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HOUSE BILL 390

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO COURTS; REQUIRING THE METROPOLITAN, MAGISTRATE AND MUNICIPAL COURTS TO BE COURTS OF RECORD FOR ALL CASES WITHIN THEIR JURISDICTIONS; ELIMINATING DE NOVO APPEALS TO DISTRICT COURT; INCREASING DOCKET FEES FOR APPEALS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 34-8A-6 NMSA 1978 (being Laws 1979, Chapter 346, Section 6, as amended) is amended to read:

"34-8A-6. METROPOLITAN COURT--RULES--APPEAL.--

A. The supreme court shall adopt separate rules of procedure for the metropolitan courts. The rules shall provide simple procedures for the just, speedy and inexpensive determination of any metropolitan court action.

B. The metropolitan court is a court of record for

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1 civil actions. Any party aggrieved by a judgment rendered by
2 the metropolitan court in a civil action may appeal to the
3 district court of the county in which the metropolitan court is
4 located within fifteen days after the judgment was rendered.
5 The manner and method for the appeal shall be set forth by
6 supreme court rule.

7 C. The metropolitan court is a court of record for
8 criminal actions [~~involving driving while under the influence~~
9 ~~of intoxicating liquors or drugs or involving domestic~~
10 ~~violence. A criminal action involving domestic violence means~~
11 ~~an assault or battery under any state law or municipal or~~
12 ~~county ordinance in which the alleged victim is a household~~
13 ~~member as defined in the Family Violence Protection Act]. Any~~
14 party aggrieved by a judgment rendered by the metropolitan
15 court in a criminal action [~~involving driving while under the~~
16 ~~influence of intoxicating liquors or drugs or involving~~
17 ~~domestic violence]~~ may appeal to the district court of the
18 county in which the metropolitan court is located within
19 fifteen days after the judgment was rendered. The manner and
20 method of appeal shall be set forth by supreme court rule.

21 [~~D. The metropolitan court is not a court of record~~
22 ~~for criminal actions other than driving while under the~~
23 ~~influence of intoxicating liquors or drugs or domestic violence~~
24 ~~actions. Any party aggrieved by a judgment rendered by the~~
25 ~~metropolitan court in a criminal action, other than driving~~

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1 ~~while under the influence of intoxicating liquors or drugs or~~
2 ~~domestic violence action, may appeal to the district court of~~
3 ~~the county in which the metropolitan court is located within~~
4 ~~fifteen days after the judgment was rendered. The appeal shall~~
5 ~~be de novo.~~

6 E.] D. All judgments rendered in civil actions in
7 the metropolitan court shall be subject to the same provisions
8 of law as those rendered in district court."

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

11 "35-1-1. MAGISTRATE COURT--ESTABLISHMENT.--There is
12 established the "magistrate court" as a court of limited
13 original jurisdiction within the judicial department of the
14 state government. Personnel of the magistrate court are
15 subject to all laws and regulations applicable to other state
16 offices and agencies and to other state officers and employees
17 except where otherwise provided by law. The magistrate court
18 is ~~[not]~~ a court of record."

19 SECTION 3. Section 35-13-1 NMSA 1978 (being Laws 1968,
20 Chapter 62, Section 148, as amended) is amended to read:

21 "35-13-1. APPEALS--RIGHT OF APPEAL.--~~[Any party aggrieved~~
22 ~~by any judgment rendered or final order issued by the~~
23 ~~magistrate court in any civil action or special statutory~~
24 ~~proceeding, or the defendant aggrieved by any judgment rendered~~
25 ~~or final order issued by the magistrate court in any criminal~~

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1 ~~action, may appeal to the district court within fifteen days~~
2 ~~after judgment is rendered or the final order is issued in the~~
3 ~~magistrate court.] The magistrate court is a court of record~~
4 ~~for all civil and criminal actions. Any party aggrieved by a~~
5 ~~judgment rendered by the magistrate court may appeal to the~~
6 ~~district court of the county in which the magistrate court is~~
7 ~~located within fifteen days after the judgment was rendered.~~
8 ~~The manner and method for the appeal shall be set forth by~~
9 ~~supreme court rule."~~

10 SECTION 4. Section 35-13-2 NMSA 1978 (being Laws 1975,
11 Chapter 242, Section 10, as amended) is amended to read:

12 "35-13-2. APPEALS [~~DISTRICT COURT PROCEEDINGS~~]--DOCKET
13 FEES [~~JUDGMENT~~].--

14 [~~A. Appeals from the magistrate courts shall be~~
15 ~~tried de novo in the district court.~~

16 B.] The district court docket fee in any criminal
17 appeal is [~~thirty-five dollars (\$35.00)~~] one hundred dollars
18 (\$100), ten dollars (\$10.00) of which shall be deposited in the
19 court automation fund.

