

What are Municipal Courts?

By Randy Van Vleck, General Counsel for the New Mexico Municipal League

The municipal court is a court of limited jurisdiction. As the name implies, municipal courts are city courts and not state or federal courts. As such, while governed by the Constitution and state law, municipal courts are independent arms of city government. There is however, a balancing of powers. In that regard, the municipal court's budget is set by the city council, and the salary of the judge and other court personnel are set by each local government.

There are currently one hundred and three incorporated municipalities in New Mexico, yet there are only 81 municipal courts. This is because a provision of the New Mexico statutes permits exceptionally small municipalities to choose not to have a municipal court. In such a circumstance criminal cases would be tried in the magistrate court for the county in which the municipality is located. In this circumstance, all fines and fees collected by the magistrate court would go directly into the state treasury, whereas the fines and a portion of the fees collected by a municipal court go into the municipal treasury. Regardless of size, a municipality may not do away with its municipal court during the current judge's term of office, nor may the municipality either increase or decrease the salary paid to the municipal judge during his or her term.

Municipal judges are elected every four years. It is a judge's job to give you a fair hearing and to determine if you have violated any of the ordinances of the municipality. The judge does not serve as a prosecutor. The judge decides, after hearing all the evidence (both sides of the story), if the defendant is guilty or not guilty of violating a municipal ordinance, and if found guilty, to pronounce what the punishment will be.

A judge may be paid a salary by the municipality. The Judge's salary cannot be based upon the number of convictions or the amount of fines generated by the municipal court. The municipal court is not connected with the municipal police department, and all money collected by the municipal court is turned over to the General Fund of the municipality.

The difference between municipal judges and magistrate judges are that municipal judges must reside within the municipal limits, and municipal elections, including those for judge, are nonpartisan, meaning that people do not run as a member of a particular political party. To be legally qualified to run for municipal judge a person must be a resident of the municipality and a registered voter in that municipality. A municipal judge must be at least 18 years of age and must never have been convicted of a felony and be mentally competent to hold the office.

Municipal judges can only be removed from office by the New Mexico Supreme Court. Judges cannot be recalled by the voters. Grounds for removal are willful misconduct in office, willful and persistent failure to perform the duties of the office, and any other manner deemed serious enough to warrant removal. The process for removal is initiated through a complaint to the Judicial Standards Commission. After an investigation and

hearing, the Commission makes a recommendation to the Supreme Court concerning possible disciplinary action against a municipal judge. The Supreme Court, after a hearing, will determine whether removal is the appropriate sanction, and if it is, the judge will be removed from office.

There is no requirement that a municipal judge be an attorney. This may be surprising to some people, but the reasoning is quite logical. Municipal courts are meant to be a "People's Court." While there are legal and procedural rules that must be followed and applied by the judge, sufficient training ensures the judge's ability to carry out these duties. Additionally, the majority of the cases heard by municipal courts do not involve lawyers and are heard *pro se*. A typical case would involve a police officer prosecuting the case and the defendant representing himself/herself. Because complex legal issues are rare in municipal court, lawyers are not routinely hired for these matters. Finally, it might be difficult if not impossible to find lawyers willing to run for municipal judge in many of the small towns throughout New Mexico, particularly in light of the fact that many municipal judges serve without compensation.

There are safeguards built into the system to address the fact that many municipal judges are not lawyers. One of the safeguards is the appellate process. If the defendant is dissatisfied with the decision of the municipal judge, that person has an absolute right to appeal the decision to the District Court. At the District Court, the appeal will be heard *de novo* or anew. This means that the entire case will be reheard in the District Court as if it had not been heard previously. Another safeguard is the requirement that municipal judges must annually complete an approved judicial training program unless exempted by the Chief Justice of the New Mexico Supreme Court. Failure to complete a training program may result in the judge being removed from office. Municipal judges are also provided a week-long intensive training program after first being elected or appointed to the bench.

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