

UNANNOTATED

CHAPTER 36 Attorneys

ARTICLE 1 District Attorneys

36-1-1. [Oath and bond of district attorneys.]

Each district attorney shall, within sixty days after his election, qualify by filing in the office of the secretary of state, an oath of office as prescribed for other officers and a good and sufficient bond to be approved by a justice of the supreme court in the sum of five thousand dollars [(\$5,000)].

History: Laws 1909, ch. 22, § 1; Code 1915, § 1857; C.S. 1929, § 39-101; 1941 Comp., § 17-101; 1953 Comp., § 17-1-1.

36-1-2. Assistants; appointment; revocation; duties.

Each district attorney in this state may appoint one or more suitable persons who shall be attorneys-at-law practicing their profession in this state and members of the bar of this state to be his assistants. Every appointment of an assistant district attorney shall be in writing under the hand of the district attorney and filed in the office of the clerk of the district court of the judicial district in which the district attorney resides, and the person so appointed shall take and file in the office of the clerk of the district court of the judicial district in which the district attorney resides an oath of office as is now prescribed by law for district attorneys before entering upon his duties as assistant district attorney. Every such appointment may be revoked by the district attorney making it, which revocation shall be in writing and filed in that clerk's office. The assistant district attorney may attend the meetings of the boards of county commissioners, the district court, metropolitan, magistrate and probate courts in the district attorney's district and therein discharge any duties imposed by law upon or required of the district attorney by whom he was appointed.

History: Laws 1905, ch. 34, § 1; Code 1915, § 1858; C.S. 1929, § 39-102; 1941 Comp., § 17-102; 1953 Comp., § 17-1-2; Laws 1984, ch. 109, § 1.

36-1-3. District attorneys; travel expenses.

District attorneys and their employees shall be allowed per diem and shall be reimbursed for their necessary travel expenses incurred while absent from their district headquarters upon official business as provided in the Per Diem and Mileage Act [10-8-

1 to 10-8-8 NMSA 1978]. These expenses shall be paid from the appropriation to the district attorney of the judicial district for which the business is transacted.

History: 1953 Comp., § 17-1-3, enacted by Laws 1968, ch. 69, § 49; 1971, ch. 7, § 2.

36-1-4. District attorneys; limitation of private practice.

After January 1, 1977, no district attorney or assistant district attorney shall engage in the private practice of law. Violation of this section is ground for removal from office.

History: 1953 Comp., § 17-1-3.1, enacted by Laws 1968, ch. 69, § 50; 1969, ch. 85, § 1; 1973, ch. 2, § 1; 1975, ch. 302, § 1.

36-1-5. District attorneys; assistants; investigators.

A. Within legislative appropriations, the district attorney in each judicial district may appoint:

(1) necessary assistant district attorneys and other personnel and assign their duties; and

(2) full-time staff as peace officers for the purpose of investigating and enforcing the criminal laws of the state, within the district attorney's judicial district.

B. Those staff appointed as peace officers pursuant to the provisions of Paragraph (2) of Subsection A of this section shall comply with the certification provisions of Section 29-7-8 NMSA 1978 [repealed].

History: 1953 Comp., § 17-1-3.3, enacted by Laws 1968, ch. 69, § 52; 1988, ch. 92, § 2.

36-1-6. District attorneys; salaries.

A. For fiscal year 2000, district attorneys who serve in a district that does not include a class A county within the district shall receive an annual salary of seventy-four thousand four hundred eighty-one dollars (\$74,481) and district attorneys who serve in a district that includes a class A county within the district shall receive an annual salary of seventy-eight thousand four hundred one dollars (\$78,401).

B. For fiscal year 2001 and all subsequent fiscal years, the annual salary for district attorneys shall be established by the legislature in an appropriations act.

History: 1953 Comp., § 17-1-3.4, enacted by Laws 1976 (S.S.), ch. 18, § 1; 1978, ch. 173, § 1; 1980, ch. 132, § 1; 1982, ch. 31, § 1; 1986, ch. 49, § 8; 1988, ch. 136, § 6; 1990, ch. 117, § 1; 1995, ch. 168, § 1; 1999 (1st S.S.), ch. 7, § 1.

36-1-7. District attorneys; salary and allowances exclusive.

No district attorney shall receive to his own use any salary, fees or emoluments other than the salary and per diem and travel allowances prescribed by law.

History: Laws 1913, ch. 54, § 2; Code 1915, § 1870; C.S. 1929, § 39-202; 1941 Comp., § 17-104; 1953 Comp., § 17-1-4; Laws 1968, ch. 69, § 53.

36-1-8. District attorneys; payments of salaries and expenses.

A. The salaries of all district attorneys, assistant district attorneys and other employees of their offices shall be paid from the time when the district attorney or assistant district attorney qualifies and from the time when other employees begin their duties.

B. All salaries and expenses of the offices of the district attorneys, except the expenses of maintenance and upkeep of quarters occupied by the district attorneys and their staffs, shall be paid from funds appropriated to the district attorneys in the respective judicial districts upon warrants drawn by the secretary of finance and administration in accordance with budgets approved by the state budget division of the department of finance and administration.

C. Nothing in this section shall be construed to prevent an agreement between an incorporated municipality or a county and a district attorney whereby the district attorney agrees to assign an assistant to the municipality or county and the municipality or county agrees to reimburse the department of finance and administration to the credit of the district attorney's budget for all or a portion of the assistant's salary or expenses.

D. The provisions of this section shall not be interpreted to prevent a district attorney from contracting with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

- (1) serve as a tribal prosecutor; or
- (2) prosecute alleged violations of tribal codes by tribal members in tribal courts.

E. If a district attorney enters into a contract, as provided in Subsection D of this section, the district attorney shall be reasonably compensated for the expenses of staff and equipment.

History: Laws 1913, ch. 54, § 3; Code 1915, § 1871; Laws 1925, ch. 120, § 4; C.S. 1929, § 39-203; 1941 Comp., § 17-105; Laws 1945, ch. 73, § 2; 1949, ch. 102, § 2; 1951, ch. 125, § 2; 1953, ch. 89, § 2; 1953 Comp., § 17-1-5; Laws 1968, ch. 69, § 54; 1975, ch. 302, § 3; 1977, ch. 247, § 148; 1980, ch. 4, § 1; 2001, ch. 178, § 1.

36-1-8.1. District attorney facilities; maintenance and upkeep.

Each board of county commissioners shall provide adequate quarters for the operation of the district attorney and provide necessary utilities and maintenance service for the operation and upkeep of district attorney facilities.

History: Laws 1980, ch. 4, § 2.

36-1-8.2. Eleventh judicial district; two district attorney divisions.

The eleventh judicial district is divided into two separate district attorney divisions which shall constitute two separate election divisions, as follows:

- A. district attorney division 1, to be composed of San Juan county; and
- B. district attorney division 2, to be composed of McKinley county.

History: Laws 1981, ch. 25, § 1; 1993, ch. 336, § 1.

36-1-8.3. District attorneys; election; residence.

