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_____ BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO COURTS; TRANSFERRING CERTAIN DUTIES OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO INDIVIDUAL JUDICIAL DISTRICTS; CREATING SUPERVISORY AUTHORITY FOR DISTRICT COURTS OVER MAGISTRATE COURTS IN CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 35-1-37 NMSA 1978 (being Laws 1968, Chapter 62, Section 39, as amended) is amended to read:

"35-1-37. MAGISTRATE COURT--PRESIDING MAGISTRATE.--In magistrate districts where two or more divisions operate as a single court, the ~~[director of the administrative office of the courts]~~ chief district judge shall designate the magistrate of one of the divisions as "presiding magistrate" to perform administrative duties prescribed by ~~[regulation of]~~ the ~~[administrative office]~~ supreme court."

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1 SECTION 2. Section 35-2-3 NMSA 1978 (being Laws 1968,
2 Chapter 62, Section 43) is amended to read:

3 "35-2-3. QUALIFICATION--CERTIFICATE OF MAGISTRATE
4 QUALIFICATION.--

5 A. Within fifteen days after each general election,
6 the administrative office of the courts shall notify each
7 apparently successful candidate for the office of magistrate of
8 the requirements for qualification. Within thirty days after
9 election or appointment, each apparently successful candidate
10 and each appointee shall file with the administrative office of
11 the courts an application for certificate of magistrate
12 qualification. The application shall be in a form prescribed
13 by the administrative office of the courts and shall include:

- 14 (1) the oath of office prescribed by the
- 15 constitution for public officers subscribed to by the
- 16 applicant;
- 17 (2) the applicant's certificate of election or
- 18 appointment; and
- 19 (3) evidence of the applicant's possession of
- 20 personal qualifications required by law.

21 B. Each applicant for a certificate of magistrate
22 qualification who has not previously held such a certificate
23 shall attend a qualification training program conducted by the
24 administrative office of the courts as a prerequisite to the
25 issuance of [~~his~~] the applicant's first certificate. The

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1 administrative office of the courts shall prescribe the content
2 of the qualification training program so as to inform
3 applicants with reference to judicial powers and duties.

4 C. Upon approval of the application and, when
5 required, upon the applicant's attendance at a qualification
6 training program, the administrative office of the courts shall
7 certify the applicant's initial qualification in accordance
8 with the requirements of law by issuing to the applicant a
9 "certificate of magistrate qualification". Each magistrate
10 shall post the certificate in a conspicuous place in [~~his~~] the
11 magistrate's courtroom.

12 D. If not sooner suspended or revoked as provided
13 by law, each certificate of magistrate qualification
14 automatically expires at the end of the term to which the
15 magistrate is elected or appointed or when [~~his~~] the
16 magistrate's successor in office is qualified, whichever is
17 later.

18 E. Any magistrate who fails to complete the
19 requirements for initial qualification within forty-five days
20 of election or appointment shall be held to have resigned [~~his~~]
21 the magistrate's office. [~~and the administrative office~~] The
22 chief district judge shall certify the existence of [~~the~~] any
23 magistrate vacancy to the governor and notify the
24 administrative office of the courts."

25 SECTION 3. Section 35-6-7 NMSA 1978 (being Laws 2003,

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1 Chapter 240, Section 3) is amended to read:

2 "35-6-7. MAGISTRATE COURT--DRUG COURT FEE--MONTHLY
3 REMITTANCES.--[A.] A magistrate court that has an adult drug
4 court program may assess and collect from participants a "drug
5 court fee" of fifty dollars (\$50.00) a month. Program fee
6 requirements may be satisfied by community service at the
7 federal minimum wage. Proceeds from the drug court fee shall
8 be deposited in the [magistrate] drug court fund

9 ~~[B. Each magistrate court shall pay monthly to the~~
10 ~~administrative office of the courts, not later than the date~~
11 ~~established by rule of the director of the administrative~~
12 ~~office, the amount collected pursuant to Subsection A of this~~
13 ~~section, which shall be credited to the magistrate drug court~~
14 ~~fund. The administrative office shall return to each~~
15 ~~magistrate a written receipt itemizing all money received and~~
16 ~~credited to the fund] of the judicial district established~~
17 pursuant to Section 34-6-47 NMSA 1978."

