



The NM EDGE County College

A Program of the Cooperative Extension Service and
the New Mexico Association of Counties

Present

The New Mexico County Clerk Handbook

November 2016 Edition



NEW MEXICO COUNTY CLERKS

A Reference Handbook and Practical Guide

November 2016
12th Revised Edition

Revised by
Members of the
New Mexico County Clerks Curriculum Committee

Edited & Produced by
The NM EDGE
A Program of the New Mexico Cooperative Extension Service
New Mexico State University

Partial funding provided by
New Mexico Association of Counties
Steve Kopelman, Executive Director



Education Designed to Generate Excellence in the Public Sector
A Program of New Mexico Cooperative Extension Service

Practical Learning Programs include:

NM Certified Public Manager®

Open to State, County & Municipal Elected & Appointed Officials & their Employees

County College

Training Particular to County Elected Offices & Other Specialized Offices of a County

Certified Advocate for Public Ethics (CAPE)

NMEDGE.NMSU.EDU

Better Government through Education

Dr. Jon Boren, Associate Dean and Director Cooperative Extension Service
Mary C. DeLorenzo, Program Director

NM EDGE Albuquerque Office
NMSU @ CNM Montoya Campus – Bldg. K #K102
4700 Morris St. NE
Albuquerque, NM 87111
505-646-0314

NM EDGE Las Cruces Office NMSU Campus
P.O. Box 30003, MSC 3AE
Gerald Thomas Hall, Room 275
Las Cruces, NM 80003
575-646-5424

FORWARD

As Associate Dean and Director of New Mexico Cooperative Extension Service, I have had the pleasure of working with the New Mexico Association of Counties (NMAC) on a number of projects—none more important than bringing education and resources to New Mexico’s 33 counties. We appreciate the vision of the New Mexico Association of Counties leadership in pursuing collaboration with Cooperative Extension Service to create and help sustain the NM EDGE County College.

NMSU’s Cooperative Extension Service delivers the land-grant mission to the people through a century of service to New Mexico residents. Today, Cooperative Extension Service continues to deliver education deeply rooted in tradition, innovation and collaboration.

In addition to the vital role county agents and staff play in providing non-formal, educational programs in every community around the state, we are proud of the evolving role of NM EDGE in pursuit of its goal of Better Government through Education and its statewide reach. Building on the foundation of County College, New Mexico Association of Counties and Cooperative Extension Service joined together to offer high quality, meaningful and accessible education at affordable prices and later expanded to include the nationally recognized Certified Public Manager® Program. NM EDGE continues to work closely with NMAC to bring you county-specific classes and resources.

First created and published by Cooperative Extension Service in 1975, this handbook is periodically updated and revised to assure that it remains relevant and factual. This year in particular, the handbook was revised to include a more direct tie to the classes being taught in the New Mexico County Clerk curriculum so that the information is consistent and supportive of both handbook and classes.

We hope you will find this handbook a useful and practical resource in your role as New Mexico County Clerk. We also encourage you to give us feedback on ways to make this handbook even more helpful. We sincerely thank you for your service to New Mexico County Government.

Dr. Jon C. Boren, Associate Dean and Director New Mexico Cooperative Extension Service

TABLE OF CONTENTS

Chapter 1 - KNOWING YOUR GOVERNMENT.....Page 1

- 1.1 The US Constitution: Establishing a Federal System of Government
- 1.2 The Role of State & Federal Government
- 1.3 The New Mexico State Constitution
- 1.4 County Government in New Mexico
- 1.5 Organization of County Government
- 1.6 County Assessor
- 1.7 County Clerk
- 1.8 County Sheriff
- 1.9 County Surveyor
- 1.10 County Treasurer
- 1.11 Probate Judge
- 1.12 District Judge
- 1.13 District Attorney
- 1.14 Tribal Governments in New Mexico
- 1.15 Tribal Government Relationships with Other Governments
- 1.16 Cultural Awareness

Chapter 2 - KNOWING THE LAW.....Page 19

- 2.1 The Power to Make Law
- 2.2 The Lawmaking Process
- 2.3 Other Law Making Bodies
- 2.4 The Impact of Laws
- 2.5 Encouraging Public Involvement in Policy Making & Transparency

Chapter 3 - ETHICS & PROFESSIONALISM

IN THE PUBLIC SECTOR.....Page 25

- 3.1 Universal Ethical Principles
- 3.2 Ethical Principles for Public Servants
- 3.3 Ethical Principles in New Mexico Law
- 3.4 Ethical Rules for Specific Aspects of Public Service

- 3.5 Ethical Leadership
- 3.6 Consequences of Ethical Breaches

**Chapter 4 - ROLES & RESPONSIBILITIES OF
THE NM COUNTY CLERK.....Page 33**

- 4.1 Election to Office
- 4.2 Bond and Oath of Office
- 4.3 Duties of the Office of County Clerk, Generally
- 4.4 Vacancy in Office
- 4.5 Removal and/or Suspension from Office
- 4.6 Temporary Replacement during Military Absence and/or Abandonment of Office
- 4.7 Voter Recall of Elected County Officials
- 4.8 Abolishment of Office Permitted

**Chapter 5 - ELECTION DUTIES OF
THE NM COUNTY CLERK.....Page 37**

- 5.1 Types of Elections
- 5.2 Timing of Elections
- 5.3 Restriction on local government elections (§1-12-71 NMSA)
- 5.4 Roles of the SOS, the County Clerk, Precinct Officials, and the BOCC
 - 5.4.1 The Secretary of State (SOS)
 - 5.4.2 Precincts and the Duties of Board of County Commissioners (§1-3-2 NMSA)
 - 5.4.3 Precinct Officials
- 5.5 Voting System Certification Committee (§1-9-7.5 NMSA)
- 5.6 Strict Time Deadlines and Penalties
- 5.7 Topics Covered in the NM Election Code
- 5.8 Applicable Federal Laws
- 5.9 Administrative Complaints
- 5.10 Voter Registration
- 5.11 Election Caveats for Greatest Success

Chapter 6 - RECORDING & FILING DUTIES OF

THE NM COUNTY CLERK.....Page 47

- 6.1 Acknowledgment Necessary for Recording; and Exceptions (§14-8-4 NMSA)
- 6.2 Instruments affecting real estate; recording (§14-9-1 NMSA)
 - 6.2.1 Uniform Real Property Electronic Recording Act - Short title (§14-9A-1 NMSA)
 - 6.2.2 Validity of Electronic Documents (§14-9A-3 NMSA)
- 6.3 Recording of documents (§14-9A-4 NMSA)
- 6.4 Administration and Standards (§14-9A-5 NMSA)
- 6.5 Uniformity of Application and Construction (§14-9A-6 NMSA)
- 6.6 Relation to electronic signatures in global and National Commerce Act (§14-9A-7 NMSA)
- 6.7 Acknowledgements Necessary for Recording (§14-8-4 NMSA)
- 6.8 Recording Fees for Counties
- 6.9 County Clerk Recording and Filing Fund: Uses (§14-8-12.2 NMSA)
- 6.10 Security of Books of Record; Delivery to Successors (§14-8-9 NMSA)
- 6.11 Searching Records; Reproduction of Records; Fees (§14-8-14 NMSA)
- 6.12 Fee Schedule for the Uniform Commercial Code (§55-9-525 NMSA)
- 6.13 Recording of Plats with County Clerks and Recording of Vacation of Plats (§47-6-7 NMSA)
- 6.14 Records Affecting Real Property (§14-9-1 NMSA)
- 6.15 Fees for Recording of Real Estate Plats (§14-8-16 NMSA)
- 6.16 Recording of Mining Location (§69-3-2 NMSA), Oil and Gas Royalty Assignments (§70-1-1 NMSA) and Liens on Oil and Gas Wells (§7-4-5 NMSA)
- 6.17 Recording Copies of Deeds to Property (§7-38-12 NMSA)
- 6.18 Public records; inspection; exceptions (§14-8-9.1 NMSA)
- 6.19 Disclosure of Records (§24-14-27 NMSA)
- 6.20 Penalties (§24-14-31 NMSA)
- 6.21 Right to Inspect Public Records; Exceptions (§14-2-1 NMSA)
- 6.22 Recording of Water Rights (§72-1-3 NMSA)
- 6.23 Recording of Orders Organizing a Conservancy District (§73-14-16 NMSA)

- 6.24 Miscellaneous Recording Activities
- 6.25 Filing for Record; Effect; Reception Book (§14-9-4 NMSA)
- 6.26 Indexing (§14-10-1 NMSA)
- 6.27 Method of Copying Original Documents and Destruction of Obsolete Documents (§14-1-1, §14-1-3, §14-1-8 NMSA)

Chapter 7 - EX OFFICIO CLERK TO BOCC DUTIES OF

THE NM COUNTY CLERK.....Page 65

- 7.1 Clerk of the County Board of Finance
- 7.2 Accounts and Claims
- 7.3 Newspaper Subscriptions
- 7.4 The Open Meetings Act
- 7.5 The New Mexico Inspection of Public Records Act
- 7.6 Service of Process Against the County

Chapter 8 - MARRIAGE & OTHER LICENSING DUTIES OF

THE NM COUNTY CLERK.....Page 73

- 8.1 Marriage Licenses
- 8.2 Business Registration Licenses
- 8.3 Liquor Licenses
- 8.4 Other Miscellaneous Licenses and Permits

Chapter 9 - PROBATE COURT CLERK DUTIES OF

THE NM COUNTY CLERK.....Page 75

- 9.1 The Clerk's Role and Authority as it Relates to the Probate Court
- 9.2 Coordination with District Court
- 9.3 County Must Furnish Office and Supplies for the Probate Judge (§34-7-6 NMSA)
- 9.4 Permanent Storage of Probate Records
- 9.5 Fees
- 9.6 Appointment of Personnel
- 9.7 Checklists and Glossary
- 9.8 Informal Probate Proceedings
- 9.9 Formal Probate Proceedings

- 9.10 Probate of Small Estates
- 9.11 Collection of personal property by affidavit (§45-3-1201 NMSA)
- 9.12 Ancillary Administration
- 9.13 Appointment of Special Administrator
- 9.14 Notice and Waiver Issues
- 9.15 Glossary of Probate Terms

Chapter 10 - SERVICES & FUNCTIONS OF THE COUNTY:

ELECTIONS EXCERPT.....Page 87

- 10.1 Election Officers and Boards
- 10.2 Precincts and Polling Places
- 10.3 Registration of Electors
- 10.4 Absentee/Early Voting
- 10.5 Use of Paper Ballots
- 10.6 Provisional Paper Ballots
- 10.7 Voting Machines
- 10.8 County Canvassing Board

Chapter 11 - RESOURCES (WEBSITES & PUBLICATIONS).....Page 93

Chapter 12 - GLOSSARY OF COMMON TERMS AND WORDS.....Page 95

CHAPTER 1

KNOWING YOUR GOVERNMENT

For more information on this Chapter take NM EDGE classes CPM 111 and CPM 212

In the United States and New Mexico, the respective Federal constitution and state constitution are both the framework and the foundation for the structure of government and the creation of all law.

While the purpose of this chapter and this handbook is to provide the reader with a better understanding of county government and how county-elected offices functions within the State of New Mexico, it is similarly important to understand the structure of government and how its history, culture, and political influence have shaped the face of modern-day New Mexico.

1.1 The U.S. Constitution: Establishing a Federal System of Government

Following the American separation from Great Britain, the original American Colonies formed a loosely aligned union under the *Articles of Confederation*, which provided for a weak central government and powerful state governments. While the central government (or national government) was responsible for handling foreign affairs and the business transactions between the states, it lacked the requisite resources and revenue (taxation power) to conduct its work.

With a number of varying practices, disputes between the states and the inability of the bankrupt national government to take action, Congress recognized the need to rethink and restructure the central government. As a result, a Constitutional Convention was established to address and revise the weaknesses within the original governing document. However, what resulted was more than a mere revision.

When the Constitutional Convention completed its work in September of 1787, the delegates representing each state had created a new document, which fundamentally changed the role of the Federal government and its relationship with the states. Ratified (or placed into law) in 1788, the U.S Constitution established a government based on two essential principles:

1. *Separation of Powers* – Rather than power centralized into one body or institution, the Framers of the Constitution saw a need to divide power between three

independent, but interrelated branches: The Legislative (Congress), charged with creating laws; The Executive (President and Administration), charged with approving laws passed by Congress and executing those laws; and the Judicial (Courts), charged with interpreting law.

2. *Checks & Balances* – While power is shared among the three branches, no single branch can act alone: there is a check on the execution of their power. For example, while Congress makes laws (with the approval of two separate houses), the President is responsible for signing such legislation into law or not (veto). In turn, the judiciary, as part of a common law system, has the ability to interpret the law as it has been applied when questioned in court.

While the Framers of the Constitution created a new, stronger central government, they also left intact the original state governments, creating a system of government we have come to know as Federalism.

In a Federal system, power is distributed between the central government and the state governments. Although the principle of Separation of Powers is applied to the shared authority among the three branches of the Federal government, the concept can be similarly recalled when applied to the respective, shared power among the central government and the states.

For a majority of the Framers, key to the creation of the new constitution (and the new American nation for that matter), was a reverence for individual freedom. It was their intention to see that no single government (Federal or state) or part of government could impede on individual liberties and rights. That is why some believed that it was important to outline, implicitly, individual rights in the original document.

Recognizing this matter, the states, while in the process of approving the Constitution, held that a *Bill of Rights* be added or amended to the document. Such a change was received and was one of the first actions taken by the First U.S. Congress. As a result, in 1791, the Bill of Rights (the first 10 amendments to the Constitution) was ratified.

While each of the first nine amendments to the Constitution are important in their own right, in this instance, the focus is on the tenth, which further highlights the balance of

power between the Federal government and the states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In this very statement, it holds that what the Federal government is not empowered to do by the Constitution is left to each state. However, we know that Federalism, even in its early days, is much more complex, and there are often times no clear boundaries.

1.2 The Role of State & Federal Government

The concept of Federalism is often compared to marble cake because of how the roles of state government and Federal government often intertwine. While some may hold that the Tenth Amendment of the US Constitution clearly suggests that the powers not provided to the Federal government are left to the several states, others would point to the US Constitution's Sixth Article:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

This Article, and its Supremacy Clause, states that the laws of the Federal Government are supreme in their authority and trump similar decisions made by state governments. As a result of these two competing philosophies or views of how Federalism ought to work, we have witnessed an evolution or experiment in Federalism over the past several hundred years. It is a process wherein America has tried to answer the fundamental question of what the proper balance of power and responsibility is between the states and the Federal government.

For example, we know that the US Constitution does not explicitly task the Federal government with the responsibility of education, roads or the administration of a number of social programs. Yet the Federal government provides most funding to states for such programs and initiatives.

It is a question that we continue to struggle with answering, and responses have changed from time to time. Government has responded to changes in society and conformed to the needs of a modern America.

1.3 The New Mexico State Constitution

Like the US Constitution, the Constitution of the State of New Mexico was born in a place and time where there was little trust and great suspicion of government. Despite several earlier attempts at statehood, it was not until 1910 that Congress authorized the territorial government to write a state constitution in the process of becoming a part of the Union.

Elected on a party ballot, 100 delegates from around the state were selected to serve in a Constitutional Convention to last no longer than 60 days. The delegates came from a variety of professions with lawyers, bankers, ranchers, farmers, doctors, newspaper editors, and merchants represented. An overwhelming majority of the delegates were *Old Guard Republicans* who had many staked financial interests in the state. There were few Democrats and Native-born Hispanics represented.

While the *Old Guard* knew that they had a majority in convention and could essentially create any document they desired, there were some key considerations that they had to keep in mind:

- They had to create a constitution that would be acceptable to all voters at that time, which included many Hispanics, and
- The document also had to be satisfactory to the conservative president, Howard Taft, and a Congress suspicious of a state with a diverse population and an unknown terrain.

The *Old Guard* worked to create a constitution to establish a system of government that would be favorable to corporate interests and their personal investments in the state. They were also highly apprehensive of government in general and knew that they wanted to put in place a somewhat weak system, where there would be little governmental influence.

While they created a structure of government that is fundamentally similar to that of the Federal Government (separation of powers and checks & balances), there are some key differences, in that it:

- Established a fragmented executive: Rather than executive power being vested entirely

- to the Governor, power is shared among several elected-executive offices; and
- To ensure that the document would remain unchanged in key aspects, the *Old Guard* established an intricate standard to revise key pieces of the document, which have come to be known as the *Unamendables*.

The *Unamendables* are four sections of the state constitution that cannot be changed without extraordinary majorities for proposing and ratifying an amendment. They are:

- Sections One and Three of Article VII, Elective Franchise
Prohibiting certain citizenship rights from being denied on account of religion, race, language or color, or inability to speak, read or write English or Spanish;
- Sections Eight and Ten of Article XII, Education
Providing for bilingual (English/Spanish) training of teachers, prohibiting racial segregation in education and guaranteeing the right of children of Spanish descent to an equal education.

Passage of a proposed amendment to change the *Unamendables* of the New Mexico Constitution requires:

- Approval of 3/4 (75%) of the members elected to each house of the State Legislature.
- Ratification by at least 3/4 of the electors in the state voting on the question.

Unlike the US Constitution, the New Mexico State Constitution is significantly longer and constantly changing. If we were to compare the original US Constitution to the US Constitution of today, several additions, clarifications and a few changes to original text would be apparent, but the document would ultimately look the same. The opposite is true for the State of New Mexico Constitution, which has been amended, grown and changed several times.

Despite the vast differences between the US Constitution and that of the State of New Mexico, each document serves an importance purpose in the lives of the people it serves.

1.4 County Government in New Mexico

Unlike state government or the Federal government, counties are not autonomous organizations that function with implicit power. Counties are entities created by the state to serve as administrative units or extensions of the state on a local basis. Initially, counties

had a general purpose of assessing and collecting property taxes for the state, enforcing laws, running elections, managing records, and maintaining the roads. While the county continues to fulfill all of these responsibilities, county government has transformed into a vital resource for the constituencies they have been created to serve.

The State Constitution's Tenth Article has three provisions that are the only limits on the State Legislature's power over counties. They include:

- A provision that outlines elections and terms of office for county officials (Section Two)
- A provision which states that a county seat can be removed with the approval of 3/5 of the voters in a given county (Section Three), and
- A provision which prevents the legislature from passing special laws that only affect one or a few counties (Section 24).

Beyond these three items, the State is free to exercise its power over the county. While there are many laws and common practices that define how counties function, there are essentially three vital roles that the county plays in NM (as outlined by Garcia, Hain, Clair & Seckler, 2006):

- They serve as an administrative unit of the state. They provide and maintain vital services for their constituents, especially those living in non-urban areas; and
- They provide innovative and entrepreneurial leadership that will help to further enhance the lives of those they serve.