The district attorney in division 1 shall be elected by the qualified electors of San Juan county and the district attorney in division 2 shall be elected by the qualified electors in McKinley county. Each district attorney shall have all the duties and powers vested in a district attorney.

History: Laws 1981, ch. 25, § 2; 1993, ch. 336, § 2; 2019, ch. 212, § 234.

36-1-8.4. District attorneys; assistants.

Within legislative appropriations, the district attorney in each judicial division may appoint necessary assistant district attorneys and other personnel and assign their duties.

History: Laws 1981, ch. 25, § 3.

36-1-9. [Removal from office; grounds enumerated.]

Any district attorney may be removed from office according to the provisions of this act [36-1-9 to 36-1-17 NMSA 1978] on any of the following grounds:

- A. conviction of any felony or of any misdemeanor involving moral turpitude;
- B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;

- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into his hands as such officer;
- E. gross incompetency or gross negligence in discharging the duties of the office;
- F. any other act or acts, which in the opinion of the court amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

History: 1953 Comp., § 17-1-9.1, enacted by Laws 1955, ch. 180, § 1.

36-1-10. [Original jurisdiction of supreme court in removal proceedings.]

Charges of any of the causes for removal mentioned in Section 1 [36-1-9 NMSA 1978] hereof may be filed with the supreme court of the state of New Mexico, which is hereby given exclusive original jurisdiction of such matters, upon presentment by the governor, the attorney general or any regularly empaneled grand jury. Any such grand jury presentment shall be immediately certified to the supreme court by the clerk of the district court where such presentment is filed.

History: 1953 Comp., § 17-1-9.2, enacted by Laws 1955, ch. 180, § 2.

36-1-11. [Attorney general to prosecute removal proceedings; exceptions.]

All charges so presented to the court shall be prosecuted by the attorney general unless he should decline to act, or the governor, in the case of presentment by him, shall request the designation of another attorney; in either of which events the court will appoint another attorney.

History: 1953 Comp., § 17-1-9.3, enacted by Laws 1955, ch. 180, § 3.

36-1-12. [Service upon accused; appearance and answer.]

Upon any such presentment, the court shall make and enter its order directing service upon the accused and specifying the time for appearance and answer.

History: 1953 Comp., § 17-1-9.4, enacted by Laws 1955, ch. 180, § 4.

36-1-13. [Contents and nature of answer.]

Within the time prescribed in such order, the accused may by way of answer, object to the sufficiency of any charge or specification or deny the truth thereof. Any charge or specification legally sufficient and not denied shall be taken as admitted.

History: 1953 Comp., § 17-1-9.5, enacted by Laws 1955, ch. 180, § 5.

36-1-14. [Hearing and determination when defendant fails to appear.]

If the accused shall not appear, the court will proceed to hear and determine the charges in his absence.

History: 1953 Comp., § 17-1-9.6, enacted by Laws 1955, ch. 180, § 6.

36-1-15. [Issues to be tried without jury; applicability of Rules of Civil Procedure; burden of proof.]

The issues shall be tried to the court without a jury. So far as they may conveniently be applied and except as varied herein, the Rules of Civil Practice and Procedure in the District Courts shall govern the conduct of the trial, including compulsory attendance of witnesses, examination of witnesses, the admissibility of evidence and the amendment of pleadings. Upon the issues the burden of proof shall be upon the prosecution.

History: 1953 Comp., § 17-1-9.7, enacted by Laws 1955, ch. 180, § 7.

36-1-16. [Decision of court to be final.]

The decision and judgment of the court shall be final.

History: 1953 Comp., § 17-1-9.8, enacted by Laws 1955, ch. 180, § 8.

36-1-17. [No filing fee; taxation of costs.]

No docket fee or filing fee shall be required in any removal proceeding. Witness fees and other costs shall be taxed in such manner as may be determined by the court in its discretion.

History: 1953 Comp., § 17-1-9.9, enacted by Laws 1955, ch. 180, § 9.

36-1-18. Duties of district attorney.

A. Each district attorney shall:

(1) prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested;

(2) represent the county before the board of county commissioners of any county in his district in all matters before the board whenever requested to do so by the

board, and he may appear before the board when sitting as a board of equalization without request;

(3) advise all county and state officers whenever requested; and

(4) represent any county in his district in all civil cases in which the county may be concerned in the supreme court or court of appeals, but not in suits brought in the name of the state.

B. A district attorney may contract with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

(1) serve as a tribal prosecutor; or

(2) prosecute alleged violations of tribal codes by tribal members in tribal courts.

History: Laws 1909, ch. 22, § 2; Code 1915, § 1859; C.S. 1929, § 39-108; 1941 Comp., § 17-111; 1953 Comp., § 17-1-11; Laws 1966, ch. 28, § 30; 2001, ch. 178, § 2.

36-1-19. Legal representation; state; county.

A. Except as provided in Subsections B and C of this section, no one shall represent the state or any county thereof in any matter in which the state or county is interested except the attorney general, his legally appointed and qualified assistants or the district attorney or his legally appointed and qualified assistants and such associate counsel as may appear on order of the court, with the consent of the attorney general or district attorney.

B. Notwithstanding any other provision of law, a board of county commissioners may contract with private counsel for legal assistance to or representation of the county in any civil matter in which the county is interested. Such private counsel shall have the same powers of compromise, satisfaction or release in civil proceedings as are held by district attorneys pursuant to Section 36-1-22 NMSA 1978.

C. The private legal assistance permitted pursuant to Subsection B of this section shall not extend to the prosecution of any criminal action without the permission of the district attorney for that county, provided that such permission shall not be required for the prosecution of any violation of a county ordinance.

History: Laws 1909, ch. 22, § 15; Code 1915, § 1860; C.S. 1929, § 39-109; Laws 1933, ch. 21, § 7; 1941 Comp., § 17-112; 1953 Comp., § 17-1-12; Laws 1977, ch. 318, § 1; 1985, ch. 147, § 2.

36-1-20. [Authority of district attorney before magistrate court.]

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

History: Laws 1909, ch. 22, § 3; Code 1915, § 1861; C.S. 1929, § 39-110; 1941 Comp., § 17-113; 1953 Comp., § 17-1-13.

36-1-21. [Aiding defense; penalty against attorney general or district attorney; removal from office; exceptions; taking case in which state or county interested prohibited.]

If the attorney general or any district attorney shall consult with any accused defendant, or in any other manner shall aid the defense of any person accused of any crime or misdemeanor in this state, he shall be fined in the sum of not less than five hundred dollars (\$500) and shall be removed from office by judgment of the court if convicted of the charge.

Provided, further, that said attorney general or district attorney are [is] authorized and should be allowed by the judge of the district court to defend their [his] cases already on the docket of said court, on which appears on said docket that said attorney general or district attorney were [was] the attorneys [attorney] of said cases prior to the appointment of said attorney general or district attorneys [attorney].

