistrate and the district courts; the legislature has designated the Albuquerque metropolitan court as a magistrate court. Therefore, the public defender department is obligated to represent all indigents in the Albuquerque metropolitan court who are charged with any violation that carries a possible penalty of imprisonment, including city code violations. 1987 Op. Att'y Gen. No. 87-43.

34-8A-3. Metropolitan court; jurisdiction.

A. In addition to the jurisdiction provided by law for magistrate courts, a metropolitan court shall have jurisdiction within the county boundaries over all:

(1) offenses and complaints under ordinances of the county and of any municipality located within the county in which the court is located except municipalities with a population of more than two thousand five hundred but less than five thousand persons in the 1980 federal decennial census; provided that the metropolitan court shall not have jurisdiction over uncontested municipal parking violations;

(2) civil actions in which the debt or sum claimed does not exceed five thousand dollars ($5,000) exclusive of interest and costs; and

(3) contested violations of parking or operation of vehicle regulations promulgated by a board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico located within the county in which the court is located.

B. For the purposes of this section, "uncontested violation" is a violation for which a citation has been issued, and the person has paid the citation by mail or in person to the appropriate issuing authority; and "contested violation" is a violation for which a citation has been issued and the person had indicated his intent to contest the citation or the person has not paid or answered the citation.

C. The issuing authority shall provide to the metropolitan court on a mutually agreed schedule the unpaid citations and a listing in a manner mutually agreed upon of unpaid citations.

D. The municipality shall retain as reimbursement for its expenses all revenues from uncontested municipal parking violations.

History: Laws 1979, ch. 346, § 3; 1980, ch. 142, § 2; 1981, ch. 304, § 2; 1985, ch. 128, § 1; 1987, ch. 111, § 2.

Temporary provisions. - Laws 1980, ch. 142, § 7, provides that this section, 34-8A-4A and 35-14-1 NMSA 1978 shall not be applicable to municipalities having a population of less than 5,000 persons, until the terms of the current municipal judges end and, at that time, the metropolitan court shall have jurisdiction over offenses of those municipalities or until such time as the governing bodies of those municipalities inform them that by resolution of the governing body the municipal courts in those jurisdictions are no longer in operation, whichever is earlier.

Service of writ of execution. - A writ of execution on a judgment of the former small claims court may be served outside of the county where the court is created. 1963-64 Op. Att'y Gen. No. 63-18 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Small claims: jurisdictional limits as binding on appellate court, 67 A.L.R.4th 1117.

34-8A-4. Metropolitan court; judges.

A. Metropolitan judges shall be elected as provided in Section 34-8A-4.1 NMSA 1978. The governor shall fill vacancies in the office of metropolitan judge, by appointment of persons who possess the personal qualifications established by law, until the next general election.

B. No person shall be eligible for election or appointment to the office of metropolitan judge unless he is a member of the bar of and has practiced in this state for a period of three years. There shall be a presiding metropolitan judge of a metropolitan court. The presiding metropolitan judge shall designate each metropolitan judge position as a separate and consecutively numbered division, and any additional metropolitan judge authorized within a metropolitan court shall be designated as metropolitan judge of the next consecutive division. A district court judge may designate a metropolitan judge as a special master.

C. The annual salary of each metropolitan judge of a metropolitan court shall be fifty-two thousand five hundred dollars ($52,500). The provisions of the Judicial Retirement Act shall not apply to metropolitan judges.

History: Laws 1979, ch. 346, § 4; 1980, ch. 142, § 3; 1981, ch. 11, § 1; 1981, ch. 318, § 1; 1983, ch. 171, § 1; 1984, ch. 115, § 1; 1986, ch. 49, § 6; 1988, ch. 136, § 4; 1989, ch. 283, § 4; 1990, ch. 115, § 4.

Cross-references. - Classification of counties, 4-44-1 NMSA 1978.

The 1989 amendment, effective at the beginning of the first full pay period of the seventy-ninth fiscal year, in Subsection C, substituted "forty-eight thousand six hundred thirty-two dollars ($48,632)" for "forty-four thousand seven hundred sixty-five dollars ($44,765)".