1.5 Organization of County Government

The form of organization for County Government in New Mexico is established by the State Constitution. The powers of the county as a political and corporate entity are exercised by a *Board of County Commissioners (BOCC)* (Section 4-38-1 New Mexico Statutes Annotated). The BOCC has broad authority, including adopting the annual budget, approving tax levies, and enacting ordinances to provide for the health, safety, welfare and prosperity and morals of the community. In addition, the BOCC has significant appointive, administrative, and regulatory powers.

While the BOCC serves as the governing body of the county, they must also cooperatively share their power with other elected county officials in a number of different aspects. These offices include the Assessor, Clerk, Sheriff, Surveyor, Treasurer, and Probate Judge. Additionally, New Mexico counties also play a role in housing a district attorney and a district judge or judges. Each office is discussed in brevity below:

1.6 County Assessor

In general, the Assessor is responsible for the proper and timely assessment of most property subject to valuation for taxation purposes within the county (§4-39-2 through §4-39-6 NMSA). In addition, the Assessor is responsible for mailing notices of tax liability within their jurisdiction. Though serving in an elected position, the Assessor works cooperatively with the Taxation & Revenue Department.

1.7 County Clerk

The County Clerk serves an important role for the BOCC and the state. The County Clerk is the ex-officio Clerk of the BOCC (§4-40-3 through 8 NMSA) and, therefore, the Clerk must attend all sessions of the BOCC, though a surrogate may be sent in their place. In this role, the Clerk is responsible for recording all action taken by the BOCC and any supporting materials. The Clerk is also mandated by statute to subscribe to and maintain files of all newspapers published in the county (§4-40-7, 8 NMSA). Additionally, the Clerk's office receives a multitude of documents from the public for filing and recording, such as property records, marriage certificates and informal probates, which is a service to the state.

1.8 County Sheriff

The elected County Sheriff is the principal preserver of the peace in the county and is charged with the suppression of assaults and batteries, and the apprehension and commitment to jail of all offenders violating criminal state laws or county ordinances (§4-41-2 NMSA).

1.9 County Surveyor

In all counties, the surveyor is no longer elected. Private surveyors, engineering firms, or the county road or public works department now perform these functions (§4-42-11 NMSA). The office of the County Surveyor was created in 1891 (§4-42-1 through 15 NMSA) to conduct official surveys, plats and maps within the county. Historically, all surveying of county roads and bridges was performed by the County Surveyor who was, by virtue of office, mandated to be one of the reviewers in establishing new roads or bridges.

1.10 County Treasurer

The County Treasurer is responsible for keeping accounts of all county funds received and disbursed by the various county departments, keeping regular accounts of all checks and warrants drawn, and keeping the books, papers and money pertaining to the office ready for inspection by the BOCC at all times (§4-43-2 NMSA).

1.11 Probate Judge

In 1865, the part-time position of elected Probate Judge was created for each county to help with the settlement of wills and estates (§34-7-1 NMSA). The Probate Judge is not required to be a lawyer, but is required to hold court in the county seat (§34-7-4 NMSA). The county is responsible for housing the Probate Judge and providing additional administrative resources.

1.12 District Judge

There are 13 judicial districts in New Mexico, with one or more District Judges in each district. Districts include two or more counties except for the Second (Bernalillo) and Third (Doña Ana) Judicial Districts, which contain only one. District Judges are charged with presiding over cases of general jurisdiction at the trial level. District Judges hear both criminal and civil cases, and divisions to address specific matters (such as family law) can be created.

Each county is required to provide quarters for the operation of the District Court, including juvenile probation services. The provision of office space includes necessary utilities and maintenance service for the operation and upkeep of District Court facilities (§34-6-24 NMSA).

1.13 District Attorney

While the District Attorney is elected locally, they are an employee of the state and all salaries and expenses, except office space, which is the responsibility of the county, are paid from state funds appropriated to the District Attorney (§36-1-8 NMSA). The District Attorney is charged with prosecuting and defending criminal and civil cases in which the State or county is a party, or may be interested in all courts of record (i.e., magistrate courts are not “courts of record”) within the district. The District Attorney is also authorized and required by law to represent the BOCC upon request, to advise all county and state officers whenever requested, and to represent any county in the district in all civil cases in which

the county may be concerned in the Supreme Court or Court of Appeals, except in suits brought in the name of the State (§36- 1-18 NMSA).

1.14 Tribal Governments in New Mexico

Written by Fred Harris and used with permission

Approximately 2.5 million Native Americans are found in over 500 groups known as tribes, nations, pueblos or native villages.

- Around 10% of the two million people who live in New Mexico are Native Americans.
- Reservations in New Mexico include:
 1. Mescalero Apaches
 2. Jicarilla Apaches
 3. Part of the Navajo reservation
 4. Nineteen Pueblos
- Each of the nineteen New Mexico pueblos is a Federally recognized Indian tribe.
- The Navajo tribe is the largest in the United States. Reservations arose when Congress “reserved” or set aside certain lands for Native Americans.
- American Indian tribes are not, as some think, “foreign nations.” For example, they can’t make treaties with foreign governments.
- The Federal Government has exclusive power to deal with Federal and tribal matters, unless it delegates that power to the states - which it rarely does.
- Upon becoming a state, New Mexico adopted a constitutional provision (Article XXI, Section 2) giving up taxing jurisdiction and other authority on Indian reservations.
- Legally, a pueblo and a reservation is the same thing. Pueblo is a Spanish word for village.
- New Mexico was the first in the nation to create a Bureau of Indian Affairs and a Cabinet Level appointment made by the NM Governor. For many years Federal policy sought to assimilate Native Americans. It was felt that Native Americans should become like everyone else.
- Since the 1960’s, however, federal policy has changed. Preserving the heritage of Native Americans is encouraged. Native Americans, in addition to being citizens of the United States and the state they live in, are also citizens of the tribes of which they are enrolled as members. Each tribe has the authority to determine who is eligible to be a member.
- Dual citizenship means that Native Americans are entitled to vote in all elections plus tribal elections.

- Native Americans have become active in state and national politics. They are represented in the state legislature. Indian casinos have become a significant source of campaign funds.

When Congress created the reservations, the federal government assumed responsibility for providing certain needs such as health and education benefits.

- But Native Americans do not receive individual payments, as some people think.
- Just as it does for state and local governments, the federal government makes grants and loans to tribes and tribal programs.
- For example, when a Native American attends a public school, the federal government makes a contribution for this purpose to the local school district. This is similar to a federal contribution for children who live on military bases and attend public schools.

Do tribal members have the same constitutional rights as the rest of the country?

- Almost. The Bill of Rights acts as restraint on federal officers. The Fourteenth Amendment acts as restraint on state and local officers. But these amendments do not apply to tribal officials.
- To remedy this, Congress passed the Indian Civil Rights Act in 1968 to put similar restraints on tribal officers. But there are exceptions. For example, an Indian tribe can establish a religion, of whatever kind, although it cannot prohibit other religions. A Pueblo may choose to have a Catholic priest “bless the canes” (a traditional symbol of authority) for an inauguration of tribal officials.
- Nor is a tribe required to elect its officials. In fact, the majority of pueblos choose their leaders in the traditional (non-elective) way.

For more information on Tribal Government in New Mexico see *Governing New Mexico: "American Indians and tribal governments" / Chapter* Written by Fred R. Harris and LaDonna Harris, UNM Press, 1994.

1.15 Tribal Government Relationships with Other Governments

Researched and Written by Douglas Decker, JD, McKinley County Attorney

Federal Indian Law --

“Prior to the creation of the United States, the entire land mass it now occupies was owned and governed by hundreds of Indian tribes. These tribes, sovereign nations under international law, were brought into the United States through a colonial process that was

partly negotiated and partly imposed. Federal Indian law is the primary mechanism for mediating the resulting intergovernmental relationships among the Indian nations, the United States, and the states of the Union.” [Underlining added].

–Cohen’s Handbook of Federal Indian Law.

Some basic concepts to keep in mind in discussing Tribal Government relations with other Governments are:

- Tribal status as Federally-Recognized Tribal Governments.
- Tribes govern citizens of its government (Tribal Members); and, Territory - - i.e. Indian Country.
- Tribal Sovereignty.
- Exclusive Federal Authority in Indian Affairs or Preemption.
 - No state authority over activity in Indian country if preempted by federal law.
 - Fee land within Indian Country is broader in scope than under constitutional law, and as such State law may apply.
 - State law will be preempted if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests sufficiently justify the assertion of state authority. Balancing of interests of the three sovereigns.
 - Trust Responsibility of the United States Federal Government

Pre United States Constitution: Discovery, Settlement, and Colonial period.

- The “Rule of Discovery” simply put was the notion of 16th and 17th century European countries had to simply plant their flag in unknown lands; and, thereby exercise sovereign authority. This simple act of planting the flag divested all existing governments and simply left the inhabitants a Right of Occupancy.
- This rule was tempered somewhat when King George III issued the Proclamation of 1763 to prevent settlements of colonies in the west of the Appalachian Mountains.
- The framers of the US Constitution had examples of how a system of separation of powers in a central government worked. The IROQUOIS CONFEDERATION united several tribes (Mohawk, Oneida, Onondaga, Cayuga, and Seneca nations). The governance structure of the Confederation had three separate groups:
 - A Chief: as the Executive
 - Two groups of “lords”: as the Legislature
 - Fire Keepers: as the Judiciary

Ratification of the United States Constitution in 1789.

- The US Constitution Creates a bi-governance structure: a National or Central Government (separate Executive; Legislature; and, Judiciary) with enumerated powers; and, State Governments having significant independence and power. This notion of Federalism means USA has 51 different governments above local governments, i.e. the 50 States and the Federal Government. Tribal Governments are also addressed in the US Constitution with subsequent US Supreme Court Decisions and Federal Legislation.
- The US Constitution vests the federal government exclusive authority over commerce with Indian tribes and treaties with tribes. [See, US Constitution Article I Section 8(3); and, Article II Section 2(2)]. From 1790 to 1871, the United States entered into just under 400 treaties with tribes. In 1871, Congress passed a statute that purportedly ended the President's authority to negotiate treaties with tribes. Now the United States still negotiates with tribes, but resulting agreements are adopted as legislation.

The United States Supreme Court interpreting the Constitution handed down three foundational Indian Law Opinions which are now referred to as the Marshall Trilogy or the Indian Cannons of Construction.

Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823).

Cherokee v. Georgia, 30 U.S. (5 Peters) 1 (1831).

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)

Johnson v. M'Intosh

- This case was a land dispute in the nature of ejectment, involving non-Indians -- One party purportedly acquiring title from a tribe through private purchase; and, the other party with a land patent.
- Case was viewed as collusive litigation by land speculators seeking to secure a decision to defeat the 1763 Royal Proclamation.
- Ruled on the Discovery Doctrine: discovering colonial power acquires title to the land, and tribes retain "aboriginal title" – a right to occupy the land

Cherokee v. Georgia

- The State of Georgia declares the Cherokee territory to be "Cherokee County" and opened the lands for non-Indian settlement.
- Georgia purported to extend its jurisdiction into the Cherokee lands and render tribal laws null and void

- Georgia prohibited Indians from testifying in court.
- Cherokee Nation sued Georgia, relying on the U.S. Constitution Article III, Section 2 original jurisdiction of the Supreme Court.
- The Supreme Court held: Indian tribes are not foreign nations, which would give the Supreme Court original jurisdiction under Article III, Section 2.
- The case is most cited for two other propositions: Tribes are Nations; and, Tribes are not states of the Union, but are “domestic dependent nations.”
- In this case, the Court distinguishes between “external” and “internal” sovereignty. [External is the power to enter treaties with other nations, which Tribes do not have; and, Internal means that Tribes are part of the United States – i.e. the notion of federalism].
- The case did not resolve crux of the dispute between Cherokee Nation and Georgia was not settled.

Worcester v. Georgia

- Non-Indian missionary living in Cherokee Nation convicted in Georgia state court of violating state law forbidding non-Indians from being in Indian Country without a license.
- Georgia did not file a brief or appear at oral argument.
- The Supreme Court held that State law does not apply in Indian Country, Emphasizing the tribe’s plenary authority in Indian Country.
- Today there is still a presumption against state authority in Indian Country

Self-Determination:

From the ratification of the U.S. Constitution in 1789, Federal policy toward Indian tribes has moved in various decades from physical extirpation to measured separatism to removal to assimilation to self-determination – sometimes at the same time.

-Prof. Matthew L.M. Fletcher

Today we are in what can be called the Self-Determination Era. This era has an origin in the late 1960’s.

In 1969 the Senate Labor and Public Welfare’s Special Subcommittee issued a report on “Indian Education; A National Tragedy – A National Challenge”.

This report found among other things:

- “A nation that is massively uninformed and misinformed about the American Indian and his past and present.”
- “Prejudice, racial intolerance, and discrimination towards Indians far more widespread and serious than generally recognized.”

President Lyndon B. Johnson in a 1968 message to Congress: “The Forgotten American”, stated the goal of ending termination (the prior policy of ending the Trust Relationship) and stressing self-determination. Some of the goals set out by President Johnson included:

- Freedom of Choice: An opportunity [for Indians] to remain in their homelands, if they choose, without surrendering their dignity; an opportunity to move to the towns and cities of America, if they choose, equipped with the skills to live in equality and dignity.
- Full participation in the life of modern America, with a full share of economic opportunity and social justice.

President Richard M. Nixon’s address on Indian affairs in 1970 stated the goals for national toward the Indian people to include:

- Strengthen the Indian's sense of autonomy without threatening his sense of community.
- Assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group.
- Make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.

These goals and findings culminate in the adoption of the “Indian Self-Determination and Education Assistance Act of 1975.

- Rather than the Bureau of Indian Affairs (BIA) providing services, the tribes themselves have the option of providing and managing services.
- Recognition that tribes were in the best position to govern their affairs and determine their future.

Other considerations to consider in Government to Government relations with Tribes:

- The US Constitution; Supreme Court Case Law; along with, International The Full Faith and Credit Clause—Article IV, Section 1, of the US Constitution—

provides that the various states must recognize legislative acts, public records, and judicial decisions of the other states within the United States. It states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The Full Faith and Credit Clause ensures that judicial decisions rendered by the courts in one state are recognized and honored in every other state. It also prevents parties from moving to another state to escape enforcement of a judgment or to relitigate a controversy already decided elsewhere, a practice known as forum shopping. This is the basis of Government to Government relations between States of the United States. Indian Tribes are not States; nor are they foreign nations, but are domestic dependent nations.

The US Constitution is the source for the government to government relationship between Tribes and the Federal Government. When developing a government to government relationship between States of the U.S. (or their political subdivisions – i.e. Counties and Municipalities) we borrow principals found in international law.

The doctrine of comity --- The U.S. Supreme Court's holding in *Hilton v. Guyot* (1895) where the Court held in that case: ..."Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Comity in the U.S. between States (including the political subdivisions) and Tribes is stronger because the citizens of the Federally Recognized Indian Tribes are also citizens of the United States.

- Tribal Jurisdiction and Regulatory Authority

Both Civil and Criminal Jurisdiction of Tribes hinge primarily on two factors: who and where.

- Who (political identity): Member Indian, Non-Member Indian, Non-Indian.
- Where: Indian Country

Other considerations in analyzing jurisdiction and how laws are applied include:

- *Montana v. U.S.* is the “path-marking case” standing for the Presumption in favor of Tribal regulatory authority in Indian Country.
- If the location is Fee Land within Indian Country and the person is a non-Indian; first look at treaties or federal statutes that may affirm/vest jurisdiction. If none, then the presumption is against tribal regulatory authority, unless:
 - Conduct threatens or directly affects the tribe’s political integrity, economic security, or the health or welfare; or,
 - The non-Indian has consented to tribal jurisdiction
- Statutes or Federal regulations that grant authority to Tribes:
 - Clean Water Act
 - Clean Air Act

Congress may regulate in Indian Country pursuant to its broad authority. However, there is an outstanding question whether this can be done through generally applicable laws.

- New Mexico Police Power intergovernmental relations:
 - N.M.S.A. Section 29-8-3. Mutual aid agreements – a/k/a Cross Commission Agreements. “Any state, county or municipal agency having and maintaining peace officers may enter into mutual aid agreements with any public agency as defined in the Mutual Aid Act, with respect to law enforcement, provided any such agreement shall be approved by the agency involved and the governor.
 - See, *Loya v. Gutierrez*, 2015-NMSC-017, 350 P.3d 1155. The New Mexico Supreme Court only mentioned the Mutual Aid Act in passing. The facts of *Loya* did not include a validly executed Cross Commission agreement. The Court did hold that “Count[ies] must provide [non-county employee peace officers that are commissioned by the Sheriff] ...with a legal defense, including costs and attorney’s fees in conformity with the [New Mexico Tort Claims Act] NMTCA.

Further Resources

Cohen's Handbook of Federal Indian Law (LexisNexis Matthew Bender 2012).

William C. Canby, Jr., American Indian Law in a Nutshell (6th ed. 2015).

Matthew L.M. Fletcher, Federal Indian Law (West 2016).

Lindsay Robertson, Conquest By Law (2012).

1.16 Cultural Awareness Researched and Written by Reese Fullerton, JD

The importance of cultural awareness, competence and humility when relating with Native American governments, individuals, families and communities

How do we learn to respectfully interact with tribes and their citizens?

Direct interaction, experience and personal relationships build understanding and respect for different cultures. We need to remember that there is great diversity in cultures among tribes and pueblos. Cultural customs vary significantly. Each community is unique and their customs are important to understand.

We need to have an open mind, a sense of humor, honest communication, be flexible and adaptable, tolerate ambiguity, be sensitive and respectful of differences, not make assumptions, be aware of the possibility of misunderstanding, let time happen in a conversation, do not interrupt, listen carefully, seek guidance, always remember you are a guest, and be respectful, predictable and credible.

You can build trust by demonstrably respecting their values, sharing interest in their welfare and following through on commitments. When asking questions for understanding make the purpose explicit. A question about culture should relate to how services are to be provided in a culturally appropriate manner. Confidentiality and privacy are extremely important to insure for a tribe or a pueblo.

So your ability to value cultural differences, understand a range of dynamics that can occur in interactions among people of different cultures and your ability to adapt programs, projects and services to fit the cultural context of the individual, family or community is critically important.

So how do we do this?

Our agenda needs to be secondary and open. We need to be transparent and flexible. We need to explore joint purposes and inclusive priorities. We need to work together, be clear about the impact of a project or of services, clarify roles and responsibilities, and understand where there is agreement and differences, and keep discussing the process and checking in to insure that everyone is comfortable with how things are progressing.

NOTES

CHAPTER 2

KNOWING THE LAW

For more information on this Chapter take NM EDGE classes CPM 113, CPM 114, and CPM 153

In order to understand law in the United States and New Mexico, we must first understand the sources of law. Generally, there are two sources of law: primary and secondary. Primary sources of law are laws created by an established body of government and have the potential to impact the citizenry. Secondary sources of law are essentially background resources that do not have the weight of law but help us to understand primary law. Here are some examples of each:

- **Primary Sources of Law:** Constitutions, Statutes (state or Federal laws), ordinances (local government laws), administrative regulations or executive orders (by the President, Governor or a cabinet-level secretary), and court decisions (rulings made by the courts that interpret or clarify the law).
- **Secondary Sources of Law:** Opinions issued by the Attorney General, legal publications and dissenting court opinions (arguments against court rulings).