Provided, further, that where it appears in the record of the court that the attorney general or district attorney was the attorney in some cases prior to the appointment of the said attorney general or district attorney, in those cases the court shall appoint a lawyer to prosecute in those particular cases, allowing said lawyer the fee which is allowed to the attorney general or district attorney, and the attorney general or district attorney should be allowed to defend in those particular cases.

Provided, further, that said attorney general or district attorney shall not be allowed to take any case after he is appointed attorney general or district attorney in which the state or county is involved in the litigation in which the law compels the attorney general or district attorney to prosecute or defend as said attorney general or district attorney.

History: Laws 1889, ch. 56, § 11; C.L. 1897, § 2582; Laws 1905, ch. 93, § 1; Code 1915, § 1862; C.S. 1929, § 39-111; 1941 Comp., § 17-114; 1953 Comp., § 17-1-14.

36-1-22. [Compromise, satisfaction or release by attorney general or district attorney.]

The attorney general and district attorneys of this state in their respective districts, when any civil proceedings may be pending in their respective districts, in the district court, in which the state or any county may be a party, whether the same be an ordinary

suit, scire facias proceedings, proceedings growing out of any criminal prosecution, or otherwise, shall have power to compromise or settle said suit or proceedings, or grant a release or enter satisfaction in whole or in part, of any claim or judgment in the name of the state or county, or dismiss the same, or take any other steps or proceedings therein which to him may appear proper and right; and all such civil suits and proceedings shall be entirely under the management and control of the said attorney general or district attorneys, and all compromises, releases and satisfactions heretofore made or entered into by said officers are hereby confirmed and ratified.

History: Laws 1875-1876, ch. 5, § 1; C.L. 1884, § 1856; C.L. 1897, § 2905; Code 1915, § 1863; C.S. 1929, § 39-112; 1941 Comp., § 17-115; 1953 Comp., § 17-1-15.

36-1-23. Terminated.

36-1-23.1. Special prosecutors in conflict cases.

Each district attorney may, when he cannot prosecute a case for ethical reasons or other good cause, appoint a practicing member of the bar of this state to act as special assistant district attorney. Any person so appointed shall have authority to act only in the specific case or matter for which the appointment was made. An appointment and oath shall be required of special assistant district attorneys in substantially the same form as that required for assistant district attorneys in Section 36-1-2 NMSA 1978.

History: 1978 Comp., § 36-1-23.1, enacted by Laws 1984, ch. 109, § 2.

36-1-24. Terminated.

36-1-25. Administrative office of the district attorneys created; director; personnel.

A. There is created the "administrative office of the district attorneys," which shall be supervised by a director who shall be appointed by majority vote of the elected or appointed district attorneys and serve at their pleasure.

B. The director may, within legislative appropriations, appoint necessary personnel and assign their duties.

History: Laws 1984, ch. 110, § 1.

36-1-26. Director; duties.

The director of the administrative office of the district attorneys shall, under the supervision of the elected or appointed district attorneys:

A. assist in the preparation and presentation of fiscal and budgetary matters to the department of finance and administration, the legislative finance committee and the legislature;

B. prepare personnel pay plans and develop a comprehensive data base on case management;

C. prepare and distribute uniform forms and procedures manuals and develop uniform systems for use by district attorneys' offices with respect to administrative, personnel and budgetary matters;

D. prepare and distribute forms and procedures for the establishment of a uniform worthless check program;

E. prepare, update and distribute a district attorneys' trial manual;

F. prepare and conduct training and education programs for district attorneys;

G. prosecute conflict of interest and other cases at the request of an elected or appointed district attorney;

H. submit an annual report to the department of finance and administration and the legislative finance committee detailing the activities of the office and statistical and other data relating to all district attorneys' offices; and

I. perform such other duties in furtherance of the administration of justice and the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

History: Laws 1984, ch. 110, § 2.

36-1-27. Repealed.

36-1-28. District attorney fund; created; administration; purpose.

A. The "district attorney fund" is created in the state treasury. The fund shall consist of worthless check fees, preprosecution diversion fees, other statutory revenues directed to the fund, appropriations, gifts, grants and donations.

B. Money in the fund is appropriated to the administrative office of the district attorneys for the sole purpose of meeting necessary expenses incurred in the operation of the administrative office of the district attorneys.

C. Expenditures from the fund shall be pursuant to budgets approved by the state budget division of the department of finance and administration and made by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by

the director of the administrative office of the district attorneys or his authorized representative.

D. The fund shall not revert at the end of any fiscal year.

History: Laws 1998, ch. 88, § 1.

ARTICLE 1A

District Attorney Personnel and Compensation

36-1A-1. Short title.

This act [36-1A-1 to 36-1A-15 NMSA 1978] may be cited as the "District Attorney Personnel and Compensation Act".

History: Laws 1991, ch. 175, § 1.

36-1A-2. Purpose of act; enactment under constitution.

The purpose of the District Attorney Personnel and Compensation Act is to establish for all district attorneys a uniform, equitable and binding system of personnel administration. The system shall be based solely on qualification and ability and will provide for classifications, compensation, fringe benefits, disciplinary procedures, appeal rights and other aspects of state employment. The District Attorney Personnel and Compensation Act will also provide a system of classification and compensation of district attorney personnel that is comparable to the personnel system in effect for other similar state employees. The District Attorney Personnel and Compensation Act is enacted pursuant to the provisions of Article 7, Section 2 of the constitution of New Mexico.

History: Laws 1991, ch. 175, § 2.

36-1A-3. Definitions.

As used in the District Attorney Personnel and Compensation Act:

A. "appeal" means a formal request for a full hearing before the board or authorized hearing officer to review a disciplinary action solely involving suspension, demotion or termination of a covered employee in a district attorney's office;

B. "board" means the District Attorney Personnel Review Board;

C. "class specification" means a written statement of the duties and responsibilities characteristic of a class of positions, and includes the class title, supervision exercised and received, guidelines available, examples of work performed, working conditions and

minimum qualifications or substitutions thereof that specify education, training, health, experience, knowledge, abilities and skills required for a position;

D. "classification series" means a group of class specifications or employment positions similar enough in powers and responsibilities that they can be covered by similar qualifications and titles. A classification series may consist of many levels, starting with the entry level position and advancing upward in duties, complexity, authority and responsibility;

E. "compensation plan" means a plan that establishes for each class in the plan a salary range that consists of at least minimum and maximum salaries, as authorized by the legislature;

F. "covered employee" means a person in a full-time or part-time covered position who has successfully completed the probationary period and is covered by all provisions of the District Attorney Personnel and Compensation Act;

G. "covered position" means any position within a district attorney's office except the positions of district attorney, attorney, district office manager and special program director;

H. "disciplinary action" means a suspension, demotion or dismissal of a covered employee;

I. "district attorneys" means the present fourteen duly elected district attorneys, or a substitute appointee for one of them, plus any additional elected district attorneys or future appointees created after the effective date of the District Attorney Personnel and Compensation Act;

J. "employee" means a person in a full-time or part-time position in a district attorney's office but shall not be construed to include district attorneys;

K. "performance evaluation" means the written appraisal of an employee's performance of assigned duties;

L. "position" means any position in a district attorney's office; and

M. "probationary employee" means a person who is appointed to a covered position but who has not yet completed the probationary period.