The 1990 amendment, effective July 6, 1990, in Subsection A, deleted the former first sentence which read "The magistrates of the magistrate court and the judges of the small claims court and of any municipal courts within a class A county shall continue to hold their offices as metropolitan judges of the metropolitan court for the balance of the terms for which they were elected or appointed" and deleted "Thereafter" at the beginning of the present first sentence and, in Subsection C, increased the salary of metropolitan judges from $48,632 to $52,500.

When eligibility requirements to be met. - A candidate for metropolitan court judge had to meet the eligibility requirements under former Subsection B at the time of taking the oath of office. Chavez v. Yontz, 104 N.M. 265, 720 P.2d 300 (1986).

Prohibition against private practice of law constitutionally permissible. - A lawyer is constitutionally denied the privilege of engaging in the private practice of law during the time he is serving as a small claims court judge. In prohibiting a small claims court judge from practicing law while in office, the legislature is attaching a lawful condition to the holding of the office. This in no way interferes with the class of persons who are eligible to be chosen to hold public office as prescribed by N.M. Const., art. VII, § 2. 1963-64 Op. Att'y Gen. No. 63-58 (opinion rendered under former law).

34-8A-4.1. Metropolitan court judges; terms of office; election.

A. The elected term of office for each judge of the metropolitan court is four years.

B. Judges of the metropolitan court who have been previously elected in a partisan election or who were serving as metropolitan judges on January 1, 1989, in divisions one through twelve shall be subject to retention or rejection on a nonpartisan ballot at the 1990 general election for a four-year term ending December 31, 1994.

C. Any person appointed to fill a vacancy on the metropolitan court after January 1, 1989, shall serve until the next general election. That person's successor shall be chosen at that general election and shall hold the office until the general election four years later.

D. Judges of the Bernalillo county metropolitan court for divisions thirteen, fourteen and fifteen shall be appointed and shall serve until the 1992 general election. Their successors shall be chosen at that general election and shall hold office until the general election four years later.

History: 1978 Comp., § 34-8A-4.1, enacted by Laws 1981, ch. 318, § 2; 1988, ch. 115, § 1; 1990, ch. 114, § 1.

The 1988 amendment, effective July 1, 1988, added Subsection E.

The 1990 amendment, effective January 1, 1991, rewrote this section to the extent that a detailed comparison is impracticable.

34-8A-5. Metropolitan court; jury trial.

A. With respect to civil actions, except for contempt of the metropolitan court, the right to trial by jury exists in all actions in the metropolitan court which are within metropolitan court jurisdiction. Either party to an action may demand trial by jury. The demand shall be made in the complaint if made by the plaintiff and in the answer if made by the defendant, and the metropolitan clerk shall collect from the demanding party the jury fee established by law for magistrate juries. If demand is not made pursuant to this subsection, or if the jury fee is not paid at the time demand is made, trial by jury is deemed waived.

B. With respect to criminal actions:

(1) if the penalty does not exceed ninety days' imprisonment or if the penalty is a fine or forfeiture of a license, the action shall be tried by the judge without a jury;

(2) if the penalty exceeds ninety days' but does not exceed six months' imprisonment, either party to the action may demand a trial by jury. The demand shall be made orally or in writing to the court at or before the time of entering a plea or in writing to the court within ten days after the time of entering a plea. If demand is not made pursuant to this subsection, trial by jury is deemed waived; or

(3) if the penalty exceeds six months' imprisonment, the case shall be tried by jury unless the defendant waives a jury trial with the approval of the court and the consent of the state.

C. Juries in the metropolitan court shall hear the evidence in the action which shall be delivered in public in its presence. After hearing the evidence and being duly charged by the judge, the members of the jury shall be kept together until:

(1) in civil actions, five members shall agree upon a verdict;

(2) in criminal actions, the members unanimously agree upon a verdict; or

(3) the members are discharged by the judge.

The judge shall give judgment upon any verdict.

