



**Belén**  
*The Hub City*

OFFICE OF THE CITY CLERK

# CITY OF BELEN 2018 Candidate Packet

2017-2018 Edition **MASTER for ALL Candidates**

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Belen, NM. 87002

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# Letter of Introduction

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**Belén**  
*The Hub City*

Dear Candidate,

Thank you for your interest in serving as an elected official for the City of Belén. This packet serves to answer questions and guide you through the process of running your campaign and declaring your candidacy. Municipal elections are administered through the Office of the City Clerk and the Clerk or Deputy Clerk is available to answer any questions you have not covered by this handbook.

The City of Belén is a service-focused government that responds to the needs of the residents and businesses of our community. The City operates under the mayor-council-manager form of government. There are three classifications of elected officials including: Mayor (elected at large), Council Members (4 total members elected at large), and Municipal Judge (elected at large).

The City of Belén currently has an estimated population of 7,122 residents. If you are running for Mayor, City Council or Municipal Judge, all eligible voters may cast a vote for you.

Many questions that are not specifically covered in this handbook can be found using online resources. Please visit the City's Web site at, <http://www.belen-nm.gov/>, the City's online municipal code at, [https://library.municode.com/nm/belen/codes/code\\_of\\_ordinances](https://library.municode.com/nm/belen/codes/code_of_ordinances), and the City's election information at, <http://www.belen-nm.gov/election-information.aspx>.

Please review all the pages of this handbook, paying particular attention to the requirements for declaring your candidacy, campaign sign information, and the forms required. The Office of the City Clerk has provided you with all forms required and are contained in this packet.

We wish you success on your journey. Please do not hesitate to contact the Clerk's Office with any additional questions you may have.

Sincerely,

**Leona Vigil, CMC**  
City Manager/City Clerk

# Qualifications of Candidates

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## Qualifications Required to Run for Municipal Office

All candidates must meet the following basic requirements to run for municipal office:

- Be a resident of the City (see additional explanation below)
- Be over 18 years of age
- Be a qualified voter of the City of Belen. You may register to vote or receive more information by contacting the Valencia County Clerk's Office.
- Have no felony convictions

## Residency Requirements

All candidates must reside within the municipal boundaries of the City of Belen. There are no requirements for the amount of time a candidate must reside within the City, or a particular district, prior to being eligible to run for municipal office; however, it is required that the candidate reside within the City (and applicable district) at the time they file their declaration of candidacy with the City Clerk.

## Candidate Packets

Packet will contain the required information that you will need during your candidacy. The Packet attached to this document will contain information on the following:

- Election Resolution
- Important Dates
- Declaration of Candidacy Form
- Declaration of Candidacy Form (Write-in)
- Candidacy Withdrawal Form
- Candidacy Withdrawal Form (Write-in)
- Affidavit Authorizing Declaration of Candidacy
- Campaign Sign Application
- Campaign Sign Ordinance
- VC News Bulletin: Candidate Information Form
- State of NM Election Code for Municipalities (2017)

# Declaration of Candidacy

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## Date/Required Documents

All candidates **must declare their candidacy on the 56<sup>th</sup> day preceding the election** (January 9, 2018), by filing the following information with the Office of the City Clerk, at Belen City Hall, between the hours of 8 a.m. and 5 p.m.:

- Declaration of Candidacy form (provided by the City Clerk)
- Certified copy of the candidate's voter registration  
(A certified copy of your voter registration may be obtained from the Valencia County Clerk)

## Write-in Candidacy

If you miss the deadline to declare your candidacy as described above, you may register as a write-in candidate meaning you will be eligible to run, but your name will not appear on the ballot. All write-in candidates **must declare their candidacy on the 49<sup>th</sup> day preceding the election**, (January 16, 2018) by filing the following information with the Office of the City Clerk, at Belen City Hall, between the hours of 8 a.m. and 5 p.m.:

- Declaration of Candidacy form (provided by the City Clerk)
- Certified copy of the candidate's voter registration

(A certified copy of your voter registration may be obtained from the Valencia County Clerk)

### Withdrawal of Candidacy

If you declare your candidacy and subsequently wish to withdraw your name from consideration, you must file an affidavit in the City Clerk's office on a form provided by the City Clerk expressing your intent to withdraw. The deadline to withdraw candidacy for those who filed to have their name appear on the ballot is **49 days** prior to the election (January 16, 2018 at 5:00 pm). Those who declared as write-in candidates must withdraw their candidacy no later than **35 days** prior to the election (January 30, 2018 at 5:00 pm).

## Campaigning

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### Signs

The ordinance and application is contained in this packet, please review and file as soon as possible. If you have any questions on this ordinance or application process, please contact the Office of the City Clerk or the Planning and Zoning Department.

## Election

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### Voting

Regular municipal elections take place on the first Tuesday of March in even numbered years. (March 6, 2018) Voters may vote in-person between the hours of 7 a.m. and 7 p.m. In addition, voters may vote by requesting an absentee ballot beginning 35 days before Election Day or they may vote early in-person in the Office of the City Clerk beginning 20 days before the election during business hours.

### Voting Convenience Centers

The City of Belen consolidates all of its precincts into 2 voting convenience centers. Voters may vote at The Belen Community Center or the Belen Public Library.

### Photo ID to Vote

NO photo ID will be required to vote.

**\*We wish you the best of luck in you venture for public office, if we can answer any question you may have, please do not hesitate to contact is in the City of Belen Clerk's Office, or stop by City Hall during regular business hours, thank you.\***

## 2018 CALL TO ELECTION RESOLUTION

### CITY OF BELEN

#### Resolution No. 2017-28

**Be it resolved by the governing body of the City of Belen that:**

- A. A regular municipal election for the election of municipal officers shall be held on March 6, 2018. Polls will open at 7:00 A.M. and close at 7:00 P.M.
- B. At the regular municipal election, persons shall be elected to fill the following elective offices:
1. ONE Mayor for a four year term.
  2. ONE Councilor for a four year term.
  3. ONE Councilor for a four year term.
  4. ONE Municipal Judge for a four year term.
- C. All precincts are consolidated for the regular municipal election.
- D. The following locations are designated as polling places for the conduct of the regular municipal election:
1. Voters in all precincts may vote at the Belen Community Center located at 305 Eagle Lane, Belen, NM. 87002.
  2. Voters in all precincts may vote at the Belen Public Library located at 333 Becker Avenue, Belen, NM. 87002.
- E. Absentee Voting. Applications for absentee ballots may be obtained only from the office of the Municipal Clerk. All applications for an absentee ballot must be completed and accepted by the Municipal Clerk prior to 5:00 p.m., March 2, 2018. After 5:00 p.m. on March 2, 2018, all unused absentee ballots will be publicly destroyed by the Municipal Clerk. The Municipal Clerk will accept completed absentee ballots delivered by mail, or in person by the voter casting the absentee ballot, by a member of the voter's immediate family, or by the caregiver to the voter until 7:00 p.m. on March 6, 2018.
- Absentee ballots may be marked in person in the office of the Municipal Clerk during the regular hours and days of business, beginning on Tuesday, January 30, 2018 and closing at 5:00 p.m. on Friday, March 2, 2018.
- F. Early Voting. Early voting on paper ballots counted by electronic vote tabulator will be conducted in the office of the Municipal Clerk during the regular hours and days of business, beginning on Wednesday, February 14, 2018 and closing at 5:00 p.m. on Friday, March 2, 2018.
- G. Persons desiring to register to vote at the regular municipal election must register with the County Clerk of Valencia County not later than Tuesday, February 6, 2018 at 5:00 P.M., the date on which the County Clerk will close registration books.

- H. All Declarations of Candidacy shall be filed with the Municipal Clerk on Tuesday, January 9, 2018 between the hours of 8:00 A.M. and 5:00 P.M.
- I. The casting of votes by qualified municipal electors shall be recorded on paper ballots and counted by electronic vote tabulators.

**Adopted and approved by the Belen City Council this 20th day of November, 2017.**

*Published in accordance with 3-8-26A NMSA 1978, in the VC News Bulletin on 11/30/2017.*

cc: Belen City Clerk  
County Clerk  
Secretary of State

**CITY OF BELEN NM**  
**2018 Municipal Election**

**Useful dates for candidates - state rules**

- ✓ **1/9/2018** **Candidate filing day by 5:00 pm** (56th day preceding the election). (3-8-27A-F)
- ✓ 1/10/2018 Municipal Clerk shall determine whether the declaration of candidacy shall be certified (55th day preceding the election). (3-8-27G)
- ✓ 1/11/2018 Municipal Clerk shall post by 9:00 a.m. (54th day preceding election) a list of the certified candidates & those that were not certified with reasons. (3-8-27H)
- ✓ **1/11/2018** In the presence of the certified candidates (54th day preceding election) the Municipal Clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. (3-8-29A)
- ✓ **1/16/2018** **Candidate withdrawal** - last day by 5:00 p.m. (49th day preceding the election) (3-8-27I)
- ✓ **1/16/2018** **Write in candidate filing day by 5:00 p.m.** (49 days prior to election) (3-8-27L1, 2)
- ✓ 1/17/2018 Municipal Clerk shall certify (48 days prior to election) those individuals who have satisfied the requirements as declared write-in candidates. (3-8-27L3)
- ✓ 1/18/2018 Municipal Clerk shall post by 9:00 a.m. (47 days prior to election) a list of the certified write-in candidates & those that were not certified with reasons. (3-8-27L4)
- ✓ **1/30/2018** **Write in candidate withdrawal - last day by 5:00 p.m.** (35 days prior to election) (3-8-27L5)
- ✓ 3/2/2018 Last day to appoint a challenger etc by 5:00 p.m. (4 days prior to election) (3-8-31B)
- ✓ **3/5/2018** **Last day for governing body to appoint a qualified elector to serve as observer, by 3:00 pm on the day before the election.** (3-8-31K)
- ✓ 3/12/2018 Candidate elected shall personally appear before the Municipal Clerk to sign a written statement acknowledging receipt of the certificate of election & acknowledging that he/she is legally qualified to hold office, by 7:00 p.m. on the sixth day following the election. (3-8-33A&B & 14-13-3)
- ✓ **3/19/2018** **Organizational meeting of governing body in special or regular session, not earlier than 6th day after election or no later than 21st day after election,** (3-8-33H, 3-11-5)
- ✓ 4/11/2018 Last date to object in district court, no later than 30 days from issuance of cert of election (3-8-63C)

**Useful dates for voters**

- ✓ **1/30/2018** **First day absentee ballots can be issued/mailed to voters whose applications have been approved, not earlier than 35 days prior to the election.** (3-9-4L&M)
- ✓ 2/6/2018 **County Clerk closes voter registration, by 5:00 p.m.** on the 28th day immediately preceding any election. (1-4-8A1)
- ✓ **2/14/2018** **First day for early voting using voting machines/electronic vote tabulators** (20 days prior to election) (3-8-37.1A)
- ✓ **3/2/2018** **Last day for early voting using machine/tabulators** (3-8-37.1A)
- ✓ 3/2/2018 Last day absentee ballots can be issued/mailed out to voters, no later than 5 pm on the Friday immediately prior to the date of the election. (3-9-4M)
- ✓ 3/2/2018 Last day to issue replacement absentee ballots (3-9-13B)
- ✓ **3/6/2018** **Election Day**

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**Useful dates for precinct workers**

- ✓ **1/16/2018** Precinct Board appointed by governing body, not less than 35 days before the election (3-8-19(C))
- ✓ 1/30/2018 First day absentee ballots may be issued/mailed to voters, including Federal qualified electors & overseas voters (35 days prior to election) (3-9-4L & M)
- ✓ 2/14/2018 First day for early voting using voting machines/electronic vote tabulators in Municipal Clerk's office (20 days before election) (3-8-37.1A)
- ✓ **2/15/2018** Notice of election training to poll workers, must be done no later than 7 days prior to day of training. (3-8-21A-D)
- ✓ **3/1/2018** Municipal Clerk conducts or causes to be conducted an election training for precinct workers which shall be open to public (5) days prior to election. (3-8-21A)
- ✓ 3/2/2018 Last day for early voting using voting machine;/tabulator, by 5:00 p.m. (Friday before the election) (3-8-37.1A)
- ✓ 3/5/2018 Municipal Clerk must have prepared ID badges for qualified challengers, watchers and alternates, by 3:00 p.m. on the day prior to election. (3-8-31C)
- ✓ **3/5/2018** Municipal Clerk swears in presiding judge and causes election supplies, voting machine/tabulator keys, ballot box, ballot box keys, and other election Materials to be delivered to the presiding judge; not earlier than noon on the day before the election and not later than 1 hour prior to the opening of the polls (between Mar. 3, 2014 at noon and Mar. 4, 2014 at 6:00 a.m.) (3-8-38A&B)
- ✓ **4/5/2018** Precinct workers shall be compensated, within 30 days following election (Mar. 4, 2014 - Apr. 3, 2014). (1-2-16 & 3-8-19F,G)

COUNTY OF VALENCIA )  
 ) ss.  
STATE OF NEW MEXICO )

**CITY OF BELEN**

**DECLARATION OF CANDIDACY**

I, \_\_\_\_\_, being first duly sworn upon my oath do hereby state for my affidavit that:

I, \_\_\_\_\_, hereby declare that I am a candidate for the office of \_\_\_\_\_ for a four year term to be elected at the regular municipal election to be held on March 6, 2018.

I affirm that I currently reside at \_\_\_\_\_ New Mexico.  
(Address, City, Zip)

I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the county clerk of Valencia County, New Mexico.

I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.

I affirm that I have not been convicted of a felony.

**-OR-**

I affirm that I have been convicted of a felony, which my elective franchise has been restored, and, I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.

I affirm that I, or my authorized representative, shall contact the office of the municipal clerk during normal business hours on January 11, 2018 to ascertain whether the municipal clerk has certified my declaration of candidacy as valid.

I affirm that I, or my authorized representative, can be reached at the following for purposes of receiving notice: \_\_\_\_\_ or \_\_\_\_\_.

I affirm that this declaration of candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth degree felony under the laws of New Mexico.

\_\_\_\_\_  
Signature of Candidate

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

Received in the office of the Municipal Clerk at \_\_\_\_\_ (A.M./P.M.) on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Municipal Clerk

COUNTY OF VALENCIA                    )  
  ) ss.  
STATE OF NEW MEXICO                )

**CITY OF BELEN**

**DECLARATION OF WRITE-IN CANDIDACY**

I, \_\_\_\_\_, being first duly sworn upon my oath do hereby state for my affidavit that:

I, \_\_\_\_\_, hereby declare that I am a write-in candidate for the office of \_\_\_\_\_ for a four year term to be elected at the regular municipal election to be held on March 6, 2018.

I affirm that I currently reside at \_\_\_\_\_, New Mexico.  
(Address, City, Zip)

I affirm that my name and resident address as stated in this Declaration of Write-In Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the county clerk of Valencia County, New Mexico.

I affirm that I am eligible and legally qualified to hold the office for which I have declared my write-in candidacy.

I affirm that I have not been convicted of a felony.

**-OR-**

I affirm that I have been convicted of a felony, which my elective franchise has been restored, and, I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.

I affirm that I, or my authorized representative, shall contact the office of the municipal clerk during normal business hours on January 18, 2018 to ascertain whether the municipal clerk has certified my declaration of write-in candidacy as valid.

I affirm that I, or my authorized representative, can be reached at the following for purposes of receiving notice: \_\_\_\_\_ or \_\_\_\_\_.

I affirm that this declaration of write-in candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth degree felony under the laws of New Mexico.

\_\_\_\_\_  
Signature of Write-In Candidate

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Received in the office of the Municipal Clerk at \_\_\_\_\_ (A.M./P.M.) on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Municipal Clerk

**CITY OF BELEN**

**AFFIDAVIT OF WITHDRAWAL OF CANDIDACY**

COUNTY OF VALENCIA                    )  
  ) ss.  
STATE OF NEW MEXICO                 )

I, \_\_\_\_\_, being first duly sworn upon my oath do hereby state for my affidavit that:

I, \_\_\_\_\_, hereby withdraw as a candidate for the office of \_\_\_\_\_  
(Name of Candidate)

for a four year term in the election scheduled for March 6, 2018 and that I hereby revoke my Declaration of Candidacy filed with the Municipal Clerk on January 9, 2018.

Signed \_\_\_\_\_  
Signature of Candidate

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

Received in the office of the Municipal Clerk at \_\_\_\_\_ (A.M./P.M.) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed \_\_\_\_\_  
Municipal Clerk



**AFFIDAVIT AUTHORIZING FILING OF  
DECLARATION OF CANDIDACY**

COUNTY OF VALENCIA                    )  
  ) ss.  
STATE OF NEW MEXICO                 )

I, \_\_\_\_\_, being first duly sworn upon my oath do hereby state for my affidavit that I hereby appoint and authorize \_\_\_\_\_, who resides at \_\_\_\_\_, New Mexico to file my declaration of candidacy for me with the office of the Municipal Clerk of the City of Belen.

\_\_\_\_\_  
Signature of Candidate

Subscribed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_



**Belén**  
*The Hub City*

# Campaign Sign Application

## Applicant Information

Name	
Street Address	
City ST ZIP Code	
Home Phone	
Work Phone	
E-Mail Address	

## Sign Locations

Estimated total number of signs that will be made, handed-out or posted= \_\_\_\_\_

Do you plan on having signs placed in the following areas: (Check all that apply)

\_\_\_ Residential Homes (Private Property)

\_\_\_ Commercial Buildings (Private Property)

*\*The responsible party and/or a private property owner, as applicable, shall be responsible for code compliance of all campaign signs located on property covered by this code.\**

## Sign Policy

Please initial here certifying that you have received a copy of the Current City of Belen Sign Ordinance: \_\_\_\_\_

## Agreement and Signature

By submitting this application, I affirm that the facts set forth in it are true and complete. I understand that any false statements, omissions, or other misrepresentations made by me on this application may result in violation of the City of Belen Ordinance # 17.58.090 and could result in fine and/or punishment.

Name (printed)	
Signature	
Date	

## Authorizing Signature

Applicant has deposited the campaign sign permit fee and has submitted the correct documentation needed.