History: Laws 1991, ch. 175, § 3.

36-1A-4. Coverage of service; exemptions.

A. The District Attorney Personnel and Compensation Act shall cover all employees except only covered employees shall be entitled to utilize grievance procedures and the

appeals provisions in Section 9 of the District Attorney Personnel and Compensation Act.

B. The positions of attorney, district office manager and special program director are "at will" positions that serve at the pleasure of the district attorney.

History: Laws 1991, ch. 175, § 4.

36-1A-5. Personnel board; appointment.

There is created the "district attorney personnel review board". The board shall consist of five district attorneys, including a president, vice-president, secretary-treasurer and two voting members, all elected annually by the district attorneys.

History: Laws 1991, ch. 175, § 5.

36-1A-6. Board members; compensation.

Each board member shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] when traveling on board business directly related to the District Attorney Personnel and Compensation Act.

History: Laws 1991, ch. 175, § 6.

36-1A-7. Board; duties.

The board shall:

A. recommend to the district attorneys regulations necessary or appropriate to implement and administer the District Attorney Personnel and Compensation Act;

B. determine the qualifications for each class specification or classification series, including required levels of education, experience, special skills and legal knowledge;

C. prepare class specifications to be performed in each class of positions;

D. recommend a compensation plan of pay ranges to which class specifications and classification series are assigned, subject to legislative appropriations;

E. hear appeals solely involving suspension, demotion or termination of a covered employee, and render its final decision, unless the covered employee elects under Section 9 [36-1A-9 NMSA 1978] of the District Attorney Personnel and Compensation Act to have the appeal heard by a state-personnel-office-designated hearing officer;

F. make periodic reviews of the personnel regulations, classification plan and compensation ranges that govern employees to ensure that all federal action, legislative

mandates and other substantive changes are incorporated into the regulations in a timely fashion and make recommendations thereon to the district attorneys;

G. recommend to the district attorneys to contract for services of consultants necessary to perform a compensation or classification plan of all district attorney positions, subject to legislative appropriation; and

H. consider other personnel matters as designated by the district attorneys.

History: Laws 1991, ch. 175, § 7.

36-1A-8. Rules; adoption; coverage.

A. Personnel rules shall be promulgated by the district attorneys and shall be effective when filed as required by law.

B. The personnel rules of the district attorneys shall include provisions governing:

- (1) a classification plan for all positions;
- (2) a compensation plan for all positions;
- (3) a reasonable period of probation during which a probationary employee may be discharged, demoted or transferred without benefit of hearing;
- (4) hours of work requirements and holiday, overtime and leave policies;
- (5) the evaluation of performance of employees for the purpose of improving staff effectiveness;
- (6) any reduction in force needed due to lack of funds or work, abolition of a position, material change in duties or reorganization;
- (7) promotions or transfers, which shall give appropriate consideration to the applicant's qualifications, skills, job performance and duties;
- (8) a disciplinary procedure, which shall provide for an equitable response to infractions of rules or work performance standards; and
- (9) an appeal process to review a disciplinary action solely involving suspension, demotion or termination.

History: Laws 1991, ch. 175, § 8.

36-1A-9. Appeals by covered employees to the board; judicial review.

A. A covered employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appellant and the agency whose action is reviewed shall have the right to be heard publicly and to present facts pertinent to the appeal.

B. Formal rules of evidence shall not apply to appeals to the board.

C. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. The cost of transcripts may be assessed by the court to the losing party on appeal.

D. Appeals may be heard, at the election of the appellant, either by the board or by a hearing officer selected by the state personnel office. If the appellant does not elect to have his case heard by a state-personnel-office-designated hearing officer as provided in this section, the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing held pursuant to this section. This latter hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law.

E. If the appellant chooses to have his case heard by a state-personnel-office-designated hearing officer, the appellant shall elect in writing within twenty days after filing the notice of appeal to have his appeal heard solely by a state-personnel-office-designated hearing officer. In the event of that election, the board shall promptly make that request to the state personnel office and promptly execute any and all documents necessary to implement this election. The state personnel office shall promptly arrange for the hearing officer without charge. This hearing officer shall have all of the rights, duties and responsibilities provided to the board by the District Attorney Personnel and Compensation Act, and that hearing officer's decision shall be binding and of the same force and effect as if the board itself had rendered the final decision.

F. If the board or the state-personnel-office-designated hearing officer finds that the action taken was without just cause, the board or the state-personnel-office-designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his former position or to a position of like status and pay. When the board or the state-personnel-office-designated hearing officer orders a reinstatement of an appellant, the reinstatement shall be effective within thirty days after the service of a written copy of the decision on the affected party. The board or the state-personnel-office-designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the order may specify.

G. A party aggrieved by the decision of the board or the state-personnel-office-designated hearing officer made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1991, ch. 175, § 9; 1998, ch. 55, § 43; 1999, ch. 265, § 45.

36-1A-10. Oaths; testimony; records; refusal.

The board or the state-personnel-office-designated hearing officer has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the District Attorney Personnel and Compensation Act. Refusal to testify on matters pertaining to personnel is grounds for dismissal from employment.

History: Laws 1991, ch. 175, § 10.

36-1A-11. District attorneys to establish a compensation plan coverage.

A. The district attorneys shall establish a compensation plan for all employees of district attorneys. Before being implemented, the compensation plan shall be reviewed by the legislative finance committee and approved by the department of finance and administration. The compensation plan shall substantially conform to the compensation plan and classification series in effect for all other state employees. In addition, the plan shall include class specifications and requirements for performance evaluation.

B. The compensation plan provided by this section and adopted by the district attorneys shall apply to all employees.

History: Laws 1991, ch. 175, § 11.

36-1A-12. Additional duties of district attorneys.

The district attorneys as a group shall:

A. adopt and promulgate regulations to effectuate the provisions of the compensation plan for all employees;

B. conduct periodic reviews of the regulations, classification series and compensation ranges to ensure that applicable federal action, legislative mandates and other substantive changes are incorporated in the compensation plan in a timely fashion;

C. contract for consultant services to reevaluate the classification and compensation plans to ensure their compatibility, subject to legislative appropriation, with classes covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978] and the judicial pay plan; and

D. prepare an annual fiscal report and specify proposed changes, if any, to the compensation plan prior to each regular legislative session. Before any proposed

changes are implemented, they shall be reviewed by the legislative finance committee and approved by the department of finance and administration.

History: Laws 1991, ch. 175, § 12.

36-1A-13. Status of present employees.

All current employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be continued in their positions and shall be recognized as covered employees if they have held the position for at least six months prior to the effective date of the District Attorney Personnel and Compensation Act. All other employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be continued as probationary employees until they have successfully completed their probationary period. Nothing in the District Attorney Personnel and Compensation Act shall preclude the reclassification or reallocation of any position held by a current employee.

History: Laws 1991, ch. 175, § 13.