While it is always good to know about secondary sources of law, it is of greater importance, for the purpose this text, to understand our primary sources of law and who has the authority to make such laws.

2.1 The Power to Make Law

In general, it is Congress and the New Mexico State Legislature who have the authority to make law in New Mexico. However, those laws (as legislation) must be signed into effect by the President or the Governor. Such laws are often the subject of dispute and interpretation and that is when the court systems, both federal and state, have the ability to further define the law and thus make policy through precedence.

While the federal government does have the ability to make laws that affect all states and the laws that they make individually, not all federal laws are applicable in each state. Conversely, laws made in New Mexico only affect New Mexico. Nonetheless, the law in New Mexico can affect how the federal government operates within the state.

2.2 The Lawmaking Process

Although both Congress and the New Mexico State Legislature follow ultra-specific procedures in the lawmaking process, all laws are made following a rather general process (model adaptation from Kraft & Furlong, 2007):

- **Agenda Setting:** This is where an issue, problem or desired change is presented before a policy making body such as the State Legislature or the Board of County Commissioners (BOCC). The influences at this point are essential. The public, policy-makers (lawmakers), current events or legal mandates (laws about law making) all play a role in determining what becomes part of the agenda.
- **Policy Formulation:** Once there is a specific issue or item being discussed by a policy-making body, policy-makers must discuss, create, and outline how they will address a particular issue. This process occurs in a political system and there are often clashes of values.
- **Policy Legitimation:** During the process of formulating policy, lawmakers (policy-makers) must mobilize support for their policy proposal and how it will to achieve its outlined goals. This is the politicking of the process. Not everyone or every policy will prevail. This part of the process often requires compromise and change to a policy in order for it to be adopted.
- **Policy Implementation:** Once a policy has gone through a very complex and lengthy process of approval and adoption (very few items make it this far), it is time to put it into place. Some laws take effect immediately, while others are implemented at a later time or slowly phased into place.
- **Policy Evaluation:** While it is becoming more and more common for a law to require revision within a given period of time, not all laws require future review. However, most laws, should they need to be modified and adapted, will require evaluation. This part of the policy-making process is often left to professionals (such as the Legislative Council Service) and results are presented to the policy-making body.
- **Policy Change:** If a law or policy requires change, it will have to reenter the competitive process as listed above. It will again have to compete for a place on the agenda and be walked through the complexities of the political process.

For specific details on the lawmaking processes in New Mexico and in Congress, please see the following resources:

- Federal lawmaking: “How Our Laws are Made,” Revised and Updated in 2007, by John V. Sullivan, Parliamentarian, U.S. House of Representatives
<http://thomas.loc.gov/home/lawsmade.toc.html>
- State law making: “How a Bill Becomes Law”, by Allen Maury
- <http://nmedge.nmsu.edu/documents/how-a-bill-becomes-law-.PDF>

2.3 Other Law Making Bodies

Although legislative bodies are typically regarded as the sole creators of law in America, it is important to keep in mind that is not always the case. Administrative decisions and rules set by governmental units also have the effect of law. For example, while the BOCC creates policy for Human Resources within a given county, the Board cannot make a law for every possible HR-related issue. Rather, the Human Resources Department, under direction of the county Manager, tends to be provided with a general law that they have to interpret and apply as they believe was expressed by the BOCC. While their decisions can be overturned by the BOCC (or another governing body, such as the courts), most administrative decisions or policies have the effect of law.

2.4 The Impact of Laws

While counties also follow the policy-making process as a lawmaking entity, it is important to also watch how such a process plays out at both the Federal and state level. While laws have the ability to impact a number of groups and stakeholders, laws at the state and Federal level have a significant impact on local government.

Local governments, including counties, are often delegated or mandated to carry out very specific tasks and duties. Generally, there are two types of mandates that can be placed upon counties. Here is what they are, with some examples:

- *Funded Mandates*: If the State Legislature were to pass a law requiring counties to provide immunizations to all those who present themselves, and provided the funding and/or requisite resources to purchase the vaccines and deliver such a service, the county has been given a funded mandate.
- *Unfunded Mandates*: On the other hand, if the State were to require the county to provide immunizations, but provided zero funding and/or resources beyond their general appropriations that would be an unfunded mandate. The county, through the BOCC, would be forced to find a way to pay for such a requirement.

In an effort to prevent the Federal Government from placing unfunded burdens on counties, the Unfunded Mandates Reform Act of 1995 (UMRA) was established to curb such a practice. Under this act, Congress and Federal agencies are required to identify and evaluate mandates placed on other governmental entities.

In New Mexico, Article X, Section Eight of the State Constitution holds that the state government cannot place mandates on local governments unless requisite resources or funding are provided. Note that the language does not apply to un-funded laws passed by the legislature:

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed. (Adopted by the people November 6,1984.)

Despite these efforts, unfunded mandates are still handed down to local government. However, through effective intergovernmental relations and communication, there are things that can be done to curb these types of directives.

2.5 Encouraging Public Involvement in Policy Making & Transparency

While there is an expectation that lawmakers understand and know the needs of their constituency, it is impossible to expect that representatives in government are all-knowing. That is why it is critical for policy-makers to engage the public in all decisions they make. Inclusive government is vital to the preservation of a democratic society. To aid public servants in their inclusive efforts, there are two key laws that all elected officials should know.

The first is the New Mexico Open Meetings Act (OMA), which was established to ensure that the public has every opportunity to involve themselves in the policy making process. The purpose of this Act holds that:

- Representative government depends upon an informed electorate
- All persons are entitled to the greatest possible information regarding affairs of government and the official acts of public officers and employees; and

- Providing such information is an essential function of government and an integral part of the routine duties of public officers and employees (Section 14-2-5 New Mexico Statutes Annotated)

The act provides explanations for what types of meetings fall under the law, public notice requirements for meetings, and proper issuance of agendas, minutes, and closed meetings. Also covered in the Act are remedies, penalties, and exceptions to the law.

The second is the Inspection of Public Records Act (IPRA), which serves as New Mexico's version of the Federal Freedom of Information Act and is designed to provide the public with access to virtually all public records. Such a law is intended to see that all work and action of the government is visible to the public. Of course, there are some limited restrictions on what is open.

For more information on both of these laws, please see the New Mexico Attorney General's compliance guides. These guides aid local governmental agencies in meeting each respective act's requirements.

The OMA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <http://www.nmag.gov/consumer/publications/openmeetingsactcomplianceguide>

The IPRA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <http://www.nmag.gov/consumer/publications/inspectionofpublicrecordsactcomplianceguide2009>

For a video that explains both New Mexico's OMA and the IPRA, please see <http://www.nmag.gov/newsroom/video-clips/omaipra>

NOTES

CHAPTER 3

ETHICS & PROFESSIONALISM IN THE PUBLIC SECTOR

For more information on this Chapter take NM EDGE CAPE classes.

Introduction - Ethics are Essential to Government

People judge their government by the caliber of those who serve in it. The public's belief in the integrity of their government will be determined entirely by the ethics of its elected officials and appointed personnel, from the highest elected officials forging policy, to the thousands of public employees diligently conducting the daily work of government.

When members of the public trust their government to act with integrity, they are more likely to vote, voice opinions on issues, resolve disputes through the courts and administrative agencies, pay their taxes fully, cooperate with government authorities, and otherwise comply with the law. Their trust in government depends upon the belief that it will keep its promises, perform diligently and competently, give out truthful and complete information, act transparently, distribute public benefits and burdens fairly, and use publicly funded resources for the benefit of the community.

Nothing erodes public confidence in government more than unethical or dishonest leadership. Even the perception of immoral or corrupt behavior among elected public officials can be sufficient to destroy political careers. More important, however, is the impact on the larger community. The cynicism and distrust of government that usually follows political scandals over ethical violations diminish the public trust in its leaders, institutions, and laws. Both history and current events offer numerous examples where the public found dishonesty and favoritism so pervasive that they even attacked the very legitimacy of their governments. (NM EDGE class PE 226 offers further discussion of this topic.)

This chapter will offer a brief overview of ethical government for public officials, including:

- Universal ethical principles
- Ethical principles for public servants
- Ethical requirements in New Mexico law
- Ethical rules for specific areas of public service
- How leaders create a culture of ethics
- Suggested models for ethical decision-making
- Consequences of misconduct

This chapter is intended only as an overview. The NM EDGE curriculum for Certified Advocates for Public Ethics (CAPE) offers a series of classes exploring these and other concepts in detail. Throughout this chapter we parenthetically note NM EDGE ethics classes in which material is explored, either as Public Ethics (PE) or Certified Public Manager (CPM) classes. All classes noted may be credited toward attaining a CAPE certificate from NM EDGE.

3.1 Universal Ethical Principles (PE 120, CPM 139)

Ethicists have attempted to identify ethical principles valued in all settings and across many different cultures. While there are some differences among their lists, several principles appear on virtually all of them. According to one typical formula, universal ethical principles include:

- Trustworthiness
- Responsibility
- Compassion
- Respect
- Fairness
- Loyalty
- Tying all these principles together is a general rule, familiar to all of us, that has been stated in various ways over the millennia:

Treat Others as You Would Yourself Wish to Be Treated.

3.2 Ethical Principles for Public Servants (PE 239)

When we apply these universal ethical principles to the work of public servants, we find principles like these:

- Public service is a trust to be used only to advance public interests, not personal gain.
- Decisions are to be made on the merits, free of partiality or prejudice and unimpeded by conflicts of interest.
- Government is to be conducted openly, so the public can make informed judgments and hold public officials and servants accountable.
- Leaders of governmental agencies are responsible for ensuring that they, and all other public servants under their authority, conduct the public's business efficiently, equitably and honorably.
- All public officials must observe the letter and spirit of the laws.
- Public officials are responsible for safeguarding public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public servant.

3.3 Ethical Principles in New Mexico Law (PE 110 and PE 111; CPM 142 and CPM 153)

New Mexico has embedded many ethical principles into its statutes. Conduct that does not violate the law may still violate other ethical principles. But violating ethical laws may lead to administrative, civil and even criminal sanctions. Ethical violations that do not violate the law still have consequences, discussed elsewhere in this chapter, such as undermining public trust.

A. Governmental Conduct Act:

The primary law governing ethical conduct by officials of New Mexico state and local government is the Governmental Conduct Act, §10-16-1 et seq. NMSA 1978.

Originally this law applied only to officials and employees of state government. In recent years the legislature has extended coverage of this law to officials and employees of local government, including judges and many board and commission members. It has therefore become crucial that all state and local government officers and employees in New Mexico, including even volunteer board and commission members, understand their ethical responsibilities under the Act. To that end, the Attorney General has published a Compliance Guide to explain the provisions of the Governmental Conduct Act and clarify their application to covered officials and employees. In addition, the Guide will enable members of the public to become more knowledgeable about the standards of conduct the Act requires and assist them in holding their representatives in government accountable to those standards.

The Attorney General's Compliance Guide on the Governmental Conduct Act may be found online at <http://www.nmag.gov/> Select the Governmental Conduct Act Compliance Guide from the menu on the left.

B. Other Ethics Laws Applicable to Local Government:

The Governmental Conduct Act is not the only New Mexico law that imposes ethical restrictions on officials and employees of local governments. For example, the Whistle-blower Protection Act, §10-16C-1 et seq. NMSA 1978, protects public employees against retaliation for disclosing improper conduct at their public agencies. The Open Meetings Act and Inspection of Public Records Act, both described in section 2.5 of this Handbook, are designed to ensure transparency of governmental decision making, so citizens can provide their input and hold their elected representatives accountable for their actions. Local governments who use the State Procurement Code, §13-1-1 et seq. NMSA 1978, are subject to ethical requirements related to their purchasing and contracting practices. A number of

state laws prohibit government employees from committing serious unethical practices such as embezzling funds, receiving kickbacks or unlawful fees, or nepotism. And federal laws also control conduct by local government officials in certain circumstances. One example is the limitation on political activities imposed by the Hatch Act, 5 USC §1502, on officials whose jobs are partially or wholly funded by federal grant money.

A listing of many of these laws is attached as Appendix II to the Attorney General's Compliance Guide on the Governmental Conduct Act. The link to the Compliance Guide may be found in the previous section of this Handbook.

3.4 Ethical Rules for Specific Aspects of Public Service (PE 110 and PE 120 in general, and other classes as noted):

Public servants elected or appointed to positions in local government are required to comply with ethical rules in discharging all of their responsibilities. What follows are some examples, briefly described, of ethical rules that arise frequently for those working in the public sector.

A. Conflicts of Interest:

The Governmental Conduct Act, Criminal Laws, and the Procurement Code, all referenced above, contain numerous restrictions to prevent people from using their public position to unlawfully benefit themselves, family or friends. For example, these laws restrain people from being involved in hiring or contracting decisions from which they or close family members may benefit. Even former employees of government are restricted from benefiting from certain transactions involving their former agencies. The first step to overcoming ethical problems arising from conflicts is to make full disclosure to the appropriate authorities.

B. Abuses of Power (PE 147):

Public officials cannot take advantage of their authority to harass other people, improperly gain political advantage, or seek unauthorized special favors. Examples of abuse of power include sexual harassment or other forms of bias; offering or withholding public services based on the political affiliations of those requesting them; or avoiding criminal citations because of one's official position.

C. Managing Public Funds (CPM 142):

Special rules apply to those in charge of managing public funds, to ensure that the funds are protected and used as intended. Those having these responsibilities must be aware of their duties as fiduciaries, including the obligation to act with diligence, responsibility, loyalty and honesty.

D. Managing Staff (PE 239):

Supervisors are required to treat those they supervise with fairness, respect and sensitivity to their rights as employees. Employees must be treated with impartiality when being hired or promoted, and must receive due process when being disciplined.

E. Politics:

While elected public officials are expected to campaign for office, it is unethical to use official resources or status in support of one’s election or other political objectives.

Officials are prohibited from requesting, or even “advising,” any employee to contribute to or to work on a political campaign.

F. Civility (PE 123):

This is one area where ethical principles require positive behavior, even when laws may not. Public officials should treat all people with whom they come in contact— colleagues, employees, citizens, the media, everyone else they serve—courteously and openly.

Government suffers when lapses occur.

G. Research (CPM 271):

Research is an important tool of government, but when it does not consider ethics it can do more harm than good. For example, insensitive polling can cause invasions of privacy, or even emotional harm for people dealing with stressful situations.

H. Transparency (CPM 153):

Government can only be trusted when it operates as much as possible in the open. When citizens understand what officials have decided and, even more importantly, how they decided it, the public will be more inclined to trust the officials’ efforts and less inclined to oppose them. This applies both to meetings and government documents, but with exceptions to protect the public interest. See section 2.5 of this Handbook, above.

3.5 Ethical Leadership (PR 239)

Elected public officials have special obligations to ensure that government adheres to the highest ethical standards. It is not enough for elected officials to be honest personally; they are also accountable to the public for the honesty of all appointed public officials that they supervise and contractors that they approve. Meeting these expectations requires elected leaders, as well as other managers, to make several commitments for their terms of office:

A. Understand the Importance of Appearances:

Leaders of government organizations must recognize that appearances count for as much as reality. A public official may know, for example, that he will be fair and unbiased when dealing with a request by a relative or close friend for some service.

But to outside observers, just dealing with such a person gives the appearance that the official cannot help but be influenced by the relationship. Unlike in the private sector, public officials are working with the community's resources, not their own. Thus appearances matter.

B. Create a Culture of Ethics (CPM 139 and PE 239):

A leader must inspire ethical conduct within the organization. The leader must demonstrate every hour of every day that ethical conduct is valued and emphasized. Employees and colleagues must know that choosing the ethical course of action will be respected and rewarded, even when it may not be the fastest or easiest way to attain other goals. It is equally important to convey the message that unethical conduct will not be tolerated or overlooked, even when it is done in the name of a desirable goal.

To create a culture of ethics, a leader must ensure that everyone working with the organization understands that he or she is expected to behave ethically at all times. This requires training in ethics for everyone in the organization, and clear statements of the standards of expected conduct. The disciplinary consequences of unethical conduct must also be clearly defined, and, when necessary, applied. Leaders must assess the compliance of staff with ethical standards, both through periodic performance reviews and through closer, more frequent monitoring as needed to resolve problems.

To ensure the credibility of the agency's commitment to ethics, leadership must train everyone to recognize and respond appropriately to trouble signs, whether those signs point to inappropriate conduct internal to the organization or in dealing with the public. Staff and the public must have clear, easily accessible directions on how to report ethical concerns, and each concern must be acted on promptly and appropriately. Staff must also be confident that a fair and efficient mechanism exists for resolving disputes within the organization, so that they will resort to those mechanisms for constructive conflict resolution before disputes escalate.

C. Commit to a Principle-Based Approach to Ethical Decision-Making (PE 120 and 220):

Decisions with ethical consequences often come with little warning and under intense pressure, especially for leaders with weighty responsibilities. Decisions are most difficult when there are advocates for both sides, each emotionally involved. It is therefore valuable for those responsible for deciding to understand and commit in advance to use one or more systems of ethical decision-making. While there are

different ways to resolve ethical dilemmas, the important thing is to commit to using a principle-based approach. If the leader is able to articulate a principled, factually supported reason for his or her decision, that reduces the concern that the leader plays favorites or responds without adequately understanding the situation.

To begin a principle-based ethical decision making process, it is helpful to start with several preparatory steps. First, seek as much information about the issue as possible. Information obtained from a single source will likely omit important facts important to other perspectives. Second, review and consider all the facts, to anticipate all the possible consequences of the decision. Third, review your own emotions and put them in context. While reason is usually a more reliable guide than emotion, “gut reactions” may be helpful in matters such as reining in offensive conduct. But it is important to analyze whether the emotion involved is an appropriate one. Fourth, be open to all solutions, since the most ethical and productive decision may not be the one that has been used before or that first comes to mind.

Examples of principle-based approaches include:

- a “virtuous character” test (what would [insert your personal role model] do in this situation?);
- a “disclosure” test (has the process been open and transparent?);
- a “professional ethics” test (does the decision satisfy the professional requirements in the relevant field?);
- an “intuitive ethics” test (which decision feels right?).

Each of these tests has some strengths and some weaknesses, making each appropriate in some circumstances and less appropriate in others. The point is not to select one in advance and stick to it for every decision. Rather, the point is to recognize which test is operating in the decision making process, to articulate how it has been applied, and to check whether the chosen approach is the most suitable and persuasive to others.

3.6 Consequences of Ethical Breaches (PE 110 and 111)

As discussed in the beginning of this chapter, unethical conduct in government does serious harm to the public interest and to citizen confidence in government. A critical job for elected officials is to use every available tool to prevent ethical problems before they arise. When they arise despite the best efforts of agency leadership, a rapid and predictable response should follow.