Name, Title	Brian McBain, City of Belen-Deputy City Clerk
Signature	
Date	

## Payment

The responsible party shall post a deposit with the city clerk in the following amounts in order to guarantee removal of all campaign signs covered by the permit following the election:

- a. Non-partisan elections—individual candidates: \$100.00
- b. Partisan elections—individual candidates: \$100.00
- c. Partisan elections—political party permit: \$500.00
- d. Issues—organization: \$500.00
- e. Issues—property owner: \$100.00
- f. All elections—registered or unregistered PAC: \$500.00

*\*Within ten (10) days following Election Day, all campaign signs shall be removed from the areas covered by the permit. Upon certification by the code enforcement officer of compliance, the clerk shall refund the deposit to the responsible party. The responsible party shall forfeit the deposit if all campaign signs have not been removed within said period. Any campaign signs remaining following said ten-day period shall be deemed abandoned, subject to removal and disposal by the city.\**



## **17.58.090 - Campaign Signs Ordinance**

**A. Definitions.** [The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

"Campaign sign" means any sign, as defined in section 17.58.20, that contains the name of, image of, or any message regarding a candidate in any election or that contains a message or identification of an issue in any election.

"Campaign sign, small" means any campaign sign not exceeding four (4) square feet.

"Campaign sign, large" means any campaign sign larger than four (4) square feet, and shall include banners of all sizes.

"Election" means any primary, general or special election governed by the state election code, NMSA 1978, Chapter 1, any regular or special municipal election, and any regular or special election of a school district or other special district.

"Election day" means the actual day of election as specified by law for any type of election.

"Issue" means any ballot question other than a candidate, including, but not limited to, constitutional amendments, bond questions, tax questions, initiatives or referenda.

"Responsible party" means the representative of any candidate or of any issue who shall be responsible for obtaining a sign permit and for compliance with the provisions of this code. A political action committee ("PAC"), whether officially registered or not, may be a responsible party.

### **B. Responsible Party.**

1. Partisan Candidates. For any candidate of a major or minor political party, the chairperson of the county political party or the chairperson's designee shall be presumed to be the responsible party, provided, that the candidate may agree to be the responsible party. In the absence of a county chairperson or designee, the candidate shall be the responsible party. The chair or the chair's designee may obtain a single permit for all candidates or for designated candidates in a given election.

2. Non-Partisan Candidates. For any candidate that is listed on a ballot without party affiliation, the candidate or the candidate's designee shall be presumed to be the responsible party.

3. Issues. For any issue, the responsible party shall be presumed to be, in order:

- a. The person designated by the organization sponsoring the sign;
- b. The person designated as treasurer on any form filed with the secretary of state;
- c. The person, if any, whose name appears on the sign as treasurer or representative; or

d. The owner of the property on which the sign is located.

### **C. Permit Required.**

1. All campaign signs displayed within the city limits shall conform to the definition of either a small campaign sign or a large campaign sign.
2. Except as exempted herein, the responsible party shall obtain a permit, on a form provided by the city clerk, prior to placement of any campaign signs on any property. The clerk shall provide the responsible party with a copy of the rules regulating campaign signs at the time of issuing the permit, or at the time of registration for any municipal election, whichever is earlier.
3. The responsible party shall post a deposit with the city clerk in the following amounts in order to guarantee removal of all campaign signs covered by the permit following the election:
  - a. Non-partisan elections—individual candidates: \$100.00
  - b. Partisan elections—individual candidates: 100.00
  - c. Partisan elections—political party permit: 500.00
  - d. Issues—organization: 500.00
  - e. Issues—property owner: 100.00
  - f. All elections—registered or unregistered PAC: 500.00
4. The responsible party and/or a private property owner, as applicable, shall be responsible for code compliance of all campaign signs located on property covered by this code.
5. The code enforcement officer shall notify the responsible party and/or the property owner, as applicable, of violations of the provisions of this code. Upon failure of the responsible party or the property owner to resolve the violation within the time specified in the notice, the code enforcement officer may issue a citation to the responsible party, the property owner, or both.
6. Within ten (10) days following election day, all campaign signs shall be removed from the areas covered by the permit. Upon certification by the code enforcement officer of compliance, the clerk shall refund the deposit to the responsible party. The responsible party shall forfeit the deposit if all campaign signs have not been removed within said period. Any campaign signs remaining following said ten-day period shall be deemed abandoned, subject to removal and disposal by the city.

### **D. Display of Campaign Signs.**

1. **Period of Display.** The permit shall authorize the display of campaign signs not sooner than thirty (30) days prior to Election Day, and shall expire at the end of the tenth day following Election Day.
2. **Location.** Campaign signs may be displayed during the authorized period only on private property.
  - a. Campaign signs shall be located in a manner as not to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, and as not to obstruct or interfere

with a driver's view of approaching, merging or intersecting traffic. Any sign placed in violation of these provisions shall be subject to immediate removal, without notice, by the city.

b. No campaign sign shall extend over any right-of-way or any sidewalk.

c. All campaign signs shall be either free-standing or affixed to a permanent structure, such as a building or wall, but shall not be affixed to any publicly-owned structure, such as a fence, wall or pole.

3. Small campaign signs located on improved, residentially zoned property shall be subject to the provisions of this code, but shall not require a permit.

#### **E. Enforcement.**

1. Code Enforcement Officer. The code enforcement officer shall be authorized to enforce this section by issuing notices and citations to the responsible party and/or the property owner, and shall be authorized to remove campaign signs displayed in violation of the provisions of this section.
2. Right-of-Way and Public Property. Upon determining a violation of the provisions of this section for any campaign sign located within the public right-of-way or on public property, the code enforcement officer shall notify the responsible party of the violation and specify the time within which the violation must be corrected. Upon failure of the responsible party to correct the violation as directed, the code enforcement officer may remove the campaign sign or signs in violation of this section, provided, that the code enforcement officer may remove without notice any campaign sign that the officer determines to be a threat to public safety.
3. Private Property. Upon determining a violation of the provisions of this section for any campaign sign located on private property, the code enforcement officer shall notify the property owner of the violation and shall specify the time within which the violation must be corrected. Upon failure of the property owner to correct the violation as directed, the code enforcement officer may issue a citation to the property owner. In the event that the property owner cannot be identified, the code enforcement officer may issue the warning and/or citation to the responsible party.
4. Survival of Citation. Any citation issued for violation of these provisions shall survive the conclusion of the election, and shall be punishable in municipal court according to the general penalty provisions of this code, with minimum fines as specified herein.
5. Minimum Fine. Upon a finding of violation, the municipal court shall impose a mandatory minimum fine of fifty dollars (\$50.00) per sign, per day. Each day of violation shall constitute a separate offense.

#### **F. Other Campaign Signs.**

1. Private Property. Any campaign sign or other political sign located on private property that has not been included in the permit provisions of this section shall comply with all other provisions of this chapter. For commercially zoned property, the sign shall be considered a commercial sign subject to the requirements and limitations of [section 17.58.030](#) regarding business signs. Any such sign shall be considered a nonconforming billboard sign, subject to removal as provided for in section 17.58.030B.3.

2. Public Right-of-Way and Public Property. Any campaign sign located within the public right-of-way or on public property shall be unlawful and shall be subject to removal as provided for herein.

(Ord. No. 2016-07, 11-7-2016)

# **Valencia County News-Bulletin**

## **Candidate Information**

**Name:**

**Age:**

**Position seeking:**

**Previous elected positions:**

**Occupation (If retired, from what):**

**Mailing address:**

**Physical address:**

**Email address:**

**Home telephone number:**

**Cell phone number:**

**(Candidate: We are seeking this information for our use only. We will not  
release your private information to the public.)**

# CHAPTER 3

## Municipalities

### ARTICLE 8

#### Municipal Elections

- | Sec.                |   | Sec.      |   |
|---------------------|---|-----------|---|
| 3-8-1.              | Election code; short title; purpose; "ahall" and "may"; headings; construction; counting days.  | 3-8-36.   | Special elections; publication of election data.  |
| 3-8-2.              | Definitions.  | 3-8-37.   | Uniform procedure.  |
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3-8-68. Recount; recheck; application; costs.	3-8-81 to 3-8-95. Repealed.

### **3-8-1. Election code; short title; purpose; "shall" and "may"; headings; construction; counting days.**

- A. Chapter 3, Articles 8 and 9 NMSA 1978 may be cited as the "Municipal Election Code"
- B. It is the purpose of the Municipal Election Code to:
- (1) secure the secrecy of the ballot;
  - (2) secure the purity and integrity of elections;
  - (3) guard against the abuse of the elective franchise; and
  - (4) provide for the efficient administration and conduct of elections.
- C. As used in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], "shall" is mandatory and "may" is permissive.
- D. Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Municipal Election Code.
- E. The Municipal Election Code shall govern the conduct of all aspects of all municipal elections except when the Municipal Election Code is silent or is in conflict with the state Election Code [Chapter 1 NMSA 1978] with respect to any procedures or protections required of the state by federal law, then the state Election Code shall govern, as appropriate. The provisions of the Municipal Election Code shall not apply to home rule municipalities or municipalities incorporated under special act unless the Municipal Election Code is adopted by reference by such municipality.
- F. When computing time, the first day shall be excluded and the last included unless the last falls on a Sunday or legal holiday, in which case, the time prescribed shall be extended to include the whole of the following business day.
- G. In the event that a municipality is required by law or ordinance to elect any or all members of the governing body from districts, then that municipality shall adopt an ordinance setting forth rules and regulations necessary to implement elections by district, and such municipal ordinance may conflict with and supersede the Municipal Election Code to the extent such ordinance must do so to legally implement elections by district.

**History:** 1978 Comp., § 3-8-1, enacted by Laws 1985, ch. 208, § 9; 1991, ch. 123, § 1; 1995, ch. 200, § 1.

### **3-8-2. Definitions.**

**A.** The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] in addition to those definitions set forth in the Municipal Election Code.

**B.** As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes paper ballots, absentee ballots, ballot sheets and paper ballots used in lieu of voting machines;

(3) "ballot sheet" means the material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(5) "county clerk" means the clerk of the county or the county clerk's designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine-printed returns, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine-printed returns;

(7) "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(8) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of absentee voting, counting and tallying of absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(9) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(10) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(11) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(12) "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

(a) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;

(b) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(c) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

(13) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns;

(14) "recount" pertains to ballots and absentee ballots and means a retabulation and retallying of individual ballots;

(15) "voter" means a qualified elector of the municipality; and

(16) "voting machine" means any electronic recording and tabulating voting system as tested and approved by the secretary of state.

**History:** 1978 Comp., § 3-8-2, enacted by Laws 1985, ch. 208, § 10; 1997, ch. 286, § 3; 1999, ch. 278, § 1; 2008, ch. 244, § 1; 2008, ch. 278, § 1.

### 3-8-3. Residency.

For the purpose of determining the residence of a person desiring to be a candidate for a municipal elected office, or the residence of a person who has signed a petition to cause a special or regular municipal election, or for determining residency for any other purpose pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the following rules shall govern:

A. residence shall be presumed to be at the address or location shown on the original affidavit of voter registration on file with the county clerk; and

B. the presumption established in Subsection A of this section may be overcome if residence is shown to be elsewhere pursuant to the rules set forth in Section 1-1-7 NMSA 1978.

**History:** 1978 Comp., § 3-8-3, enacted by Laws 1985, ch. 208, § 11.

### 3-8-4. Oaths.

A. A person authorized to administer oaths, as the term is used in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], means any person empowered by the laws of any state, the federal government, or of any foreign country to administer oaths.

B. The words "swear" and "oath" include affirmation in all cases where an affirmation can be substituted for swearing or an oath.

**History:** 1978 Comp., § 3-8-4, enacted by Laws 1985, ch. 208, § 12.

### 3-8-5. Major fractions.

In any section in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] requiring counting or computation of numbers, any fraction greater than one half of a whole number shall be counted as a whole number.

**History:** 1978 Comp., § 3-8-5, enacted by Laws 1985, ch. 208, § 13.

### **3-8-6. County clerk; election duties.**

The county clerk shall maintain accurate voter registration information for each municipality located in the county. The county clerk shall provide to the municipal clerk, in advance of a municipal regular or special election, the names of only those registered voters entitled to vote in the municipal election as required in Subsection B of Section 3-8-7 NMSA 1978.

**History:** 1978 Comp., § 3-8-6, enacted by Laws 1985, ch. 208, § 14; 1987, ch. 323, § 4.

#### **3-8-6.1. Secretary of state; duties.**

The secretary of state shall investigate complaints concerning conduct of elections held pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and issue the findings to the appropriate enforcement authority.

**History:** 1978 Comp., § 3-8-6.1, enacted by Laws 1991, ch. 123, § 2.

### **3-8-7. Municipal clerk; county clerk; election duties.**

- A. The municipal clerk shall:**
- (1) administer the municipal election;
  - (2) with the consent of the governing body, secure the necessary polling places;
  - (3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;
  - (4) certify voting machines;
  - (5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978;
  - (6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and
  - (7) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.
- B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. The county clerk shall provide to the municipal clerk a printed registered voter list and the voter registration information in compatible electronic format containing only the qualified electors eligible to vote in the municipal election twenty days prior to the election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any information to or from the registered voter list except as otherwise provided by law. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists, signature rosters and**

voter registration in electronic format but in no case in an amount that exceeds the actual cost to the county.

**History:** 1953 Comp., § 14-8-5, enacted by Laws 1965, ch. 300; 1969, ch. 246, § 1; 1971, ch. 306, § 4; 1975, ch. 255, § 125; 1978 Comp., § 3-8-5, recompiled

as 1978 Comp., § 3-8-7 by Laws 1985, ch. 208, § 15; 1987, ch. 323, § 5; 1991, ch. 123, § 3; 1995, ch. 188, § 16; 1997, ch. 266, § 4; 1999, ch. 278, § 2.

### **3-8-8. Time to register to vote.**

Voter registration, for purposes of all municipal elections, shall occur during the times allowed pursuant to Section 1-4-8 NMSA 1978.

**History:** 1978 Comp., § 3-8-8, enacted by Laws 1985, ch. 208, § 16.

### **3-8-9. Election scheduling; conflicts; notice.**

A. Except as otherwise provided by law, a municipal election may be held concurrently with, but shall not be held within forty-two days prior to or within thirty days after, any statewide special, general or primary election or any regular school district election. Whenever a municipal election would be or has been scheduled within the prohibited time, the governing body shall adopt an election resolution scheduling or rescheduling the election on a date as soon as is practicable outside the prohibited period and in compliance with the requirements of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and any other statute specifically related to such election. If an election resolution has already been adopted, the new election resolution shall supersede the existing election resolution and the new election resolution shall be published as required by the Municipal Election Code.

B. Except as otherwise provided by law, one or more municipal special elections, including but not limited to bond elections, may be held in conjunction with a regular municipal election or one or more special municipal elections.

C. When concurrent elections are called for, publications, notices, selection of precinct boards, election schools, ordering election supplies, conduct of the election, canvassing, record keeping and all other election matters shall be conducted to comply with all election requirements for each such election as if it were held separately. However, any requirement may be satisfied by a combined action if such action would satisfy the requirements set by law for each individual election. Allowable combined actions include but are not limited to, combined:

- (1) publications;
- (2) notices;
- (3) appointment of precinct boards;
- (4) ordering of election supplies;
- (5) conduct of election;
- (6) canvassing; and
- (7) record keeping.

**History:** 1978 Comp., § 3-8-9, enacted by Laws 1985, ch. 208, § 17; 1987, ch. 323, § 6; 2003, ch. 154, § 2.

### **3-8-10. Consolidation of precincts.**

A. Any precinct may be combined with one or more adjacent and contiguous precincts by the governing body when the municipal clerk determines that consolidation is in the best interest of those precincts and will not compromise the orderly and efficient conduct of the election.

B. Precincts may be consolidated in any regular or special municipal election, including bond elections, except when prohibited by law.

**History:** 1978 Comp., § 3-8-10, enacted by Laws 1985, ch. 208, § 18; 1997, ch. 268, § 5.

### **3-8-11. Polling places.**

A. The governing body shall designate within the municipal boundaries a polling place, in each precinct or consolidated precinct, that is the most convenient and suitable public building or public school building in the precinct that can be obtained and that provides suitable access for handicapped persons as required by law.

B. If no public building or public school building is available, the governing body shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable within the municipal boundaries and in the precinct, considering the purpose for which it is to be used.

C. If no public building or public school building is available in the precinct and if there is no other suitable place obtainable in the precinct, the governing body may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained; provided, no polling place shall be designated outside the boundaries of the municipality and of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

D. Upon application of the governing body or municipal clerk, the governing board of any school district shall permit the use of any school buildings or a part thereof for the conduct of any municipal election.

E. If only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidate files for a position and there are no questions or bond issues on the ballot, the municipal clerk may designate a single polling place for the election.

**History:** 1978 Comp., § 3-8-11, enacted by Laws 1985, ch. 208, § 19; 2009, ch. 278, § 2.

### **3-8-12. Election resolutions; notices; correction of errors and omissions.**

The election resolution, publication of the election resolution, or any notice regarding municipal election matters may be amended by the municipal clerk to correct any ministerial errors or omissions. The corrected resolution or notice shall be published, in the manner that the original is required to be published as required by law. However, if publication as required by law cannot be made, then such notice shall be given as is practicable under the circumstances in order to best reach those people to whom notice was intended under the law.

**History:** 1978 Comp., § 3-8-12, enacted by Laws 1985, ch. 208, § 20.

**3-8-13. Voting machines; paper ballots.**

Voting machines shall be used in all municipal elections, except paper ballots may be used in lieu of voting machines for the recording of votes cast in a municipal special or regular election in municipalities of less than one thousand five hundred population. A decision to use paper ballots shall be made by the governing body at the time the election resolution is adopted. Nothing in this section shall prevent the use of absentee ballots as allowed by law.

**History:** 1978 Comp., § 3-8-13, enacted by Laws 1985, ch. 208, § 21; 2009, ch. 278, § 3.

**3-8-14. Voting machines; ordering; preparation; certification; delivery.**

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation. The municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount that exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place; provided that the municipal clerk shall order a sufficient number of voting machines to ensure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. Programming of electronic machines shall be performed under the supervision of the municipal clerk and the county clerk. The machines shall be programmed so that votes will be counted in accordance with specifications for electronic voting machines adopted by the secretary of state.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to contact the candidates using the information listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public. If voting machines are to be used for absentee voting, inspection and certification shall occur not later than seven days prior to the beginning of absentee voting and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

- (1) ensure that the correct ballot sheet has been installed on each voting machine, if ballot sheets are to be installed;
- (2) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;
- (3) test each voting machine to ensure that it has been correctly programmed; and
- (4) inform the county clerk when each machine is satisfactory and ready to be certified.