36-1A-14. Existing rules.

Existing personnel rules, policies and compensation plans for the employees shall remain in full force and effect until new rules, policies and pay plans are established pursuant to the District Attorney Personnel and Compensation Act.

History: Laws 1991, ch. 175, § 14.

36-1A-15. Federal funds and assistance.

When the provisions of any laws of the United States or any rule, order or regulation of any federal agency or authority providing federal funds for use in the state, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds other or higher personnel standards or different classifications than are provided for by the District Attorney Personnel and Compensation Act, the board shall recommend to the district attorneys adoption of rules and regulations to meet the requirements of such laws, rules, order or regulation.

History: Laws 1991, ch. 175, § 15.

ARTICLE 2

Regulation of Attorneys

36-2-1. [Rules defining and regulating practice of law; authority of supreme court; distribution; effective date.]

The supreme court of the state of New Mexico shall, by rules promulgated from time to time, define and regulate the practice of law within the state of New Mexico. The supreme court shall cause such rules to be printed and distributed to all members of the bar, to applicants for admission and to all courts within the state of New Mexico and the same shall not become effective until thirty (30) days after the same shall have been made ready for distribution and so distributed.

History: 1941 Comp., § 18-101, enacted by Laws 1941, ch. 96, § 1; 1953 Comp., § 18-1-1.

36-2-2 to 36-2-9. Repealed.

36-2-9.1. Exclusion.

The board of bar commissioners of the state bar and the state board of bar examiners are bodies of the judicial department and are not a state agency nor their employees public employees for purposes of workmen's compensation coverage, public employment retirement programs or social security coverage.

History: Laws 1979, ch. 143, § 1.

36-2-10. [Duties of attorneys.]

It is the duty of an attorney-at-law:

- A. to support the constitution and the laws of the United States and of this state;
- B. to maintain the respect due to courts of justice and judicial officers;
- C. to counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense;
- D. to employ for the purpose of maintaining causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;
- E. to maintain inviolate the confidence and preserve the secrets of his client;
- F. to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which he is charged;
- G. not to encourage either the commencement or continuation of an action or proceeding from any corrupt motive of passion or interest;

H. never to reject for any consideration personal to himself the cause of the defenseless or oppressed.

History: Laws 1909, ch. 53, § 27; Code 1915, § 353; C.S. 1929, § 9-127; 1941 Comp., § 18-109; 1953 Comp., § 18-1-9.

36-2-11. [Authority of attorneys.]

An attorney has authority:

A. to execute in the name of his client any bond or other written instrument necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding or final judgment rendered therein;

B. to bind his client to any agreement in respect to any proceeding within the scope of his proper duties and power, but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk or an entry thereof on the records of the court;

C. to receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment, unless a revocation of his authority is filed and, upon payment thereof and not otherwise to discharge the claim or acknowledge satisfaction of the judgment.

History: Laws 1909, ch. 53, § 29; Code 1915, § 356; C.S. 1929, § 9-130; 1941 Comp., § 18-110; 1953 Comp., § 18-1-10.

36-2-12. [Proof of authority; stay of proceedings.]

The court may, on motion of either party and on showing of reasonable grounds thereof, require the attorney for the adverse party or for any one of the several adverse parties to produce or prove by his oath or otherwise the authority under which he appears and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

History: Laws 1909, ch. 53, § 30; Code 1915, § 357; C.S. 1929, § 9-131; 1941 Comp., § 18-111; 1953 Comp., § 18-1-11.

36-2-13. [Attorneys prohibited from acting as surety for clients.]

No practicing attorney shall be a surety in any action or proceeding in which he is an attorney in any of the courts in this state.

History: Laws 1909, ch. 53, § 31; Code 1915, § 358; C.S. 1929, § 9-132; 1941 Comp., § 18-112; 1953 Comp., § 18-1-12.

36-2-13.1. Liability for court reporting costs.

A. Except as provided in Subsection C of this section, an attorney who engages a court reporter to perform court reporting services shall be jointly and severally liable with the client for whom the services were performed for costs of:

- (1) the shorthand reporting of the proceedings;
- (2) transcribing the proceedings; and
- (3) each copy of the transcript of proceedings requested by the attorney.

B. Any other attorney who orders a copy or transcript of proceedings shall be jointly and severally liable with his client for the costs of preparing the copy he orders.

C. An attorney may agree in writing with the court reporter prior to the commencement of the proceedings that he shall not be liable for costs related to the proceedings. An attorney may also make a statement into the record at the commencement of the proceedings that he shall not be liable for costs. The court reporter may at that time choose not to record the proceedings at no liability to the court reporter.

D. As used in this section, "attorney" means a person engaged in the practice of law.

E. As used in this section, "court reporter" means a person who engages in the verbatim recording of judicial proceedings and who possesses a certificate as a New Mexico certified court reporter.

History: Laws 1993, ch. 125, § 1.

36-2-14. [Method for changing attorney; notice.]

The attorney in any action or proceeding may be changed at any time before judgment or after final determination, as follows:

A. upon his own consent filed with the clerk or entered upon the minutes;

B. upon the order of the court or the judge thereof, upon application of the client after notice to the attorney. And when such change is made as provided in this section written notice of the change and of the substitution of a new attorney must be given to the adverse party; until such notice he must recognize the former attorney.

History: Laws 1909, ch. 53, § 32; Code 1915, § 359; C.S. 1929, § 9-133; 1941 Comp., § 18-113; 1953 Comp., § 18-1-13.

36-2-15. [Death, removal, etc., of attorney; procedure.]

When an attorney dies or is removed or suspended, or ceases to act as such, a party to an action or proceeding for whom he was acting must, before any further proceedings are had against him, be required by the adverse party, by written notice to appoint another attorney or to appear in person.

History: Laws 1909, ch. 53, § 33; Code 1915, § 360; C.S. 1929, § 9-134; 1941 Comp., § 18-114; 1953 Comp., § 18-1-14.

36-2-16. [Breach of confidence; deserting or jeopardizing client; penalty.]

Any attorney or attorneys, counselor or counselors, defender or defenders whatever, in the courts of this state, who maliciously reveal the secrets of their client to the opposite party, or who, being charged with the defense of one party, and having informed himself of his cause and means of defense, shall desert him and defend the other, or who in any way whatever shall knowingly jeopardize his client in order to favor the opponent or derive some personal profit, or because greater fees have been proffered him after having been retained by his client, upon conviction of such an offense before any court whatsoever of this state, justice of the peace [magistrate court], probate judge or district court, shall be fined in a sum double the amount he may have received for the defense of the cause, and all fines that may result shall accrue one-half to the funds of the counties and the other half to the funds of the state; and upon conviction, he shall be deprived of the exercise of such office of attorney, counselor or defender.

History: Laws 1863-1864, p. 32; C.L. 1865, ch. 11, § 1; C.L. 1884, § 819; C.L. 1897, § 1213; Code 1915, § 354; C.S. 1929, § 9-128; 1941 Comp., § 18-115; 1953 Comp., § 18-1-15.