20 [~~G. If the judgment of the magistrate court in a~~
21 ~~criminal action is affirmed or rendered against the appellant~~
22 ~~on appeal or if the appellant fails to appear at the time fixed~~
23 ~~for hearing in the district court, the district court shall~~
24 ~~enter judgment imposing the same, a greater or a lesser penalty~~
25 ~~as that imposed in the magistrate court in the action.]"~~

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1 SECTION 5. Section 35-15-1 NMSA 1978 (being Laws 1884,
2 Chapter 39, Section 17, as amended) is amended to read:

3 "35-15-1. PROCEEDINGS TO ENFORCE ORDINANCES [~~PLAINTIFF~~]
4 APPEALS.--

5 A. All actions to enforce any ordinance of any
6 municipality shall be brought in the name of the municipality
7 as plaintiff. No prosecution, conviction or acquittal for the
8 violation of an ordinance is a defense to any other prosecution
9 of the same party for any other violation of an ordinance,
10 although different causes of action existed at the same time
11 and, if united, would have exceeded the jurisdiction of the
12 court.

13 B. The plaintiff or defendant may appeal to the
14 district court from the judgment of any municipal court within
15 fifteen days after judgment and sentence rendered in the
16 municipal court. Failure of either party to appeal within the
17 prescribed time is jurisdictional, and an appeal not timely
18 filed shall not be entertained by the district court. The
19 manner and method for appeal shall be set forth by supreme
20 court rule."

21 SECTION 6. Section 35-15-7 NMSA 1978 (being Laws 1969,
22 Chapter 35, Section 2, as amended) is amended to read:

23 "35-15-7. APPEALS--NOTICE OF APPEALS.--

24 A. An appeal from the municipal court is taken by
25 filing with the clerk of the district court a notice of appeal.

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1 ~~[When the defendant takes an appeal, the notice of appeal shall~~
2 ~~be accompanied by a bond to the municipality in the sum, and~~
3 ~~with conditions, fixed by the municipal judge as sufficient to~~
4 ~~secure the appearance of the defendant, and the judgment and~~
5 ~~sentence of the municipal court.]~~

6 B. The clerk of the district court shall docket the
7 appeal on the civil docket upon payment of a docket fee of
8 ~~[twenty dollars (\$20.00)]~~ one hundred dollars (\$100), ten
9 dollars (\$10.00) of which shall be deposited in the court
10 automation fund, and shall transmit a copy of the notice of
11 appeal to the municipal court from which the action is appealed
12 and to the municipal attorney.

13 C. Within ten days after receipt of the notice of
14 appeal from the clerk of the district court ~~[under]~~ pursuant to
15 Subsection B of this section, the municipal judge shall file
16 with the clerk of the district court a transcript of all
17 municipal court docket entries in the action, together with all
18 pleadings and other documents relating to the action. ~~[After~~
19 ~~the transcript has been filed, the action may be called for~~
20 ~~trial in the district court as in other civil actions. The~~
21 ~~appeal shall be governed by the Rules of Civil Procedure for~~
22 ~~the District Courts, except that the municipality has the~~
23 ~~burden of proving violation of an ordinance beyond a reasonable~~
24 ~~doubt.]~~

25 D. The docketing of an appeal operates as a

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1 supersedeas and stay of execution upon the judgment of the
2 municipal court in the action until final disposition of the
3 appeal."

4 SECTION 7. REPEAL.--Sections 35-13-3, 35-15-8, 35-15-10,
5 35-15-11 and 39-3-1 NMSA 1978 (being Laws 1968, Chapter 62,
6 Section 151, Laws 1919, Chapter 112, Sections 4 and 6, Laws
7 1935, Chapter 28, Section 1 and Laws 1917, Chapter 43, Section
8 59, as amended) are repealed.

9 SECTION 8. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2011.