G. If the municipal clerk informs the county clerk that a machine is satisfactory and ready to be certified:

- (1) the county clerk shall reset each counter at zero;
- (2) the voting machine shall be immediately sealed with a numbered seal so as to prevent operation of the machine or its registering counters without breaking the seal;
- (3) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

- (a) show the serial number of the voting machine;
  - (b) state that the voting machine has all of its resettable registering counters set at zero;
  - (c) state that the voting machine has been tested by voting on each registered counter to prove the counter is in perfect condition;
  - (d) state that the correct ballot sheet has been installed on the voting machine, if ballot sheets are to be installed;
  - (e) show the number of the seal that has sealed the machine; and
  - (f) show the number registered on the protective counter;
- (4) a copy of the certificate shall be delivered to the county clerk, the original certificate shall be filed in the office of the municipal clerk and one copy shall be posted on the voting machine; and
- (5) if the voting machine requires keys, the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:
- (a) the number of the precinct and polling place to which the machine is assigned;
  - (b) the serial number of the voting machine;
  - (c) the number of the seal that has sealed the voting machine;
  - (d) the number registered on the protective counter; and
  - (e) the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in the county clerk's custody and shall deliver the keys to the municipal clerk when the voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election, provided that any voting machines to be used for absentee voting shall be delivered to the municipal clerk no earlier than five days prior to the beginning of absentee voting and no later than noon on the day prior to the beginning of absentee voting in person in the office of the municipal clerk.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election.

History: 1978 Comp., § 3-8-14, enacted by Laws 1966, ch. 206, § 22; 1987, ch. 323, § 7; 1993, ch. 22, §

1; 1997, ch. 266, § 6; 2001, ch. 197, § 1; 2003, ch. 244, § 2; 2009, ch. 278, § 4.

**3-8-15. Repealed.****3-8-16. Paper ballots in lieu of voting machines; form; general requirements.**

As used in this section, "paper ballots" means paper ballots used in lieu of voting machines. Paper ballots shall be in the form prescribed by the municipal clerk, which shall conform to the following rules:

- A. paper ballots shall:
- (1) be numbered consecutively beginning with number one. The number shall be printed with a perforated line appropriately placed so that the portion of the ballot bearing the number may be readily and easily detached from the ballot;
  - (2) be uniform in size;
  - (3) be printed on good quality paper;
  - (4) be printed in plain black type;
  - (5) have all words and phrases printed correctly and in their proper places; and
  - (6) have district and precinct, if applicable;
- B. the following heading shall be printed on each paper ballot used in all municipal elections:

**"OFFICIAL ELECTION BALLOT**

Election held . . . . . (insert date)";

C. if the election is a regular municipal election, the paper ballot shall be prepared consistent with the requirements of Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. Where space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". Below the heading shall appear one line, with a box to the right of the line, for each individual office holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body;

D. if the election is a special municipal election, questions presented shall be placed on the paper ballot in the order designated by the governing body;

E. next to each question presented on a paper ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST"; and

F. at the bottom of all paper ballots shall be printed: "OFFICIAL ELECTION BALLOT", followed by a facsimile signature of the municipal clerk.

**History:** 1978 Comp., § 3-8-16, enacted by Laws 1985, ch. 208, § 24; 1997, ch. 266, § 7; 2008, ch. 278, § 5.

**3-8-17. Sample ballots.**

A. At the same time official ballots are printed for voting with machines or paper ballots, the municipal clerk shall cause sample ballots to be printed, which shall:

- (1) be printed in both English and Spanish;
- (2) be printed in a total number equal to at least five percent of the number of qualified electors in each precinct or consolidated precinct;

(3) be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the municipal clerk or any endorsement on the sample ballot or the back thereof;

(4) be marked in large black capital letters, "SAMPLE BALLOT"; and

(5) be made available in reasonable quantities to all interested persons for distribution to the voters.

B. Nothing in this section shall prevent any person from having printed at his expense sample ballots, of a different color than the official sample ballot, which comply with the provisions of this subsection, so long as no marks, notations, words or other material are added to, taken from or deface, change or hide the information on or the appearance of the sample ballot as authorized by the municipal clerk.

**History:** 1978 Comp., § 3-8-17, enacted by Laws 1985, ch. 206, § 25; 1993, ch. 22, § 2; 2003, ch. 244, § 3.

### **3-8-17.1, 3-8-17.2. Repealed.**

### **3-8-18. Election supplies.**

A. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots;

(2) order ballots and sample voting machine ballots; and

(3) order all other election supplies necessary for the conduct of the election.

B. Ballots and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election.

**History:** 1978 Comp., § 3-8-18, enacted by Laws 1985, ch. 208, § 26; 1987, ch. 323, § 6; 1999, ch. 278, § 4; 2003, ch. 244, § 4; 2009, ch. 278, § 6.

### **3-8-19. Precinct boards; appointments; compensation.**

A. In order to qualify as a member of a precinct board, a person shall:

(1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;

(2) be able to read and write;

(3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board if that person is a:

(1) candidate for any municipal office;

(2) spouse, parent, child, brother or sister of any candidate to be voted for at the election;

(3) sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman;

(4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or

(5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of no fewer than three members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be appointed as election clerks. Not less than two alternates shall be appointed who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance and keep a record of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy that may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars (\$20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election.

History: 1953 Comp., § 14-8-10, enacted by Laws 1971, ch. 306, § 8; 1978 Comp., § 3-8-11, recompiled as

1978 Comp., § 3-8-19 by Laws 1985, ch. 208, § 27; 1987, ch. 323, § 9; 1997, ch. 266, § 8; 1999, ch. 278, § 5.

### 3-8-20. Precinct board; duties.

A. The precinct board shall:

(1) conduct the municipal election in the manner provided for the conduct of elections in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]; and

(2) at the close of the polls, count the votes cast on each question, if any, and for each candidate, if any, and perform all duties as required by the Municipal Election Code.

B. A member of the precinct board shall not disclose the name of any candidate for whom any voter has voted.

C. No person shall serve on a precinct board unless that person has attended election training conducted by the municipal clerk in the previous four years.

History: 1953 Comp., § 14-8-10.1, enacted by Laws 1971, ch. 306, § 9; 1978 Comp., § 3-8-12, recompiled as

1978 Comp., § 3-8-20 by Laws 1985, ch. 208, § 28; 2009, ch. 278, § 7.

### **3-8-21. Municipal clerk; precinct board; election training.**

A. The municipal clerk shall conduct or cause to be conducted election training not less than five days prior to the election. All major details of the conduct of elections shall be covered at the training, with special emphasis given to recent changes in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. The training session shall be open to the public, with notice published not less than four days prior to the training.

B. Notice of the training shall be mailed to each precinct board member and alternate not less than seven days prior to the training.

C. Two or more municipalities may jointly conduct election training.

D. The governing body may authorize payment of mileage to precinct board members who attend election training.

**History:** 1978 Comp., § 3-8-21, enacted by Laws 1985, ch. 208, § 29; 1987, ch. 323, § 10; 2008, ch. 276, § 8.

### **3-8-22. Conduct of election; eligibility for assistance; oral assistance for language minority voters; aid or assistance to voter marking ballot; who may assist voter; type of assistance.**

A. A voter may request assistance in voting only if the voter is:

- (1) visually impaired;
- (2) a person with a physical disability;
- (3) unable to read or write;
- (4) a member of a language minority who is unable to read well enough to exercise the elective franchise; or
- (5) not able to operate a voting machine or mark a ballot without assistance.

B. When a voter who is eligible for assistance requires assistance in marking a ballot or recording a vote on a voting machine, the voter shall announce this fact before receiving the ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking a ballot or recording a vote on a voting machine. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking a ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in this subsection, "language minority" means a person who is Native American or of Spanish heritage, and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing Native American election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service.

**History:** 1978 Comp., § 3-8-22, enacted by Laws 1985, ch. 208, § 30; 2001, ch. 197, § 2; 2007, ch. 46, § 2; 2008, ch. 278, § 9.

### **3-8-23. Messengers; compensation.**

A. The municipal clerk may appoint messengers to deliver ballot boxes, signature rosters, keys, election supplies and other materials pertaining to the election.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] each way over the usually traveled route. The mileage shall be paid within thirty days following the date of election.

**History:** 1978 Comp., § 3-8-23, enacted by Laws 1985, ch. 208, § 31.

### **3-8-24. Uniform procedure.**

The provisions of 3-8-1 NMSA 1978 through 3-8-23 NMSA 1978 relate to overall election matters and pre-election day matters, and shall apply to all municipal elections except as otherwise specified.

**History:** 1978 Comp., § 3-8-24, enacted by Laws 1985, ch. 208, § 32.

### **3-8-25. Regular municipal elections; time of holding election.**

Regular municipal elections for the purpose of electing municipal officers and considering any other question placed on the ballot by the governing body shall be held on the first Tuesday in March of each even-numbered year; provided, that any municipality which has adopted a charter shall elect its municipal officers at the time provided for in the charter.

**History:** 1953 Comp., § 14-8-3, enacted by Laws 1985, ch. 300; 1978 Comp., § 3-8-3, recompiled as 1978 Comp., § 3-8-25 by Laws 1985, ch. 208, § 33.

### **3-8-26. Regular municipal election; publication of resolution; choice of ballots or voting machines.**

A. Not earlier than one hundred twelve days or later than eighty-four days prior to the date of a regular municipal election, the governing body shall adopt an election resolution calling for the regular municipal election. The election resolution shall be published in both English and Spanish and once within fifteen days of adoption and again not less than sixty days prior to the election or more than seventy-five days prior to the election, as provided in Subsection J of Section 3-1-2 NMSA 1978. In addition, the election resolution shall be posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed within fifteen days of adoption to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the date when the election will be held, the offices to be filled, the questions to be submitted to the voters, the date and time of the closing of the registration books by the county clerk as required by law, the date and time for filing the declaration of candidacy, the location of polling places, the date and time for absentee voting and the consolidation of precincts, if any, notwithstanding any conflicting provisions of Section 1-3-5 NMSA 1978. Any question to be submitted to the voters in addition to the election of municipal officers may be included in the election resolution, but such inclusion shall not substitute for any additional or separate resolution or publication thereof as required by law.

C. In those municipalities allowed by law to use paper ballots, the election resolution shall also state whether paper ballots or voting machines will be used in the election.

**History:** 1953 Comp., § 14-6-4, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 3; 1971, ch. 306, § 3; 1977, ch. 29, § 1; 1978 Comp., § 3-8-4, recompiled as

1978 Comp., § 3-8-26 by Laws 1985, ch. 206, § 34; 1997, ch. 266, § 9; 2001, ch. 197, § 3; 2003, ch. 244, § 5.

### **3-8-27. Regular municipal election; declaration of candidacy; withdrawing name from ballot; penalty for false statement.**

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for municipal office shall personally appear at the office of the municipal clerk to file all documents required by law in order to cause a person to be certified as a candidate. Alternatively, on candidate filing day, a person acting solely on the candidate's behalf, by virtue of a written affidavit of authorization signed by the candidate, notarized and presented to the municipal clerk by such person, shall file in the office of the municipal clerk all documents required by law in order to cause a person to be certified as a candidate.

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk a declaration of candidacy; a certified copy of the candidate's current affidavit of voter registration that is on file with the county clerk and that has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution; and, in a home rule or charter municipality that requires a nominating petition to be submitted by a candidate for municipal office, a nominating petition that has the required number of signatures.

C. All candidates shall cause their affidavits of voter registration to show their address as a street address or rural route number and not as a post office box.

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy that contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored and that the candidate has been granted a pardon or a certificate by the governor restoring the candidate's full rights of citizenship;

(5) a statement that the candidate or the candidate's authorized representative shall contact the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) the contact information for how the candidate or the candidate's authorized representative can be reached for purposes of giving notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made in the declaration of candidacy constitutes a fourth degree felony under the laws of New Mexico; and

(8) the notarized signature of the candidate on the declaration of candidacy.

E. The municipal clerk shall not accept a declaration of candidacy for more than one municipal elected office per candidate, so that each candidate declares for only one municipal elected office.

F. Once filed, the declaration of candidacy is a public record.

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk shall prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, the municipal clerk shall not certify that individual as a candidate for municipal office.

H. The municipal clerk shall post in the clerk's office a list of the names of those individuals who have been certified as candidates. The municipal clerk shall also post in the clerk's office the names of those individuals who have not been certified as candidates, along with the reasons therefor. The posting shall occur no later than 9:00 a.m. on the fifty-fourth day preceding the election.

I. Not later than 5:00 p.m. on the forty-ninth day before the day of the election, a candidate for municipal office may file an affidavit on the form provided by the municipal clerk in the office of the municipal clerk stating that the candidate is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality and the county clerk the names of the candidates and their position on the ballot.

K. Any person knowingly making a false statement in the declaration of candidacy is guilty of a fourth degree felony.

L. No person shall be elected to municipal office as a write-in candidate unless that person has been certified as a declared write-in candidate by the municipal clerk, as follows:

(1) write-in candidates filing day shall be on the forty-ninth day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-eighth day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the forty-seventh day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons; and

(5) not later than 5:00 p.m. on the thirty-fifth day preceding the election, a declared write-in candidate may file an affidavit that the candidate is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that candidate shall not be counted and canvassed.

**History:** 1953 Comp., § 14-8-8, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 6; 1978 Comp., § 3-8-8, recompiled as 1978 Comp., § 3-8-27 by Laws 1985, ch.

208, § 35; 1987, ch. 323, § 11; 1997, ch. 288, § 10; 2001, ch. 197, § 4; 2009, ch. 278, § 10.

### **3-8-28. Regular municipal election; candidate for office.**

Any qualified elector who complies with Section 3-8-27 NMSA 1978 may be a candidate or write-in candidate for municipal office in the municipality in which he resides.

**History:** 1953 Comp., § 14-8-6, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-6, recompiled as 1978

Comp., § 3-8-28 by Laws 1985, ch. 208, § 36; 1987, ch. 323, § 12.

### **3-8-29. Regular municipal election; ballots.**

A. At 5:01 p.m. on the fifty-fourth day preceding the election, in the presence of the certified candidates or their authorized representatives who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

B. The ballot shall first set forth candidates running for executive office (mayor), if any; then candidates running for legislative office (councilors, trustees, commissioners), if any; and finally candidates running for judicial office (municipal judge), if any. For each office to be filled, the ballot shall contain:

(1) the office to be filled and its term;

(2) the names of the candidates running for office exactly as shown on the candidate's declaration of candidacy and in the order determined by the drawing by lot;

(3) a space for a qualified elector to write in the name of one declared write-in candidate, if any, per position to be filled; and

(4) any necessary reference to districts, positions or other similar official designations for office.

C. The only reference to a candidate for office to be placed on a ballot is the candidate's name as it appears on the candidate's declaration of candidacy. No ticket designations or party affiliations shall be shown on the ballot. Municipal elections shall be nonpartisan.

D. If it appears to the municipal clerk that the name of two or more candidates for any office are the same or so similar as to tend to confuse the voter as to the candidates' identities, the occupation and address of each such candidate shall be printed immediately under the candidate's name on the ballot.

E. The municipal clerk shall place on the ballot any question in the order designated by the governing body.

**History:** 1978 Comp., § 3-8-29, enacted by Laws 1985, ch. 208, § 37; 1987, ch. 323, § 13; 1999, ch. 278, § 6.

### **3-8-30. Regular municipal election; publication of names of candidates and other election data.**

The municipal clerk shall publish the names of the candidates for each office to be filled, the order their names will appear on the ballot, the location and address of the polling place for each precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. If districted, the municipal clerk shall also publish the precincts or portion of precincts in each election district. Publication shall be once each week for two successive weeks with the first publication not more than twenty-eight days prior to the day of the election and the last publication not less than two days before the day of election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

**History:** 1953 Comp., § 14-8-9, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 7; 1978 Comp., § 3-8-9, recomplied as 1978 Comp., § 3-8-30 by Laws 1985, ch. 208, § 38; 1987, ch. 323, § 14.

### **3-8-31. Regular municipal election; challengers; watchers; observers.**

A. Upon petition filed with the municipal clerk by an unopposed candidate or by both candidates for a municipal office, if only two candidates are running for the office, or by a majority of the candidates for a municipal office, if more than two candidates are running for the office, those candidates may:

(1) appoint one person as a challenger and one alternate for each polling place in the municipal election; and

(2) appoint one person as a watcher and one alternate for each polling place in the municipal election.

B. The petition appointing a challenger and watcher and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the election.

C. Upon receipt of the petition, the municipal clerk shall verify whether the challengers, watchers and alternates are properly qualified pursuant to Subsection D of this section. Not later than 3:00 p.m. on the day prior to the election, the municipal clerk shall prepare official identification badges for those challengers, watchers and alternates who are properly qualified. Such identification badges shall be signed by the municipal clerk and contain the name of the challenger, watcher or alternate and state that person's title and the polling place where such person serves. Challengers, watchers and alternates shall be responsible to obtain their identification badges from the office of the municipal clerk prior to the opening of the polls on election day.

D. A challenger, watcher or alternate shall function only at a polling place that serves the precinct within which such challenger, watcher or alternate resides. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person who is a spouse, parent, child, brother or sister of a candidate to be voted for at the election or any municipal clerk, deputy clerk or assistant shall serve as a challenger, watcher or alternate. No person shall serve as a challenger or watcher unless that person is a qualified elector of the municipality.

E. Upon presentation of their official identification badges to the precinct board, challengers, watchers and alternates shall be permitted to be present at the polling place from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

F. Challengers, watchers and alternates shall wear their official identification badges at all times while they are present in the polling place. They shall not wear any other form of identification or any pins or other identification associated with any candidate, group of candidates or any question presented at the election.

G. Challengers, watchers and alternates shall not:

- (1) be permitted to perform any duty of a precinct board member;
- (2) handle the ballots, signature rosters, absentee voter lists or voting machines;
- (3) take any part in the tallying or counting of the ballots; or
- (4) interfere with the orderly conduct of the election.

H. If a challenger, watcher or alternate is wearing his official identification badge, it is a petty misdemeanor to:

- (1) deny him the right to be present at the polling place;
- (2) deny him the right to examine voting machines as authorized by law;
- (3) deny a challenger or alternate challenger the right to challenge voters pursuant to Section 3-8-43 NMSA 1978 and inspect the signature rosters; or
- (4) deny him the right to witness the counting and tallying of ballots.