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

E. The presiding judge of the metropolitan court shall direct the clerk of the district court to draw and assign to that court the number of qualified jurors the judge deems necessary for one or more jury panels. Upon the receipt of the direction and in the manner prescribed for the selection of district court jurors, the clerk of the district court shall draw at random from the master jury wheel the number of qualified jurors specified. The names of jurors drawn for metropolitan jury service shall be forwarded to the metropolitan court clerk who shall maintain a record of the names and addresses of the prospective jurors.

F. Whenever a jury is required, the presiding judge of the metropolitan court shall order the sheriff or a responsible person to summon the persons named on the jury list to appear at the time and place set for trial of the action. If a jury is left incomplete because of failure of jurors to appear, excused absences or disqualification of jurors, a metropolitan judge shall direct the sheriff to summon others to complete the jury.

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

History: Laws 1979, ch. 346, § 5; 1981, ch. 304, § 3.

Cross-references. - As to right to jury trial, see N.M. Const., art. II, § 12.

Constitutionality. - Because of the legislature's requirement that magistrate judges in metropolitan court be attorneys and magistrates elsewhere throughout the state need not meet that qualification, the disallowance of juries in metropolitan court for petty criminal offenses is not arbitrary, unreasonable nor unrelated to a legitimate legislative purpose. Meyer v. Jones, 106 N.M. 708, 749 P.2d 93 (1988).

"The penalty" in Subsection B refers to potential aggregate penalty of all offenses being tried at a single time. Vallejos v. Barnhart, 102 N.M. 438, 697 P.2d 121 (1985).

34-8A-6. Metropolitan court; rules; appeal.

A. The supreme court shall adopt separate rules of procedure for the metropolitan courts. Such rules shall provide simple procedures for the just, speedy and inexpensive determination of any metropolitan court action.

B. The metropolitan court is not a court of record with respect to criminal actions. The metropolitan court is a court of record with respect to civil actions.

C. Any person aggrieved by any judgment rendered by the metropolitan court may appeal to the district court of the county in which such judgment has been rendered within fifteen days after entry of the judgment. All criminal trials upon appeal from the metropolitan court shall be de novo unless otherwise specified by supreme court rule.

D. Any person aggrieved by any decision of the metropolitan court with respect to a civil action may appeal to the district court of the county in which the decision has been rendered, or order or judgment made, by filing within fifteen days of the entry of same a notice of appeal with the clerk of the district court, and the manner and method for such appeal shall be set forth by rules of the supreme court.

Appeals from the district court shall be allowed as in other civil action [actions].

E. All judgments rendered in civil actions in the metropolitan court shall be subject to the same provisions of law as those rendered in district court.

History: Laws 1979, ch. 346, § 6; 1980, ch. 142, § 4; 1981, ch. 304, § 4.

Cross-references. - As to court automation fund, see 34-9-10 NMSA 1978.

As to crime laboratory fee, see 31-12-7 NMSA 1978.

As to crime laboratory fund, see 31-12-9 NMSA 1978.

As to court automation fee, see 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

As to metropolitan court mediation fee, see 35-6-1 NMSA 1978.

As to corrections fee to be imposed for all persons found guilty in the magistrate and metropolitan court, see 35-6-1 NMSA 1978.

As to payment of costs of any court ordered screening and treatment program, see 66-8-102 NMSA 1978.

As to funding of local government corrections fund by penalty assessment fees, see 66-8-116 NMSA 1978 and 66-8-119 NMSA 1978.

Subsection C does not unconstitutionally abridge right of appeal guaranteed by N.M. Const. art. VI, § 27. State v. Ball, 104 N.M. 176, 718 P.2d 686 (1986).

"Aggrieved" party for purposes of appeal. - A defendant who properly has entered a plea of guilty or nolo contendere in metropolitan court is not an "aggrieved" party entitled, under Subsection C, to appeal to the district court for a trial de novo. State v. Ball, 104 N.M. 176, 718 P.2d 686 (1986).

One who agrees not to be aggrieved by entering into a plea and disposition agreement in the metropolitan court, who alleges no constitutional invalidity in the agreement, and who does not seek to have his plea and agreement withdrawn, is not an "aggrieved" party and cannot appeal to the district court. State v. Bazan, 97 N.M. 531, 641 P.2d 1078 (Ct. App. 1982).