36-2-17. [Deceit or collusion; damages; disbarment.]

If an attorney is guilty of deceit or collusion or consents thereto with intent to deceive the court, judge or party, he shall forfeit to the injured party, treble damages to be recovered in a civil action, and may, if in the opinion of the board of bar examiners such conduct warrants it, be disbarred.

History: Laws 1909, ch. 53, § 28; Code 1915, § 355; C.S. 1929, § 9-129; 1941 Comp., § 18-116; 1953 Comp., § 18-1-16.

36-2-18. [Grounds for disbarment and suspension by supreme court.]

An attorney may be disbarred or suspended by the supreme court for any of the following causes arising after his admission to practice:

- A. his conviction of felony or misdemeanor involving moral turpitude in which case the record of conviction is conclusive;
- B. wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession and any violation of the oath taken by him or of his duty as such attorney as before provided in this chapter;
- C. corruptly or wilfully and without authority appearing as attorney for a party to an action or proceeding;
- D. lending his name to be used as an attorney by another party who is not an attorney;
- E. failing or refusing to account for money of his client coming into his hands as such attorney;
- F. for any other act to which such a consequence is by law attached.

History: Laws 1909, ch. 53, § 34; Code 1915, § 361; C.S. 1929, § 9-135; 1941 Comp., § 18-117; 1953 Comp., § 18-1-17.

36-2-19. [Conviction of crime; certifying copy of record to supreme court; disbarment.]

In the case of the conviction of an attorney of a felony or of a misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had must within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction, and the supreme court upon receipt of such record, after judgment of such conviction, is filed, must enter an order disbaring such attorney.

History: Laws 1909, ch. 53, § 35; Code 1915, § 363; C.S. 1929, § 9-137; 1941 Comp., § 18-118; 1953 Comp., § 18-1-18.

36-2-20. [Attorneys who are partners of or related to district attorney; restrictions on practice.]

No attorney-at-law, who is at the time a partner of any district attorney, or the father, son or brother of a district attorney, shall defend in any court any person charged with any criminal offense, or appear in any civil action against the state in which it is the duty of such district attorney to prosecute or appear for the state. A violation of the provisions of this act [section] shall be grounds for disbarment.

History: Laws 1933, ch. 172, § 1; 1941 Comp., § 18-119; 1953 Comp., § 18-1-19.

36-2-21. [Judgment of disbarment.]

Upon conviction of the accused in cases arising under the first subdivision of Section 36-2-18 NMSA 1978, the judgment of the court must be that the name of the party be stricken from the roll of attorneys of the court, and that he be precluded from practicing as such attorney in all the courts of this state and upon conviction in other cases the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as an attorney in the courts of this state permanently or for a limited period.

History: Laws 1909, ch. 53, § 45; Code 1915, § 373; C.S. 1929, § 9-147; 1941 Comp., § 18-120; 1953 Comp., § 18-1-20.

36-2-22. [Payment of costs in disbarment proceedings.]

In all disbarment proceedings where the respondent is disbarred or suspended from practice, the costs of such proceedings shall be taxed against such respondent. Where such respondent is reprimanded only, the costs, at the option of the court may be taxed either against the respondent or the state, or may be apportioned. If such respondent be discharged he shall pay no costs, but such costs shall be paid out of the court fund of the county of the residence of the respondent, upon order of the court trying such cause. If the respondent shall have no property subject to execution, and such fact be established to the satisfaction of the court trying such cause, such court may order the costs incurred by the state in prosecuting such cause, to be paid out of the court fund of the county of the residence of such respondent.

History: Laws 1917, ch. 41, § 1; C.S. 1929, § 9-148; 1941 Comp., § 18-121; 1953 Comp., § 18-1-21.

36-2-23. [Effect of disbarment; reinstatement.]

Every judgment or order of disbarment or suspension made in pursuance of this chapter by the supreme court of this state, shall operate while it continues in force to deny the party against whom the same is rendered the right to appear in any of the courts of this state; but an attorney-at-law, who by such order or judgment of the supreme court has been disbarred from practice or suspended for a longer period than two years for any offense not indictable, on application to the supreme court may be reinstated as such attorney in the discretion of the court at any time after two years from the date of such judgment.

History: Laws 1909, ch. 53, § 46; Code 1915, § 374; C.S. 1929, § 9-149; 1941 Comp., § 18-122; 1953 Comp., § 18-1-22.

36-2-24. [License fraudulently obtained; revocation.]

The supreme court may revoke the license of any attorney at any time within three years after the same is granted, upon satisfactory showing that the same was obtained by false representations, fraud or deceit.

History: Laws 1909, ch. 53, § 47; Code 1915, § 375; C.S. 1929, § 9-150; 1941 Comp., § 18-123; 1953 Comp., § 18-1-23.

36-2-25. Repealed.

36-2-26. [Annual meetings of state bar; annual election.]

There shall be an annual meeting presided over by the president of the state bar, open to all members of the bar in good standing, and held at such time and place as the board of commissioners may designate, for the discussion of the affairs of the bar and the administration of justice. At noon on the last day of such meeting the annual election shall close and the ballots [be] canvassed and the results announced.

History: Laws 1925, ch. 100, § 11; C.S. 1929, § 9-211; 1941 Comp., § 18-125; 1953 Comp., § 18-1-25.

36-2-27. Practice without admission; contempt of court; foreign attorneys.

No person shall practice law in a court of this state, except a magistrate court, nor shall a person commence, conduct or defend an action or proceeding unless he has been granted a certificate of admission to the bar under the provisions of Chapter 36 NMSA 1978. No person not licensed as provided in that chapter shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law or hold himself out as an attorney or counselor at law, and all persons violating the provisions of that chapter shall be deemed guilty of contempt of the court in which the violation occurred, as well as of the supreme court of the state; provided, however, that nothing in this section shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in participating in an action or proceeding.

History: Laws 1909, ch. 53, § 26; Code 1915, § 352; Laws 1917, ch. 48, § 4; 1925, ch. 24, § 1; 1927, ch. 64, § 1; C.S. 1929, § 9-126; Laws 1935, ch. 124, § 1; 1941 Comp., § 18-126; 1953 Comp., § 18-1-26; Laws 1957, ch. 106, § 1; 1999, ch. 272, § 1.

36-2-28. Repealed.

History: Laws 1925, ch. 100, § 12; C.S. 1929, § 9-212; 1941 Comp., § 18-127; 1953 Comp., § 18-1-27; 1978 Comp., § 36-2-28, repealed by Laws 2011, ch. 107, § 3.

36-2-28.1. Unauthorized practice of law; private remedies.

A. A person likely to be damaged by an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for an injunction against the alleged violator. An injunction shall be granted pursuant to the principles of equity and on terms that the court considers reasonable. Proof of monetary damage or loss of profit is not required for an injunction to be granted pursuant to this subsection.