I. A challenger or alternate challenger, for the purposes of interposing challenges pursuant to Section 3-8-43 NMSA 1978, shall be permitted to:

- (1) inspect the voter registration list;
- (2) inspect the signature rosters or absentee voter lists to determine whether entries are being made in accordance with law;
- (3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope, to see that all ballot labels are in their proper places and to see that the voting machine is ready for voting at the opening of the polls;
- (4) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and
- (5) witness the counting and tallying of the ballots.

J. A watcher or alternate watcher shall be permitted to:

- (1) observe the election to assure that it is conducted in accordance with law;
- (2) examine any voting machine used at the polling place in the same manner that challengers may examine voting machines;
- (3) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and
- (4) witness the counting and tallying of ballots.

K. The governing body of a municipality may, at its discretion, appoint one qualified elector for each polling place to serve as an observer of the election. The governing body shall make such appointment not later than 3:00 p.m. on the day before the election and shall notify the municipal

clerk of such appointment. The municipal clerk shall issue identification badges to all observers. An observer shall have no powers other than to observe the conduct of the election and observe the counting and tallying and report to the governing body.

**History:** 1953 Comp., § 14-8-11, enacted by Laws 1965, ch. 306, § 10; 1978 Comp., § 3-8-13, recompiled

as 1978 Comp., § 3-8-31 by Laws 1985, ch. 208, § 39; 1987, ch. 323, § 15; 1999, ch. 278, § 7.

### **3-8-32. Regular municipal election; plurality of votes cast required for election.**

A. The candidate who receives a plurality of the votes cast for a designated office and term and who is qualified to hold office shall be elected to the office for the term designated.

B. If more than one candidate is to be elected to an office and term or the candidates are not running for a designated term, the candidates, in the number to be elected, receiving the largest pluralities shall be elected.

C. No candidate shall take office if the candidate has not remained legally qualified to hold office from the time the candidate was certified by the municipal clerk as a candidate or declared write-in candidate through the time at which the candidate is to take office.

**History:** 1953 Comp., § 14-8-13, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 13; 1978 Comp., § 3-8-15,

recompiled as 1978 Comp., § 3-8-32 by Laws 1985, ch. 208, § 40; 1987, ch. 323, § 16.

### **3-8-33. Regular municipal election; certificates of election; qualification of official; taking office.**

A. After canvass and not later than 5:00 p.m. on the sixth day following the election, the municipal clerk shall prepare a certificate of election for each candidate elected and shall post, in the office of the municipal clerk, the election results and the date, time and place where the oath of office will be administered.

B. Each candidate elected shall personally appear before the municipal clerk after canvass and after the municipal clerk has prepared the certificate of election and not later than 7:00 p.m. on the sixth day following the election. When the candidate appears, the municipal clerk shall deliver the certificate of election to the candidate and the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The municipal clerk shall file a copy of the certificate of election and the written receipt and qualification statement in the official minute book of the municipality. Not later than 7:00 p.m. on the sixth day following the election, the municipal clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualification statement to the municipal clerk. Upon taking the oath of office, the candidate shall be deemed to have taken office.

C. If a candidate fails to appear as required in Subsection B of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the municipal clerk, not later than 5:00 p.m. on the tenth day following the election, stating that the candidate was unable to personally appear before the municipal clerk as required by law and the reasons therefor. If such an affidavit is timely filed, the candidate shall appear before the municipal clerk not later than 5:00 p.m. on the thirtieth day after the election to receive the election certificate, file the receipt and qualification statement and take the oath of office.

D. If a candidate fails to comply with Subsection B of this section, then the municipal clerk shall administer an impartial drawing by lot to determine which person shall remain in office until the candidate takes office or the office is declared vacant.

E. If a candidate fails to comply with Subsection B and Subsection C of this section, then the governing body shall declare by resolution that the office is vacant.

F. After each elected candidate has taken the oath of office, the municipal clerk shall mail, within five days thereof, a copy of the certificate of election to the county clerk and the secretary of state for information purposes.

G. An elected official shall remain in office as provided in this section until the official's successor has taken office as provided in this section.

H. The newly elected officials of the governing body who have taken office, the elected officials of the governing body whose terms have not expired and the elected officials of the governing body whose successors have not taken office shall meet not earlier than the sixth day after the election or later than the twenty-first day after the election for an organizational meeting. Such a meeting may be a special meeting or a regular meeting of the governing body.

**History:** 1978 Comp., § 3-8-33, enacted by Laws 1985, ch. 208, § 41; 1987, ch. 323, § 17; 1995, ch. 200, § 2.

### 3-8-34. Uniform procedure.

The provisions of Section 3-8-25 NMSA 1978 through 3-8-33 NMSA 1978 shall apply to all regular municipal elections.

**History:** 1978 Comp., § 3-8-34, enacted by Laws 1985, ch. 208, § 42.

### 3-8-35. Special election; giving notice.

A. When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election, and the election resolution shall be published once each week for four consecutive weeks. The first publication of the election resolution shall be between fifty and sixty days before the day of the election. The election resolution shall be posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the purpose for calling the election, the date of the election, the date and time of the closing of the registration books by the county clerk as required by law, the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and, regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election.

**History:** 1953 Comp., § 14-8-2, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 2; 1978 Comp., § 3-8-2,

recompiled as 1978 Comp., § 3-8-35 by Laws 1985, ch. 208, § 43; 1990, ch. 278, § 8.

**3-8-36. Special elections; publication of election data.**

The municipal clerk shall publish the location or address of the polling place for each precinct or consolidated precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. Publication shall be once each week for two successive weeks. The first publication shall be not more than twenty-eight days before the day of election and the last publication shall be not less than two days prior to the election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

**History:** 1978 Comp., § 3-8-36, enacted by Laws 1985, ch. 208, § 44; 1987, ch. 323, § 18.

**3-8-37. Uniform procedure.**

The provisions of 3-8-35 NMSA 1978 through 3-8-36 NMSA 1978 shall apply to all municipal special elections.

**History:** 1978 Comp., § 3-8-37, enacted by Laws 1985, ch. 208, § 45.

**3-8-37.i. Early voting; use of absentee voting procedures.**

A. An early voter may vote in person on a voting machine beginning at 8:00 a.m. on the twentieth day before the election at the municipal clerk's office during regular hours and days of business until 5:00 p.m. on the Friday immediately before the date of the election.

B. Upon receipt of a properly completed application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

C. If the application is accepted, the municipal clerk shall:

(1) mark the application accepted; and

(2) enter the required information in the absentee ballot register.

D. Upon acceptance of the application, the voter shall be allowed to vote.

E. The municipal clerk shall notify the county clerk, who shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early.

**History:** Laws 2009, ch. 278, § 31.

**3-8-38. Conduct of election; swearing in; delivery of supplies; opening and closing of polls; precinct board attendance.**

A. Not earlier than noon on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box, ballot box keys and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed.

**History:** 1978 Comp., § 3-8-38, enacted by Laws 1985, ch. 208, § 48; 1993, ch. 22, § 3; 1999, ch. 276, § 9.

### **3-8-39. Conduct of election; maintenance of order; peace officer; memoranda of actions or omissions.**

- A. The election judges shall maintain order within the polling place.
- B. Crowding or disruption of the voting process shall not be permitted in the polling place.
- C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.
- D. The election judges may call upon any state or local law enforcement officer to assist in the maintenance of order in the polling place. When so requested, the law enforcement officer shall render assistance.
- E. The election judges may request any state or local law enforcement officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.
- F. Any state or local law enforcement officer may enter a polling place upon request of a precinct board member for the purpose of observing the conduct of the election.
- G. No state or local law enforcement officer shall interfere in any way with a member of the precinct board, a person voting or the conduct of the election, except to assist in maintaining order and orderly control of access, when requested by an election judge.
- H. Any state or local law enforcement officer violating Subsection G of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.
- I. Any member of the precinct board may make written memoranda and preserve them for future reference. The memoranda may concern any action or omission on the part of any person charged with a duty under the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

**History:** 1978 Comp., § 3-8-39, enacted by Laws 1985, ch. 208, § 47; 1995, ch. 200, § 3.

### **3-8-40. Conduct of election; persons not permitted to vote; certificate voting; fraudulent and double voting.**

- A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct that encompasses his place of residence as shown on the signature roster.
- B. Notwithstanding the provisions of Subsection A of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:
  - (1) his residence is within the boundaries of the municipality and within the boundaries of the precinct and the district, if applicable, in which he offers to vote;
  - (2) his name is not listed as having been issued an absentee ballot;
  - (3) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from

the voter rolls and that he shall be permitted to vote in the precinct and election specified therein; provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the certificate and on his executed sworn statement;

(3) retain the completed certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (4) of Subsection B of this section is guilty of perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-40, enacted by Laws 1985, ch. 208, § 48; 1987, ch. 323, § 19; 1997, ch. 266, § 11; 1999, ch. 278, § 10; 2008, ch. 244, § 6.

### **3-8-40.1. Repealed.**

### **3-8-41. Conduct of election; voter's name, address, signature; entries by precinct board.**

A. When a person goes to the polls to vote, the person shall announce the person's name and address in an audible tone of voice and locate the person's name and number in the registered voter list posted for such purpose. An election clerk shall locate the person's name and number in the signature roster. The person shall then sign the person's name in the signature roster or, if the person is unable to write, the election clerk shall sign the person's name in the signature roster, which shall be initialed by an election judge in the signature roster. Thereupon, a challenge may be interposed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. If no challenge is interposed, an election clerk shall issue a voting machine permit to the person, upon which shall be written the person's voter registration list number. The person shall present the voting machine permit to the precinct board member monitoring the machine or issuing ballots, and the person shall be allowed to vote. The precinct board member shall enter the public counter number onto the voting machine permit as shown on the voting machine after the person has voted. All voting machine permits shall be retained in consecutive order and made part of the election returns.

**History:** 1978 Comp., § 3-8-41, enacted by Laws 1985, ch. 208, § 48; 2009, ch. 278, § 11.

**3-8-42. Repealed.****3-8-43. Conduct of election; challenges; required challenges; entries; disposition.**

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

- (1) the person offering to vote is not registered;
- (2) the person offering to vote is listed among those persons in the precinct to whom an absentee ballot was issued;
- (3) the person offering to vote is not a qualified elector;
- (4) the person offering to vote is not listed on the signature roster or voter registration list;
- (5) in the case of an absentee ballot, the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or
- (6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where the person is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or the person's name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster and:

- (1) if the challenge is unanimously affirmed by the election judges:
  - (a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;
  - (b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;
  - (c) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and
  - (d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted; or
- (2) if the challenge is not unanimously affirmed by the election judges:
  - (a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and
  - (b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer to vote and demands to vote and the person's name does not appear on the signature roster and cannot be entered pursuant to Subsection B of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

- (1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;
- (2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;
- (3) the person shall sign the person's name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the required challenge ballot in an envelope marked "rejected-required challenge" that shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

**History:** 1978 Comp., § 3-8-43, enacted by Laws § 12; 1999, ch. 276, § 11; 2003, ch. 244, § 7; 2009, ch. 1985, ch. 206, § 51; 1987, ch. 323, § 20; 1997, ch. 266, 278, § 12.

### **3-8-44. Conduct of election; voting machines; instructions; inspection of voting machine face after vote; entry into machine.**

A. Before each person votes, a member of the precinct board shall, at the request of the voter and so far as possible, instruct the person on how to operate the voting machine, illustrate its operation on the model and call attention to the posted sample ballot. If any person, before voting, asks for further information regarding the machine's operation, an election judge shall give the person the necessary information prior to the person's casting a vote.

B. The member of the precinct board attending the voting machine shall inspect the face of the machine after each person has voted to see that the ballot labels are in their proper places and have not been defaced.

C. After a person has announced the person's name and address, had voter registration confirmed, signed the signature roster and has had no challenge affirmed against casting a ballot, the person may vote. No more than one voter shall be permitted at the voting machine at one time unless the voter is being assisted.

**History:** 1978 Comp., § 3-8-44, enacted by Laws 1985, ch. 208, § 52; 1985, ch. 200, § 4; 2006, ch. 278, § 13.

### **3-8-45. Conduct of election; closing polls; arrival of voter after the polls close; election clerk certificate.**

A. When the polls are closed, the precinct board shall proclaim that fact aloud at the place of election. After the proclamation no person shall cast a vote. However, if at the hour of closing there are other persons inside the polling place and in line to offer themselves to vote, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. When the polls are proclaimed closed, an election judge shall determine the last person in the polling place and in line who may offer themselves to vote, announce that person's name in an audible tone, and no person arriving at the polling place thereafter may vote.

B. Immediately after the last vote is cast and the polls are closed, the precinct board shall complete and sign a certificate which shall state: "We certify the . . . . . election complete with the voting of voting machine number . . . . . by voter number . . . . . on the signature roster."

**History:** 1978 Comp., § 3-8-45, enacted by Laws 1985, ch. 208, § 53.

**3-8-46. Conduct of elections; closing polls; locking voting machines; opening voting machines; verification of votes; admittance of watchers and candidates; proclamation of results; completion of locking; duration of locking and sealing.**

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and, if required by the county clerk, seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked; giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, or if the precinct officials are unable to obtain the returns from the voting machine, the precinct officials shall call the municipal clerk, who shall immediately contact the county clerk, who shall dispatch a voting machine technician to that polling place to help the precinct officials obtain the returns from the voting machine.

D. A write-in vote shall be cast by writing in the name of a declared write-in candidate on the ballot or, on voting machines, write-ins shall be written in the slot provided for each designated office. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of write-in candidacy of the declared write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify the declared write-in candidate;

(2) the name is written in the proper slot on the voting machine or on the proper line for write-in votes provided on an absentee ballot or paper ballot used in lieu of voting machines;

(3) the name written in is not a vote for a person who is on the ballot for that office; and

(4) the name written in is not imprinted by rubber stamp or similar device or by the use of preprinted stickers or labels.

E. Only the members of the precinct board, candidates or their representatives, representatives of the news media, certified challengers, watchers and observers and the municipal clerk may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, machine-printed returns and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by an election judge who shall read the name of each candidate and the total number of votes cast for each candidate shown on the printed returns. An election judge shall also read the total number of votes cast for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns. The precinct board may make corrections then and there.

G. When the precinct board is satisfied that the election results have been correctly tallied, an election judge shall complete a separate election return certificate in triplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each

question. The certificate shall be signed by all the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided and the original returned to the municipal clerk in the envelope provided.

H. Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

I. On the voting machine, the machine return sheet is the official vote tally for that machine and the separate election return certificate is the official vote tally for that precinct or consolidated precinct.

J. If in the district court's opinion a contest is likely to develop, the court may order a voting machine to remain locked and sealed for such time as it deems necessary.

K. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the county clerk, unless other provisions for the use of the voting machine are ordered by the court.

**History:** 1978 Comp., § 3-8-46, enacted by Laws 1985, ch. 208, § 54; 1987, ch. 323, § 21; 2001, ch. 197, § 5; 2009, ch. 278, § 14.

### **3-8-47. Conduct of elections; disposition of signature roster; machine-printed returns; ballot boxes; election return certificate; affidavits; other election materials.**

A. After all certificates have been executed, the precinct board shall place the voter checklist and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope or other container provided by the municipal clerk for such purpose:

- (1) all ballot box keys;
- (2) the signature roster;
- (3) one voter registration list;
- (4) the election returns certificate, if separate from the signature roster;
- (5) one copy of the machine-printed returns;
- (6) a machine cartridge or memory card for any voting machine, if required by the county clerk;
- (7) voting machine permits; and
- (8) all unused election supplies.

C. All materials listed in Subsection B of this section, along with the locked ballot box containing any paper ballots cast in the election, including spoiled and challenged ballots, shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The sum-

mons shall be served by a sheriff or state police officer without cost to the municipality, and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk.

**History:** 1978 Comp., § 3-8-47, enacted by Laws 1985, ch. 208, § 55; 1997, ch. 266, § 13; 1999, ch. 278, § 12; 2009, ch. 278, § 15.

### **3-8-48. Conduct of elections; paper ballots; one to a voter; receipt or delivery; occupation of voting machines.**

A. Only one paper ballot shall be given to each qualified elector entitled to vote. The ballots shall be delivered to qualified electors entitled to vote in consecutive order, beginning with the lowest numbered ballot.

B. No qualified elector entitled to vote shall receive a ballot from any person other than from an election judge at the polling place where the person is authorized to vote. No person other than an election judge shall deliver a ballot to any qualified elector entitled to vote.

C. Unless otherwise provided by law, when voting machines are used as voting booths to mark paper ballots, they shall not be occupied by more than one person at a time. A person shall not remain in or occupy such voting machine longer than is necessary to mark and prepare the paper ballot.

D. The ballot shall be completed and returned to the presiding judge who shall place it in a locked ballot box to be counted when the machine is repaired or replaced or at the time the polls close.

**History:** 1978 Comp., § 3-8-48, enacted by Laws 1985, ch. 208, § 56; 1997, ch. 266, § 14; 2009, ch. 278, § 16.

### **3-8-49. Conduct of election; paper ballots; marking; use of pen or other writing implement; identification marks.**

A. In order to vote for a candidate, the person voting shall mark a cross (X) or a check (✓) in the box next to the name of that candidate or write in the name of the person for whom the voter desires to vote in the space for write-in candidates and mark a cross (X) or a check (✓) in the box next to the line upon which the write-in vote is cast. Such write-in vote shall be cast in accordance with the provisions of Subsection D of Section 3-8-46 NMSA 1978. Notwithstanding the requirements of this subsection, if a different mark, other than a cross or check, is required for proper counting of the ballot, then the person voting shall make such mark on the ballot in the place so designated on the ballot utilizing the required writing implement pursuant to the instructions of the precinct board.

B. If a question is included on the paper ballot, the person voting shall mark the paper ballot by marking a cross (X) or a check (✓) in the box for or against the question submitted or otherwise marking the ballot in accordance with Subsection A of this section.

C. All crosses, checks or other proper marks on the ballot shall be made only with pen or other writing implement and in the manner required for the proper counting of the ballot. The cross used in marking ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "V"-shaped mark with it being permissible for either side of the "V" to be longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extends outside the circle or box, shall be counted as a valid marking of the ballot when crosses or checks are required.

D. A vote shall be counted if:

- (1) the ballot is marked in accordance with the instructions for that ballot type;
- (2) the preferred candidate's name or answer to a ballot question is circled;
- (3) there is a cross or check within the voting response area for the preferred candidate or answer to the ballot question; or
- (4) the presiding judge and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.