A. Education

The first response need not always be punitive. Even employees trained in ethical conduct

may not understand the rules, especially when they are new to government. Misconduct may result from honest mistakes. In such cases, education may be sufficient to prevent further errors, provided that the damage that was done can be repaired. Relying on education where possible also encourages other employees to report problems, since the consequences to the offender may not be criminal charges or administrative discipline.

B. Administrative Sanctions

Most ethical misconduct is handled through disciplinary action. Any disciplinary measures should be only as harsh as the seriousness of the misconduct. Such measures may include reassignment, suspension or dismissal, among others. See Chapter 7 of this Handbook for disciplinary options and the restrictions on imposing them.

C. Civil Action

When serious infractions have occurred, the Governmental Conduct Act provides for civil cases to be filed. These can be used to recoup losses caused by the unethical conduct and prevent further such actions.

D. Criminal Proceedings

When public officials break the law, it may be necessary to refer the matter for prosecution. Most infractions of the Governmental Conduct Act and state criminal laws are classified as misdemeanors, but some are felonies. Criminal laws may also provide for forfeiture of salary or benefits.

Conclusion

Everyone who chooses to enter public service, whether through election or appointment, commits to abide by rules of ethical conduct. It is incumbent on all government personnel to learn the rules and observe them. Leaders have an additional obligation: to ensure that the culture of their government agency includes a commitment to ethics.

CHAPTER 4

ROLES & RESPONSIBILITIES OF THE NM COUNTY CLERK

4.1 Election to Office

The office of county clerk is established by Article VI, Section 22 of the New Mexico Constitution. The statutes provide for the election of a county clerk to a four-year term. The constitution also requires that all county officers be residents of the county for which they are elected (Art. V, Sec. 13). All county officers are to establish and maintain their offices and headquarters for the transaction of business at the county seat (§4-44-34 New Mexico Statutes Annotated 1978). Stationery, postage and office supplies are provided by the Board of County Commissioners (§4-44-33 NMSA).

4.2 Bond and Oath of Office

The law requires all county officers to be bonded, to assure faithful performance of the duties required by law (§10-1-13 NMSA). Any elected county official failing to meet the nominal bonding requirements by January 10th following their election or within ten days after appointment shall have their office declared vacant. The clerk must also take and subscribe to an oath of office as must any of their appointed deputies.

It is evident the law is somewhat outdated, as it requires that the amount of the bond is to be fixed by the Board of County Commissioners in an amount equal to 20% of all public monies received during the preceding fiscal year, but not to exceed \$10,000 in the case of the county clerk. The cost of the bond for all county officers is to be paid from the county general fund, and the terms of this statute are usually fulfilled by coordination between the elected officer and the county's risk manager, in cooperation with the New Mexico Association of Counties Insurance Authority, the insurance pool that insures many New Mexico counties.

4.3 Duties of the Office of County Clerk, Generally

The duties of the county clerk can be categorized into several different areas, which will be addressed in some detail in the chapters that follow.

- First, the county clerk serves as the arm of the state with regard to the administration of elections in the county.
- Secondly, the county clerk has significant recording, filing, and indexing duties as the

repository for numerous documents required by law to be filed of record in the clerk's office.

- Third, the county clerk serves as the ex officio clerk for the Board of County Commissioners (BOCC) of their respective counties.
- Fourth, the clerk also serves as the clerk for the probate court.
- Fifth, the county clerk is responsible for the issuance of marriage licenses, and other miscellaneous permits and licenses and the collection of fees for same.
- Finally, the county clerk has other varied statutory duties, including but not limited to those relating to the routine financial transactions of the county. After reviewing this manual, the reader should gain a better understanding of the many functions the clerk serves that are vital for the proper functioning of county government.

4.4 Vacancy in Office

When a vacancy occurs in a county office by reason of death, resignation, abandonment, failure to provide bond or otherwise, the Board of County Commissioners appoints a qualified person to hold the office until a successor is duly elected and qualified (§10-3-3 NMSA).

4.5 Removal and/or Suspension from Office

Any county officer may be removed from office on the following grounds: conviction of any felony or of any misdemeanor involving moral turpitude; failure, neglect or refusal to discharge the duties of the office; knowingly demanding or receiving illegal fees; failure to account for money coming into his/her hands; gross incompetency or gross negligence; and any other act or acts which, in the opinion of a jury or court, amount to corruption in office or gross immorality rendering the officer unfit to fill the office (§10-4-1, §10-4-2 NMSA).

In addition to the grounds and process involved in the statutes identified above, the director of the Department of Finance and Administration (DFA) may suspend any local official when an audit reveals any of the following: fraudulent misappropriation or embezzlement of public monies; fiscal mismanagement of an office resulting in a violation of law; willful violation of DFA regulations; or willful failure to perform any duty required by any law which the director of DFA is charged with enforcing. Upon such suspension, the director of DFA may take charge of the office of the person suspended. The statutes provide for a hearing and a petition for reinstatement. The suspended officer may be reinstated by order of the district court if the director of DFA does not show reasonable cause for the

suspension, or at the discretion of the director, if the suspended officer makes a proper showing satisfactory to the director that he/ she is willing and able to conduct his office as provided by law and that no loss will be suffered by the county. Where there are grounds for removal from office, the director of DFA may cause removal proceedings to be initiated by the district attorney (§10-5-19 NMSA).

4.6 Temporary Replacement during Military Absence and/or Abandonment of Office

The statutes also provide for the temporary replacement of officers called to active duty in the military service and for replacement of officers who permanently abandon their offices. Permanent abandonment is defined as the acceptance of public office or employment (other than military service) or private employment for compensation when such office or employment results in failure to devote the usual and normal amount of time during ordinary working hours to duties of his office for a period of thirty (30) successive days or more (§10-6-1 through 6 NMSA).

4.7 Voter Recall of Elected County Officials

Article X, Section 9 of the New Mexico Constitution provides a method for the electorate to recall elected county officials based on malfeasance or misfeasance in office, or violation of the oath of office by the official sought to be recalled. Prior to circulating a recall petition for signatures, the grounds alleged for recall must be first presented to the district court for an evidentiary hearing, at which the proponents of the petition and the elected official are given the opportunity to present their respective positions and evidence. If the district judge finds probable cause, the petition may be circulated for signature. Such a recall petition must be signed by not less than 33 1/3 percent of the voters who voted in the election for the office in the last preceding general election which the office was voted upon.

The recall petition will be filed in the office of the county clerk for verification of signatures, both as to number and qualifications of the persons signing. If the county clerk verifies the requisite number of signatures, the question of recall shall be placed on the ballot for a special election to be called and held within 90 days—or at the next occurring general election, if within 90 days. A recall election shall not be conducted after May 1 in a calendar year in which an election is to be held for the office for which recall is sought, if the official sought to be recalled is a candidate for re-election to the office. No petition shall be submitted more than once during the term for which the official is elected.

4.8 Abolishment of Office Permitted

Any county of the third, fourth, fifth or H class may abolish the offices of county assessor, clerk, surveyor and treasurer and transfer the powers and duties of the abolished offices to the Board of County Commissioners (§4-44-36 NMSA). The procedures for abolishing these offices may be initiated by a petition signed by at least 10% of the registered voters in the county (§4-44-37 NMSA). The procedures for challenging the petition and conducting an election on the question are set forth in statutes §4-44-38 to §4-44-43 NMSA. The statutes also provide for the reestablishment of the abolished offices by similar procedures (§4-44-44 NMSA).

CHAPTER 5

ELECTION DUTIES OF THE NM COUNTY CLERK

One of the most important functions of the county clerk is to serve as an arm of the state with regard to the adherence to, and enforcement of, the Election Code, Chapter 1 of the New Mexico Statutes Annotated. The primary purposes of the Election Code, and thus the county clerk's role, include protecting the secrecy of the ballot and the purity of elections, guarding against abuse of the elective franchise, as well as to pursue the efficient administration and conduct of elections (§1-1-1.1 NMSA 1978).

5.1 Types of Elections

The Election Code governs all types of elections, including:

- primary elections
- general elections
- statewide special elections
- federal elections
- school district elections
- bond elections
- special district (i.e. flood district, fire district, hospital district)
- and others if incorporated by reference in the authorizing legislation.

Each election has its own set of strict deadlines outlined in the code pertaining to resolutions, notices, and proclamations, inspections, appointing of precinct board members, printing of ballots, training of poll officials, moving of precinct boundaries and/or polling places/consolidated polling locations – more commonly referred to as vote centers. These deadlines are too numerous to list or outline in this manual and care should be given to obtain the schedule from the SOS for state wide and federal elections, as well to generate one in house for other elections being monitored by the county for other entities. Although elections are but one area of operation for the county, it is very time consuming unless a streamlined process is set up and employees trained on a regular basis.

5.2 Timing of Elections

The timing of most elections is set by law.

- Federal elections (for congressional representatives) occur every two years.

- A primary election shall be held in each county in this state on the first Tuesday after the first Monday in June of each even-numbered year.
- The primary election shall be followed by the general election on the first Tuesday, after the first Monday in November (§1-8-11 NMSA).
- School district elections occur in each school district on the first Tuesday in February in odd numbered years (§1-22-3 (B) NMSA).
- For county and other special elections with no statutorily set election dates, they are scheduled amid and amongst the many other elections' deadlines, at a time that there is no conflict.

5.3 Restriction on Local Government Elections (§1-12-71 NMSA)

No municipal, school or special district election shall be held within fifty days prior to or following any statewide election.

5.4 Roles of the Secretary of State (SOS), the County Clerk, Precinct Officials, and the Board of County Commissioners (BOCC)

Upon review of the Election Code, you will note that there are many specific duties assigned primarily to four different parties: The Secretary of State (SOS), the County Clerk, the Precinct Officials and the Board of County Commissioners (BOCC). It takes all of them working together, communicating openly and regularly, and most importantly, cooperatively, for an election to be successful.

5.4.1 The Secretary of State (SOS)

The Secretary of State (SOS) is the Chief Elections Officer of the state, charged with obtaining and maintaining uniformity in the application, operation and interpretation of the Election Code. The SOS relies on the clerks of each county to consistently apply the rules and regulations issued by the SOS regarding the preparation and conduct of elections (§1-2-1 NMSA). The code mandates uniformity in election procedures amongst all the counties. It is for this reason that the code prohibits the use of any new form or procedure by any county that has not first been approved by the SOS.

Just as the clerk supports the SOS in ensuring uniformity amongst the counties in elections (see below), the SOS is mandated by law to guide, train, approve contracts and qualification of voting machines, and direct the county clerks, voting machine technicians and registration officers as they carry out the duties prescribed under

the Election Code (See §1-2-1; §1-2-1.1; §1-2-2; §1-2-4; §1-2-5; §1-9-13 NMSA). The SOS also prepares and furnishes each county with the forms necessary for voter registration.

Note: All registration or voting notices, forms, instructions, assistance or other information regarding the electoral process shall be printed in both English and Spanish (§1-2-3 (B) NMSA).

5.4.2 Precincts and the Duties of Board of County Commissioners (§1-3-2 NMSA)

Not later than the first Monday in November of each odd-numbered year, the Board of County Commissioners (BOCC) shall by resolution:

1. designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;
2. create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;
3. create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978;
4. consolidate any precincts pursuant to Section 1-3-4 NMSA 1978;
5. divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and
6. designate any mail ballot election precincts.

- The BOCC also appoints the board of registration, the body that creates the inactive voter list and ultimately compiles the purge voter list (§1-4-34 NMSA)
- The BOCC issues resolutions calling for county elections.
- The BOCC is the canvassing board and as such is responsible for examining the returns of each precinct and ultimately for declaring the results of the election and certifying same to the SOS within ten days of the election (§1-13-1; §1-13-13 NMSA).

In practice, the BOCC delegates much of the work of examining the returns to the staff of the county clerk.

5.4.3 Precinct Officials

The Secretary of State prescribes the duties for precinct officials, and provides these to the county clerk. The precinct officials are the persons who actually serve their precincts by conducting the election at a designated polling place within their

precinct.

Under the direction of the county clerk they:

- check the voting machines
- open and close polls
- assist voters with the process
- administer paper ballots
- verify the returns by producing tally tapes and ensuring they are legible and match the number of voter numbers on the machine
- count and tally the emergency paper ballots and
- lock and seal the voting machines.

It is crucial to plan in advance for the recruitment and selection of these precinct officials in order educate them well in advance to ensure an orderly execution of their duties on Election Day.

5.5 Voting System Certification Committee (§1-9-7.5 NMSA)

- The Voting System Certification Committee was created by House Bill 198 during the 2010 Legislature for the purpose of reviewing written test reports and the findings of the Secretary of State on the certification, recertification and decertification of voting systems for use in elections in the state.
- The Voting System Certification Committee shall be composed of:
 - the secretary of information technology or the secretary's designee from within the department of information technology; and
 - (2) four additional members pursuant to Paragraph (2) of Subsection B as follow:
 - one member appointed by the president pro tempore of the senate;
 - one member appointed by the minority floor leader of the senate;
 - one member appointed by the speaker of the house of representatives; and
 - one member appointed by the minority floor leader of the house of representatives
- The four additional members shall be county clerks or their chief deputies or other persons knowledgeable of elections in this state.
- Members shall be appointed for terms of two years beginning on May 1 of each even-numbered year. Vacancies shall be filled by the original appointing authority.
- The members of the committee shall select a committee member to serve as chair of the committee.

- No person who is currently or has been within the previous twelve months an employee or contractor of a voting machine vendor or the office of the secretary of state may serve as a member of the committee.
- Members of the committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act (Chapter 10, Article 8 NMSA 1978), to be paid out of the funds appropriated to the secretary of state.
- All meetings of the voting system certification committee shall be open meetings held in accordance with the Open Meetings Act (Chapter 10, Article 15 NMSA 1978).
- All reports and other records that are used, created, received, maintained or held by or on behalf of the voting system certification committee shall be open to public inspection pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978).

5.6 Strict Time Deadlines and Penalties

As mentioned above, the Election Code has very specific requirements and time lines for activities that must occur in the months leading up to the election, that must occur during the conduct of the election, and that must occur after the election. Each clerk should become intimately familiar with the current edition of the Election Handbook of the New Mexico issued by the Secretary of State's Office.

Violation of the Election Code constitute crimes, either fourth degree felonies or misdemeanors, and the district attorney, Justice Department and/or the attorney general are given the jurisdiction and authority to prosecute all persons, including elected county clerks, for actions taken contrary to the Election Code. (Some penalties are listed directly in the statute; others are described in Article 20 of the Election Code, at §1-20-1 through 23 NMSA).

5.7 Topics Covered in the NM Election Code

The twenty-four (24) articles making up Chapter 1, of the Election Code are listed here:

Articles & Sections of NM Election Code	Topic Covered
Article 1, Sections 1-1-1 through 21	Definitions and General Provisions
Article 2, Sections 1-2-1 through 30	Election Officers and Boards
Article 3, Sections 1-3-1 through 18	Precincts and Polling Places
Article 4, Sections 1-3-1 through 48	Registration of Electors
Article 5, Sections 1-5-1 through 31	Automated Voter Records System Act
Article 6, Sections 1-6-1 through 25	Absentee Voting
Article 7, Sections 1-7-1 through 6	Political Parties
Article 8, Sections 1-8-1 through 64	Nominations and Primary Elections
Article 9, Sections 1-9-1 through 19	Voting Machines
Article 10, Sections 1-10-1 through 10	Ballots and Ballot labels
Article 11, Sections 1-11-1 through 18	Notices, Preparation for Election and Election Supplies
Article 12, Sections 1-12-1 through 69	Conduct of Elections
Article 13, Sections 1-13-1 through 22	Post-Election Duties
Article 14, Sections 1-14-1 through 21	Contests and Recounts
Article 15, Sections 1-15-1 through 23	Presidential electors, Senators, Congressman and Expiring Terms
Article 16, Sections 1-16-1 through 13	State Constitutional Amendments and Other Questions Submitted
Article 17, Sections 1-17-1 through 14	Referendum Petitions
Article 18, Sections 1-18-1 through 5	Federal Constitutional Amendments
Article 19, Sections 1-19-1 through 37	Campaign Practices
Article 19A, Sections 1-19A-1 through 17	Voter Action
Article 20, Sections 1-20-1 through 23	Offenses and Penalties
Article 21, Sections 1-21-1 through 14	Federal Voting Rights Compliance
Article 22, Sections 1-22-1 through 19	School Election Law
Article 23, Sections 1-23-1 through 7	Mail Ballot Elections
Article 24, Sections 1-24-1 through 4	Special Election Procedures

NOTE: These have changed significantly since the previous version of this handbook.

Some articles contain more duties and deadlines for county clerks than others. See for example, Articles 4, 5, 6, 9, 10, 11, 12, 13 (canvassing duties if delegated to the clerk by the BOCC), but an understanding of the entire code is essential to being able to successfully manage the multitude of duties and functions prescribed to the clerk.

5.8 Applicable Federal Laws

In addition to the state Election Code requirements, county clerks should be aware of the federal laws also governing elections. These include but are not limited to:

- Voting Rights Act
- National Voter Registration Act (NVRA)
- Help America Vote Act (HAVA) of 2002 (effective January 2003)
- Americans with Disabilities Act (“ADA”) (also incorporated into HAVA)
- and the Uniformed Overseas Citizens Absentee Voter Act (“UOCAVA”)

As federal laws are passed, the state legislature attempts to incorporate new mandates and/or to change conflicting state provisions which should assist clerks to stay abreast of these laws. One interesting note about New Mexico is that our state constitution provided that election materials be produced in both English and Spanish to ensure New Mexican residents an equal opportunity to understand the issues when voting; whereas, the rest of the country is just catching up by the provisions in Section 203 of the federal Voters Rights Act that requires non-English speaking minorities to be provided election materials in their native language. It should also be noted that in New Mexico there are some minorities that speak languages that are unwritten, and clerks encountering this situation should review Section 203 of the VRA in order to comply with the Act’s mandate. See also §1-2-3 (C) NMSA.

5.9 Administrative Complaints

As a result of HAVA, there is now a relatively new administrative complaint process for persons wishing to grieve accessibility violations, including provisions relating to voting system standards, provisional voting procedures and operational standards of the statewide voter registration system. It is codified at §1-2-2.1 NMSA, and the SOS has issued regulations relating to the procedures for these complaints, which by law are required to be resolved by final decision within 90 days of the filing of the complaint, unless the complainant agrees to extend the deadline, or else it proceeds alternate dispute resolution procedures according to the Governmental Dispute Resolution Act.

5.10 Voter Registration

A year round election duty is the registration of voters and the maintenance of voter registration lists in the form required by the SOS. When the books are closed due to an impending election, the county clerk's office will accept certificates of registration, but is unable to process these registrations until the books reopen the Monday after Election Day. Once received, the clerk must process a registration by first determining if the applicant is an eligible elector, and finalize the process according to Statute. This automated voter registration system is state wide and allows the SOS to instantly review all data in each county register.