B. A person who suffers a loss of money or other property as a result of an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for the greater of actual damages or one thousand dollars (\$1,000) and for the restitution of any money or property received by the alleged violator, provided that if the court finds that the alleged violator willfully engaged in the unauthorized practice of law, the court may award up to three times the actual damages or three thousand dollars (\$3,000), whichever is greater.

C. A person bringing an action pursuant to Subsection A or B of this section shall, if the person prevails, also be awarded attorney fees and costs.

D. The relief provided by this section is in addition to other remedies available at law or equity.

History: Laws 2011, ch. 107, § 1.

36-2-28.2. Unauthorized practice of law; action by attorney general or bar association.

A. Whenever the attorney general, the state bar of New Mexico or a local bar association authorized by the state bar of New Mexico to prosecute actions related to the unauthorized practice of law has reason to believe that a person has engaged in the unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 or has aided or abetted another person in the unauthorized practice of law and the initiation of legal proceedings would be in the public interest, the attorney general or bar association may bring an action in the name of the state against the alleged violator. The action may be brought in the district court for the county in which the alleged violator resides or has a principal place of business or in the district court for a county in which the alleged violation took place. In an action brought pursuant to this section, in addition to civil penalties, the attorney general or bar association may petition the court for a temporary or permanent injunction and restitution and, if seeking a temporary or permanent injunction, the attorney general or bar association shall not be required to post bond.

B. In lieu of filing or continuing an action pursuant to this section, the attorney general or bar association may accept a written assurance of discontinuance of the unauthorized practice of law from the alleged violator. The assurance may contain an agreement by the alleged violator that restitution of money or property received from them in any transaction related to the unauthorized practice will be made to all persons,

provided that a person harmed by the unauthorized practice is not required to accept restitution. If the offer of restitution is accepted, the person accepting the restitution is barred from recovering damages from the alleged violator in an action based upon the same unauthorized practice.

C. In an action brought by the attorney general or bar association pursuant to this section, if the court finds the alleged violator engaged in the unauthorized practice of law, the court may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation. In addition, if the court finds that a person has aided or abetted another to engage in the unauthorized practice of law, the court may impose a civil penalty not to exceed one thousand dollars (\$1,000) for the first violation and a civil penalty not to exceed five thousand dollars (\$5,000) for each subsequent violation.

History: Laws 2011, ch. 107, § 2.

36-2-29. [Direct and indirect solicitation of damage claims declared illegal.]

It shall be unlawful for any person to solicit employment for himself or for another in the collection of any claim for damage to property or for damages for personal injuries sustained within this state or elsewhere or for death resulting therefrom, whether to be presented, collected, enforced or prosecuted in this state or elsewhere, or to accept any employment so solicited or to employ any person or agent by, through or on whose behalf such solicitation is made; or directly or indirectly to pay the debts or liabilities of the person from whom such employment is sought, or to lend any money or give or promise to give any money or other consideration to or for the benefit of the person from whom such employment is sought.

History: 1941 Comp., § 18-128, enacted by Laws 1949, ch. 81, § 1; 1953 Comp., § 18-1-28.

36-2-30. [Solicitation of damage claims; injunction.]

The attorney general or the board of bar commissioners of the New Mexico state bar association or any person, firm, corporation or association against whom any claim for damage to property or damages for personal injuries or for death resulting therefrom, is or has been asserted, may file an action for an injunction in the district court against any person, firm, corporation or association who has solicited employment for himself or itself or another, or for whom employment has been solicited, to collect or prosecute such claim, and in any such action the court, upon finding that such employment was solicited in violation of this act [section], whether such solicitation was successful or unsuccessful, may enjoin and permanently restrain such person, firm, corporation or association, his or its agents, representatives and principals from soliciting any such claims against any person, firm, corporation or association subsequent to the date of the injunction.

History: 1953 Comp., § 18-1-28.1, enacted by Laws 1955, ch. 190, § 1.

36-2-31. [Fee splitting prohibited; division of fees by attorneys excepted.]

It shall be unlawful for any person, firm, corporation or association to divide with or receive from any attorney-at-law, or group of attorneys-at-law, whether practicing in this state or elsewhere, either before or after action is brought, any portion of any fee or compensation charged or received by such attorney-at-law, or any valuable consideration or reward, as an inducement for placing or in consideration of being placed in the hands of such attorney or attorneys-at-law, or in the hands of another person, firm, corporation or association, a claim or demand of any kind, for the purpose of collecting such claim or instituting an action thereon or of representing claimant in the pursuit of any civil remedy for the recovery thereof, or for the settlement or compromise thereof, whether such compromise, settlement, recovery, suit, claim, collection or demand shall be in this state or elsewhere. This paragraph [section] shall not apply to agreements between attorneys to divide compensation received in cases or matters legitimately, lawfully and properly received by them.

History: 1941 Comp., § 18-129, enacted by Laws 1949, ch. 81, § 2; 1953 Comp., § 18-1-29.

36-2-32. [Hospital or other employees; communication with attorneys concerning damage claims declared illegal.]

It shall be unlawful for any person in the employ of, or in any capacity attached to or connected with, any hospital, infirmary or other institution, public or private, which receives patients for medical or surgical treatment, to communicate, directly or indirectly, with any attorney-at-law, or any person representing such attorney, for the purpose of enabling such attorney, or any associate or employee of such attorney, to solicit employment to present a claim for damages or prosecute an action for the enforcement thereof, on behalf of any patient in any such institution, or to negotiate or attempt to negotiate the settlement of any such claim.

History: 1941 Comp., § 18-130, enacted by Laws 1949, ch. 81, § 3; 1953 Comp., § 18-1-30.

36-2-33. [Solicitation prosecutions; prima facie evidence of agency.]

The solicitation by any person of another person to employ, or procure or bring about the employment of, any attorney-at-law for the purpose of presenting, collecting, enforcing or prosecuting such a claim for damages, if followed by the employment of said attorney for such purposes, shall, in any prosecution for violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] or in any injunction action instituted pursuant to this

act, be prima facie evidence that such person so soliciting was an agent, employee or acting on behalf of said attorney at law.

History: 1941 Comp., § 18-131, enacted by Laws 1949, ch. 81, § 4; 1953 Comp., § 18-1-31.

36-2-34. [Solicitation violation; stay of proceeding; employment of other counsel.]

In any action for personal injury brought in any court of this state, the court, upon being satisfied that the employment of counsel for any party has been solicited in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], shall order all proceedings in the action stayed until such party has been given an opportunity to engage other counsel, and may deny the right to collect costs wholly or in part to any party to the action. Counsel employed in violation hereof shall not be permitted to appear further in the action.

History: 1941 Comp., § 18-132, enacted by Laws 1949, ch. 81, § 5; 1953 Comp., § 18-1-32.

36-2-35. [Solicited employment contracts void; recovery of compensation paid.]

Any contract of employment obtained or made in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] shall be absolutely void as to the attorney but the client may recover any compensation paid thereunder to or for or received by the attorney on account of such employment.

History: 1941 Comp., § 18-133, enacted by Laws 1949, ch. 81, § 6; 1953 Comp., § 18-1-33.