E. A person voting shall not place any mark on the ballot by which it may be afterwards identified as one voted by that person.

**History:** 1978 Comp., § 3-8-49, enacted by Laws 1985, ch. 208, § 57; 2009, ch. 278, § 17.

### **3-8-50. Conduct of election; paper ballots; procedure after marking; delivery of two or more ballots; person authorized to receive ballots; spoiled or defaced ballots.**

A. After marking and preparing the paper ballot, the person voting:

- (1) shall not show it to any person in such a way as to reveal its contents; and
- (2) shall deliver it to an election judge who shall then remove any visible number on the ballot, hand the detached number to the person voting and deposit the paper ballot in the ballot box in the presence of the person voting.

B. Only an election judge shall receive a ballot from a person voting. No person shall examine or solicit a person to reveal or show the contents of the person's paper ballot.

C. The election judge shall not deposit in the ballot box any paper ballot from which the slip containing the number of the paper ballot has not been removed by the election judge and handed to the person voting.

D. A person who accidentally spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. The election judge in delivering the new ballot shall announce the name of the person voting in an audible tone and the number of the new ballot.

F. Upon the announcement of the election judge, the election clerks shall cross out the number of the spoiled or erroneously prepared ballot in the signature roster with a single line and shall insert in lieu thereof the number of the new ballot.

G. The election judge shall mark the spoiled or erroneously prepared ballot with the word "SPOILED" and shall place it in a separate envelope marked "SPOILED BALLOTS", which shall be returned to the municipal clerk.

H. Any person who knowingly hands to the election judge two or more ballots folded together is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-50, enacted by Laws 1985, ch. 208, § 58; 2009, ch. 278, § 18.

**3-8-51. Conduct of election; paper ballots; unused ballots; destruction of unused ballots; counting and tallying.**

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction, which shall state the number of the last ballot that was used for voting, the numbers of the ballots that were destroyed and the fact that all unused ballots were destroyed.

B. Immediately after preparation of the certificate of destruction and before any ballot box is unlocked, the precinct board shall destroy all unused ballots in the presence of the candidates, if present, the municipal clerk, if present, certified challengers and watchers, if any, and representatives of the news media, if any.

C. On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the municipal clerk shall publicly, in the clerk's office, proceed to destroy every unused ballot that remains in the clerk's control and make and file an affidavit in writing as to the number of ballots so destroyed.

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate and shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media and certified challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board.

**History:** 1975 Comp., § 3-8-51, enacted by Laws 1965, ch. 208, § 59; 1999, ch. 278, § 13; 2009, ch. 278, § 19.

**3-8-52. Conduct of election; paper ballots; signature rosters; disposition.**

A. After the counting and tallying of ballots is completed and after all certificates have been executed, the precinct board shall place the voter checklist and one copy of all certificates and tally sheets in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The signature roster, all certificates, tally sheets and all ballot box keys shall be returned to the municipal clerk. The signature roster, certificates, tally sheets and ballot box key shall not be placed in the ballot box.

C. After paper ballots used in lieu of voting machines are counted and tallied, the precinct board shall place the following in the ballot box:

- (1) the bundles of counted paper ballots used in lieu of voting machines;
- (2) the envelopes containing spoiled ballots; and
- (3) the envelopes containing rejected ballots.

D. After the required items have been placed in the ballot box, the ballot box shall be closed and locked.

E. The locked ballot box containing those materials required by law, the election returns and all other election materials shall be delivered to the municipal clerk by the precinct board within twenty-four hours after the polls are closed. If such delivery is not timely made, then the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

F. Once the ballot box is locked, it shall not be opened prior to canvassing.

**History:** 1978 Comp., § 3-8-52, enacted by Laws 1985, ch. 208, § 60; 1987, ch. 323, § 22; 2009, ch. 278, § 20.

### **3-8-53. Post-election duties; canvass of returns; majority vote for questions.**

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns:

(1) a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality;

(2) the members of the governing body of the municipality who are not candidates for municipal office; provided that if the members of the governing body who are not candidates for municipal office constitute a quorum, a special meeting shall be called; or

(3) a district court judge from the judicial district in which the municipality is located.

B. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

C. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each declared write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

D. The matters to be performed pursuant to Subsection C of this section shall be completed not later than 5:00 p.m. on the third day following the election, and such matters shall be performed solely at the office of the municipal clerk.

E. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law.

**History:** 1953 Comp., § 14-8-14, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 14; 1978 Comp., § 3-8-16, recompiled as 1978 Comp., § 3-8-53 by Laws 1985, ch.

208, § 61; 1987, ch. 323, § 23; 1999, ch. 278, § 14; 2001, ch. 197, § 6.

**3-8-54. Post-election duties; canvass method.**

The municipal clerk in the presence of the other members of the municipal canvassing board shall canvass the election returns by carefully examining such returns of each precinct to ascertain if they contain the properly executed certificates required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and to ascertain whether any discrepancy, omission or error appears on the face of the election returns.

**History:** 1978 Comp., § 3-8-54, enacted by Laws 1985, ch. 208, § 62.

**3-8-55. Post-election duties; canvass; defective returns; correction.**

A. The municipal clerk shall immediately order the precinct board to appear and make the necessary corrections or supply omissions or any missing election returns if it appears:

- (1) on the face of the election returns that any certificate has not been properly executed;
- (2) that there is a discrepancy within the election returns;
- (3) that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;
- (4) that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or
- (5) that there are missing election returns.

B. If any members of the precinct board fail to appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary notifications or summonses, the canvass of all correct election returns shall proceed.

**History:** 1978 Comp., § 3-8-55, enacted by Laws 1985, ch. 208, § 63; 1997, ch. 266, § 15; 1999, ch. 278, § 15.

**3-8-56. Post-election duties; canvass; when recheck is required.**

A. If it appears that the defective returns cannot be corrected without a recheck of the voting machine, the municipal clerk shall immediately cause written notice to be hand-delivered to the district court.

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the municipal clerk for a recheck of the machines from that precinct.

C. The municipal clerk shall immediately notify all candidates for municipal office, if any, of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be retained by the municipal clerk and the municipal clerk shall execute an amended certificate of canvass.

**History:** 1978 Comp., § 3-8-56, enacted by Laws 1985, ch. 208, § 64.

**3-8-57. Post-election duties; canvass; search for missing returns.**

The municipal clerk may open the ballot box during canvass for the purpose of obtaining ballots cast in the election to be counted and tallied, to search for missing election returns and to remove all unused election supplies from the ballot box. The ballot box shall be opened by the municipal clerk only in the presence of the canvassing board.

**History:** 1978 Comp., § 3-8-57, enacted by Laws 1985, ch. 208, § 65; 1999, ch. 278, § 16.

**3-8-58. Post-election duties; canvass; voting machine recheck.**

A. Prior to completion of the official canvass of an election, the municipal clerk, upon written request of any candidate in the election, if any, or upon receipt of a written petition of five percent of the people who voted in the election, shall, in the presence of the district judge, conduct a recheck and comparison of the results shown on the official returns being canvassed with the results of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the municipal clerk may request the county clerk to:

- (1) unlock the voting machine;
- (2) check the figures shown by the counter on the voting machine;
- (3) insert the cartridge or memory card into the voting machine; and
- (4) rerun the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be secured.

D. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared.

**History:** 1978 Comp., § 3-8-58, enacted by Laws 1985, ch. 208, § 66; 2001, ch. 197, § 7; 2009, ch. 278, § 21.

**3-8-59. Post-election duties; voting machine recheck cost.**

A. Before any recheck and comparison of returns and voting machines is made pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the candidate making the request or the petitioners shall deposit a sum of money or a surety bond made in favor of the municipality to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars (\$10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid to the county by the municipality. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be remitted to the county.

**History:** 1978 Comp., § 3-8-59, enacted by Laws 1985, ch. 208, § 67.

**3-8-60. Post-election duties; tie vote.**

In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been elected shall be decided by

drawing by impartial lot. The method of determining by lot shall be mutually agreed upon by the candidates who are tied. The municipal clerk shall issue a certificate of election to the candidate chosen by lot.

**History:** 1978 Comp., § 3-8-60, enacted by Laws 1985, ch. 208, § 68.

### **3-8-61. Post-election duties; nature of documents; expense of corrections; proceedings for contempt; responsibility for voting machines.**

A. Municipal election returns are public records, subject to inspection during customary office hours by candidates and by members of the public, and may be copied upon request of a candidate or member of the public at a reasonable charge.

B. The expense of any proceeding to complete or correct any election returns or certificates shall be paid from the municipal general fund upon voucher signed by the municipal clerk.

C. Failure of any person to obey any summons required to be issued by or issued pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], is contempt and is punishable as provided by law.

D. The municipal clerk shall have custody of all voting machines at all polling places. Within three days after the election, the county clerk shall take physical custody of and secure such machines for thirty days after certificates of election are issued to candidates, or thirty days after canvass is completed, in an election with no candidates for municipal office. The county clerk shall take the proper action to see that the voting machines in custody remain unopened, untampered with, and undamaged during the thirty day period.

**History:** 1978 Comp., § 3-8-61, enacted by Laws 1985, ch. 208, § 69.

### **3-8-62. Contest of elections; destruction of ballots.**

A. The district court shall entertain contests for any municipal office or on any question placed on the ballot and the procedure shall be as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. The ballots only shall be destroyed:

(1) thirty days after the issuance of the certificate of election, or thirty days after completion of canvassing for elections in which there are no candidates for municipal office, for those precincts in which the municipal clerk has received no notice of contest or judicial inquiry; or

(2) upon order of the district court having jurisdiction for those precincts where a contest, recount or judicial inquiry is sought.

**History:** 1953 Comp., § 14-8-16, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 15; 1978 Comp., § 3-8-18,

recompiled as 1978 Comp., § 3-8-62 by Laws 1985, ch. 208, § 70.

### **3-8-63. Contest of elections; who may contest; status of person holding certificate; filing of complaint.**

A. Any unsuccessful candidate for election to any municipal office may contest the election of the candidate to whom a certificate of election has been issued. Twenty percent of those people who voted at the municipal election may contest the election on a question.

B. In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided. If a contest of a question occurs, the question shall be considered passed or defeated according to the official certificate of canvass of the election filed by the municipal clerk in the official records of the municipality until the contest is decided.

C. Any action to contest an election shall be commenced by the filing of a verified complaint of contest in the district court. Such complaint shall be filed no later than thirty days from issuance of the certificate of election to the successful candidate or thirty days after completion of canvassing for elections in which there are no candidates for municipal office. A copy of the petition shall be served on the municipal clerk, and the municipality shall be afforded an opportunity to intervene in the contest. The one instituting the action shall be known as the contestant and the one against whom the action is instituted shall be known as the contestee. The rules of civil procedure shall apply to all actions commenced under the provisions of this section.

**History:** 1978 Comp., § 3-8-63, enacted by Laws 1985, ch. 208, § 71; 1999, ch. 278, § 17.

### **3-8-64. Contest of elections; judgment; effect; costs; disqualification of trial judge; appeal.**

A. Judgment shall be rendered in favor of the person legally qualified to take office for whom a plurality of the legal votes shall be proven to have been cast in accordance with 3-8-32 NMSA 1978, and shall be to the effect that the person is entitled to the office in controversy with all the privileges, powers and emoluments belonging thereto and for his costs. If the contestant prevails, then that person shall have judgment placing the contestant in possession of the contested office and for the emoluments thereof from the beginning of the term for which the contestant was elected and for costs.

B. When a contest involves a question, judgment shall be rendered to cause the question to be passed or defeated based upon whether a majority of the legal votes favored passage or defeat of the question. Successful contestants shall recover costs.

C. Any election contest shall be an action or proceeding within the meaning of Section 38-3-9 NMSA 1978. Any affidavit of disqualification shall be filed on or before the date when the answer is required to be filed to the notice of contest.

D. An appeal shall lie from any judgment or decree entered in the contest proceeding within the time and in the manner provided by law for civil appeals from the district court.

**History:** 1978 Comp., § 3-8-64, enacted by Laws 1985, ch. 208, § 72.

### **3-8-65. Contest of elections; preservation of ballots; ballots defined; application for order; deposit.**

A. Either the contestant or contestee, within the time provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot sheets and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment.

**History:** 1978 Comp., § 3-8-65, enacted by Laws 1985, ch. 208, § 73; 1995, ch. 200, § 5; 1999, ch. 278, § 18; 2003, ch. 244, § 8; 2009, ch. 278, § 22.

### **3-8-66. Contest of elections; order of impoundment; subsequent orders; access; termination of order; disposition of deposit.**

A. The court order of impoundment shall specify the items of ballots to be impounded and may direct the state police to:

(1) take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;

(2) take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the polling place until the polling place is closed and the results have been tallied and certified as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(3) take physical custody of items ordered impounded and being used in the conduct of the election as soon as the polling place is closed and the results in the precinct have been tallied and certified as required by the Municipal Election Code; and

(4) deliver all items ordered impounded and taken into physical custody to the district court clerk of the court entering the order for safekeeping subject to further orders of the court.

B. The party petitioning the court for the original order of impoundment may by motion to the court request an order allowing the party or his attorney access to and inspection of any items impounded. The court shall enter its order allowing access and inspection under conditions set by the court that will assure adequate safeguarding of the impounded items. The order shall, if requested by the petitioner, allow for the copying or reproduction of any items by and at the expense of the petitioner.

C. Ten days from the date of the original order of impoundment or, if an order granting access and inspection has been entered, ten days after that order, the order of impoundment shall automatically terminate unless the court extends the time for good cause shown. The court shall in all cases order the impoundment of ballots terminated no later than thirty days after the entry of the original order of impoundment.

D. Upon the termination of an impoundment of ballots the items impounded shall be delivered by the district court clerk to the person that would have been entitled to the possession of the items under the Municipal Election Code if there had been no impoundment.

E. If the petitioner shall successfully prosecute an election contest or recount proceeding that results in a change in the petitioner's favor the court shall refund to the petitioner the deposit required under Section 3-8-65 NMSA 1978 less any amount expended for guarding and preserving the impounded ballots. In all other cases there shall be no refund. Any amounts not refunded shall be transmitted to the municipal treasurer for credit to the municipal general fund.

**History:** 1978 Comp., § 3-8-66, enacted by Laws 1985, ch. 208, § 74.

### **3-8-67. Contest of election; burden of proof.**

A. If a contestant makes a prima facie showing that the precinct board or municipal clerk failed to substantially comply with those provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] which protect the secrecy and sanctity of the ballot and prescribe the duties of the precinct board or municipal clerk, then the burden shall be on the contestee to prove that no fraud, intimidation, coercion or undue influence was exerted by such precinct board members or the municipal clerk, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. If the contestee fails to make such a showing, the votes of that entire polling place shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board or municipal clerk ignored the requirements of the Municipal Election Code with the probable intent of procuring the rejection of the entire vote in the precinct.

**History:** 1978 Comp., § 3-8-67, enacted by Laws 1985, ch. 208, § 75.

### **3-8-68. Recount; recheck; application; costs.**

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge or memory card that contains the number of total votes that were cast in the precinct.

B. In the case of any office for which the municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars (\$50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars (\$50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars (\$10.00) in cash or a sufficient surety bond in an amount equal to ten dollars (\$10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the municipality upon warrant of the municipal clerk from the general fund of the municipality.

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, it shall not be entitled to such mileage or fees.

**History:** 1978 Comp., § 3-8-68, enacted by Laws 1985, ch. 208, § 76; 1999, ch. 278, § 19; 2001, ch. 197, § 8; 2009, ch. 278, § 23.

### **3-8-69. Recount; recheck; proceedings.**

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and place fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots that the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence.

**History:** 1978 Comp., § 3-8-69, enacted by Laws 1985, ch. 208, § 77; 1999, ch. 278, § 20; 2003, ch. 244, § 9; 2009, ch. 278, § 24.

### **3-8-70. Recount; recheck; recanvass.**

A. Immediately upon receipt of the certificate of recount or recheck from all the precinct boards making a recount or recheck, the municipal canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the municipal canvassing board shall be bound by the certificates of recount or recheck from the precinct boards instead of the original returns from those precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the municipal clerk shall revoke the certificate of election already issued to any person for that office and shall issue a certificate of election in favor of the person receiving a plurality of the votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to all of the rights and privileges of the

office. The person shall take office after complying with Section 3-8-33 NMSA 1978 with the time to take office running from the date that the new certificate is issued.

**History:** 1978 Comp., § 3-8-70, enacted by Laws 1985, ch. 208, § 78.

### **3-8-71. Preservation of election information.**

- A. The municipal clerk shall retain for two years after each municipal election:
- (1) the absentee ballot register, application for absentee ballots, absentee voter lists and affidavits of destruction;
  - (2) signature roster and registered voter list;
  - (3) the machine-printed returns;
  - (4) oaths of office of the precinct board;
  - (5) declarations of candidacy and withdrawals;
  - (6) copies of all election material required to be published or posted;
  - (7) a copy of all sample ballots and ballot sheets;
  - (8) voting machine permits;
  - (9) certificates submitted by voters;
  - (10) copies of all affidavits and certificates prepared in connection with the election;
  - (11) all results of recounts, rechecks, contests and recanvass; and
  - (12) all other significant election materials.
- B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.
- C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying.

**History:** 1978 Comp., § 3-8-71, enacted by Laws 1985, ch. 208, § 79; 1995, ch. 200, § 6; 1997, ch. 266, § 16; 1999, ch. 278, § 21; 2003, ch. 244, § 10; 2009, ch. 278, § 25.

### **3-8-72. Penalties; applicability.**

The penalties imposed by Sections 3-8-73 NMSA 1978 through 3-8-79 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

**History:** 1978 Comp., § 3-8-72, enacted by Laws 1985, ch. 208, § 80.

### **3-8-73. Unlawful opening of ballot box or voting machine; penalty.**

- A. Unlawful opening of a ballot box consists of opening any ballot box or inspecting or removing the contents thereof without lawful authority, or conspiring with others to have the same done.
- B. A person who commits unlawful opening of a ballot box is guilty of a fourth degree felony.
- C. Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, tampering, resetting or adjusting a voting machine which has been certified by the municipal clerk, or conspiring with others to have the same done.
- D. A person who commits unlawful opening of a voting machine is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-73, enacted by Laws 1985, ch. 208, § 81.