The SOS is also responsible for facilitating the National Voter Registration Act (NVRA) within the county. In that capacity, the SOS coordinates with MVD and HSD offices in the county, and compiles quarterly reports of voter registrations processed at those offices.

5.11 Election Caveats for Greatest Success

In closing to this brief overview of the role of the county during elections, there are three caveats that those more experienced than the author have shared:

Organization and advance planning are key

Know your deadlines and plan your necessary staff and other resources accordingly. Bigger counties require hundreds of poll officials to work elections; coordinate with your county's Party Chairs well in advance to share your anticipated needs and minimum qualifications needed for poll workers. Although county clerks may designate and delegate election duties to a division within their office and assign only certain staff members those duties, i.e. a bureau of elections, as the elected county official, it is the county clerk who bears the responsibility for the election.

Open and unbiased communication is essential

Another important ingredient to a successful election is to maintain an open line of communication and to work with all interested parties, including your Chief Deputy, your administrative staff, your technical staff (i.e. voting machine technicians), your information system staff or contractor (i.e. computer software and hardware), the representatives of the political parties, the members of the public, the Secretary of State's Office. Your staff should be informed that you want to know about any problem that arises. Consult with your county's internal county attorney, and the Secretary of State when in doubt on any procedural or other issue potentially affecting an election.

Involve political parties in the various processes

The involvement of the political parties should encompass; voter registration, appointment of precinct board members, creation of voter inactive lists and voter cancellation process, and also any time any changes in protocol is proposed. What you agree to do for one party, do for all. This will help to eliminate accusations (and the appearance) of favoritism and/or fraud.

NOTES

CHAPTER 6

THE RECORDING DUTIES OF THE NM COUNTY CLERK

- The County Clerk as Ex Officio Recorder (§14-8-1 New Mexico Statutes Annotated 1978)
- The Duties of the Recorder (§14-8-2 NMSA)
- Acknowledgment Necessary for Recording (§14-8-4 NMSA)
- and Endorsement on the Receipt of Documents (§14-8-6 NMSA)

RECORDING

6.1 Acknowledgment Necessary for Recording; and Exceptions
(§14-8-4 NMSA)

- A. Any instrument of writing duly acknowledged may be filed and recorded. Any instrument of writing not duly acknowledged may not be filed and recorded or considered of record, though so entered.
- B. For purposes of this section, "acknowledged" means notarized by a person empowered to perform notarial acts pursuant to the Notary Public Act or the Uniform Law on Notarial Acts.
- C. Notwithstanding Subsection A of this section, the following documents need not be acknowledged but may be filed and recorded:
 - 1. court-certified copies of a court order, judgment or other judicial decree;
 - 2. court-certified transcripts of any money judgment obtained in a court of this state or, pursuant to §14-9-9 NMSA 1978, in the United States district court for the district of New Mexico;
 - 3. land patents and land office receipts;
 - 4. mining location notices and amended or additional notices made pursuant to §69-3-1 or §69-3-12 NMSA 1978 if properly signed by the locator;
 - 5. notice of lis pendens filed pursuant to §38-1-14 NMSA 1978;
 - 6. certified copies of foreign wills, marriages or birth certificates duly authenticated;
 - 7. instruments of writing in any manner affecting lands in the state filed pursuant to §14-9-7 NMSA 1978, when these instruments have been duly executed by an authorized public officer.
- D. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code need not comply with the requirements of this section.

- E. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded.

6.2 Instruments Affecting Real Estate; Recording (§14-9-1 NMSA)

All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated. Leases of any term or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section.

As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease; and the terms of the lease, including the initial term and the term or terms of all renewal options, if any.

6.2.1 Uniform Real Property Electronic Recording Act - Short title (§14-9A-1 NMSA)

This act may be cited as the Uniform Real Property Electronic Recording Act.

Definitions (§14-9A-2 NMSA)

As used in the Uniform Real Property Electronic Recording Act [§14-9A-1 NMSA 1978]:

- A. document means information that is:
 - 1. inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and
 - 2. eligible to be recorded in the land records maintained by a county clerk;
- B. electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
- C. electronic document means a document that is received by a county clerk in an electronic form;
- D. electronic signature means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document;

- E. person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;
- F. state means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

6.2.2 Validity of Electronic Documents (§14-9A-3 NMSA)

- A. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act (§14-9A-1 NMSA 1978).
- B. If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.
- C. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform that act and all other information required to be included is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

6.3 Recording of Documents (§14-9A-4 NMSA)

- A. In this section, "paper document" means a document that is received by the county clerk in a form that is not electronic.
- B. A county clerk:
 - 1. who implements any of the functions listed in this section shall do so in compliance with standards established by the information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, pursuant to Section 5 (§14-9A-5 NMSA 1978) of the Uniform Real Property Electronic Recording Act;
 - 2. may receive, index, store, archive and transmit electronic documents;
 - 3. may provide for access to and for search and retrieval of documents and information by electronic means;
 - 4. who accepts electronic documents for recording shall continue to accept paper

documents as authorized by state law and shall place entries for both types of documents in the same index;

5. may convert paper documents accepted for recording into electronic form;
6. may convert into electronic form information recorded before the county clerk began to record electronic documents;
7. may accept electronically any fee that the county clerk is authorized to collect; and
8. may agree with other officials of a state, of a political subdivision of a state or of the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

6.4 Administration and Standards (§14-9A-5 NMSA)

- A. The information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, shall adopt standards to implement the Uniform Real Property Electronic Recording Act (§14-9A-1 NMSA 1978).
- B. To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act, the information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, so far as is consistent with the purposes, policies and provisions of the Uniform Real Property Electronic Recording Act, in adopting, amending and repealing standards shall consider:
 1. standards and practices of other jurisdictions;
 2. the most recent standards promulgated by national standard-setting bodies, such as the property records industry association;
 3. the views of interested persons and governmental officials and entities;
 4. the needs of counties of varying size, population and resources; and
 5. standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.
- C. The secretary of state may adopt and promulgate rules to implement the provisions of Subsection C of Section 3 (§14-9A-3 NMSA 1978) of the Uniform [Real Property]

Electronic Recording Act by providing for the electronic notarization, acknowledgment, verification, swearing or affirming under oath and other notarial acts by notaries public with respect to a document or signature.

6.5 Uniformity of Application and Construction (§14-9A-6 NMSA)

In applying and construing the Uniform Real Property Electronic Recording Act (§14-9A-1 NMSA 1978), consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

6.6 Relation to Electronic Signatures in Global and National Commerce Act (§14-9A-7 NMSA)

The Uniform Real Property Electronic Recording Act [§14-9A-1 NMSA 1978] modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

6.7 Acknowledgement Necessary for Recording; exceptions: (§14-8-4 NMSA)

- A. Any instrument of writing, duly acknowledged may be filed and recorded. Any instrument of writing, not duly acknowledged may not be filed and recorded or considered of record, though so entered, unless otherwise provided in this section. A duplicate of an instrument of writing duly acknowledged may be filed and recorded to the same extent as the original.
- B. For purposes of this section, “acknowledged” means notarized by a person empowered to perform notarial acts pursuant to the Notary Public Act [14-12A-1 through 14-12A-26 NMSA 1978] or the Uniform Law on Notarial Acts [14-14-1 through 14-14-11 NMSA 1978].
- C. The following documents need not be acknowledged but may be filed and recorded:
 1. Court-certified copies of a court order, judgement or other judicial decree;
 2. Court-certified transcripts of any money judgment obtained in a court of this state or, pursuant to Section 14-9-9 NMSA 1978, in the United States district court for the district of New Mexico;
 3. Land patents and land office receipts;
 4. Notice of lis pendens filed pursuant to Section 3-1-14 NMSA 1978;
 5. Provisional orders creating improvement districts pursuant to Section 4-55A-7 NMSA 1978;

6. Notices of levy on real estate under execution of writ of attachment when filed by a peace officer pursuant to Section 39-4-4 NMSA 1978;
 7. Surveys of land that do not create a division of land but only show existing tracts of record when filed by a professional surveyor pursuant to Section 61-23-28.2 NMSA 1978;
 8. Certified copies of foreign wills, marriages or birth certificates duly authenticated; and
 9. Instruments of writing in any manner affecting lands in the state filed pursuant to Section 14-9-7 NMSA 1978, when these instruments have been duly executed by an authorized public officer.
- D. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] need not comply with the requirements of this section.
- E. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded.

6.8 Recording Fees for Counties

- A. No county clerk shall receive any instrument of writing for filing or record unless the fees for such filing and recording have first been paid.
- B. Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars (\$25.00) for each document filed or recorded by the county clerk.
- C. If a document being filed or recorded contains more than ten entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars (\$25.00) for each additional block of ten or fewer entries to the county recording index from the document.
- D. To the extent documents described in Section 14-8-13 NMSA 1978 are filed or recorded in the office of the county clerk, the documents shall be received pursuant to the fees described in this section.
- E. For each fee of twenty-five dollars (\$25.00) collected by the county clerk pursuant to this section, eighteen dollars (\$18.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund.

Payment of fees; in-person filings; disposition. (§14-8-15.1)

- A. Notwithstanding the provisions of Subsection B of Section 14-8-15 NMSA 1978, if a document being filed or recorded contains fewer than ten entries to the county recording

index and is filed or recorded in person in the office of the county clerk by one of the interested persons named on the document, the county clerk shall collect a fee of ten dollars (\$10.00).

B. For each fee of ten dollars (\$10.00) collected by the county clerk pursuant to this section, three dollars (\$3.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording filing fund.

UCC filing, Fees (§55-9-525)

A. The fee for filing and indexing a record pursuant to Sections 55-9-501 through 55-9-526 NMSA 1978 in the office of the county clerk is as provided in Section 14-8-15 NMSA 1978

Documents recorded without cost. (§14-8-15.1) The County Clerk shall record Free of Charge:

- A. Oaths of public office made pursuant to Article 20, Section 1 of the constitution of New Mexico;
- B. the discharge papers of any person who was accepted for service and served in the armed forces of the United States for thirty days or more;
- C. notices of tax liens filed by the taxation and revenue department pursuant to Section 7-1-38 NMSA 1978;
- D. tax delinquency lists filed by the county treasure pursuant to section 7-38-61 NMSA 1978;
- E. notices and warrants issued by the secretary of workforce solutions for defaults on payments to the unemployment compensation administration fund filed pursuant to Section 51-1-36 NMSA 1978; and
- F. a claim of lien under oath of the state engineer, artesian well supervisor or an officer of an artesian conservancy district filed pursuant to Section 72-13-8 NMSA 1978.

6.9 County Clerk Recording and Filing Fund; Uses (§14-8-12.2 NMSA)

- A. A “county clerk recording and filing fund” is established in each county.
- B. Expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the Board of County Commissioners.
- C. Expenditures from the county clerk recording and filing fund may be expended only:
 - 1. to rent, purchase, lease or lease-purchase recording equipment and for supplies, training and maintenance for such equipment;
 - 2. to rent, purchase, lease or lease-purchase equipment associated with all regular

duties in the county clerk's office and for supplies, training and maintenance for such equipment;

3. to rent, purchase, lease or lease-purchase vehicles associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such vehicles, provided that the county clerk shall report annually to the board of county commissioners the usage, mileage and necessity of any vehicle acquired pursuant to this paragraph;
4. for technical assistance or for training associated with all regular duties of the county clerk's office; or
5. for staff travel associated with all regular duties of the county clerk's office pursuant to the Per Diem and Mileage Act (§10-8-1 NMSA 1978).

6.10 Security of Books of Record; Delivery to Successors (§14-8-9 NMSA)

It is the duty of the county clerk to keep the books of record well secured, and when they leave office as clerks, they shall deliver them complete to their successors, including all necessary keys, combinations and passwords.

6.11 Searching Records; Reproduction of Records; Fees (§14-8-14 NMSA)

- A. Records maintained in the office of the county clerk are available to be searched without charge during regular business hours.
- B. County clerks:
 1. may charge reasonable fees for conducting searches and for reproducing or permitting reproduction of their records as well as for certifying documents;
 2. shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;
 3. may require advance payment of fees before making copies of public records;
 4. shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and
 5. shall provide a receipt, upon request.
- C. County clerks shall establish reasonable fees for conducting searches and for reproducing or copying records maintained at the office of the county clerk.

6.12 Fee Schedule for the Uniform Commercial Code (§55-9-525 NMSA)

For the fee schedule for the county clerk see (Section 6.7 Recording Fees for Counties). These documents are mainly recorded at the Secretary of State's Office.

6.13 Recording of Plats with County Clerks and Recording of Vacation of Plats (§47-6-7 NMSA)

Every person who desires to subdivide land shall furnish a plat and legal description of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico, to be filed with the municipal planning commission, the county clerk and the county assessor of that county in which the re-subdivision is situated (§3-20-2 and §14-8-16. E. NMSA).

If the county clerk has the appropriate technology, the clerk shall record the plat electronically, return the original to the person who submitted the plat and forward an electronic copy to the county assessor. Otherwise, all plats to be recorded shall be filed in duplicate with the county clerk.

One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor.

When a plat is submitted to the county clerk, the clerk must first determine whether the land in the plat is subject to the New Mexico Subdivision Act (§47-5-9, §47-6-1, §47-6-29 NMSA) and if the required endorsements are on the plat.

The county clerk may not accept any plat subject to the New Mexico Subdivision Act for filing which has not been approved as provided in the Act (§47-6-6 NMSA).

- Any person who divides the surface of an area of land within New Mexico into five or more parcels for the purpose of sale or lease without filing a plat approved by the Board of County Commissioners for those divisions, shall file an affidavit with the county clerk prior to the sale or lease.
- The affidavit shall state that the person attesting to it has not divided the area of such land during the three years immediately preceding the division which is the subject of the affidavit. Any plat which has been filed in the office of the county clerk may be vacated if the owners of the land sign an acknowledgment statement and if this statement is approved by the Board of County Commissioners.

The approval statement from the Board of County Commissioners shall be filed in the office of the county clerk. The clerk then marks the original plat with the word "vacated" or the words "partially vacated" and refers on the plat to the volume and the page on which the statement of vacation is recorded (§47-6-7 NMSA).

6.14 Records Affecting Real Property (§14-9-1 NMSA)

- All deeds, mortgages, U.S. patents, and other real estate instruments are required to be recorded by the county clerk in the county which the subject property is located.
- Unrecorded instruments do not affect the title to property to any purchaser, mortgagee, or judgment lien creditor (§14-9-3 NMSA). However, creditors recording liens on real property have priority lien based upon the time it was recorded.
- The county clerk is responsible for maintaining a reception book/index for entering data from all incoming instruments including the date and time received including hours and minutes (§14-9-4 NMSA).
- Any original patents for property that are lost and never have been previously recorded by the county clerk may request a certified copy from the U.S. General Land Office.
- Any tax liens and court judgments may also be filed as liens against property.

6.15 Fees for Recording of Real Estate Plats (§14-8-16 NMSA)

The clerk is required to number each real estate plat consecutively as it is filed and show on the plat the filing number and the time of filing. Proper entries are to be made in the Recording Index.

The county clerk shall record all descriptions and plats in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee as provided for in §14-8-15 NMSA 1978 for recording documents in the office of the county clerk.

Some of the specific legislation in New Mexico referring to plats would include the following:

- PLATS (§14-8-16 NMSA)
 - A. Certification necessary for recording
 - B. Certification and acknowledgment for government agency plat
 - C. Clerk's instructions
 - D. Fees
 - E. Clerk to furnish copy to Assessor
- MUNICIPAL ANNEXATIONS (§3-7-17 NMSA) Ordinance recorded with copy of plat attached
- SUBDIVISION PLATS

- Municipal Code (§14-19-9 NMSA)
- Filing with County Clerk determine if proposal is subject to §30-10-1 NMSA (§19-19-11 NMSA)
- Vacation of subdivision plat clerk's duties:
 - State Subdivision Act (§47-5-9, §47-6-1 through 29 NMSA)*
 - Filing with County Clerk (§47-6-6 NMSA) duty to determine if land platted is subject to Subdivision Act.
 - Vacation of plat (§47-6-3 and 4 NMSA)
- SURVEYS (§61-23-1 through §61-23-34 NMSA) – boundary surveys recorded

*In counties where local regulations have been adopted, refer to local regulations for fees, etc.

6.16 Recording of Mining Location (§69-3-2 NMSA), Oil and Gas Royalty Assignments (§70-1-1 NMSA) and Liens on Oil and Gas Wells (§7-4-5 NMSA)

The clerk is authorized to record the location of mines (these need not be acknowledged) (§14- 8-5 NMSA) and is authorized to collect the standard recording fees as allowed under Section 14 when recording these instruments. Owners of un-patented lodes or placer mining claims are required to fill intentions to hold the mine annually with the county clerk.

The clerk is required to record royalty assignments and leases from gas, oil or other minerals located in the lands within the state of New Mexico. (§70-1-1 NMSA).

Liens on oil and gas wells are recorded by the clerk in a book which is to be indexed. The same fees for recording mining locations shall apply to oil and gas wells.

Miners who locate a claim on public lands after October 21, 1976, are required to file a copy of the location certificate within 90 days with:

Bureau of Land Management
 U.S. Department of Interior
 Post Office Box 1449
 Santa Fe, New Mexico 87501

This requirement is in addition to the stipulations which require the location certificate to be filed with the recorder and county clerk. The Bureau of Land Management requires a \$5.00 filing fee, name and number of the claim, date of location, type of claim (mill site, tunnel site, placer or lode), name and address of the owner, the quarter section, range and township in which the claim is located, a map showing the claim with a scale of not less than 1/4 inch to the mile. However, if the claim is on un-surveyed lands, a sketch or narrative may be used to describe the claim with reference to hydrographic, topographic or man-made features. Also, the Bureau of Land Management requires the page and book in which the claim is recorded.

6.17 Recording Copies of Deeds to Property (§7-38-12 NMSA)

When a deed is transferred, the county clerk is to give a copy of the deed to the county assessor. Allowing access to the Clerk's Electronic records by the Assessors' Office shall satisfy this requirement. Failure to do so could result in the county clerk being found guilty of a misdemeanor. This covers contracts, agreements or any paper which transfers the ownership of real estate from one party to another.

6.18 Public records; inspection; exceptions (§14-8-9.1 NMSA)

- A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records, subject to disclosure pursuant to the Inspection of Public Records Act.
- B. The county clerk shall publicly post in the office of the county clerk and on the county's web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.
- C. Before digitizing or purchasing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act, shall be redacted.
- D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to §14-6-1 NMSA 1978.
- E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be copied, digitized or purchased by any third party, except by those persons authorized in this section. As the

technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

- the veteran who filed the papers;
- the veteran's next of kin;
- the deceased veteran's properly appointed personal representative or executor;
- a person holding the veteran's general power of attorney; or
- a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be copied, digitized or purchased by any third party unless fifty years have elapsed after the date of death and the cause of death and any other medical information contained on the death certificate is redacted, in addition to redaction of protected personal identifier information. Death certificates and other vital records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of §24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property.