Prosecution is not a "person" within the meaning of Subsection C. State v. Giraudo, 99 N.M. 634, 661 P.2d 1333 (Ct. App. 1983).

Liability for district court docket fee upon transfer. - A party instituting an action or causing it to be docketed in the former small claims court must pay the district court docket fee on transfer to the district court under certain circumstances. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

Limited authority to impose jail time on appeal. - In a criminal trial de novo, on appeal from the metropolitan court, the district court lacks the authority to impose jail time greater than the jail time imposed by the metropolitan court. State v. Haar, 100 N.M. 609, 673 P.2d 1342 (Ct. App. 1983).

No change in sentence allowed in de novo trial upon an appeal. - In a de novo trial upon an appeal from a metropolitan court, there is no statutory authority empowering the district court to impose a lesser or greater penalty than that imposed by the metropolitan court. State v. Lyon, 103 N.M. 305, 706 P.2d 516 (Ct. App. 1985).

State can reduce charge in de novo trial even though effect is to avoid jury trial. - At a trial de novo on an appeal of a metropolitan court jury conviction, the state may reduce the charge against the defendant with the effect that the defendant would not be exposed to a term of confinement which would require a jury trial. State v. Lyon, 103 N.M. 305, 706 P.2d 516 (Ct. App. 1985).

Standard of review to be applied by district court in a civil appeal from the metropolitan court to the district court is one of "substantial evidence" to support the finding of the metropolitan court. Johnson v. Southwestern Catering Corp., 99 N.M. 564, 661 P.2d 56 (Ct. App. 1983).

Extent of retention of jurisdiction by district court. - A district court may retain jurisdiction of an action filed in the former small claims court to the same extent as if originally filed in the district court. 1963-64 Op. Att'y Gen. No. 63-168 (opinion rendered under former law).

Law reviews. - For annual survey of New Mexico law relating to criminal procedure, see 12 N.M.L. Rev. 271 (1982).

34-8A-7. Metropolitan court; administration.

A. The metropolitan judges of a metropolitan court shall select and appoint a court administrator who shall supervise all matters relating to the administration of the metropolitan court. The court administrator shall, after his appointment, be directly responsible to and work at the direction of the presiding judge of the metropolitan court.

B. The metropolitan court administrator shall annually prepare and submit a proposed budget approved by the presiding judge of the metropolitan court to the administrative

office of the courts. The metropolitan court shall make monthly written reports to the administrative office of the courts as is currently required of all magistrates and shall otherwise comply with the rules and statutes regarding administration except as provided by this act.

C. All money for the operation and maintenance of the metropolitan court shall be paid by the state treasurer upon warrants of the secretary of finance and administration, supported by vouchers of the presiding judge of the metropolitan court and in accordance with budgets approved by the administrative office of the courts and the state budget division of the department of finance and administration.

History: Laws 1979, ch. 346, § 7; 1980, ch. 142, § 5.

Meaning of "this act". - The term "this act," referred to at the end of Subsection B, means Laws 1980, ch. 142, which is compiled as 34-8A-2 to 34-8A-4 and 34-8A-6 to 34-8A-8 NMSA 1978.

Supreme court control over metropolitan courts. - The supreme court has ultimate authority over administrative matters of the courts. Russillo v. Scarborough, 935 F.2d 1167 (10th Cir. 1991).

The supreme court's power of superintending control includes the authority to order the metropolitan court to terminate its court administrator. Russillo v. Scarborough, 935 F.2d 1167 (10th Cir. 1991).

Metropolitan court administrator was an "at-will" employee who could have been terminated with or without cause, and was not entitled to any grievance procedures or to notice or hearing at termination. Russillo v. Scarborough, 727 F. Supp. 1402 (D.N.M. 1989).

34-8A-8. Metropolitan court; Bernalillo district.

A. The name of the metropolitan court in the Bernalillo metropolitan district shall be the "Bernalillo county metropolitan court".

B. The metropolitan court is an agency of the judicial department of state government. Personnel of the metropolitan court are subject to all laws and regulations applicable to state officers and agencies and state officers and employees, except where otherwise specifically provided by law.