### **3-8-74. Unlawful possession of keys; absentee ballot; penalty.**

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box or possession of an imitation or duplicate thereof or making or causing to be made any imitation or duplicate thereof unless authorized by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an absentee ballot is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-74, enacted by Laws 1985, ch. 208, § 82; 1999, ch. 278, § 22; 2003, ch. 244, § 11.

### **3-8-75. False voting; falsifying election documents; false swearing; penalty.**

A. False voting consists of:

- (1) voting or offering to vote with the knowledge of not being a qualified elector;
- (2) voting or offering to vote in the name of any other person;
- (3) knowingly voting or offering to vote in any precinct except that in which one is registered;
- (4) voting or offering to vote more than once in the same election;
- (5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or
- (6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, municipal clerk or other election official:

- (1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;
- (2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, sample ballot, facsimile diagram, ballot sheet or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;
- (3) defacing, altering, forging, making false entries in or changing any election document, including election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code; or

(5) preparing or submitting any false certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-75, enacted by Laws 1986, ch. 208, § 83; 1989, ch. 278, § 23; 2003, ch. 244, § 12; 2009, ch. 278, § 26.

### **3-8-76. Offering a bribe; accepting a bribe; intimidation; penalty.**

A. Offering a bribe consists of willfully offering, advancing, paying or causing to be paid or promising, directly or indirectly, any money, other valuable consideration, office or employment to any person for any of the following purposes connected with or incidental to any election:

(1) to induce such person to vote or refrain from voting for or against any candidate or question;

(2) to induce such person, if a precinct board member, municipal clerk or other election official, to mark, alter, withhold or otherwise change or falsify any ballot or vote that has been cast, any election return, any certificate of election or any other election document; or

(3) to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

B. A person who offers a bribe is guilty of a fourth degree felony.

C. Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, other valuable consideration, office or employment for the unlawful purposes specified in Subsection A of this section.

D. A person who accepts a bribe is guilty of a fourth degree felony.

E. Intimidation consists of any person, including but not limited to any elected or appointed municipal official or employee, inducing or attempting to induce fear by use of or threatened use of force, violence, infliction of damage, harm or loss to any person or property or any form of economic retaliation upon any person voting or intending to vote, precinct board member, challenger, watcher or municipal clerk to impede or prevent the free, fair and secret exercise of the elective franchise or the impartial and legally correct administration of the election pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

F. A person who commits intimidation is guilty of a fourth degree felony.

**History:** 1978 Comp., § 3-8-76, enacted by Laws 1986, ch. 208, § 84; 1987, ch. 323, § 24.

### **3-8-77. Electioneering too close to polling place; obstructing polling place; disturbing polling place; penalty.**

A. Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located and includes but is not limited to the display of signs, bumper stickers or distribution of campaign literature.

B. A person who commits electioneering too close to the polling place is guilty of a petty misdemeanor.

C. Obstructing the polling place consists of:

(1) approaching nearer than fifty feet from any polling place during the conduct of the election with the intention of knowingly interfering with the legal conduct of the election; or

(2) willfully blocking an entrance to the polling place so as to prevent free ingress and egress.

D. A person who obstructs the polling place is guilty of a petty misdemeanor.

E. Disturbing the polling place consists of doing one or more of the following acts in the building in which the polling place is located or outside the building in which the polling place is located on election day:

(1) any act which knowingly interferes with or impedes the legal conduct of the election or the legal performance of any election official's duties or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity; or

(2) any act which knowingly interferes with or impedes a person's right to cast a vote in quiet, secret and orderly surroundings or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity.

F. A person who disturbs the polling place is guilty of a petty misdemeanor.

**History:** 1978 Comp., § 3-8-77, enacted by Laws 1985, ch. 208, § 85; 1997, ch. 266, § 17.

### **3-8-78. Coercion of employees; permitting prisoners to vote; malfeasance by messengers; unlawful use or possession of liquor or illegal drugs; penalty.**

A. Coercion of employees consists of any officer or agent of any corporation, company or association or any person having supervision over or employing persons entitled to vote at any election directly or indirectly discharging or penalizing or threatening to discharge or penalize such employee because of the employee's opinions or beliefs or because of such employee's intention to vote or to refrain from voting for any candidate or for or against any question.

B. A person who commits coercion of employees is guilty of a fourth degree felony.

C. Permitting prisoners to vote consists of any person who has custody of convicts or prisoners taking such convicts or prisoners or permitting them to be taken to any polling place for the purpose of voting in any election.

D. A person who permits prisoners to vote is guilty of a petty misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for not less than thirty days nor more than ninety days, or both.

E. Subsection C and Subsection D of this section do not prohibit permitting prisoners who are legally qualified to vote to cast an absentee ballot pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

F. Malfeasance by messengers consists of the willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board or municipal clerk, the willful delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other election materials, documents or supplies to the municipal clerk or precinct board or the willful delay or failure of any official messenger to perform as required by any precinct board member or the municipal clerk who makes a legal demand.

G. Any messenger committing such malfeasance is guilty of a petty misdemeanor.

H. Unlawful use or possession of alcoholic liquor or illegal drugs consists of the use or possession of any alcoholic liquor or illegal drug by any member of the precinct board, challengers, watchers or the municipal clerk prior to or while performing official duties on election day. Unlawful use or possession also consists of the use, possession or carrying of alcoholic liquor or illegal drugs within two hundred feet of the polling place during any election.

I. A person who commits unlawful possession of alcoholic liquor or illegal drugs is guilty of a petty misdemeanor.

**History:** 1978 Comp., § 3-8-78, enacted by Laws 1985, ch. 208, § 86; 1997, ch. 286, § 18.

### **3-8-79. Conspiracy; general penalty; violation by municipal clerk; penalty.**

A. Conspiracy to violate the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] consists of two or more persons knowingly combining, uniting or agreeing to cause or attempt to cause the omission or commission of any duty or act that violates the provisions of the Municipal Election Code.

B. A person who commits conspiracy to violate the Municipal Election Code is guilty of a fourth degree felony.

C. If the Municipal Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a person who knowingly commits such violation is guilty of a misdemeanor.

D. Violation of the Municipal Election Code consists of the willful violation of the Municipal Election Code or the willful failure or refusal to perform any act or duty required by the Municipal Election Code.

E. A member of the municipal governing body, a municipal official or employee, or municipal clerk, deputy or assistant who willfully violates the Municipal Election Code is guilty of a fourth degree felony and, in addition, such violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

**History:** 1978 Comp., § 3-8-79, enacted by Laws 1985, ch. 208, § 87; 1999, ch. 278, § 24.

### **3-8-80. Uniform procedure.**

The provisions of Sections 3-8-38 through 3-8-79 NMSA 1978 concerning election day matters, post election duties, election challenges and penalties shall apply to all municipal elections, except as otherwise specified.

**History:** 1978 Comp., § 3-8-80, enacted by Laws 1985, ch. 208, § 88; 1999, ch. 278, § 25.

### **3-8-81 to 3-8-95. Repealed.**

## ARTICLE 9

### Absentee Voting

Sec.	Sec.
3-9-1. Definitions.	3-9-10. Delivery of absentee ballots to absent voter precinct.
3-9-2. Repealed.	3-9-11. Handling absentee ballots by absent voter precinct boards.
3-9-3. Absentee voting; regular or special municipal elections; right to vote.	3-9-12. Canvass; recount or recheck; disposition.
3-9-4. Absentee ballot application; rejection; acceptance; issuance of absentee ballot.	3-9-13. Voting in person prohibited.
3-9-5. Absentee ballot register.	3-9-13.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.
3-9-6. Form of absentee ballot; form of absentee ballot envelopes.	3-9-14. Repealed.
3-9-7. Manner of voting; use of an electronic voting device.	3-9-15. Watchers, challengers, and observers for absent voter precinct.
3-9-8. Care of absentee ballots; destruction of unused ballots by municipal clerk.	3-9-16. Penalties.
3-9-9. Absent voter precinct.	

#### 3-9-1. Definitions.

As used in Chapter 3, Article 9 NMSA 1978:

- A. "absentee voting" means the casting of a vote by a qualified elector for any candidate or question prior to election day;
- B. "early voter" means a voter who votes in person before election day, and not by mail;
- C. "election" means a regular or special municipal election;
- D. "federal qualified elector" means:
  - (1) a uniformed-service voter; or
  - (2) an overseas voter;
- E. "immediate family" means a person's spouse, children, parents, brothers and sisters;
- F. "overseas voter" means an individual who is a United States citizen, who is outside the United States and who:
  - (1) is temporarily absent from the individual's residence in this state;
  - (2) before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
  - (3) before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
  - (4) was born outside the United States, is not otherwise described in this subsection and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
    - (a) the last place where a parent or legal guardian of the individual was, or under the Municipal Election Code would have been, eligible to vote before leaving the United States is within this state; and
    - (b) the individual has not previously registered to vote in any other state;
- G. "uniformed-service voter" means an individual whose voting residence is in this state, who otherwise satisfies this state's voter eligibility requirements and who is:
  - (1) a member of the active or reserve components of the army, navy, air force, marine corps or coast guard of the United States who is on active duty and who by reason of that active duty is absent from the state;

(2) a member of the merchant marine, the commissioned corps of the United States public health service, the astronaut program of the national aeronautics and space administration or the commissioned corps of the national oceanic and atmospheric administration of the United States and who by reason of that service is absent from the state;

(3) a member on activated status of the national guard or state militia and who by reason of that active duty is absent from the member's county of residence; or

(4) a spouse or dependent of a member referred to in Paragraph (1), (2) or (3) of this subsection and who, by reason of active duty or service of the member, is absent from the state; provided the spouse or dependent is an individual recognized as a spouse or dependent by the entity under which the member is serving; and

H. "voter" means a qualified elector of the municipality.

**History:** 1953 Comp., § 14-8A-2, enacted by Laws 1973, ch. 375, § 2; 1978 Comp., § 3-9-2, recompiled as

1978 Comp., § 3-9-1 by Laws 1985, ch. 208, § 89; 2003, ch. 244, § 13; 2009, ch. 278, § 27; 2015, ch. 145, § 87.

### **3-9-2. Repealed.**

### **3-9-3. Absentee voting; regular or special municipal elections; right to vote.**

A. Any voter entitled to vote in the municipal election may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at the voter's assigned polling place, as if the voter were able to cast a ballot in person at such polling place.

B. A federal qualified elector entitled to vote in the municipal election may vote in a municipal election pursuant to the provisions of the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978].

C. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision.

**History:** 1953 Comp., § 14-8A-1 enacted by Laws 1973, ch. 375, § 1; 1975, ch. 75, § 1; 1978 Comp., § 3-9-1, recompiled as 1978 Comp., § 3-9-3 by Laws 1985, ch.

208, § 91; 1993, ch. 22, § 4; 1999, ch. 278, § 26; 2009, ch. 278, § 29; 2015, ch. 145, § 88.

### **3-9-4. Absentee ballot application; rejection; acceptance; issuance of absentee ballot.**

A. The municipal clerk shall prescribe the form of the absentee ballot application.

B. An application for an absentee ballot may be obtained from the municipal clerk.

C. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

D. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

- (1) the application is not made on the form provided by the municipal clerk;
- (2) the application does not set forth the applicant's full name and address;
- (3) the application does not set forth the applicant's date of birth;
- (4) the application is not signed by the applicant; or
- (5) the applicant:
  - (a) has no valid affidavit of registration on file with the county clerk; or

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; and

(c) cannot comply with Subparagraph (a) or (b) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

E. If the municipal clerk rejects an absentee ballot application pursuant to Subsection D of this section, the municipal clerk shall mark the application "rejected", enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant in writing of the reasons for rejection of the application. If the application is incomplete, the municipal clerk shall immediately mail a new application for an absentee ballot.

F. If the application for absentee ballot is accepted, the municipal clerk shall:

- (1) mark the application "accepted";
- (2) enter the required information in the absentee ballot register; and
- (3) issue to the applicant an absentee ballot.

G. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals that have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

H. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

I. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk.

J. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than as provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

K. Absentee ballots shall be issued to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

L. No absentee ballot shall be delivered or mailed by the municipal clerk to any person other than the applicant for such ballot.

**History:** 1953 Comp., § 14-8A-3, enacted by Laws 1973, ch. 375, § 3; 1978 Comp., § 3-9-3, recompiled as 1978 Comp., § 3-9-4 by Laws 1985, ch. 208, § 92; 1987,

ch. 323, § 25; 1993, ch. 22, § 5; 1999, ch. 278, § 27; 2001, ch. 197, § 10; 2003, ch. 244, § 14; 2009, ch. 278, § 30; 2015, ch. 145, § 89.

### **3-9-5. Absentee ballot register.**

A. For each election, the municipal clerk shall keep an "absentee ballot register" in which the clerk shall enter:

- (1) in numerical sequence, the name and municipal address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;
- (5) the applicant's precinct and district number, if applicable;
- (6) whether the applicant is a voter, and whether the voter is a uniformed-service voter or an overseas voter;
- (7) affidavits of voters who did not receive absentee ballots; and
- (8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election. The municipal clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

**History:** 1953 Comp., § 14-8A-6, enacted by Laws 1973, ch. 375, § 6; 1978 Comp., § 3-9-6, recompiled as 1978 Comp., § 3-9-5 by Laws 1985, ch. 208, § 93; 1999,

ch. 278, § 28; 2001, ch. 105, § 2; 2009, ch. 278, § 32; 2015, ch. 145, § 90.

### **3-9-6. Form of absentee ballot; form of absentee ballot envelopes.**

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for other ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

- (1) official inner envelopes for use in sealing the completed absentee ballot;
- (2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;
- (3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and
- (4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal qualified electors shall be as prescribed in the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978]. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials

to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

**History:** 1958 Comp., § 14-8A-7, enacted by Laws 1973, ch. 375, § 7; 1978 Comp., § 3-9-7, recompiled as 1978 Comp., § 3-9-6 by Laws 1985, ch. 208, § 94; 1993,

ch. 22, § 6; 1995, ch. 98, § 1; 1997, ch. 266, § 19; 1999, ch. 278, § 29; 2009, ch. 278, § 33; 2015, ch. 145, § 91.

### **3-9-7. Manner of voting; use of an electronic voting device.**

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot as instructed on the ballot, place the marked ballot in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope.

B. A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the municipal clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

C. When an electronic voting device is used by the voter to cast an absentee vote, the municipal clerk shall ensure that each absentee voting machine is located within the office of the municipal clerk. The area shall be secured by lock and key. Each day during the time the absentee voting machine is used for absentee voting, the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. Each day, at the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, secure the office where the voting machine is located. Each day immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the absentee voting daily report. The municipal clerk shall prescribe the form of the absentee voting daily report, which shall include the following information:

- (1) the voting machine serial number;
- (2) the beginning and ending public counter number for the day;
- (3) the beginning and ending protective counter number for the day;
- (4) the closing seal number, if any;
- (5) the total number of voters for the day; and
- (6) a place for the date and signature of the municipal clerk and the municipal employee.

D. Voting shall be conducted substantially in the manner provided in the Municipal Election Code. The absentee voting daily report shall be submitted to the absent voter precinct on election day, along with any voting machines used.

**History:** 1958 Comp., § 14-8A-8, enacted by Laws 1973, ch. 375, § 8; 1978 Comp., § 3-9-8, recompiled as 1978 Comp., § 3-9-7 by Laws 1985, ch. 208, § 95; 1995,

ch. 98, § 2; 1995, ch. 200, § 7; 1997, ch. 266, § 20; 1999, ch. 278, § 20; 2003, ch. 244, § 15; 2009, ch. 278, § 34; 2015, ch. 145, § 92.

### **3-9-8. Care of absentee ballots; destruction of unused ballots by municipal clerk.**

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in the municipal clerk's office, record this information in the absentee ballot register and

safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official outer envelope, by a member of the voter's immediate family or by the caregiver to the voter until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, uniformed-service voters and overseas voters and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Friday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and the certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". The certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots.

**History:** 1953 Comp., § 14-8A-9, enacted by Laws 1973, ch. 375, § 9; 1978 Comp., § 3-9-9, recompiled as 1978 Comp., § 3-9-8 by Laws 1985, ch. 208, § 96; 1999,

ch. 278, § 31; 2003, ch. 244, § 16; 2009, ch. 278, § 35; 2015, ch. 145, § 93.

### **3-9-9. Absent voter precinct.**

For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause an absent voter precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and shall designate a polling place for the counting and tallying of absentee ballots in the election on election day. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board.

**History:** 1953 Comp., § 14-8A-10, enacted by Laws 1973, ch. 375, § 10; 1978 Comp., § 3-9-10, recompiled

as 1978 Comp., § 3-9-9 by Laws 1985, ch. 208, § 97; 1995, ch. 200, § 8; 1999, ch. 278, § 32.

### **3-9-10. Delivery of absentee ballots to absent voter precinct.**

After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk, any electronic

voting machines used and all absentee voting daily reports. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct.

**History:** 1978 Comp., § 3-9-10, enacted by Laws 1985, ch. 208, § 98; 1993, ch. 200, § 9; 1999, ch. 278, § 33; 2003, ch. 244, § 17.

### **3-9-11. Handling absentee ballots by absent voter precinct boards.**

A. Before opening any official mailing envelope, an election judge shall determine that the required signature has been executed on the reverse side of the official mailing envelope.

B. If the signature is missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected - missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope, write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. Declared challengers certified by the municipal clerk may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

- (1) the official mailing envelope has been opened prior to being received by the absent voter precinct board;
- (2) the person offering to vote is not a voter as provided in the Municipal Election Code; or
- (3) the person offering to vote is not a federal qualified elector authorized to vote in a municipal election.

Upon the challenge of an absentee ballot, an election judge shall generally follow the same procedure as when ballots are challenged when a person offers to vote in person. If a challenged ballot is not to be counted, it shall not be opened and shall be placed in an envelope provided for challenged ballots.

D. If the official mailing envelopes have properly executed signatures and the voters have not been challenged:

- (1) an election judge shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and
- (2) the election clerks shall mark the notation "AB" opposite the voter's name in the "notations" column of the absentee voter list.

E. Prior to the closing of the polls, an election judge may remove the absentee ballots from the official inner envelopes and either count and tally the results of absentee balloting by hand or register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. The municipal clerk shall, prior to the opening of the polls on election day, notify the absent voter precinct board in writing whether absentee ballots are to be counted and tallied or registered on a voting machine. The procedures shall be such as to ensure the secrecy of the ballot.

G. Absent voter precinct polls shall be closed at 7:00 p.m. on the day of the election by the absent voter precinct board.