6.19 Disclosure of Records (§24-14-27 NMSA)

- A. It is unlawful for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any record except as authorized by law.
- B. The department shall provide access to record level data required by the New Mexico health policy commission and the health information system created in the Health Information System Act [§24-14A-1 NMSA 1978]. The New Mexico health policy commission and the health information system may only release record level data obtained from vital records in the aggregate. For the purposes of this subsection, "record level data" means one or more unique and non-aggregated data elements relating to a single identifiable individual. The department may authorize the disclosure of data contained in vital records for other research purposes.
- C. When one hundred years have elapsed after the date of birth or fifty years have elapsed after the date of death, the vital records of these events in the custody of the state registrar shall become open public records, and information shall be made available in

accordance with regulations that provide for the continued safekeeping of the records; provided that vital records of birth shall not become open public records prior to the individual's death.

6.20 Penalties (§24-14-31 NMSA)

- A. Except for violations of §24-14-18 NMSA 1978, any person is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of §31-18-15 NMSA 1978, who willfully and knowingly:
 - 1. makes any false statement or supplies any false information in a report, record or certificate required to be filed;
 - 2. with the intent to deceive, alters, amends or mutilates any report, record or certificate;
 - 3. uses or attempts to use or furnishes to another for use for any purpose of deception any certificate, record, report or certified copy that has been altered, amended or mutilated or that contains false information; or
 - 4. neglects or violates any of the provisions of the Vital Statistics Act or refuses to perform any of the duties imposed upon him by that act.
- B. Any person who willfully and knowingly permits inspection of or discloses information contained in vital statistics records of adoptions or induced abortions or copies or issues a copy of all or part of any record of an adoption or induced abortion, except as authorized by law, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act (§31-18-1 NMSA 1978).

6.21 Right to Inspect Public Records; Exceptions (§14-2-1 NMSA)

- A. Every person has a right to inspect public records of this state except:
 - 1. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
 - 2. letters of reference concerning employment, licensing or permits;
 - 3. letters or memoranda that are matters of opinion in personnel files or students' cumulative files;
 - 4. law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the

information listed in this paragraph;

5. as provided by the Confidential Materials Act [§14-3A-1 NMSA 1978];
 6. trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
 7. tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and as otherwise provided by law.
- B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Un-redacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.

6.22 Recording of Water Rights (§72-1-3 NMSA)

When a person, firm or corporation claims to be an owner of a water right, the claimant may make and file in the office of the state engineer a declaration on a form prescribed by the engineer, or he may record his claim in the office of the county clerk in the county wherein the claim is located. All permits or documents which grant, define or limit water rights shall also be recorded in the office of the clerk in that county in which the claim is situated (§72-5-21 NMSA). Underground water rights must be recorded with the state engineer and may also be recorded in the office of the county clerk (§72-12-5 NMSA).

6.23 Recording of Orders Organizing a Conservancy District (§73-14-16 NMSA)

Within 30 days after a conservancy district has been declared a corporation by the court, the clerk is required by law to transmit to the state corporation commission and the probate clerk and ex officio recorder copies of the findings of the court which incorporated the conservancy district. The county recorder can charge \$1.00 for filing and the state corporation commission can charge \$5.00 for filing. The clerk is also required to keep a file of all papers received in connection with a conservancy district (§73-18-42 NMSA) and to index all such instruments received for filing.

6.24 Miscellaneous Recording Activities

From time to time the county clerk may be called upon to record miscellaneous instruments. Some of these instruments and the statutes which the clerk may wish to consult are listed below:

- Preservation of State Law (§2-2-2 NMSA)
- Recording Bonds of County Officers (§10-2-8 NMSA)
- Orders Appointing Commissioners (§19-4-29 NMSA)
- Municipal Annexation (§3-7-17 NMSA)
- Recording Petitions Ordering Changes of Names (§40-8-1 NMSA)
- Filing Notice of Levy on Real Estate Recording and Indexing (§39-4-5 NMSA)
- Notice and Filing Release of Levies (§39-4-4 39-4-6 NMSA)
- Recording of Marriage Settlement or Separation Contracts (§40-2-5 NMSA)
- Recording of Notice of Lis Pendens (§38-1-14 NMSA)
- Recording of Money Judgments (§39-1-6 NMSA)
- Recording transcripts of judgments (§39-1-7 NMSA)
- Recording of Warehousemen Bond & Numbering of Licenses (§56-6-3 56-6-4 NMSA)
- Recording of Liens (§7-1-38 NMSA)
- Recording of tax liens (§7-1-39 NMSA)
- Release of Liens (§7-1-39 NMSA)
- Recording of Osteopathy Licenses (§61-10-13 NMSA)
- Registration of Chiropractors (§61-4-6 NMSA) (Repealed as of July 1, 1986)
- Recording of Placement Marks (§61-23-1 NMSA)
- Recording of Powers of Attorney (§47-1-7 NMSA)
- County Recording Index (§14-9-4 NMSA)
- Fees for Conveyances to State and Public Corporations (§14-9-7 NMSA)

6.25 Filing for Record; Effect; Reception Book (§14-9-4 NMSA)

The time of the recording of an instrument shall be the time of its deposit in the office of the county clerk and his entry thereof in the reception book as herein provided. It shall be the duty of every county clerk immediately on the receipt for record of any deed, mortgage or other writing affecting the title to real estate, to enter the same by the name of the grantor, mortgagor or other persons [person] whose title is affected thereby, in a proper book, arranged in alphabetical or numerical order, to be known as the reception book, together with the date, hour and minute of such record. Any county clerk failing to make

such entry immediately, shall be punished by a fine of one hundred dollars [(\$100)], and shall also be liable for damages to any person injured by such neglect, to the extent of such injury.

INDEXING

- County Recording Index (§14-9-4 NMSA)
- Fees for Conveyances to State and Public Corporations (§14-9-7 NMSA)

6.26 Indexing

Indexing is a set of books used to record complete and accurate data concerning instruments of record affecting real property. Authority for maintaining these records is found in Section 14-10-1. All real estate is to be indexed electronically or listed alphabetically as well as in their reverse order in the same manner. All property descriptions are to be according to numbers, metes or bounds, and if not possible, from tracts described by some appropriate title or the owner's name. §14-10-5 NMSA requires that a standard form of index be used throughout the state.

6.27 Method of Copying Original Documents and Destruction of Obsolete Documents (§14-1-1, §14-1-3, §14-1-8 NMSA)

Whenever any document on file with the county clerk is in danger of being destroyed or damaged, the clerk may, upon the authorization of the BOCC, have a true and correct copy of the original made and filed in the office of the county clerk. Copies may be made in any manner in which the clerk determines would be the best to correctly exemplify the original.

The period of time that a certain record must be retained is known as its "retention period".

<http://164.64.110.239/nmac/parts/title01/01.021.0002.htm>

The record retention period for records is determined by their administrative, fiscal, historical and legal value. Retention periods shall be extended until all current litigation, current claims or audit exceptions involving a record have been resolved or concluded. If the clerk intends to destroy any records, he is required to give notice by registered or certified mail to the state's record administrator in Santa Fe of:

- the date the destruction is proposed to take place, and
- the type and date of the records he intends to destroy

Such notice must be sent at least 60 days before the date of the proposed destruction.

If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.

The state records center has also requested that all books prior to 1912 be sent to their office after they have been microfilmed by the clerk.

The state board center has a booklet which further describes the records which can be destroyed by local officials. A copy of this publication is available through:

State Record Center and Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

<http://www.nmcpr.state.nm.us/records-management/agency-analysis-bureau/functional-retention-disposition-schedules/>

CHAPTER 7

THE DUTIES AS EX OFFICIO CLERK TO THE BOARD OF COUNTY COMMISSION (BOCC)

Among the many duties that the New Mexico statutes assign to the county clerk, is that of serving as the ex officio clerk for the Board of County Commissioners. The county clerk is required to attend sessions of the board in person or by his deputy; to keep the seals, records and creates minutes of the board; to make regular entries of all the board's resolutions and decisions on all questions concerning the raising of money; to record the vote of each commissioner on any question concerning the raising of money; to record the vote of each commissioner on any question submitted to the board if required to do so by any member; to sign all orders issued by the board for the payment of money and record the receipts of the county treasurer and expenditures of the county; to preserve and file all accounts acted upon by the board; and to perform special duties as required by law (§4-40-3,4 NMSA 1978).

7.1 Clerk of the County Board of Finance

The Board of County Commissioners constitutes the county board of finance. As such, they coordinate with the county treasurer to determine the qualifications and selection of banks and savings and loan associations to receive the public monies of the county and of certain special districts within the county. The county clerk serves ex officio and without additional compensation as the clerk of the board of finance (§6-10-8 NMSA). The duties are identical to those for attending, recording and preparing minutes as for the BOCC meetings.

7.2 Accounts and Claims

It is the duty of the clerk to indicate, upon every account audited, approved and allowed by the Board of County Commissioners, the amount so allowed. All accounts, before being allowed and warrants drawn, are to be verified by an affidavit administered by the clerk or other officer authorized to administer oaths.

The affidavit is to be in the following words, endorsed upon the bill or attached to it under seal: "I do solemnly swear (or affirm) that the within and aforementioned account is true and correct and that the services have been rendered (or articles have been furnished) as stated, and that no part thereof has been paid."

A clerk who willfully fails or refuses to perform these duties or violates these provisions is guilty of a misdemeanor, and, upon conviction before a district court, is to be punished by a fine of not less than \$50 nor more than \$100 for each offense.

- County orders are to be signed by the chairman of the Board of County Commissioners and attested to by the clerk.
- The orders are to specify the nature of the claim for which they were issued, and money is not to be paid from the county treasury without such orders (§4-45-4 NMSA).
- Every order is to be numbered, and that date, amount, number of the order and the name of the person to whom it is issued are to be entered in a book kept in the clerk's office for that purpose.

The clerk's duties as budget officer are spelled out in an accounting manual provided by the Department of Finance and Administration, so these duties therefore, will not be detailed in this document. The Board of County Commissioners, in some counties, has delegated budgetary duties to a county manager or to a finance director. Nonetheless, the county clerk is still required to sign all warrants and orders.

When any claim is disapproved by the Board of County Commissioners, the person making the claim may appeal to the district court pursuant to §1-3-39.1 NMSA.

The Board of County Commissioners, at their annual January meeting of each year, or more often if deemed necessary, is to reconcile the returned orders of the clerks to the county treasurer's records. (§4-45-7 NMSA).

7.3 Newspaper Subscriptions

An interesting and somewhat archaic statutory duty (like a few of the other above described statutory duties) is that which requires the clerk to subscribe to each newspaper printed and published in the county (§4-40-7 NMSA).

The clerk is also charged with preserving every copy of each newspaper and arranging to have them properly bound and available for free inspection by the public (§4-40-8 NMSA).

Alternatively, and in accordance with the conditions in the statute, the clerk may microfilm these papers pursuant to §14-3-15 NMSA. The subscription prices and binding cost are to

be paid out of the county's general fund (§4-40-9 NMSA). Upon approval by the BOCC, the clerk may make indefinite loans of files of newspapers not in current demand to libraries of state educational institutions or public libraries for the purpose of preserving historical source material.

7.4 The Open Meetings Act

All meetings for the discussion of public business are mandated to be open to the public by the Open Meetings Act, §10-15-1 et seq, NMSA, with some exceptions which allow discussions but not final action to be conducted in closed session. There are some specific procedural aspects to convening in closed session pursuant to one of the exceptions and the clerk should assist the board with this if needed.

The justifications for a closed session are as follows:

1. Meetings pertaining to the issuance, suspension, renewal or revocation of a license, except evidentiary hearing and final actions taken (i.e. roll call vote).
2. Limited personnel matters (discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation into complaints against public employee) except final actions taken must be in public by roll call vote.
3. Deliberations in connection with an administrative adjudicatory (trial type) proceeding in which individual legal rights, duties, or privileges are determined - except evidentiary hearing and final action (i.e. roll call vote) must occur in public.
4. Discussion of personally identifiable information about individual students.
5. To discuss bargaining strategy preliminary to collective bargaining sessions between policy-making body and representatives of the collective bargaining unit and collective bargaining sessions at which policy-making body and unit representatives are present.
6. Meetings re: sole source purchases exceeding \$2500.00 AND meetings to discuss contents of competitive sealed proposals solicited pursuant to the Procurement Code during the contract negotiation process except final action (i.e. roll call vote) shall be in public.
7. Meetings subject to attorney-client privilege pertaining to pending or threatened litigation in which public body is or may become a participant. (Note: NM case law holds that it does not violate the Act for the Board to authorize the filing of a lawsuit in closed session, without voting in open session to do so).
8. Meetings re: discussion of purchase, acquisition or disposal of real property or water rights.

9. Meetings of public hospital boards which receive less than 50% operating budget from direct public funds where strategic and long-range business plans are discussed.

§ 10-15-1 (I) describes how to properly close a meeting:

If the board is already in a duly noticed meeting, a motion to close is made stating the subject to be discussed with reasonable specificity and stating the authority for closure (See above list). The motion must be passed by majority roll call vote.

Note: If action (other than a decision to file suit on behalf of the County) is to be taken as a result of matter discussed in closed session, then the matter must have been also listed on the agenda with reasonable specificity. However, if the public body is not already in a duly noticed open meeting, it cannot hold a closed meeting until the proper notice is given (according to the board's annual notice resolution consistent with the Open Meetings Act) regarding the fact that the closed meeting will be held, stating the authorization (See above list) for the closed meeting, and stating with reasonable specificity the subject to be discussed.

§10-15-1 (J) of the Open Meetings Act requires that after any closed meeting, a board member must state, and the minutes must reflect, that the matters discussed in closed session were limited to only those specified in the motion or in the Notice of the Separate Closed Meeting.

One of the more challenging aspects of complying with the Open Meetings Act is that of preparing the draft minutes in a timely manner, especially if the BOCC holds meetings more than once monthly, or if the BOCC has expressed a desire for verbatim or very detailed minutes. The Act requires that draft minutes be ready for public inspection within ten days of the meeting, and requires that only the essential facts about the meeting be included: the date, time and place; the members present, whether a quorum was present, and a brief description of the issues considered, the positions of each person that spoke on the issue and the vote of each commissioner and whether the Item was approved or not. The draft minutes are to be included on the board's next meeting agenda for approval.

If the clerk is having difficulty keeping up with the minutes, it may be due to the frequency of BOCC meetings, the detail desired to be reflected in the minutes by the BOCC, the availability of staff to transcribe minutes and any time line for submittal to the county

manager of an Item for inclusion on the board's next agenda. Sometimes the agenda for the next meeting (when the minutes from the previous meeting are required by law to be approved) is being put together even as the minutes are being taken by the clerk.

Open Meetings Act is simple to understand and is liberally construed in favor of the public. The D.A. and the Attorney General are authorized to investigate and to prosecute any violations of the Act, and the Act imposes penalties for said violation, including fines and nullification of official action taken in violation of the Act. The attorney general's office has an excellent publication that states the requirements of the Open Meetings Act, then explains the law, then gives specific and commonly encountered hypothetical examples applying the law; each county clerk should familiarize himself/herself with it.

7.5 The New Mexico Inspection of Public Records Act

The person given the responsibility as custodian of records will have very short time deadlines to respond to requests for public documents. For example, a response at a minimum acknowledging the request is due within three days of receipt of the request, and if possible the production of the requested document for inspection.

7.5.1 Right to Inspect Public Records; Exceptions (§14-2-1 NMSA)

- A. Every person has a right to inspect public records of this state except:
 - 1. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
 - 2. letters of reference concerning employment, licensing or permits;
 - 3. letters or memoranda that are matters of opinion in personnel files or students' cumulative files;
 - 4. law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;
 - 5. as provided by the Confidential Materials Act (§14-3A-1 NMSA 1978);
 - 6. trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

7. tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and
 8. as otherwise provided by law.
- B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.

- The document need only be produced for inspection and copies do not have to be made in advance or provided free of charge.
- However, if originals are allowed to be inspected, then a staff member should closely supervise during the inspection.
- Reasonable fees may be charged to reproduce the documents for the requestor and payment may be required in advance of release of the documents.
- Information may be requested that takes other forms than paper; for example, cassette tapes or computer files.
- If inspection is not allowed within fifteen days of the request, then a written letter containing specific information relating to the delay must be provided to the requestor; a failure to provide this will be deemed a denial of the request.
- If the request is wrongly denied, there are daily fines that can be imposed upon an enforcement action.
- The clerk should work closely with the department most familiar with the requested public information, and if necessary with legal counsel, to determine whether it is indeed public information or whether it might be confidential or otherwise privileged.
- The attorney general's office has an excellent publication that states the requirements of the public records act, then explains the law, then gives specific and commonly encountered hypothetical examples applying the law; each county clerk should become familiar with it.

7.6 Service of Process Against the County

In all legal proceedings against the county, required to be brought in the name of the BOCC, and sometimes naming other county defendants in their official capacities, process is required to be served on the county clerk. The clerk is not authorized to accept service of process of a complaint against a county employee in his personal or individual capacity on behalf of that person; only suits against official capacity defendants are validly accepted by the clerk. The statute requires the clerk to then notify the D.A. And to present to the BOCC at its next meeting “all information he has in regard to the suit or proceedings”.

In practice, all complaints are immediately transmitted by the clerk to the county’s legal counsel (typically not the D.A.) And all information relating to the claim will be discussed with the BOCC in a closed session between it and its legal counsel. All notices of potential claims (tort claim notices) are also forwarded to the legal representative, county manager and department named in a claim notice, but not with the urgency of a formal complaint already filed in court, which have deadlines that start to run against the county the moment it is served.

NOTES

CHAPTER 8

THE COUNTY CLERK'S DUTIES TO ISSUE MARRIAGE AND OTHER LICENSES

Another important function of the county clerk is that of issuing various licenses for various privileges or rights granted by state law.

8.1 Marriage Licenses

The most common license and the most frequently issued license is the marriage license. Every couple desiring to marry in New Mexico must obtain a license from a county clerk and return the license for recording after the marriage ceremony (§40-1-10 NMSA). The clerk is not to issue a license to anyone under the age of majority without parental consent. If in doubt as to an applicant's age, the clerk is to require proof of age.

The fee for issuing, acknowledging, and recording a marriage license and marriage certificate is set by law at \$25.00 (§40-1-11 NMSA). The form of application for marriage license and the form of the marriage certificate are prescribed by law also (§40-1-18 NMSA).