C. There shall be fifteen judges of the Bernalillo county metropolitan court.

History: Laws 1979, ch. 346, § 8; 1980, ch. 142, § 6; 1981, ch. 308, § 1; 1983, ch. 70, § 1; 1988, ch. 115, § 2; 1990, ch. 114, § 2.

The 1990 amendment, effective January 1, 1991, substituted "fifteen judges" for "twelve judges" in Subsection C.

34-8A-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1980, ch. 142, § 11, repeals 34-8A-9 NMSA 1978, relating to the metropolitan court commission, effective July 1, 1980.

34-8A-10. Metropolitan court mediation fund created; administration; distribution.

A. There is created in the state treasury the "metropolitan court mediation fund" to be administered by the Bernalillo county metropolitan court.

B. All balances in the metropolitan court mediation fund are appropriated to the Bernalillo county metropolitan court for payment to metropolitan courts for the purpose of funding and administering voluntary mediation programs established by court rule for the efficient disposition of small claims and specified criminal complaints. Payments shall be made upon certification by the metropolitan courts of eligible amounts as provided in Subsection C of this section.

C. Each metropolitan court shall be eligible for a payment in an amount equal to the mediation fees collected by that court and deposited in the metropolitan court mediation fund.

D. Payments from the metropolitan court mediation fund shall be made upon vouchers issued and signed by the Bernalillo county metropolitan court administrator upon warrants drawn by the secretary of finance and administration.

History: Laws 1986, ch. 16, § 1; 1989, ch. 245, § 1.

The 1989 amendment, effective July 1, 1989, deleted "quarterly" following "made" in the second sentence of Subsection B.

34-8A-11. Metropolitan court; indigency standard; fee schedule; reimbursement.

A. The metropolitan court shall use a standard adopted by the public defender department to determine indigency of persons accused of crimes carrying a possible jail sentence.

B. The metropolitan court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent defendants who are financially unable to obtain private counsel.

C. The metropolitan court shall order reimbursement from each person who has received or desires to receive legal representation or another benefit under the Public Defender Act [31-15-1 to 31-15-12 NMSA 1978] after a determination is made that he was not indigent according to the standard for indigency adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund.

History: 1978 Comp., § 34-8A-11, enacted by Laws 1987, ch. 20, § 4.

Cross-references. - Defense of indigents, see 31-16-1 to 31-16-10 NMSA 1978.

34-8A-12. Service of warrants; metropolitan court pilot program.

A. Notwithstanding the provisions of any other laws to the contrary, the metropolitan court may establish a pilot program to increase the service of warrants for failure to appear and failure to pay fees and fines at the direction of the court.

B. The metropolitan court may enter into an intergovernmental agreement with a law enforcement agency to provide for the service of outstanding warrants. The metropolitan court is authorized to reimburse the law enforcement agency not to exceed twenty percent of the money collected by the court pursuant to warrants served by the agency. After reimbursement, the remainder of the money collected shall be deposited to the credit of the general fund.

C. The intergovernmental agreement between the metropolitan court and the law enforcement agency shall provide that warrants to be served shall be grouped geographically and that the law enforcement agency agrees to serve all warrants within a given group of warrants.

D. In order to expedite the service of warrants and the collection of money due the court without placing a burden on the jail facilities, the metropolitan court may provide a locked collections box for the convenience of persons served. A person upon whom a warrant is served may choose to pay the amount owed by placing the money in an envelope provided for that purpose, signing the envelope and placing the envelope in the locked box. The law enforcement officer shall witness the transaction and give the person a receipt for the money paid.

History: Laws 1987, ch. 110, § 1.

ARTICLE 9
ADMINISTRATIVE OFFICE OF THE COURTS

34-9-1. [Maintenance at seat of government; supervision; appointment and removal of director by supreme court.]

The administrative office of the courts of New Mexico shall be maintained at the seat of the government. It shall be supervised by a director who shall be appointed and subject to removal by the supreme court of New Mexico.

History: 1953 Comp., § 16-6-1, enacted by Laws 1959, ch. 162, § 1.

Cross-references. - As to contracting for services of counsel to act under Indigent Defense Act, see 31-16-9 NMSA 1978.

