

Hometown Advantage: The Right to a Fair and Impartial Jury

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To Bring a Lawsuit There Must Be:

01.

Personal Jurisdiction

The court's power
over the defendant

02.

Subject Matter Jurisdiction

The court's power
to hear a certain
kind of claim

03.

Proper Venue

Where a claim can
be filed



03.

Proper Venue

In state actions, under New Mexico venue statutes, proper venue is the county in which a case can heard.

What is Venue?

Venue determines where litigation will take place

- Venue is governed by statutes.

Burden of proof

- The burden is on the plaintiff to prove venue is proper.
- A defendant may challenge venue by filing a motion to dismiss or transfer.

Venue is local

- Venue determines the specific county where a case may be filed.
- In a state like New Mexico, where rural communities have limited access to legal resources, venue statutes help ensure parties can participate in litigation without the undue hardship of having to travel across county lines to file lawsuits.

Venue as a tool for the defendant

- Although the plaintiff initially chooses the venue for filing the lawsuit, the defendant has a chance to challenge that.



Historical Background

American states first adopted venue statutes in the 1800s that reflected the English principle that a person should be tried by neighbors who were familiar with the facts and conditions of their community.

- At the time, most disputes were local—between people and businesses located in the same county: Venue rules therefore required that cases be filed where the defendant lived or where the event occurred.

As the country industrialized, this framework began to break down. Corporations no longer served just one community—they served regions and states.

- By the mid-20th century, Congress and state legislatures had modernized venue statutes to recognize that justice requires flexibility.

Some states still confine lawsuits to the county where the events of the lawsuit occurred.



Purpose of Venue Statutes



Fairness

Allows claims to be brought in any place where a part of the lawsuit took place.



Impartiality

The right to have a trial in front of a jury not unduly influenced by personal connections or knowledge.

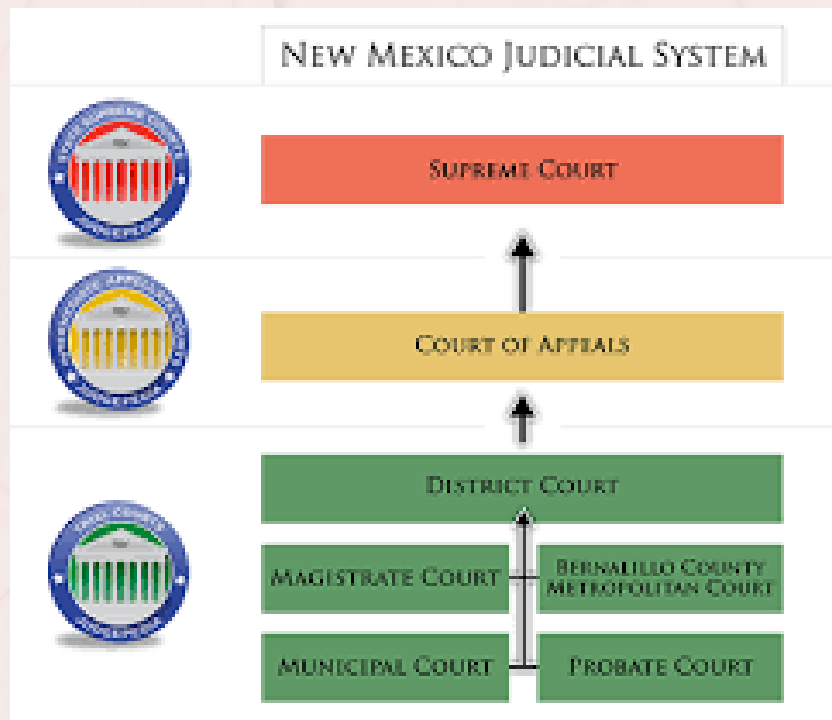


Accessibility

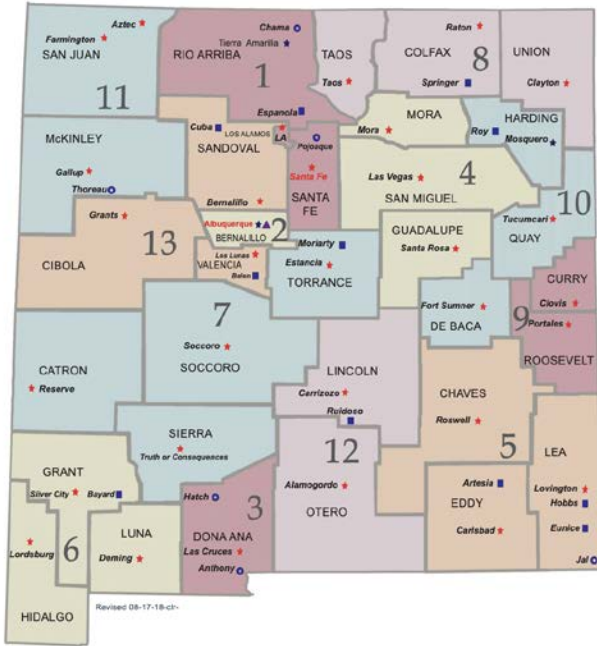
Venue reform ensures that ordinary citizens have a fair chance to pursue legitimate claims without being effectively priced out of justice.