Restrictions on marriage of minors (40-1-6)

- A. The county clerk shall not issue a marriage license to an un-emancipated person sixteen or seventeen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person sixteen or seventeen years of age, unless the minor first receives the written consent of each of the minor's living parents as shown on the minor's certificate of birth, or the district court has authorized the marriage of such person upon request of a parent or legal guardian of the person for good cause shown, and a certified copy of the judicial authorization is filed with the county clerk.
- B. The county clerk shall not issue a marriage license to any person under sixteen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person under sixteen years of age, unless the children's or family court division of the district court has first authorized the marriage of the person upon request of a parent or legal guardian of the person in settlement of proceedings to compel support and establish parentage, or where an applicant for the marriage license is pregnant, and a certified copy of the judicial authorization is filed with the county clerk.

8.2 Business Registration Licenses

Counties are authorized to regulate business operations in the interest of the community's health and welfare under the authority of the statute that grants counties the same powers as municipalities if the county adopts such an ordinance it shall charge a business registration fee of \$35.00 per year. This may be pro-rated for seasonal businesses that operate for only part of the year (§3-38-3 NMSA).

8.3 Liquor Licenses

The county government plays a part in the state's processes under the Liquor Control Act for the granting of liquor licenses. The application for a new license for example requires that the applicant obtain the approval of the governing body of the local option district in which the proposed liquor license premises is to be located. This involves a public hearing that is coordinated between the state and the county clerk's office on behalf of the board and the county. The clerk handles the specific notice and publication duties as directed by the state and the Liquor Control Act. Public hearings on issues of liquor license transfers and newly issued licenses and canopy licenses are open to the public. If the board disapproves a request for liquor license transfer or issuance, the board's minutes must reflect evidentiary findings that support its decision. The governing body ensures that the state is informed of the board's decision after the public hearing.

8.4 Other Miscellaneous Licenses and Permits

New Mexico law requires that all warehousemen file with the county clerk a surety company bond in the sum of \$5,000, payable to the state and approved by the district attorney of the district court before being allowed to issue negotiable warehouse receipts. The county clerk is authorized to file the surety bond and to number the licenses issued under this act with consecutive numbers following the name of the county (§56-6-3,4 NMSA).

Each county has its own set of local ordinances passed to address the issues of their particular county. Some of these ordinances may require permits to be obtained at the office of the county clerk. One example is circus permits. It is not possible to identify herein the many different types of licenses and permits that the various clerks' offices around the state are charged with issuing on behalf of their county government.

CHAPTER 9

DUTIES AS CLERK OF NM PROBATE COURT

9.1 The Clerk’s Role and Authority as it Relates to the Probate Court

Unless otherwise provided for by law, the county clerk is to serve as clerk of the probate court (Art. VI, Sec. 22). The primary purposes of the Probate Code, Chapter 45 of the New Mexico Statutes Annotated, is to simplify and clarify the laws concerning the affairs of decedents, missing persons, minors and incapacitated persons; to ascertain and effectuate the intent of a decedent in the distribution of his property; to promote speedy and efficient settlements of the estate of a decedent; and to facilitate the use and enforcement of certain trusts (§45-1-101 NMSA).

- The clerk is required to index and keep a record of probate action documents filed in the probate court including petitions, applications, demands for notices, demands for bonds and any orders issued by the district or probate courts.
- After payment of required fees, the clerk is required to issue certified copies of any probated wills or letters issued to personal representatives.
- Certificates relating to probated wills must show whether the decedent was a resident of New Mexico and whether the probate was formal or informal. Also, the certificates must give the names and addresses of any known heirs to the will.
- Formal probates are handled by the district court, and informal probates may be handled by either the district court or the probate court (§45-1-302 NMSA).
- The probate code imposes record keeping duties on the district court clerk for probate actions filed in district court, and on the county clerk as the clerk for the probate judge in informal proceedings. Therefore, when reference herein is made to the “clerk”, it may technically apply to both the district court clerk and the county clerk, but for purposes of this manual, refers to the duties of the county clerk.

9.2 Coordination with District Court

The law gives the power to presiding district court judges in their discretion, “if convenient or desirable”, to require the presiding district judge to order that the records of the informal probate proceedings of a particular county be kept under the supervision of the probate court or clerk of the probate court of such county for such period of time as the district judge may determine (§45-1-305 NMSA). New Mexico District Court Rule of Civil Procedure, Rule 1-095 addresses these overlapping functions, clarifying the distinct roles of

district court clerk versus county clerk as probate court clerk in a manner to avoid duplication of effort, and at the same time to enhance the efficiency of the judicial process as it relates to each probate action.

This Rule provides as follows:

- A. **Applicability of rule.** This rule shall apply to informal probate proceedings filed in the probate court.
- B. **Initial pleadings.** At the time an informal probate proceeding is filed, the probate court shall advise the clerk of the district court in writing of the style of the case and the names and addresses of the party filing the initial pleading and his attorney, if any. Upon the appointment of a personal representative in an informal proceeding, the probate court shall advise the clerk of the district court in writing of the names and addresses of the personal representative and his attorney, if any. When the informal probate proceeding is closed, the probate court shall furnish to the clerk of the district court a copy of the docket sheet for said proceeding showing all entries. The district court shall retain such information as a part of its records.
- C. **Filing of documents.** After furnishing a copy of the docket sheet, the probate court shall, promptly upon the filing of any document with the probate court, cause to be furnished to the clerk of the district court notice of the type of document so filed and date of filing. If any such document shall evidence the appointment of a personal representative or any change in the name or address of a personal representative, the notice shall include the name and address of the personal representative, or any change therein. The clerk of the district court shall enter such information on its copy of the appropriate docket sheet.
- D. **Copies of documents.** The clerk of the probate court shall, upon request and payment of fees required by law, furnish a certified copy of any document filed in an informal probate proceeding in the probate court. The obligation of the clerk of the district court to issue certified copies is limited to copies of documents actually filed in the district court.
- E. **Docket fee.** If application for informal probate of a decedent's estate has been filed with the probate court and a claimant presents a claim against the estate by filing claim with the district court pursuant to Section 45-3-804 NMSA 1978, the clerk shall require payment of the docket fee required for filing other civil cases and shall promptly furnish to the probate court a copy of such claim.

F. Demand for notice. If a demand for notice is filed with the clerk of the district court pursuant to Section 45-3-204 NMSA 1978, and an informal proceeding is then pending in the probate court, the clerk of the district court shall promptly furnish a copy of such demand to the clerk of the probate court. If at the time of filing such demand there is no proceeding pending in either the district court or the probate court, and an informal proceeding is thereafter brought in the probate court, the clerk of the district court shall promptly furnish a copy of such demand to the clerk of the probate court upon receipt of copy of the docket sheet provided for in Paragraph B of this rule. Further, upon being furnished the name and address of a personal representative, the clerk of the district court shall mail a copy of the demand to the personal representative as required by Section 45-3- 204 NMSA 1978. NMRCPC 1-095 [Emphasis added].

9.3 County Must Furnish Office and Supplies for the Probate Judge (§34-7-6 NMSA)

The Board of 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.

9.4 Permanent Storage of Probate Records

The archives of the probate judge's office are to be under the clerk's charge (§34-7-7 NMSA). Probate clerks are required to keep records of receipts and disbursements, current accounts, decedents' estates, bonds and wills. The record of receipts and disbursements is to be kept in a separate book and is to indicate from whom money was received, all warrants against the county treasury, and the purposes of each warrant (§34-7-17 NMSA). The record of accounts current for the year is to be open to public inspection (§34-7-18 NMSA). Clerks who fail to discharge their duties with respect to either of these records are guilty of a misdemeanor § (34-7-19 NMSA). The record of decedents' estates is to include the name of every deceased person whose estate is administered and the date of his death; the names of all his heirs in law, devisees, legatees and widow, together with their ages and places of residence as can be determined; a note of every sale of real estate made under order of the probate or district court; a brief account of every step or proceeding in the course of the administration of estates; and, for each of the last two items, a reference to the volume and page of the court record where a complete record can be found (§34-7-20 NMSA). Finally, the record of wills and bonds is to include all bonds

given by personal representatives, conservators, and guardians and all wills admitted to probate (§34-7-21 NMSA).

9.5 Fees

The clerk is authorized to collect the following fees: \$30.00 for docketing each case plus \$.15 additional per folio for any excess of twenty folios; \$.50 for making an itemized bill of costs when demanded; \$1.00 for making and certifying to a transcript of judgment; \$.50 for taking an acknowledgment and affixing his seal if one person acknowledges plus \$.25 for each additional person; \$.10 per folio of one hundred words for making copies of records or papers and \$.03 per folio for carbon copies; \$.50 for a certificate and seal authenticating any paper as a true and correct copy, and fees provided by law for making and certifying transcripts on appeal or certiorari to any court (§34-7-14, §34-7-15 NMSA). No other fees are to be collected, and all other services are to be without compensation (§34-7-16 NMSA).

9.6 Appointment of Personnel

With the consent of the probate judge, the clerk may appoint one deputy clerk of the probate court. The clerk is responsible for the acts of the deputy, and the deputy may not receive any additional salary or compensation. His compensation may be taken from the pay and fees of the clerk who appoints him as agreed upon between the deputy and the clerk (§34-7-22 to §34-7-25 NMSA). In practice, the clerk requests payment from the board of county commissioners, who actually have the power to set the salary which is to be paid to the deputy clerks (§4-38-19 NMSA).

9.7 Checklists and Glossary

The following checklists, descriptions and glossary of terms provide some of the basic probate procedures and terminology that may be helpful to county clerks in carrying out their role as clerk of the probate court.

9.8 Informal Probate Proceedings

The proceeding is commenced by filing with the probate or district court (§45-3-301 NMSA):

- A. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

- a statement of the interest of the applicant;
- the name and date of death of the decedent; his age and the county and state of his domicile at the time of death; and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- if the decedent was not domiciled in New Mexico at the time of his death, a statement showing venue;
- a statement identifying and indicating the address of any personal representative of the decedent appointed in New Mexico or elsewhere whose appointment has not been terminated;
- a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice, of any probate or appointment proceeding concerning the decedent that may have been filed in New Mexico or elsewhere; and
- a statement that the time limit for informal probate or appointment as provided in §45-3-101 through §45-3-1204 NMSA 1978 has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by §45-3-108 NMSA 1978 authorizing tardy probate or appointment have occurred.

B. An application for informal probate of a will shall state the following in addition to the statements required by Subsection A of this section:

- that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of his will probated in another jurisdiction accompanies the application;
- that the applicant, to the best of his knowledge, believes the will to have been validly executed; and
- that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

No notice is required on these applications unless a demand for notice has been filed with the district court or there is already a personal representative whose appointment has not been terminated (§45-3-306 NMSA).

C. Section 45-1-401 states that if notice of a hearing on any petition is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any person having an interest in the subject of the hearing.

Notice shall be given:

- by mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known; or
 - by service of a copy thereof upon the person being notified in the manner provided by the Rules of Civil Procedure for service of summons and complaint in civil actions; or
 - if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing a copy thereof at least once a week for two consecutive weeks, in a newspaper published and having general circulation in the county in which the hearing is to be held or, if there be no newspaper published in such county, then in a newspaper of general circulation in such county, the last publication of which is to be at least ten days before the time set for the hearing.
- D. The court for good cause shown may provide for a different method or time of giving notice for any hearings.
- E. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.
- F. Informal Appointment (§45-1-302 NMSA). As with all orders, it should be filed.
- G. Venue; multiple proceedings; transfer (§45-1-303 NMSA).
- Subject to the provisions of Section 3-201 (§45-3-201 NMSA), where a proceeding under the Probate Code could be maintained in more than one place in New Mexico, the court in which the proceeding is first commenced has the exclusive right to proceed.
 - If proceedings concerning the same estate, protected person, ward or trust are commenced in more than one court of New Mexico, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.
 - If a court finds that in the interest of justice a proceeding or a file should be located in another court of New Mexico, the court making the finding may transfer the proceeding or file to the other court.

- H. Bond is not ordinarily required of a PR appointed informally except:
- upon the appointment of a special administrator in some cases,
 - when the will (if present) requires it, or
 - when an interested party (creditor, heir) demands it. This demand must be filed with the court and a copy mailed to the personal representative.
- I. Prior to receiving letters, a personal representative shall qualify by filing with the appointing probate court or district court any required bond and a statement of acceptance of the duties of the office (§45-3-601 NMSA)
- J. After meeting bond requirements, if any, the probate court issues Letters Testamentary (if will present) or Letters of Administration (if no will).
- K. Within 10 days of his appointment, the PR must give notice of his appointment to the heirs of the decedent and also to the devisees (if a will is present). This requirement does not apply to special administrators (§45-3-705 NMSA).
- This notice must also be filed with the court.
- L. Within a reasonable time period the personal representative may publish notice to creditors once a week for two successive weeks in a local paper announcing the appointment and the personal representative's address and the name of the decedent and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred (§45-3-801 NMSA). This must also be filed with the court along with proof of publication.
- M. Within three months of his appointment, the PR shall prepare an inventory of the decedent's property with an estimate of the value of each item of property and also any known encumbrances (§45-3-706 NMSA). The PR must file this with the appropriate court and to those who request it. There is no longer any requirement that a formal appraisal be made and filed with the court.
- If any additional property is discovered, the personal representative has a duty to file a supplemental inventory (§45-3-708 NMSA). There are no guidelines set forth in regard to a PR's failure to file the inventory in a timely manner. It should be accepted by the clerk at any time.
 - However, the improper exercise of power concerning the estate can result in liability to the personal representative (§45-3-712 NMSA).
- N. Within nine months from the decedent's death, the personal representative must file the Federal Estate Return. The probate court has no direct interest in this, but the New Mexico Estate Tax (if any) is computed from the Federal Return. A verified statement of no tax due or of tax paid must be filed with the court some time before the estate is closed.

- O. Creditors have two months from the first publication of notice to creditors to submit claims. Creditors not filing within this time period are permanently barred from making claims (§45-3-801 NMSA).
- P. After all claims have been settled and all of the decedent's property has been inventoried, distribution of the estate may begin.
- The personal representative must file with the court and mail to all heirs or distributees a proposal for distribution setting forth the way the estate will be divided (§45-3-906 NMSA).
 - Proof of Notice must be filed with the court by the personal representative for those persons entitled to receive the above proposal.
- Q. After 30 days have passed since the personal representative filed and mailed the proposal for distribution, and assuming no objections thereto have been filed with the court, the instrument of distribution shall be filed with the court and mailed by the personal representative to each distributee. This instrument assigns, transfers, or releases the assets of the estate to the particular distributee (§45-3-906, 907 NMSA).
- R. Unless prohibited by order of the district court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than three months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative or a previous personal representative has:
- determined that the time limited for presentation of creditors' claims has expired;
 - fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements that have been made to accommodate outstanding liabilities; and
 - sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby, including guardians ad litem appointed pursuant to Section 45-1-403

NMSA 1978, conservators and guardians.

If no proceedings involving the personal representative are pending in the district court one year after the closing statement is filed, the appointment of the personal representative terminates (§45-3-1003 NMSA).

9.9 Formal Probate Proceedings

As mentioned earlier, the district court has exclusive jurisdiction of formal probate proceedings. A proceeding may be commenced informally and later transferred to district court for further proceedings at any time.

9.10 Probate of Small Estates

The administration of small estates involves fewer filing and notice requirements.

The three methods are:

- Filing an Affidavit of Successor: (§45-3-1201.A. NMSA)
- No administration is necessary if the only assets will be items of tangible personal property presenting no title issues.
- The heirs can pay creditors and divide the personal property without administration, if all tax obligations are met.

9.11 Collection of Personal Property by Affidavit (§45-3-1201 NMSA)

Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

1. the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars (\$50,000);
2. thirty days have elapsed since the death of the decedent;
3. no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
4. the claiming successor is entitled to payment or delivery of the property.

9.12 Ancillary Administration

Ancillary administration is the administration over a non-resident decedent's property in New Mexico. The administration proceeding should be commenced in any county in New Mexico where the decedent had property. Although an original proceeding in New Mexico may be commenced in some circumstances it is not usually the case. If no original proceeding has begun in New Mexico, the foreign (out-of-state) personal representative of the decedent's estate may file with the district court authenticated copies of the PR's appointment, any bond given, and his address. Then after filing an authenticated copy of a will and his letters from the other state, the foreign PR may be granted ancillary letters of administration informal proceedings in the district court (§45-4-204 NMSA). The estate is then administered in the usual fashion. Thus, the code vests responsibility for ancillary proceedings with the district court and makes no specific provision for the jurisdiction of the probate court in these matters. Similarly, if real property is included in an estate, but is located in another county, the personal representative shall file a copy of the notice of administration with the court and record it with the county clerk of that other county.

9.13 Appointment of Special Administrator

The appointment of a special administrator may be done in either district or probate court. It is commenced by filing an application with the court by an interested person. When done informally, it is usually for the purpose of protecting the estate prior to appointment of a personal representative or if a prior personal representative has died or resigned. When done in a formal proceeding by order of the district court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the district court that an emergency exists, appointment may be ordered without notice (§45-3-614 NMSA).

9.14 Notice and Waiver Issues

Any heir, devisee or other interested party can file a waiver of notice for any notice requirements under any provision of the code. Such a waiver must be signed by that person and filed with the court (§45-1-402 NMSA).

Any person may file a demand for notice with the court requiring that he be given notice of any petition, hearing or other proceeding during the course of administering the estate.

This should be filed with the district court (§45-3-204 NMSA), but apparently, it is being filed with the probate court too. Upon filing, the clerk shall mail a copy of this demand to the personal representative.

A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominate different persons to be personal representatives in New Mexico and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative (§45-3-203 NMSA).

9.15 Glossary of Probate Terms

- **Allowance:** A deduction allowed by a court used to provide for the decedent's immediate family while that estate is being probated.
- **Ancillary Administration:** The administration of a deceased person's estate in a state where he/ she had property but which was not domicile.
- **Application:** The document filed with the probate court to initiate an informal probate proceeding.
- **Bequest:** A gift of personal property in a will; also referred to as a "legacy".
- **Codicil:** A written document which is a supplement to a will that may alter, modify or explain the will.
- **Community Property:** That property which is owned in common by a husband and wife: normally considered to be that property acquired by either or both during marriage.
- **Conservator:** A person who is appointed by a court to manage the estate of a protected person.
- **Decedent:** The person who has died.
- **Devise:** The disposition of real or personal property by a will and when used as a verb, means to dispose of real or personal property by will.
- **Domicile:** The place where a person has his true fixed and permanent home.
- **Estate:** All property left by a decedent in which he had an interest.
- **Fiduciary:** Includes the personal representative, guardian, conservator or trustee.
- **Final Account:** The document which is filed to close an estate and distribute a decedent's property.
- **Formal Proceeding:** Probate proceedings conducted before the district court which requires notice to interested persons.
- **Guardian:** A person who has qualified to have the care, custody or control of a person of a minor or incapacitated person.
- **Heirs:** Those persons including a surviving spouse who are entitled under the statutes of intestate succession to the property of a decedent. In other words, if a person dies without a will, those people who under the law take his property are heirs as distinguished from devisees, persons who take under a will.
- **Holographic Will:** A will written and signed by the testator with his own hand.