Temporary provisions. - Laws 1990, ch. 121, § 1 provides that the administrative office of the courts is to perform a study of and develop criteria for a pilot day fine project in class A counties as an alternative to incarceration, that all class A counties shall be requested by the administrative office of the courts to assist, financially and otherwise in the conduct of the study and that the study and criteria for the project, including recommendations, shall be submitted to the first session of the fortieth legislature.

Appropriations. - Laws 1988, ch. 121, § 7, effective March 8, 1988, appropriates $600,000 from the court automation fund to the administrative office of the courts for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purchase and maintenance of court automation systems in the magistrate and district courts and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the court automation fund.

Laws 1990, ch. 115, § 6, appropriates $900,000 from the general fund to the administrative office of the courts for the seventy-ninth fiscal year for the purpose of carrying out the provisions of the act and provides that any unexpended or unencumbered balances remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Supreme court control over courts. - The supreme court has ultimate authority over administrative matters of the courts. Russillo v. Scarborough, 935 F.2d 1167 (10th Cir. 1991).

34-9-2. [Appointment and removal of employees by director; approval of supreme court.]

The director may appoint necessary employees, subject to the approval of the supreme court, who shall be subject to removal by him with the approval of the supreme court.

History: 1953 Comp., § 16-6-2, enacted by Laws 1959, ch. 162, § 2.

34-9-3. Director; duties.

The director of the administrative office of the court shall, under the supervision and direction of the supreme court:

A. supervise all matters relating to administration of the courts;

B. examine fiscal matters and the state of the dockets of the courts, secure information as to the courts' need of assistance, prepare and transmit to the supreme court statistical data and reports as to the business of the courts;

C. submit to the supreme court and to the legislature by January 30 of each year a report of the activities of the administrative office and of the state of business of the courts, including the statistical data submitted to the supreme court pursuant to Subsection B of this section, and the director's recommendations. This report is a public document;

D. deal with the problems of finance of those courts supported by legislative appropriation and be concerned with adequate but economical financing of each of these courts and the equitable distribution of available funds among them. For this purpose, the director shall receive, adjust and approve proposed budgets submitted by these courts for the fifty-eighth and subsequent fiscal years prior to submission of the budgets to the state budget division of the department of finance and administration for inclusion in the executive budget. The district courts of all counties within a judicial district shall be included within a single budget. Budget proposals shall be submitted by the courts at the time and in the form prescribed by the director; and

E. perform other duties in aid of the administration of justice and the administration and dispatch of the business of the courts as directed by the supreme court. The courts shall comply with all requests of the director for information.

History: 1953 Comp., § 16-6-3, enacted by Laws 1959, ch. 162, § 3; 1963, ch. 66, § 2; 1968, ch. 69, § 46.

Cross-references. - As to approving bonds for district court personnel, see 34-6-22 NMSA 1978.

As to finances of district courts generally, see 34-6-34 to 34-6-43 NMSA 1978.

As to administering and distributing money from the local government corrections fund, see 33-3-25 NMSA 1978.

Supreme court control over courts. - The supreme court has ultimate authority over administrative matters of the courts. Russillo v. Scarborough, 935 F.2d 1167 (10th Cir. 1991).

34-9-4. [Officer or employee prohibited from practicing law.]

No officer or employee of the administrative office shall engage directly or indirectly in the practice of law.

History: 1953 Comp., § 16-6-4, enacted by Laws 1959, ch. 162, § 4.

34-9-5. [Seal of director; approval by supreme court; judicial notice.]

The director may use a seal approved by the supreme court. Judicial notice shall be given of such seal.

History: 1953 Comp., § 16-6-5, enacted by Laws 1959, ch. 162, § 5.

34-9-6. [Authority of courts to appoint personnel unaffected by 34-9-1 to 34-9-7 NMSA 1978.]

The authority of the courts to appoint administrative or clerical personnel shall not be limited by any provisions of this act [34-9-1 to 34-9-7 NMSA 1978].

History: 1953 Comp., § 16-6-6, enacted by Laws 1959, ch. 162, § 6.

34-9-7. Courts defined.