36-2-36. [Penalty for solicitation.]

Any person who shall violate any of the provisions of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978] shall be guilty of a misdemeanor and shall be punished by a fine not less than \$100, nor more than \$1,000, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment, and if such person is an attorney-at-law, in addition to the penalty hereinbefore provided, he shall be disbarred or suspended from acting as an attorney-at-law.

History: 1941 Comp., § 18-134, enacted by Laws 1949, ch. 81, § 7; 1953 Comp., § 18-1-34.

36-2-37. [Prosecution by attorney general for solicitation.]

Whenever the attorney general has reason to believe that employment as an attorney has been solicited and obtained in violation of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], he shall cause an action to be instituted in the name of the state against the person owning such right of action or to whose benefit the same inures, the person employed to enforce the same and the person against whom such right of action is claimed to exist, or as many of such persons as can be personally served within this state. In any such action the court, upon finding that such employment was solicited and obtained in violation of this act, may enjoin the person solicited and the person employed to prosecute such claim from continuing such employment and from continuing the prosecution of such claim through the person so employed and may further enjoin the person against whom such claim is asserted from settling such claim or negotiating for the settlement thereof with any person so employed. No undertaking shall be required upon the issuance of any temporary or permanent injunction.

History: 1941 Comp., § 18-135, enacted by Laws 1949, ch. 81, § 8; 1953 Comp., § 18-1-35.

36-2-38. [Duty to testify in action for solicitation; immunity; perjury.]

No person shall be excused from testifying in any action, civil or criminal, brought in pursuance of this act [36-2-29, 36-2-31 to 36-2-38 NMSA 1978], on the ground that his testimony may expose him to prosecution for any crime or misdemeanor. But no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any such action, excepting a prosecution for perjury committed in giving such testimony.

History: 1941 Comp., § 18-136, enacted by Laws 1949, ch. 81, § 9; 1953 Comp., § 18-1-36.

36-2-39. Recompiled.

36-2-40. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 36-2-1 through 36-2-40 NMSA 1978.

History: 1953 Comp., § 18-1-38, enacted by Laws 1974, ch. 78, § 7.

ARTICLE 3

Immigration and Nationality Law Practice

36-3-1. Short title.

This act [36-3-1 to 36-3-10 NMSA 1978] may be cited as the "Immigration and Nationality Law Practice Act".

History: Laws 1987, ch. 60, § 1.

36-3-2. Purpose.

The purpose of the Immigration and Nationality Law Practice Act is to prevent the unauthorized practice of law by nonlawyers who hold themselves out as immigration consultants rendering services in immigration, nationality or citizenship matters and who are outside pertinent federal regulations regulating the practice of immigration law.

History: Laws 1987, ch. 60, § 2.

36-3-3. Definitions.

As used in the Immigration and Nationality Law Practice Act:

A. "immigration consultant" means any person who renders services, including the completion of forms and applications, to a client where the services are related to the client's desire to determine his legal status in an immigration or naturalization matter and who is beyond the scope of federal regulations regulating appearances and practice under the Immigration and Nationality Act of 1952, as amended.

B. "immigration or naturalization matter" includes all matters implicating any law, action, filing or proceeding related to a person's immigration or citizenship status in the United States;

C. "original document" means any document of the United States government or any department or agency thereof, any foreign government, any state government or political subdivision thereof or any other document, including signed affidavits, that would demonstrate physical presence by a person in the United States; and

D. "unauthorized practice of law" occurs where any person gives legal advice of any kind or acts on behalf of a client in any legal matter without authorization under the Immigration and Nationality Law Practice Act.

History: Laws 1987, ch. 60, § 3.

36-3-4. Representation.

A. A person desiring immigration and nationality services may be represented by any of the following:

(1) attorneys in the United States; as used in this subsection, "attorney" means any person who is a member in good standing of the bar of the highest court of

any state, possession, territory, commonwealth or the district of Columbia and is not under any order of any court, suspending, enjoining, restraining, disbaring or otherwise restricting him in the practice of law;

(2) a law student who is enrolled in the final year of an accredited law school or a law school graduate who is not yet admitted to the bar, provided that:

(a) he is appearing on an individual case basis at the request of the person entitled to representation; or

(b) his appearance is permitted by the official before whom he wishes to appear including an immigration judge, district immigration director, immigration officer-in-charge, regional immigration commissioner, the commissioner of immigration and naturalization or the immigration board, which official, if in his opinion special circumstances warrant it, may require that a law student be accompanied by the supervising faculty member or attorney;

(3) any reputable individual of good moral character, provided that:

(a) he is appearing on an individual case basis, at the request of the person entitled to representation;

(b) he is appearing without direct or indirect remuneration and files a written declaration to that effect;

(c) he has a preexisting relationship or connection with the person entitled to representation including a relative, neighbor, clergyman, business associate or personal friend, provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(d) if appearing on behalf of a client, his appearance is permitted by the official before whom he wished to appear including an immigration judge, district immigration director, immigration officer-in-charge, regional immigration commissioner, the commissioner of immigration and naturalization or the immigration board, provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and nationality practice or preparation or holds himself out to the public as qualified to do so;

(4) a person representing an organization accredited by the board of immigration appeals and who has been accredited by the immigration board; or

(5) an accredited official in the United States of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

B. Except as set forth in this section, no other person or persons shall represent others in any case, nor prepare applications or forms or given [give] any legal advice.

History: Laws 1987, ch. 60, § 4.

36-3-5. Unauthorized practice of law prohibited.

On or after the effective date of the Immigration and Nationality Law Practice Act, it shall be unlawful for any person to render for compensation any service constituting the unlawful practice of law or to otherwise violate any provision of the Immigration and Nationality Law Practice Act.

History: Laws 1987, ch. 60, § 5.

36-3-6. Authority of the attorney general.

A. Whenever the public interest so requires, the attorney general shall initiate appropriate proceedings to prevent violations of the Immigration and Nationality Law Practice Act.

B. A person having an interest or right which is or may be adversely affected under the Immigration and Nationality Law Practice Act may initiate an action for private remedies in accordance with the procedures of Section 57-12-10 NMSA 1978.

History: Laws 1987, ch. 60, § 6.

36-3-7. Filing; process.

Any information required to be filed by any subsection of the Immigration and Nationality Law Practice Act shall be a matter of public record and shall be disclosed by the attorney general upon written request.

History: Laws 1987, ch. 60, § 7.

36-3-8. Unlawful acts.

Any person who misrepresents the services he may provide in immigration or nationality matters is in violation of the Immigration and Nationality Law Practice Act.

History: Laws 1987, ch. 60, § 8.

36-3-9. Original documents of the client.

No person shall retain original documents of a client in his possession unless authorized by the client.

History: Laws 1987, ch. 60, § 9.

36-3-10. Violation is a misdemeanor.

Violation of any provision in the Immigration and Nationality Law Practice Act constitutes a misdemeanor the penalty for which is as provided in Section 31-19-1 NMSA 1978.

History: Laws 1987, ch. 60, § 10.