**History:** 1978 Comp., § 3-9-11, enacted by Laws 1985, ch. 208, § 99; 1995, ch. 98, § 8; 1995, ch. 200, § 10; 2009, ch. 278, § 36; 2015, ch. 145, § 94.

### **3-9-12. Canvass; recount or recheck; disposition.**

Where no voting machines are used to register absentee ballots, such ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the canvassing, recounting and disposition of paper ballots. Where voting machines are used to register absentee ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked, but the absentee ballots shall be recounted in the manner provided by the Municipal Election Code.

**History:** 1978 Comp., § 3-9-12, enacted by Laws 1985, ch. 208, § 100; 2009, ch. 278, § 37.

### **3-9-13. Voting in person prohibited.**

A. No person who has been issued an absentee ballot shall vote in person at that person's regular precinct polling place on election day except as otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. At any time prior to 5:00 p.m. on the Friday immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant.

**History:** 1952 Comp., § 14-8A-11, enacted by Laws 1973, ch. 375, § 11; 1978 Comp., § 3-9-11, recompiled as 1978 Comp., § 3-9-13 by Laws 1985, ch. 208, § 101; 1999, ch. 278, § 34; 2003, ch. 244, § 18.

#### **3-9-13.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.**

A. A voter who has submitted an application for an absentee ballot that was accepted by the municipal clerk but who has not received the absentee ballot by mail as of the date of the election may go to the assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be issued a ballot in lieu of an absentee ballot by the presiding judge, and shall be allowed to mark the ballot.

B. The voter shall place the completed ballot issued in lieu of an absentee ballot in an official inner envelope, substantially in the form prescribed pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by the voter. The official inner envelope shall then be placed by the voter, in the presence of the presiding judge, in an official outer envelope substantially as prescribed for a trans-

mittal envelope or mailing envelope pursuant to Section 3-9-6 NMSA 1978. The presiding judge shall fill in the information on the back of the envelope that identifies the voter by name and signature roster number and contains the printed affidavit that the voter made application for an absentee ballot, which the voter believes to have been accepted by the municipal clerk, that the voter swears an absentee ballot had not been received as of the date of the election and that the voter was issued a ballot in lieu of an absentee ballot, and that the ballot was marked by the voter and submitted to the presiding judge.

C. The presiding judge shall place all ballots issued in lieu of absentee ballots in a special envelope provided for that purpose by the municipal clerk, seal the envelope and return it to the municipal clerk along with the machine tally sheets after the closing of the polls. The sealed envelope shall not be placed in the locked ballot box.

D. The municipal clerk shall, upon receipt of the envelope containing ballots in lieu of absentee ballots, and no later than forty-eight hours after the close of the polls for the election, remove the transmittal envelopes and without removing or opening the inner envelopes, determine:

(1) if the voter did in fact make application for an absentee ballot that was accepted by the municipal clerk;

(2) if an absentee ballot was mailed by the municipal clerk to the voter; and

(3) whether an absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. If the municipal clerk determines that the ballot in lieu of absentee ballot is valid, that an absentee ballot was mailed to the voter and that no absentee ballot was received from the voter by the municipal clerk, the municipal clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner envelope, unopened, in a secure and locked container to be transmitted to the canvassing board to be tallied and included in the canvass of the election returns for the municipality.

F. If the municipal clerk determines that the ballot in lieu of absentee ballot is not valid because the application for absentee ballot was rejected and no ballot was mailed to the voter, or that a ballot was received from the voter by the municipal clerk not later than 7:00 p.m. on election day, the municipal clerk shall write "rejected invalid ballot" on the front of the transmittal envelope and the transmittal envelope shall not be sent to the canvassing board for counting and tallying. The municipal clerk shall retain the unopened transmittal envelope in a safe and secure manner and shall notify the district attorney in writing of the alleged violation of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A copy of the notification to the district attorney shall be sent by first class mail to the voter and to the secretary of state.

G. The municipal clerk shall furnish and shall prescribe the form of the necessary envelopes to be used in accordance with the purposes of this section, and shall take steps to preserve the secrecy of any ballots cast pursuant to this section.

**History:** Laws 2003, ch. 244, § 19; 2009, ch. 278, § 38.

### **3-9-14. Repealed.**

### **3-9-15. Watchers, challengers, and observers for absent voter precinct.**

Watchers, challengers and observers may be appointed to serve on election day for the absent voter precinct in the manner specified for the appointment of watchers, challengers and observers for other precincts used in municipal elections.

**History:** 1953 Comp., § 14-8A-13, enacted by Laws 1973, ch. 375, § 13; 1978 Comp., § 3-9-13, recompiled

as 1978 Comp., § 3-9-15 by Laws 1985, ch. 208, § 103; 1999, ch. 278, § 35.

### **3-9-16. Penalties.**

A. A person who knowingly votes or offers to vote an absentee ballot to which the person is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. A municipal official or employee or any other person who knowingly furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] is guilty of a fourth degree felony.

C. A municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. A person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony.

**History:** 1953 Comp., § 14-8A-14, enacted by Laws 1973, ch. 375, § 14; 1978 Comp., § 3-9-14, recompiled

as 1978 Comp., § 3-9-16 by Laws 1985, ch. 208, § 104; 1999, ch. 278, § 36; 2009, ch. 278, § 39.

Fall-Spring 2017-2018

Dear Candidate for Office of Municipal Judge:

The Administrative Office of the Courts (AOC), in cooperation with the New Mexico Judicial Education Center (JEC) and the New Mexico Municipal League, is responsible for certifying to the Supreme Court that all newly elected municipal court judges have satisfied the educational prerequisites to begin their service on the bench. This letter is to advise you of those requirements should you be elected as municipal judge.

**All municipal judges who are elected for the first time, or those who previously have been municipal judges but have not served within the last four years, must attend an initial week-long orientation program to qualify for judicial office.**

JEC is responsible for providing the orientation for new municipal judges and has scheduled the orientation in Albuquerque from **Monday, March 19, through Friday, March 23, 2018**. As needed, JEC will pay the costs of this program, including mileage, lodging and per diem, for the week of instruction. Attendance is mandatory.

If you win the election, you **must contact Laura Bassein at JEC immediately** at [bassein@law.unm.edu](mailto:bassein@law.unm.edu) or 505-277-1083 to register for the new judge orientation program. You also should contact Roger Makin at the New Mexico Municipal League, 1-800-432-2036, to confirm your election and be added to their mailing list.

The following legal provisions apply to municipal judge training:

1. Supreme Court Rule 25-102 requires new municipal court judges to initially qualify for office by attending a judicial qualification training course approved by the AOC. The approved course is the one offered by JEC as described above. This rule also requires new municipal court judges to notify AOC of their initial election or appointment. You may fulfill this obligation by calling AOC at 505-827-4800 in Santa Fe.
2. Supreme Court Rule 25-103 requires all municipal court judges to attend an annual continuing judicial education program. JEC is responsible for providing this program. The next annual Municipal Judges Conference is scheduled for **May 2-4, 2018** in Albuquerque. The annual education requirement is available at <http://jec.unm.edu/education/training-requirements-in-nm-1>.
3. Supreme Court Rule 25-104 provides that the Supreme Court may suspend or remove any municipal court judge who fails to attend the initial training or to meet the continuing education requirement.
4. Section 35-14-10 of the New Mexico Statutes requires municipal court judges to annually complete a judicial training program and states that no municipal judge "shall receive any salary until he has successfully completed, or been exempted from, the required judicial training program."
5. New municipal judges are also assigned a mentor and will have a follow-up educational program in Albuquerque on **September 27-28, 2018**.
6. These four components (March Orientation, May Annual Conference, Mentor, and September Follow-up) constitute the 2018 new municipal judge training program.

As a candidate for judicial office, you must adhere to the campaign and fundraising restrictions found in the Code of Judicial Conduct. Please be aware that the Code of Judicial Conduct applies to incumbents and challengers alike. The Code of Judicial Conduct is available from the New Mexico Compilation Commission via the New Mexico Public Access Law website as described on the following page.

Sincerely,



John Newell, New Mexico Judicial Education Center Director  
Email: [newell@law.unm.edu](mailto:newell@law.unm.edu) ♦ Phone: 505-277-5037

Mailing Address: MSC11 6060, 1 University of New Mexico, Albuquerque, NM 87131 ♦ Fax: (505) 277-7064 ♦ Website: <http://jec.unm.edu>

## New Mexico Code of Judicial Conduct

The Code of Judicial Conduct applies to all municipal judges and all candidates for municipal judge. To locate the Code of Judicial Conduct take the following steps:

1. Go to the New Mexico Compilation Commission's website at: <http://nmcompcomm.us/>
2. Click on the dropdown menu labeled: **Public Access Law**
3. Click on: **Rules of Practice and Procedure**
4. Two steps are required to find the entire Code of Judicial Conduct.
  - a. First, click on: **Recently Approved Rule Amendments Since Release of the 2017 NMRA**  
–Recent changes to the Code of Judicial Conduct may be found here labeled **Rule Set 21**.
  - b. Second, return to the **Rules of Practice and Procedure** page, and:
    - i. click on: **Unannotated Version of Rules contained in the 2017 NMRA**
    - ii. then click on: **OK**
    - iii. then go to the upper left hand corner and click on the 'plus' sign next to:  
**Statutes, Rules and Const.**
    - iv. then click on: **NMRA (Unannotated)**
    - v. then click on: **21. Code of Judicial Conduct**

It is very important for judges and candidates for judicial office to understand the entire Code of Judicial Conduct. Canon 4 provides particularly important requirements for election related activity for both sitting judges and candidates for judicial office.

## 21-400. Canon 4.

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

### Committee commentary. —

[1] The public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[2] Even when subject to public election, a judge plays a role different from that of other elected officials. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free from political influence and political pressure. So too, the public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[3] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

[4] Rule 21-401 NMRA addresses the limitations on the political activities of judges generally, and who are not currently running for judicial office. Rule 21-402 NMRA establishes the boundaries for political and campaign activities that circumscribe the conduct of judges and non-judges who are judicial candidates engaged in a partisan, non-partisan, or retention election. Rule 21-403 NMRA addresses the limitations on activities of candidates seeking appointment to judicial office. Rule 21-404 NMRA requires that candidates for judicial office create campaign committees and establishes the rules for those campaign committees. Rule 21-405 NMRA addresses the activities of judges who either become candidates for or seek appointment to a non-judicial office. Finally, Rule 21-406 NMRA creates the mechanism for investigating and resolving violations of the Code, including challenges for violations of the Code in election campaigns.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule

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numbers and the corresponding new rule numbers.

The **2015 amendment**, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [4], deleted the first sentence, which read, "The Code organizes Canon 4 by the political status of the judge, that is, whether the judge is or is not a current candidate for judicial office." and in the present second sentence, after "conduct of judges and", added "non-judges who are".

**21-401. Political activity and elections for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election. non-partisan, or retention election.**

A. A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by the law or by this Code.

B. A judge may, unless prohibited by law, attend non-fundraising political gatherings.

C. A judge shall not, except as permitted by Rule 21-402 NMRA,

(1) act as a leader or hold office in a political organization;

(2) publicly endorse or publicly oppose

(a) a candidate for public office, or

(b) a ballot issue unrelated to the administration of justice or the legal system;

(3) make speeches on behalf of a political organization;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate;

(5) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(6) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(7) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

D. A metropolitan, district, or appellate court judge shall not

(1) purchase tickets for or attend dinners or other fundraising events sponsored by a political organization or a candidate for public office; or

(2) publicly identify himself or herself as a candidate of a political organization.

E. A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under this Code.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

**Committee commentary. —  
Participation in Political Activities**

[1] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited from assuming leadership roles in political organizations, such as ward chair or delegate to a party convention. See Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates. Non-candidates may attend political events, but must be conscious that a judge may abuse the prestige of judicial office by being present at the event and should consider whether the interests of the judiciary would best be served by not attending. A judge should not attend events organized for the sole purpose of raising money for a political campaign.

[2] Judges under Subparagraphs (C)(2) and (C)(3) of this rule, and judicial candidates as provided under Rule 402(A)(2)(b), are prohibited from publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations, to prevent them from lending the prestige of judicial office to advance the interests of others. See Rule 21-103 NMRA. These rules do not prohibit candidates from campaigning on their own behalf. See Rule 21-402(C)(1) NMRA.

[3] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in Subparagraph (C)(2)(a) of this rule or Rule 402(A)(2)(b) NMRA, against a judge or judicial candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that the judge or judicial candidate endorse any family member's candidacy or other political activity.

[4] Judges and judicial candidates retain the right to participate in the political process as voters in all local, state, and government elections.

[5] Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b) make applicable to both judges and judicial candidates the prohibition relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[6] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge or judicial candidate should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[7] The Code does not prohibit a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. See Rule 21-302 NMRA.

[8] A judge is prohibited from publicly endorsing a judicial candidate or candidate for public office, e.g., adding the judge's name to a list of supporters or publicly recommending the judge's election or appointment. Private endorsements, however, are permitted. A judge or judicial candidate is not prohibited from privately expressing the judge's or judicial candidate's views on judicial candidates or other

candidates for public office.

[9] Paragraph D of this rule exempts magistrate, municipal, and probate judges from the prohibitions identified in this paragraph.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

**The 2015 amendment,** approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the rule, in Paragraphs B and Subparagraph D(1), changed "non-fund raising" to "non-fundraising"; in the committee commentary, in Paragraph [1], in the second sentence, after "prohibited", deleted "by Paragraph (C)(1)", and at the end of the sentence, added "See Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates."; in Paragraph [2], at the beginning of the first sentence, added "Judges under", deleted "Paragraphs", and added "Subparagraphs", after "(C)(3)", added "of this rule," and deleted "prohibit judges", after "judicial candidates", added "as provided under Rule 402(A)(2)(b), are prohibited", after "from", deleted "making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office" and added "publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations", after "organizations," deleted "respectively", and after the second occurrence of "See", deleted "Rule 21-402(A)(7)" and added "Rule 21-402(C)(1)"; in Paragraph [3], in the first sentence, after "prohibition in", deleted "Paragraph" and added "Subparagraph", and after "(C)(2)(a)", added "of this rule or Rule 402(A)(2)(b) NMRA"; in Paragraph [4], after the first sentence, deleted "Statements and Comments Made during a Campaign for Judicial Office (see also Rule 21-402 NMRA); Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office."; in Paragraph [5], at the beginning of the paragraph, deleted "Paragraph (C)(9) (and Rule 21-402(A)(2)(a))" and added "Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b)", and after "the prohibition", deleted "that applies to judges in Rule 21-201(B) NMRA"; in Paragraph [6], in the third sentence, after "a judge", added "or judicial candidate"; and in Paragraph [7], after "See", deleted "Rule 21-312 NMRA" and added "Rule 21-302 NMRA".

## JUDICIAL REPRIMANDS

**Endorsement of political candidate.** — Where a magistrate court judge authorized the use of the judge's name for an endorsement of a candidate for reelection as mayor of a municipality and the endorsement, which was published in a local newspaper, did not explicitly identify the judge as a magistrate court judge, the judge violated the Code of Judicial Conduct. *In re Vincent*, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605 (decided prior to the 2011 recompilation).

**False statements about judicial disciplinary complaints.** — Where, during a radio broadcast debate, a judge made false or misleading statements that no judicial disciplinary complaints had been filed against the judge with the Judicial Standards Commission, the judge committed willful misconduct in office. *In re Miller-Byrnes*, S.Ct. No. 28,716 (Filed August 31, 2004) (decided prior to the 2011 recompilation).

**21-402. Political and campaign activities of judicial candidates in public elections.**

**A. Candidates for election to judicial office.** A judicial candidate in a partisan, non-partisan, or retention election,

(1) shall

(a) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(b) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations;

(c) review and approve the content of all non-financial campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 21-404 NMRA, before their dissemination;

(d) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 21-404 NMRA, that the candidate is prohibited from doing under these rules; and

(e) if intending to accept funds from others or expend funds in excess of one thousand dollars (\$1,000), establish a campaign committee pursuant to the provisions of Rule 21-404 NMRA;

(2) shall not

(a) seek to discover who has contributed to the campaign of either the judge or the judge's opponent;

(b) engage in behaviors or activities prohibited by Rule 21-401(C)(1), (C)(2), (C)(3), (C)(5), (C)(6), and (C)(7) NMRA;

(c) solicit funds for a candidate or a political organization, or make a contribution to a candidate, except as permitted by Subparagraphs (A)(3)(b) and (c) below; or

(d) misrepresent the candidate's or the candidate's opponent's identity, qualifications, present position or other material fact;

(3) may

(a) speak on behalf of his or her candidacy through any medium, including, but not limited to, advertisements, websites, or other campaign literature;

(b) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(c) contribute to a political organization;

(d) use advertising that does not contain any misleading contents, and does not, in nonpartisan elections, contain any reference to the candidate's affiliation with a political party;

and

(e) respond to personal attacks or attacks on the candidate's record as long as the response does not violate Rule 21-401(C)(6) NMRA.

**B. Contributions creating appearance of impropriety.** Candidates for judicial office in partisan, non-partisan, and retention elections shall refrain from campaign fundraising activity which has the appearance of impropriety, and shall not accept any contribution that creates an appearance of impropriety.

**C. Solicitation for other campaigns and candidates.** Candidates in partisan, non-partisan, and retention elections for judicial office shall not solicit funds for any other political campaign, or for any other candidate for any other office. Judicial candidates may, however, run for election as part of a slate of judicial candidates and may participate in joint fundraising events with other judicial candidates.

**D. Unopposed candidates in partisan and non-partisan elections.** Candidates in partisan and non-partisan elections for judicial office who have a campaign fund, but who are unopposed or become unopposed in the campaign, shall return all unused and uncommitted campaign funds pro rata to the contributors of the funds, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, with disbursement of such funds to occur within thirty (30) days after the absence of opposition becomes known. This paragraph does not apply to retention elections.

**E. Contributions by attorneys and litigants.** If a case is pending before any candidate for the judicial office being contested, restrictions of this paragraph apply to all candidates for that office. Contributions from attorneys and litigants shall be made only to a campaign committee, and are subject to all the requirements of this rule. Campaign committees may solicit contributions from attorneys. Campaign committees shall not knowingly solicit a contribution from a litigant whose case is then pending before the candidate. Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee.

**F. A judicial candidate in a partisan public election.** A judicial candidate in a partisan election may

- (1) identify himself or herself as a candidate of a partisan political organization; and
- (2) seek, accept, and use endorsements from a partisan political organization.