New Mexico Judicial System Hierarchy



NEW MEXICO STATE COURTS



Supreme Court
Santa Fe

Court Of Appeals
Santa Fe & Albuquerque

- ★ District & Magistrate Courts
- ★ District Courts
- ▲ Bernalillo County Metropolitan Court
- Magistrate Full Courts
- Magistrate Circuit Courts

Judicial District Courts by County:

1st	2nd	3rd	4th	5th	6th	7th
Los Altos	Bernalillo	Dona Ana	Guadalupe	Chaves	Grant	Catron
Rio Arriba			Mora	Eddy	Luna	Sierra
Santa Fe			San Miguel	Lee	Hidalgo	Socorro
						Torrance

8th	9th	10th	11th	12th	13th
Colfax	Curry	De Baca	McKinley	Lincoln	Cibola
Taos	Roosevelt	Harding	San Juan	Otero	Sandoval
Union		Quay			Valencia

New Mexico Judicial Districts



Venue in New Mexico

NMSA 1978 § 30-1-14: Criminal Offenses (Venue)

All trials of crime shall be had in the county in which they were committed. In the event elements of the crime were committed in different counties, the trial may be had in any county in which a material element of the crime was committed. In the event death results from the crime, trial may be had in the county in which any material element of the crime was committed, or in any county in which the death occurred. In the event that death occurs in this state as a result of criminal action in another state, trial may be had in the county in which the death occurred. In the event that death occurs in another state as a result of criminal action in this state, trial may be had in the county in which any material element of the crime was committed in this state.

NMSA 1978 § 38-3-1: Venue/Change of Judge (County in which civil action in district court may be commenced)

- **Ex:** If a student is severely injured at New Mexico State University and becomes severely disabled, then that student can be represented by a Guardian Ad Litem ("GAL") from anywhere else in New Mexico. The Plaintiff can then bring the lawsuit in the venue where the GAL is a resident.





Change of Venue in New Mexico

NMSA 1978 § 38-3-3. Change of venue in civil and criminal cases.

The venue in all civil and criminal cases shall be changed, upon motion, to another county free from exception:

A. whenever the judge is interested in the result of the case or is related to or has been counsel for any of the parties; or

B. when the party moving for a change files in the case an affidavit of himself, his agent or attorney, that he believes he cannot obtain a fair trial in the county in which the case is pending because:

- (1) the adverse party has undue influence over the minds of the inhabitants of the county;
- (2) the inhabitants of the county are prejudiced against the party;
- (3) of public excitement or local prejudice in the county in regard to the case or the question involved in the case, an impartial jury cannot be obtained in the county to try the case; or
- (4) of any other cause stated in the affidavit.

○ **Note: Change of venue may be based on presumed prejudice or on actual prejudice** — The trial court may change venue based on presumed prejudice or on actual prejudice. *State v Astorga*, 2015-





Change of Venue in New Mexico

NMSA 1978 § 38-3-7. County to which case may be removed.

In all cases where a change of venue is granted, the case shall be removed to another county within the same judicial district unless the remaining counties are subject to exception, or unless the change of venue is ordered upon any of the grounds relating to the judge. Under these circumstances, the case shall be removed to some county of the nearest judicial district which is free from exception.

- **Ex: County within the same judicial district** not subject to exception — Defendant sought a change of venue to a county outside the 9th judicial district, but failed to adduce any evidence in support of the claim that they could not obtain a fair trial in another county within the 9th judicial district. The trial court ordered that venue be changed to another county in the same judicial district. *State v. Salas*, 2010-NMSC-028, 148 N.M. 313, 236 P.3d 32.





Key Takeaways

- Current statutes reflect a belief that someone who is hurt should be able to sue in a different county, because individuals in the same county might know the defendants too personally.
- Statutes permitting change of venue help ensure a fair trial for the defendant if they believe justice cannot be achieved in the original location.