As used with reference to the duties of the director of the administrative office of the courts the word "courts" includes the supreme court, the court of appeals, the district courts, the children's and family court divisions of the district courts, the probate courts and the magistrate courts.

History: 1953 Comp., § 16-6-7, enacted by Laws 1959, ch. 162, § 7; 1963, ch. 66, § 3; 1966, ch. 28, § 29; 1968, ch. 62, § 2; 1972, ch. 97, § 50.

34-9-8. Courts; records; manuals.

A. The director of the administrative office of the courts shall compile manuals prescribing detailed requirements for uniform systems of records and forms for use by courts. Following approval by the supreme court, the manuals shall be reproduced by the administrative office of the courts and a copy filed with the supreme court law librarian. Upon the filing, any manual then constitutes a set of rules of the supreme court having the effect of law.

B. Sections of any manual may be revised or amended from time to time by the director, and the revisions or amendments become effective following approval by the supreme court, reproduction by the administrative office of the courts and filing with the supreme court law librarian.

C. The director of the administrative office of the courts shall distribute copies of each manual to each court concerned and, upon request, to other courts and to interested members of the public.

D. Each court shall comply with all the requirements contained in the applicable manual, submit reports to the director as requested and furnish additional information the director may consider expedient.

History: 1953 Comp., § 16-6-8, enacted by Laws 1963, ch. 66, § 1; 1968, ch. 69, § 47.

34-9-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 51, § 1, repeals 34-9-9 NMSA 1978, relating to district court dockets.

Laws 1983, ch. 51, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

34-9-10. Court automation fund created; administration; distribution.

A. There is created in the state treasury a "court automation fund" to be administered by the administrative office of the courts.

B. All balances in the court automation fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purchase and maintenance of court automation systems in the magistrate and district courts.

C. Payments from the court automation fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration. Any purchase or lease purchase agreement entered into pursuant to this section shall be entered into in accordance with the Procurement Code.

History: 1978 Comp., § 33-3-25.1, enacted by Laws 1987, ch. 32, § 2; 1988, ch. 121, § 1; 1991, ch. 70, § 1.

Cross-references. - As to the secretary of finance and administration, see 9-6-4 NMSA 1978.

As to court automation fee, see 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

The 1991 amendment, effective June 14, 1991, in Subsection B, deleted "for expenditure in the seventy-sixth through the eightieth fiscal years" following "courts" and deleted a second sentence which read "The balance in the court automation fund shall revert to the general fund at the end of the eightieth fiscal year" and, in Subsection C, deleted "quarterly" following "shall be made" in the first sentence and "and shall be approved by the secretary of finance and administration" at the end of the second sentence.

Compiler's note. - The provisions of this section were enacted as 33-3-25.1 NMSA 1978, but the section was renumbered for more logical placement as Chapter 33 relates to corrections.

Procurement Code. - See 13-1-28 NMSA 1978 and notes thereto.

ARTICLE 10
JUDICIAL STANDARDS COMMISSION

34-10-1. Judicial standards commission; selection; terms.

The judicial standards commission consists of nine positions:

A. positions 1 through 5, each of which shall be filled by a person who is a qualified elector of this state, who is not a justice, judge or magistrate of any court, and who is not licensed to practice law in this state. The governor shall fill each of these positions by appointment of qualified persons. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for five years or less, in such manner that one term expires on June 30 each year, and so that not more than three of the five positions are occupied by persons from the same political party. Initial terms begin on July 1, 1968 and expire as follows:

(1) position 1 on June 30, 1969;

(2) position 2 on June 30, 1970;

(3) position 3 on June 30, 1971;

(4) position 4 on June 30, 1972; and

(5) position 5 on June 30, 1973;

B. positions 6 and 7, each of which shall be filled by a person who is licensed to practice law in this state. These positions shall be filled by appointment of qualified persons by

majority vote of all members of the board of commissioners of the state bar of New Mexico, but no member of the board of commissioners shall be appointed. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 each even-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

(1) position 6 on June 30, 1970; and

(2) position 7 on June 30, 1972;

C. positions 8 and 9, each of which shall be filled by a person who is a justice of the supreme court or a judge of the court of appeals or district court. These positions shall be filled by appointment of qualified persons by the supreme court. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 each odd-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

(1) position 8 on June 30, 1971; and

(2) position 9 on June 30, 1973.

