

**STATE EX REL. LEYBA V. DISTRICT COURT OF FOURTH JUDICIAL DIST., 1928-  
NMSC-051, 33 N.M. 527, 270 P. 797 (S. Ct. 1928)**

**STATE ex rel. LEYBA, Member of Board of Com'rs. of San  
Miguel County,  
vs.  
DISTRICT COURT OF FOURTH JUDICIAL DIST. WITHIN AND FOR SAN  
MIGUEL COUNTY**

No. 3397

SUPREME COURT OF NEW MEXICO

1928-NMSC-051, 33 N.M. 527, 270 P. 797

October 10, 1928

Original application for writ of prohibition by the State, on the relation of Guillermo Leyba, a member of the Board of County Commissioners of the County of San Miguel, against the District Court of the Fourth Judicial District of the State of New Mexico within and for the County of San Miguel and another.

**SYLLABUS**

**SYLLABUS BY THE COURT**

In proceedings for the suspension and removal of a county commissioner, service may be had in the absence of the accused, by delivering copy of citation to a person over 15 years of age, residing at his usual place of abode.

**COUNSEL**

Hunker & Noble and C. L. Collins, all of East Las Vegas, and J. O. Seth, of Santa Fe, for relator.

Chas. W. G. Ward, of East Las Vegas, and Carl H. Gilbert, of Santa Fe, for respondents.

**OPINION**

{\*528} {1} OPINION OF THE COURT A proceeding having been instituted under the provisions of chapter 36, Laws of 1909 (Code of 1915, §§ 3955-3983), for the removal of a county commissioner of San Miguel county, citation was served, in the absence of the accused, by delivering a copy to a person over fifteen years of age residing at the usual place of abode of the accused. A motion to quash this service was overruled by

the district judge. Whereupon application was made to this court for a writ of prohibition against further proceedings. The sufficiency of the service being the only question involved, and the matter having been fully argued by counsel for both parties, and the court being of opinion that such service is authorized by Code 1915, § 4532, the application is denied.

{2} It is so ordered.