- **Informal Proceedings:** Probate proceedings conducted with limited notice requirements before the probate court.
- **Interested Persons:** Heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in, or claim against, an estate. It also includes personal representatives and other fiduciaries representing interested persons.
- **Intestate:** That condition which exists where an individual dies leaving no will.
- **Issue:** A direct descendent, e.g., a child, grandchild, great grandchild, etc.
- **Joint Tenancy:** An interest which two (or more) people have in property whereby the law assumes that both (all) own an undivided interest in the entire property.
- **Legatee:** The person to whom personal property is given by will or by law.
- **Personal Representative:** The person's name in a will or determined by law who is appointed by the court to manage and be legally responsible for probating a decedent's estate.
- **Personality:** Personal property.
- **Per capita:** A Latin phrase meaning "share and share alike," used to denote a method of dividing estate property by giving an equal share to each of a number of persons.
- **Per Stirpes:** An estate of a decedent is distributed per stirpes, if each branch of the family is to receive an equal share of an estate. When the heir in the first generation of a branch predeceased the decedent, the share that would have been given to the heir would be distributed among the heir's issue in equal shares.
- **Petition:** A written request to the district court for an order after giving notice to all interested parties.
- **Probate:** The judicial process by which a decedent's estate is distributed pursuant to his will or according to the laws of intestate succession.
- **Tenancy in Common:** An interest in property in which two or more people own whereby the law assumes that each owns a proportionate share of the property that is directly related to the number of people who are said to "own" the property.
- **Testate:** That condition which exists where an individual dies leaving a previously executed will.
- **Testator (Testatrix):** The male and female designation for one who makes or has made a will.

CHAPTER 10

COUNTY SERVICES & FUNCTIONS OF THE BOCC: ELECTIONS

The election code applies to the following types of elections

- General Elections
- Primary Elections
- Statewide Special Elections
- Elections to fill vacancies in the office of Representative in Congress
- School District Elections (§1-1-19 NMSA)

The Secretary of State, the chief election officer of the State, maintains uniformity in the application, operation and interpretation of the New Mexico Election Code. The Secretary of State may, subject to the State Rules Act (§14-4-1 through 14-4-9 NMSA), make rules and regulations pursuant to the provisions of the Election Code. Copies of such rules and regulations are furnished to the County Clerk of each county (§1-2-1 NMSA). No election forms or procedures can be used without prior approval of the Secretary of State.

10.1 Election Officers and Boards

At least 55 days before the primary election, the County Clerk appoints the precinct board and alternates for each precinct (§1-2-6, §1-2-10 NMSA) for a term of two years. The Precinct Board shall consist of a presiding judge, one or more election judges representing each major party and one to three election clerks, depending on the need in that particular precinct (§1-2-2 NMSA).

10.2 Precincts and Polling Places

The polling place for each precinct is designated by the Board of County Commissioners (BOCC) before the first Monday in November of each odd-numbered year. If no public building or public school building is available, the BOCC must provide some other suitable place (§1-3-7 NMSA). However, no polling place can be selected outside the boundary of the precinct unless approved by the District Court of the county where the precinct is located.

Upon application of the BOCC, the governing board of any school district must permit the use of any school building for registration and voting purposes (§1-3-7 NMSA). The BOCC

may create an alternative polling place within a precinct upon receiving a petition signed by at least ten percent of the qualified electors of that precinct (§1-3-7.1 NMSA).

The BOCC may create additional polling places or additional precincts and may divide or consolidate precincts as necessary to meet legal requirements (§1-3-2,3 NMSA). In 2009, the Election Code was changed to provide for the designation of an election precinct as a “mail ballot election precinct” by the BOCC, upon the request of the County Clerk, if the BOCC finds that the precinct has fewer than 100 voters and the nearest polling place for an adjoining precinct is more than 30 miles driving distance from the polling place designated for the precinct in question.

The BOCC is permitted by law to consolidate up to 10 precincts into one polling place called a Voter Convenience Center (§1-3-4 D (2) NMSA). Those consolidated precincts are subject to the same rules that apply to precincts generally in terms of their creation, publication of the location and hours of operation, and all other requirements. Additionally, the BOCC may designate certain rural precincts as mail ballot only precincts (§1-6-22.1 NMSA).

10.3 Registration of Electors

The BOCC must meet in February of each odd-numbered year to appoint three voters to the County Board of Registration. No more than two of the three persons may be members of the same party at the time of their appointment. The BOCC must also select two alternates who belong to different political parties at the time of their appointment. Appointments to the Board of Registration are made from the lists of county party chairpersons. The BOCC must give preference to the names in the order indicated on the lists (§1-4-34 NMSA).

The Board of Registration begins, in March of odd-numbered years, to review the voter registration lists, and to compile a list of inactive voters. The BOCC is obligated to provide the necessary clerical assistance needed by the County Clerk to perform all voter registration work, including that of the Board of Registration (§1-4-46 NMSA).

10.4 Absentee/Early Voting

Before any general, primary, or statewide special election, the BOCC must adopt a resolution creating precincts for absentee voting purposes. An absentee voter precinct is created for each state representative district in the County. The boundaries of that precinct

must coincide with the boundaries of the state representative district, except in multi-county districts. In these districts, the precinct boundaries coincide with the boundaries of that portion of the district lying within the County.

Each precinct must be identified by county name and district number (§1-6-20 NMSA). At the time that absentee voter precincts are created or consolidated, the BOCC must designate a polling place in each absentee voter precinct (§1-6-22 NMSA). The BOCC must also permit absentee voting for all bond elections (§6-15-26 NMSA). Any voter may vote absentee ballot in any election (§1-6-3 NMSA).

The County Clerk may create alternate voting locations within the County for early voting (§1-6-5.7 NMSA). Not less than ninety (90) days prior to the election the County Clerk must fix the hours of operation for alternate voting locations; however, they may not open earlier than 7:00 a.m. and may not close any later than 9:00 p.m.

Alternate voting locations must be open for a minimum of eight (8) consecutive hours during each day of early voting. In addition, the alternate voting locations must comply with seven (7) additional requirements that are set forth in the above referenced statute.

10.5 Use of Paper Ballots

The 2006 Legislature amended the election law to require the use of paper ballots in elections covered by the Election Code.

- To replace the voting system
- To acquire the necessary software
- For the Secretary of State to purchase the paper ballots for all counties to use on the new voting system for primary and general elections and
- To hold the counties harmless for payments due for voting systems under lease-purchase agreements entered into pursuant to Sections 1-9-17 through 1-9-19 NMSA.

10.6 Provisional Paper Ballots

In 2003, the election code was amended to add methods to enhance voter accessibility to the polls. The use of the provisional paper ballot was authorized for certain situations. One such situation is when a voter requests to vote at a precinct outside their precinct of residence and the poll workers have no way to verify that the voter is indeed registered to vote within the County. The voter is to be allowed to vote using a paper provisional ballot,

which will be verified later, maintaining the secrecy of the voter's identity (§1-12-25.2 NMSA). The 2005 amendment to this statute states that beginning with the closing of the polls on election-day through the tenth day following the election, the County Clerk shall notify by certified mail each person whose provisional ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the State Canvassing Board to appeal to the County Clerk a decision to reject the voter's ballot.

Also, these provisional paper ballots are to be used if polling hours are extended by court order or any other order pursuant to a state law in effect at least ten days before the date of that election. The provisional paper ballot cast pursuant to this section shall be separated and held apart from provisional paper ballots cast by those not affected by the order. The ballot shall be counted if there is no legal challenge to the order extending polling hours within ten days of the election; or a legal challenge to the order extending polling hours is not sustained (§1-12-27.1 NMSA). The voter must complete the outer envelope of the provisional paper ballot with certain minimum requirements as outlined in statute (§1-12-25.3 NMSA).

These include:

- the name and signature of the voter
- the voter's registered address, both present and former if applicable
- the voter's date of birth
- the reason for using the ballot
- the precinct and the polling place at which the voter has voted
- the voter's social security number and
- sufficient space to list the disposition of the ballot after review by the County Clerk.

A provisional paper ballot shall not be rejected for lack of the information required by this section as long as the voter provides a valid signature and sufficient information to determine eligibility.

If a voter is required to vote on a provisional paper ballot, the Election Judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. Further, the County Clerk shall establish a free access system, such as a toll-free telephone number or internet web site that a voter who casts a provisional paper ballot may access to ascertain whether the

voter's ballot was counted and, if the vote was not counted, the reason it was not counted. Access to information about an individual voter's provisional ballot is restricted to the voter who cast the ballot.

10.7 Voting Machines

The Secretary of State (SOS) is required to provide the County Clerk with a sufficient number of voting systems, as required by the Election Code (§1-1-1 NMSA), for the conduct of primary and general elections. When authorized by the State Board of Finance (BOF), the BOCC may acquire new or previously owned systems.

The Secretary of State prescribes by rule, specifications for the proper storage of voting systems, which are held in the custody of the county that uses them. The BOCC is responsible for the cost of properly storing the voting systems. The SOS must pay from the voting system revolving fund for the cost of all hardware, software, firmware, maintenance, and support for voting systems certified for use in state elections (§1-9-7.6 NMSA).

State law governing the minimum number of voting machines requires one voting machine in each polling location (§1-9-5 NMSA) and an adequate number of booths to ensure voting in secret.

10.8 County Canvassing Board

The BOCC is ex officio the County Canvassing Board (§1-13-1 NMSA). The Board must meet within three days after the election to proceed to canvass the election returns (§1-13-3 NMSA). In many counties this public meeting is a formality conducted to officially delegate the actual task of tallying the votes to the County Clerk's staff.

The job of the Canvassing Board and/or its staff is to examine poll books and tally books of each precinct to determine if they contain the properly executed certificates required by the Election Code, as well as to ascertain whether any discrepancy, omission, or error appears in the election returns (§1-13-4 NMSA). The Canvassing Board cannot adjourn until it has canvassed all the returns of the election (§1-13-12 NMSA); however, the board must complete the canvass of the returns and declare the results within ten days from the date of the election (§1-13-13 NMSA). The expense of any proceedings necessary to complete or correct any returns or certificate is to be paid from the county General Fund upon a voucher signed by the County Clerk (§1-13-20 NMSA).

CHAPTER 11 WEB RESOURCES

A partial list of General Sites

NM Association of Counties

<http://nmcounties.org>

NM EDGE

<http://nmedge.nmsu.edu>

NM Cooperative Extension Service

<http://aces.nmsu.edu/>

State of New Mexico

<http://newmexico.gov>

- Attorney General's Office
<http://www.nmag.gov/>
- Department of Finance Administration- DFA
<http://www.nmdfa.state.nm.us/>
- DFA/ Local Government Division –LGD
http://www.nmdfa.state.nm.us/Local_Government.aspx
- General Services/State Purchasing
<http://www.generalservices.state.nm.us/statepurchasing/>
- NM Governor's Office
<http://www.governor.state.nm.us/>
- Secretary of State's Office
<http://www.sos.state.nm.us/>
- State Land Office
<http://www.nmstatelands.org/>
- State Treasurer's Office
<http://www.nmsto.gov/>
- Tax and Revenue (TRD)
<http://www.tax.newmexico.gov/>

- TRD/Property Tax Division- PTD
<http://www.tax.newmexico.gov/property-tax-division.aspx>
- NM Finance Authority
<http://www.nmfa.net/>

Federal

- Payment in Lieu of Taxes link to PILT map:
<http://www.tax.newmexico.gov/Businesses/maps.aspx>

Publications

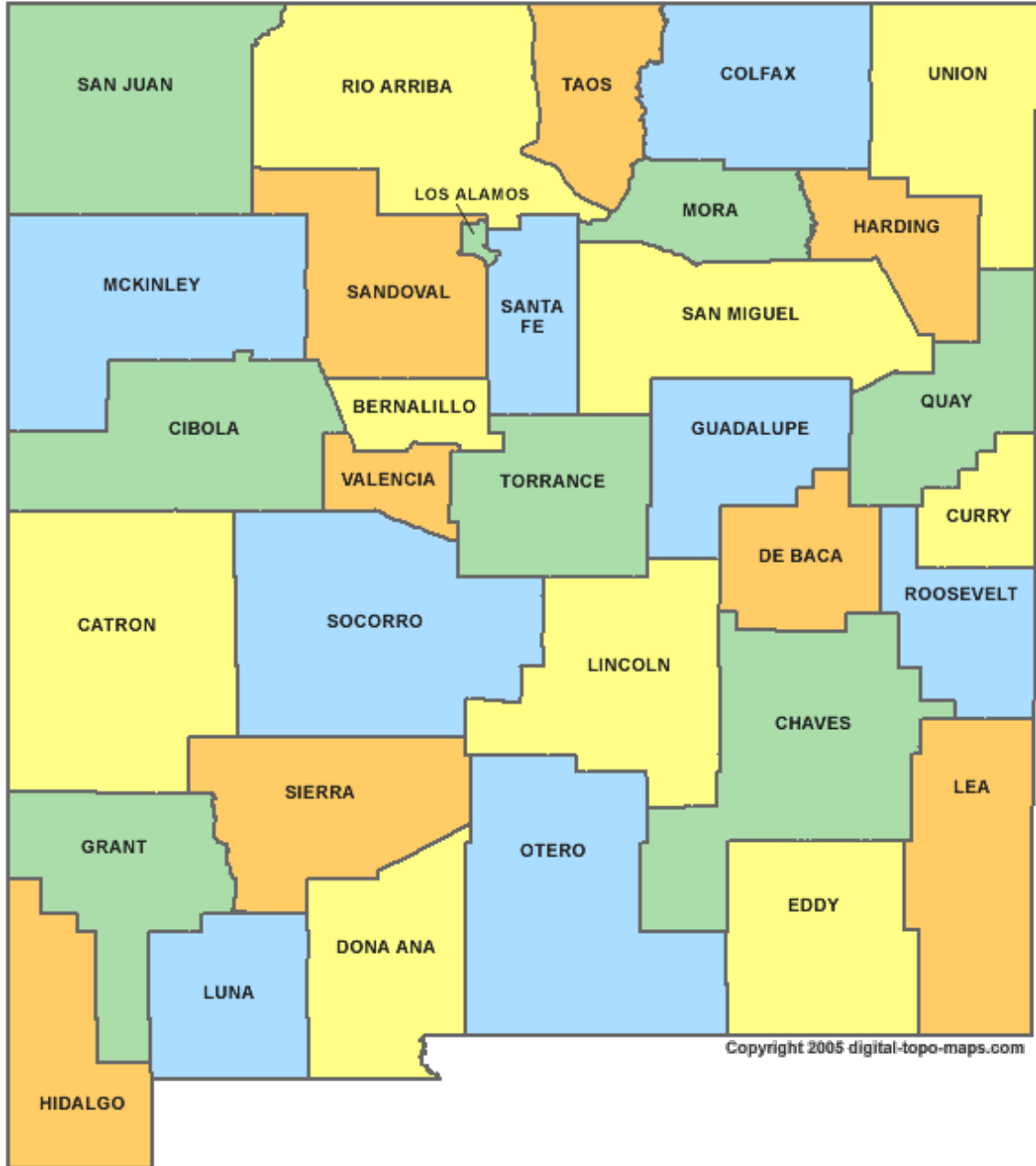
- TRD's publication: FYI-C120, County Gross Receipts Tax Local Options
<http://www.tax.newmexico.gov/Government/local-option-taxes.aspx>
- The Open Meetings Act (OMA) Compliance Guide and a Compliance Checklist
<http://www.nmag.gov/open-meetings-inspection-of-public-records-acts>
- A video that explains both NM's OMA and the Information & Public Records Act
<http://www.nmag.gov/newsroom/video-clips/omaipra>

GLOSSARY

COMMONLY USED WORDS & TERMS

- **Accountability** - taking responsibility for your own actions as well as holding others responsible for theirs
- **Assessor, County** - an elected official who assesses property for taxation
- **Board of County Commissioners (BOCC)** - the legislative body of the County
- **Board of Finance** - Board of County Commissioners as ex officio
- **Canvassing Board** - Board of County Commissioners as ex officio
- **Clerk, County** - an elected official serving as custodian of records, commission minutes, and elections
- **Code of Ethics** - written statement of values Conflict of Interest- when one activity could potentially corrupt (or appear to corrupt) another
- **Cooperative Extension Service** - serves NM Counties and brings education to rural areas
- **County Classification** - based on population and the total assessed valuation of each county at the end of the preceding year
- **Per Diem and Mileage** - governs reimbursement for travel costs associated with legitimate county business
- **Fiduciary Responsibility** - the public trust
- **Funds, Designated** - specific to the enabling legislation allowing collection (e.g. Fire, Indigent, Hospital, etc.)
- **Joint Powers Agreement** - an agreement to share power between governmental entities
- **New Mexico Association of Counties** - a private non-profit with a public purpose to serve as resource to New Mexico Counties
- **New Mexico Constitution** - foundation for law and government in New Mexico
- **New Mexico State Statutes** - laws created by the New Mexico State Legislature
- **New Mexico State Regulations** - policies made by administrative agencies
- **Open Meetings/Public Records Acts** - New Mexico sunshine laws which insure transparency
- **Probate Judge, County** - an elected official required to hold court overseeing matters of estates and wills
- **Public Trust** - the trust placed in one elected to public office
- **Sheriff, County** - an elected official responsible for preserving the peace
- **Stewardship** - a responsibility to take care of something one does not wholly own
- **Treasurer, County** - an elected office responsible for keeping account of all county funds received and disbursed, and serving as ex officio county tax collector
- **Voter Convenience Centers** - up to 10 combined precincts created within the County to offer greater access to voting

Map of NM Counties



We hope this book is useful to you in the performance of your job duties as a county elected official. If we may assist you in any way, please feel free to reach out to the NM EDGE County College (575 646 0314), New Mexico Cooperative Extension Service (575 646 3015), and to New Mexico Association of Counties (505 983 2101).

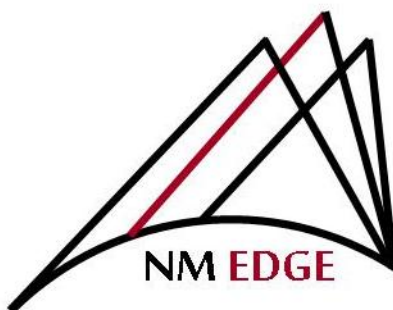
We strive to continuously improve, and welcome your suggestions. You may contact NM EDGE County College at NMEDGE@NMSU.EDU. Best wishes for every success as a Public Servant in the great State of New Mexico!

The NM EDGE County College

A Collaborative Program of
NM Cooperative Extension Service & NM Association of Counties

Visit our website at NMEDGE.NMSU.EDU
Contact us at NMEDGE@NMSU.EDU

This book is intended as a general guide.
Consult your County Attorney for matters specific to your County
or to the duties of your office.



New Mexico State University is an equal opportunity/affirmative action employer and educator.
NMSU and the U.S. Department of Agriculture cooperating.