History: 1953 Comp., § 16-8-1, enacted by Laws 1968, ch. 48, § 1.

Cross-references. - As to creation and powers of judicial standards commission relating to discipline and removal of judicial officers, see N.M. Const., art. VI, § 32.

As to board of commissioners of the state bar, see Rule 24-101.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges §§ 18 to 20.

48A C.J.S. Judges §§ 40 to 52.

34-10-2. Judicial standards commission; vacancies.

Whenever any member of the judicial standards commission dies, resigns or no longer has the qualifications required for his original selection, his position on the commission becomes vacant. The remaining members of the commission shall certify the existence of the vacancy to the original appointing authority for the vacant position, which authority shall select a successor in the same manner as the original selection was made.

History: 1953 Comp., § 16-8-2, enacted by Laws 1968, ch. 48, § 2.

34-10-2.1. Judicial standards commission; duties; subpoena power.

A. The judicial standards commission shall:

(1) investigate all charges, complaints and allegations as to willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance of any justice, judge or magistrate of any court, and when the commission deems necessary hold a hearing on the charges, complaints or allegations concerning the discipline or removal of such judicial officer;

(2) investigate and, if the commission deems necessary, hold hearings on any charge, complaint or allegation that a justice, judge or magistrate has suffered a disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character;

(3) if the commission deems it necessary or convenient, appoint three masters, who are justices or judges of courts of record, to hear and take evidence in any matter arising under Paragraph (1) or (2) of this subsection who shall report their findings to the commission; and

(4) after a hearing deemed necessary pursuant to Paragraph (2) of this subsection, or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

B. In any investigation or hearing held under the provisions of this section, the commission shall have the power to administer oaths and with the concurrence of a majority of the members of the commission, it may petition a district court to subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation upon a showing of probable cause.

History: 1953 Comp., § 16-8-2.1, enacted by Laws 1977, ch. 289, § 1.

34-10-3. Judicial standards commission; executive director.

The judicial standards commission shall employ an executive director.

History: 1953 Comp., § 16-8-3, enacted by Laws 1974, ch. 4, § 1.

Repeals and reenactments. - Laws 1974, ch. 4, § 1, repeals former 16-8-3, 1953 Comp., relating to the supreme court clerk serving as staff for the commission, and enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Confidentiality of proceedings or reports of judicial inquiry board or commission, 5 A.L.R.4th 730.

34-10-4. Judicial standards commission; director's duties.

The executive director of the judicial standards commission shall:

A. perform, or cause to be performed, all investigations as may be deemed necessary or desirable by the commission or masters appointed by the commission;

B. enter into such contracts as may be necessary to carry out the responsibilities of the commission;

C. hire such other personnel as may be necessary to carry out the responsibilities of the commission; and

D. perform such other duties as may be delegated to him by the commission.

History: 1953 Comp., § 16-8-4, enacted by Laws 1974, ch. 4, § 2.

Recompilations. - Laws 1969, ch. 209, § 7, recompiled former 16-8-4, 1953 Comp., relating to the judicial conference, as 16-9-1, 1953 Comp., which was compiled as 34-11-1 NMSA 1978. That section was repealed by Laws 1987, ch. 29, § 1.

ARTICLE 11
JUDICIAL CONFERENCE

34-11-1. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 29, § 1 repeals 34-11-1, as amended by Laws 1980, ch. 144, § 1, concerning creation and duties of the judicial conference, effective March 16, 1987. For provisions of former section, see the 1981 Replacement Pamphlet.

ARTICLE 12
JUDICIAL COUNCIL

34-12-1 to 34-12-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 305, § 8, repeals 34-12-1 to 34-12-6 NMSA 1978, relating to the judicial council, effective July 1, 1981.

34-12-7 to 34-12-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 66, § 2 repeals former 34-12-7 to 34-12-12 NMSA 1978, relating to the judicial council, effective July 1, 1986. For provisions of former sections, see 1981 Replacement Pamphlet.