18 SECTION 4. Section 35-7-1 NMSA 1978 (being Laws 1997,
19 Chapter 53, Section 1) is amended to read:

20 "35-7-1. MAGISTRATE COURTS--SUPERVISION BY THE SUPREME
21 COURT AND THE DISTRICT COURT IN THE JUDICIAL DISTRICT IN WHICH
22 THE COURT IS LOCATED.--The magistrate courts shall operate
23 under the direction and control of the supreme court and the
24 district court of the judicial district in which the court is
25 located. The ~~[director of the administrative office of the~~

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1 ~~courts]~~ district court shall provide administrative support to
2 the magistrate courts, under the supervision of the supreme
3 court."

4 SECTION 5. Section 35-7-3 NMSA 1978 (being Laws 1968,
5 Chapter 62, Section 98, as amended) is amended to read:

6 "35-7-3. MAGISTRATE ADMINISTRATION--STANDARDIZED MONTHLY
7 REPORTS.--Each magistrate court, under the supervision of the
8 district court, shall file a standardized monthly report with
9 the administrative office of the courts not later than the date
10 each month established by [~~regulation of~~] the director of the
11 administrative office of the courts. The report shall itemize
12 all fines, forfeitures and costs imposed, received and
13 disbursed by the magistrate during the previous month or
14 indicate that none were imposed, received or disbursed. One
15 copy of the report shall be retained by the magistrate court.
16 The administrative office of the courts shall audit and adjust
17 each report in accordance with the facts and file the reports
18 in its office for a period of five years."

19 SECTION 6. Section 35-7-5 NMSA 1978 (being Laws 1968,
20 Chapter 62, Section 100, as amended) is amended to read:

21 "35-7-5. MAGISTRATE ADMINISTRATION--PUBLIC MONEY--
22 COMMINGLING--TRUST FUND BANK ACCOUNT.--

23 A. All money collected by a magistrate court in
24 connection with civil and criminal actions is public money of
25 the state held in trust by the [~~magistrate~~] district court

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1 ~~within the same judicial district until [received by the~~
2 ~~administrative office of the courts or]~~ disbursed in accordance
3 with law. Public money shall not be commingled with personal
4 funds of the magistrate or any other funds.

5 B. Every ~~[magistrate]~~ district court shall ~~[open]~~
6 maintain a special trust fund checking account for the
7 magistrate courts in its judicial district in a convenient bank
8 insured by the federal deposit insurance corporation and shall
9 deposit all public money into the account within ~~[four]~~ two
10 banking days after its receipt ~~[and shall make all remittances~~
11 ~~to the administrative office, as required by law, by check on~~
12 ~~this account.~~

13 ~~C. Any magistrate who violates any provision of~~
14 ~~this section or who is the maker of a check representing an~~
15 ~~amount required by law to be remitted to the administrative~~
16 ~~office, which check is not honored by the bank upon which it is~~
17 ~~drawn when first presented for payment for reason of lack of~~
18 ~~funds, is guilty of a misdemeanor and shall be punished by a~~
19 ~~fine of not more than one thousand dollars (\$1,000), or by~~
20 ~~imprisonment for not more than one year, or both. Any~~
21 ~~conviction under this section operates as an automatic removal~~
22 ~~from office and forfeiture of the right to hold any public~~
23 ~~office for a period of four years from the date of~~
24 ~~conviction]."~~

25 SECTION 7. Section 35-7-10 NMSA 1978 (being Laws 1968,

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1 Chapter 62, Section 105, as amended) is amended to read:

2 "35-7-10. MAGISTRATE ADMINISTRATION--CLERICAL
3 ASSISTANTS.--Within appropriations and budgetary limitations,
4 ~~[each magistrate, or the presiding magistrate of a multi-~~
5 ~~magistrate court, may select and the administrative office of~~
6 ~~the courts]~~ the district court may employ and select clerical
7 assistants for magistrates."

8 SECTION 8. Section 35-7-11 NMSA 1978 (being Laws 1968,
9 Chapter 62, Section 106, as amended) is amended to read:

10 "35-7-11. MAGISTRATE ADMINISTRATION--FINANCES.--Except as
11 otherwise specifically provided by law, all salaries and
12 expenses of the magistrate court shall be paid by the state
13 treasurer upon warrants of the secretary of finance and
14 administration, supported by vouchers approved by the ~~[director~~
15 ~~of the administrative office of the courts]~~ chief district
16 judge and in accordance with budgets approved by the state
17 budget division of the department of finance and
18 administration."