**G. A judicial candidate in a retention or non-partisan election.** A judicial candidate in a retention or non-partisan election may

- (1) identify himself or herself as a candidate but shall not identify himself or herself with any specific partisan political organization; and
- (2) seek, accept, and use endorsements from a partisan political organization.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

**Committee commentary. —**

[1] This rule restricts contributions for campaigns for judicial office to sources and amounts that do not create an appearance of impropriety. Under Rule 21-404 NMRA, candidates for judicial office shall not personally solicit or personally accept campaign contributions. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. A judicial candidate is prohibited from personally soliciting or personally accepting such contributions. Candidates for election to judicial office are required to create campaign committees to solicit and accept contributions, to solicit public support, and to receive, manage, and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances, and that meet the requirements of this rule.

[2] Attorneys and litigants have the right as citizens to participate in the electoral process of public officers, including judges, and have the right to support and make contributions to candidates for judicial office. Therefore, campaign contributions by attorneys and litigants are permitted, within the restrictions of this rule. However, campaign contributions from litigants with cases pending before any candidate for the judicial office being contested may not be knowingly solicited or accepted by any candidate for that office or that candidate's campaign committee. Once a campaign committee determines it has received a contribution from a litigant with a case pending before the judicial candidate, the contribution must be returned.

[3] Although Paragraph E does not forbid a judicial candidate's campaign from accepting a contribution from a lawyer in a firm that has a pending case, a judicial candidate's campaign committee should not accept the contribution if accepting such a contribution creates an appearance of impropriety. For example, a large contribution from a law firm with many lawyers may create the appearance of impropriety as might a smaller contribution from a firm with only two or three lawyers. These examples serve only to illustrate the point that campaign committees should exercise particular vigilance when accepting contributions from lawyers whose firm has a pending case.

[4] Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fundraising.

[5] Subparagraphs (A)(3)(a) through (e) of this rule permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 21-401 NMRA. A candidate may begin to engage in activities permitted under Rule 21-401 NMRA before the next applicable electoral event, such as a primary election, or as soon as the candidate makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes, or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

[6] Despite Subparagraphs (A)(3)(a) through (e) of this rule, judicial candidates for public election remain subject to many of the same provisions as are contained in Rule 21-401 NMRA. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Subparagraph (A)(2)(b) of this rule.

[7] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot. A candidate for judicial

office does not publicly endorse another candidate for public office by having that candidate's name on the same ticket, or by participating in joint fundraising with other judicial candidates, or by running for election as part of a slate of judicial candidates.

[8] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[9] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

[10] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[11] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Rule 21-401 (C)(7) NMRA (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(7), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 21-211 NMRA.

[12] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Judges and judicial candidates and their committees must refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. See Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(5) NMRA.

[13] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate Subparagraph (A)(2)(b) of this rule as pertains to Subparagraphs (C)(3) (prohibiting speeches on behalf of a political organization), (C)(6) (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), or (C)(7) (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties) of Rule 21-401 NMRA, the candidate may respond directly and make a factually accurate public response. When a violation of the Code of Judicial Conduct may have occurred, a judicial candidate may proceed under Rule 21-406 NMRA of this Code.

[14] In addition, if a judge knows that an independent third party has made unwarranted attacks on a candidate's opponent, the candidate should disavow the attacks and request the third party to cease and

desist. When false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited from making the facts public. Subject to Subparagraph (C)(6) of Rule 21-401 NMRA (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), as made applicable by Subparagraph (A)(2)(b) of this rule, a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign. It is, however, preferable for someone else to respond if the allegations relate to a pending case.

[15] A candidate for elective judicial office is not prohibited from retaining during candidacy a public office such as district attorney, which is not an office in a "political organization."

[16] Candidates for judicial office should consider setting a limit on any individual contribution for purposes of determining whether contribution above that limit creates an appearance of impropriety or would otherwise undermine the public's confidence in the integrity and independence of the judiciary. Judicial candidates may be informed about the total amounts contributed to the campaign in order to make informed budgeting decisions relating to the campaign. Under most circumstances, however, judicial candidates should not be informed about the specific details of individual contributions.

[17] Candidates for judicial offices may, through a campaign committee, solicit endorsements of support, including endorsements from attorneys. The judicial candidate may not solicit endorsements and should not be informed about the identity of individual attorney supporters.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

**The 2015 amendment,** approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided additional restrictions on judicial candidates' political activities, provided that certain provisions of the rule apply to non-partisan elections as well as partisan and retention elections, removed the provision that candidates for judicial office may not personally accept campaign contributions, revised the committee commentary to note that the prohibition on candidates for judicial office from personally accepting campaign contributions is provided for in Rule 21-404 NMRA, and made technical changes; in Subparagraph A(1)(b), after "campaign", deleted "fund-raising" and added "fundraising"; in Subparagraph A(1)(e), at the beginning of the sentence, deleted "shall", after "intending to", deleted "raise" and added "accept funds from others", and at the end of the sentence, deleted the period and added a semicolon; deleted former Subparagraph A(2)(b) and added new Subparagraphs A(2)(b) and A(2)(c), and redesignated former Subparagraph A(2)(c) as Subparagraph A(2)(d); in Subparagraph A(3)(e), after "violate", deleted "Subparagraph (6) of Paragraph C of", and after "Rule 21-401", added "(C)(6)"; in Paragraph B, after "judicial office in", deleted "both", after "partisan", added "non-partisan", and after "campaign", deleted "fund-raising" and added "fundraising"; in Paragraph C, deleted the introductory sentence, which read, "Subject to the restrictions of Rule 21-404 NMRA and Paragraphs A and E of Rule 21-402 NMRA"; deleted Subparagraph C(1), which read, "candidates in both partisan and retention elections for judicial office may solicit contributions for their own campaigns, but shall not solicit funds for any other political campaign, or for any candidate for any other office; and"; deleted Subparagraph C(2), which read, "judicial candidates may run for election as part of a slate of judicial candidates and may participate in joint fundraising events with other judicial candidates.", and added the new paragraph; in

Paragraph E, deleted the second sentence which read, "Candidates for judicial office, in both partisan and retention elections, shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate."; in the committee commentary, in Paragraph [1], deleted the second sentence which read, "Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns for other candidates or offices." and added the second, third and fourth sentences; in Paragraph [11], after the first sentence, deleted "Paragraph A(2)(b)" and added "Rule 21-401 (C)(7) NMRA (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties)"; at the end of Paragraph [13], deleted "In addition, a judicial candidate has recourse to the complaint procedures of the Fair Judicial Elections Committee of the State Bar. In extreme cases, when there may have been a violation of the Code of Judicial Conduct, a judicial candidate may proceed under Rule 21-406 NMRA of this Code" and added the last sentence; and made technical changes throughout the committee commentary.

**Judge cannot simultaneously run for separate judicial positions.** — Paragraph B of former Rule 21-700 NMRA indicates that a judge may be nominated or run for another judicial office without resigning. It does not, however, state that a judge may simultaneously run for separate judicial positions. 1990 Op. Att'y Gen. No. 90-04 (opinion rendered prior to the 2011 recompilation).

## JUDICIAL REPRIMANDS

**Making campaign promise to provide assistance if elected.** — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

### 21-403. Activities of candidates for appointive judicial office.

A. A candidate for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support the candidacy.

B. A candidate for appointment to judicial office shall not engage in political activity to secure the appointment except that such candidate may:

(1) communicate with the appointing authority, including any nominating commission designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority and the nominating commission; and

(3) provide to the appointing authority and the nominating commission information as to the candidate's qualifications for office.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

**Committee commentary. —**

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA.

[2] Candidates for appointive judicial office should submit to the same requirements as a judicial candidate. See Rule 21-402 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

### COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

**The 2015 amendment,** approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [1], at the end of the paragraph, deleted "See Rules 21-401(A)(3)(c)(i) and 21-402(E)(6)(a) NMRA" and added "See Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA".

#### **21-404. Campaign committees.**

**A. Campaign committees.** Candidates in partisan, non-partisan, and retention elections shall establish committees of one or more responsible persons to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or these rules. Campaign committees may solicit and accept reasonable campaign contributions, and obtain public statements of support on behalf of the candidate, subject to the restrictions of these rules including, but not limited to, Rule 21-402 NMRA. Candidates shall not personally solicit or personally accept contributions for their own campaigns. Nor shall candidates solicit personally, or through campaign committees, contributions for the campaigns of other candidates or offices. All campaign contributions shall be paid or turned over to the campaign committee, and shall be managed and disbursed by the committee. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. The candidate shall take reasonable steps to ensure that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

**B. Unused campaign funds.** A candidate for judicial office in either a partisan, non-partisan, or retention election who has unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid, shall refund the remaining funds.

pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

**Committee commentary. —**

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. This rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 21-211 NMRA.

[4] Contributions for campaigns are limited to sources and amounts that do not create an appearance of impropriety. Candidates for election to judicial office are required to create campaign committees, see Rule 21-402(A)(1)(e) NMRA, to solicit and accept contributions, to solicit public support, and to receive, manage, and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances and that meet the requirements of this rule.

[5] Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fundraising.

[6] Judicial candidates for statewide judicial elective office may elect to participate in public financing that imposes restrictions on fundraising. See NMSA 1978, §§ 1-19A-1 to -17. The restrictions governing campaign finances and requirements for campaign committees apply to publicly financed campaigns. A judicial candidate who seeks or has been certified for public financing must comply with Rule 21-404 NMRA. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. Unused campaign funds for a publicly financed judicial candidate must, by law, be returned to the public election fund.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations. —** Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of

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Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided that candidates for judicial office are prohibited from personally soliciting or personally accepting campaign contributions for their own campaigns or for the campaigns of other candidates or offices, and revised the committee commentary; in Paragraph A, in the first sentence, after "Candidates in", deleted "both", in the second sentence, after "not limited to", deleted "Rule 21-402D" and added "Rule 21-402", and added the third and fourth sentences of the paragraph; and in the committee commentary, in Paragraph [1], after the first sentence, deleted "See Rule 21-402(C) NMRA"; in Paragraph [4], after the first sentence, deleted "Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns of other candidates or offices."; in Paragraph [5], after "post-election", deleted "fund-raising" and added "fundraising"; and in Paragraph [6], in the first sentence, after "restrictions on", deleted "fund-raising" and added "fundraising", after "See", deleted "Sections 1-19A-1 through 1-19A-17 NMSA 1978" and added "NMSA 1978, §§ 1-19A-1 to -17", and added the present fourth sentence to the paragraph to clarify that seed money and qualifying contributions are considered campaign contributions for the purposes of the Code of Judicial Conduct.

#### **21-405. Activities of judges who become candidates for nonjudicial office.**

A. A judge seeking appointment to a public, nonjudicial office shall not:

(1) solicit or accept funds, personally or through a committee, or otherwise, to support the candidacy;

(2) engage in any political activity to secure the appointment except:

(a) communicating with the appointing authority;

(b) seeking the support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority, subject to these rules; and

(c) providing to the appointing authority information concerning the candidate's qualifications for the office.

B. A judge seeking appointment to a public nonjudicial office, during the time the appointment is sought, shall be disqualified from presiding or participating as a judge in any legal proceeding involving or materially affecting the interests of:

(1) the appointing authority; or

(2) an organization or individual that has been contacted by the candidate to make, or is known by the candidate to be making, a recommendation to the appointing authority concerning the appointment.

C. No judge of any court in the State of New Mexico may while in office accept a nomination for, or be elected to, a public nonjudicial office. A judge must, when filing a statement of candidacy for elective nonjudicial office, resign the judge's office immediately.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by

Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

**Committee commentary. —**

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in Paragraph C ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

**The 2015 amendment,** approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, changed "non-judicial" to "nonjudicial" throughout the rule and committee commentary; and in Paragraph C, after "No", deleted "full-time".

### 21-406. Violations.

**A. Violations by judges.** Violations of any of the rules of the Code of Judicial Conduct by judges shall be investigated, proceeded upon, and disposed of by the Judicial Standards Commission in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Judges shall comply with all rules, requirements, and procedures of the Judicial Standards Commission, shall cooperate with the Judicial Standards Commission in the performance of its functions, and shall comply with all laws applicable to judicial office.

**B. Violations by non-judge candidates for judicial office.** Violations of any of the rules of the Code of Judicial Conduct by persons who are members of the bar shall be deemed to constitute violations of the Rules of Professional Conduct, and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Violations of the rules by candidates who are not lawyers are within the superintending control of the Supreme Court, and may be grounds for

petitioning the Supreme Court for relief by way of mandamus, injunction, or other equitable relief to require compliance and rectify non-compliance.

**C. Challenges of violations in election campaigns.** A candidate may bring an action to challenge a violation by the candidate's opponent of Rules 21-401 and 21-402 NMRA occurring in election campaigns for judicial office.

(1) **Filing and venue.** In election campaigns for the Supreme Court and Court of Appeals, by filing a complaint in the district court for Santa Fe County. In election campaigns for district, metropolitan, magistrate, municipal, and probate courts, by filing a complaint in the district court of the county in which the complainant or the defendant resides, but only within the judicial district where the election is to occur. The complainant shall serve all parties within three (3) days after filing the action. If available, any statement, advertisement, or publication alleged to constitute a violation shall be filed with the complaint.

(2) **Standing; parties.** Violations by a candidate or by a candidate's campaign committee can be challenged by an opposing candidate. The alleged violator shall be joined as a defendant and shall be served forthwith in person with the complaint, summons, and notice of hearing when issued. A candidate who has not been joined as a party may intervene in the proceeding by filing a notice of intervention and a response to the complaint within the time required by this rule.

(3) **Hearing.** The complaint shall be heard by the district court without a jury within ten (10) days after the action is filed, unless the time is extended for good cause. Peremptory challenges to the district judge shall be filed by the complainant within three (3) days after the action is filed and by a defendant within three (3) days after service of process on that defendant. The district court shall enter its decision, findings of fact, and conclusions of law, within not more than three (3) days after the hearing is completed. The decision of the district court shall constitute a final judgment immediately upon entry.

(4) **Remedies.** The district court is authorized to issue any order provided by the Rules of Civil Procedure for the District Courts and any remedial decrees for cessation of violations, retractions, corrective publications, or other relief as may be reasonably required to rectify the effects of the violation. The district court may also refer any violation to the Judicial Standards Commission or the Disciplinary Board of the Supreme Court for additional action.

(5) **Discovery.** Any documentary or demonstrative evidence to be offered at the hearing shall be exchanged by the opposing parties as ordered by the district court, and in any case not less than twenty-four (24) hours prior to the commencement of the hearing. Discovery shall not delay the hearing on the merits, but wrongful refusal, obstruction, or delay in discovery may be sanctioned in the discretion of the district court. The parties may, by subpoena, require the appearance of witnesses and the production of evidence at the hearing. The district court may allow oral testimony to be admitted telephonically.

(6) **Appeals.** Appeals shall be taken directly to the Supreme Court of New Mexico

pursuant to the provisions of Rule 12-603 NMRA of the Rules of Appellate Procedure.

(7) ***Other rules applicable.*** The Rules of Civil Procedure for the District Courts, Rules of Appellate Procedure, and Rules of Evidence shall apply unless inconsistent with this rule.

(8) ***Other proceedings.*** The jurisdiction of the Judicial Standards Commission, the Supreme Court, and the Disciplinary Board to hear violations of the Code of Judicial Conduct is not affected by this paragraph.

**D. Violations by hearing officers and special commissioners.** Violations of any of the applicable rules of the Code of Judicial Conduct by a hearing officer or special commissioner shall be addressed by the chief judge of the judicial district in which the hearing officer or special commissioner is employed. Any such violation shall be treated as an employment matter and may result in discipline up to and including dismissal. In addition, the Supreme Court and the Disciplinary Board retain jurisdiction to hear violations of the Code of Judicial Conduct by hearing officers and special commissioners.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

**Committee commentary. —**

[1] Rule 21-406 NMRA governs violations of the Code of Judicial Conduct by both judges and judicial candidates.

[2] Judges are required to cooperate with the Judicial Standards Commission or the Supreme Court in the course of their investigations of alleged judicial misconduct. The failure to do so is a violation of Rule 21-406 NMRA.

[3] Judicial candidates are also subject to certain provisions of the Code of Judicial Conduct. Violations by members of the bar are deemed violations of the Rules of Professional Conduct and subject the violator to discipline.

[4] Rule 21-406 NMRA also provides a detailed procedure to obtain an expedited judicial review of alleged violations of the Code during election campaigns. The expedited review recognizes the importance of maintaining the integrity of the election process by swiftly resolving allegations of misconduct.

Judicial candidates may also be subject to other requirements imposed by law that implicate ethical considerations including the Voter Action Act, NMSA 1978, Sections 1-19A-1 to -17, for judicial candidates who have elected public financing, and the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 to -36.

[5] Certain provisions of the Code are applicable by statute to hearing officers and special commissioners as a condition of their employment by the judicial branch. See NMSA 1978, § 40-4B-4 (child support hearing officers); *id.* § 40-13-9 (domestic violence special commissioners); see also Rule 21-004(C) NMRA. However, hearing officers and special commissioners are not subject to the jurisdiction of the Judicial Standards Commission, which is limited to matters that involve a "justice, judge or magistrate." See N.M. Const. Art. VI, § 32; NMSA 1978, § 34-10-2.1. Thus, Paragraph D provides that

violations of the Code by a hearing officer or special commissioner shall be addressed as an employment matter by the chief judge of the judicial district in which the hearing officer or special commissioner is employed.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

## COMPILER'S ANNOTATIONS

**Recompilations.** — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

**The 2015 amendment**, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, provided for additional procedures to address violations of the Code of Judicial Conduct by non-judge candidates for judicial office, hearing officers, and special commissioners; in Paragraph A, in the heading, after "Violations by", deleted "incumbents" and added "judges"; in Paragraph B, in the heading, after "Violations by", added "non-judge", and after the heading, deleted "All candidates for judicial office shall comply with Rules 21-401, 21-402, 21-403, 21-404, or 21-405 NMRA of the Code of Judicial Conduct.", in the present first sentence, after "Violations of", deleted "those" and added "any of the", after "rules", added "of the Code of Judicial Conduct", after "Professional Conduct", added "and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control.", and in the present second sentence, after "Violations of", deleted "those" and added "the"; added Paragraph D; and in the committee commentary, added Paragraph [5] and made stylistic changes.

