

1                                   **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2  
3                                   **April 12, 2019**

4  
5                                   **NO. 19-8500-002**

6  
7                                   **IN THE MATTER OF REVISIONS TO**  
8                                   **MAGISTRATE COURT POLICY DIRECTIVES**

9  
10                                   **ORDER**

11  
12                                   WHEREAS, NMSA 1978, Section 35-7-1, provides that magistrate courts  
13 shall operate under the direction and control of the New Mexico Supreme Court;

14                                   WHEREAS, by Supreme Court Administrative Order No. 09-8200, *In the*  
15 *Matter of Superintending Control Over Magistrate Courts*, filed on September 16,  
16 2009, this Court approved certain policy directives to apply to all magistrate courts  
17 (Magistrate Court Policy Directives) and authorized the Administrative Office of  
18 the Courts to assist this Court in its superintending control over magistrate courts  
19 by providing administrative and support services to that end;

20                                   WHEREAS, by concurrently issued Supreme Court Administrative Order  
21 No. 19-8500-001, *In the Matter of the Consolidation of Administrative Functions*  
22 *of the District and Magistrate Courts*, this Court has directed that administrative  
23 functions of all district and magistrate courts shall be consolidated statewide, by  
24 judicial district, on or before July 1, 2019;

25                                   WHEREAS, in light of the foregoing, and the Court wishing to amend the  
26 Magistrate Court Policy Directives to recognize and facilitate the changes required

1 by the statewide consolidation of administrative functions for all district and  
2 magistrate courts by judicial district and being sufficiently advised, Chief Justice  
3 Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C.  
4 Shannon Bacon, and Justice David K. Thomson concurring;

5 NOW, THEREFORE, IT IS ORDERED that Supreme Court Administrative  
6 Order No. 09-8200, *In the Matter of Superintending Control Over Magistrate*  
7 *Courts*, filed on September 16, 2009, is RESCINDED;

8 IT IS FURTHER ORDERED that former Policy Directives Nos. 1, 2, and 3  
9 shall be REISSUED WITHOUT REVISION, former Policy Directives Nos. 4, 6,  
10 9, and 10 and shall be REISSUED AS AMENDED, and former Policy Directives  
11 Nos. 5, 7, and 8 shall be WITHDRAWN;

12 IT IS FURTHER ORDERED that the following renumbered Magistrate  
13 Court Policy Directives shall apply to all magistrate courts:

- 14 No. 1: Policy Relating to Acceptance of Personal Checks, Receipting  
15 of Monies Not Readily Identifiable, and the Receipting of Bail
- 16
- 17 No. 2: Policy Relating to Audit Exceptions
- 18
- 19 No. 3: Policy Relating to Overages/Shortages in Monies Collected
- 20
- 21 No. 4: Policy Relating to Leave Taken by Magistrates
- 22
- 23 No. 5: Policy Establishing Mandatory Training Requirements for  
24 Magistrates and Magistrate Court Clerks
- 25
- 26 No. 6: Policy Relating to Records Inspection Requests
- 27

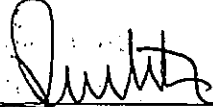
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

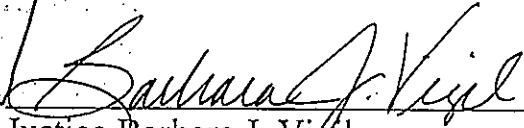
No. 7: Policy Relating to the Use of Volunteers or Community Service Participants in the Magistrate Court; and

IT IS FURTHER ORDERED that a copy of the revised and reissued Magistrate Court Policy Directives shall be attached to this order and shall take effect in each judicial district according to the consolidation schedule set forth in concurrently issued Supreme Court Administrative Order No. 19-8500-001.

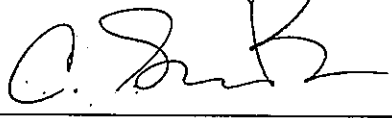
IT IS SO ORDERED.


DONE at Santa Fe, New Mexico, this 12th day of April, 2019.

  
\_\_\_\_\_  
Chief Justice Judith K. Nakamura

  
\_\_\_\_\_  
Justice Barbara J. Vigil

  
\_\_\_\_\_  
Justice Michael E. Vigil

  
\_\_\_\_\_  
Justice C. Shannon Bacon

  
\_\_\_\_\_  
Justice David K. Thomson

## NEW MEXICO MAGISTRATE COURT POLICY DIRECTIVES

(Approved by Supreme Court Administrative Order No. 19-8500-002)

### **Policy Directive No. 1 (Page 2)**

*Policy Relating to Acceptance of Personal Checks, Receipting of Monies Not Readily Identifiable, and the Receipting of Bail*

### **Policy Directive No. 2 (Page 5)**

*Policy Relating to Audit Exceptions*

### **Policy Directive No. 3 (Page 6)**

*Policy Relating to Overages/Shortages in Monies Collected*

### **Policy Directive No. 4 (Page 9)**

*Policy Relating to Leave Taken by Magistrates*

### **Policy Directive No. 5 (Page 10)**

*Policy Establishing Mandatory Training Requirements for Magistrates and Magistrate Court Clerks*

### **Policy Directive No. 6 (Page 11)**

*Policy Relating to Records Inspection Requests*

### **Policy Directive No. 7 (Page 12)**

*Policy Relating to the Use of Volunteers or Community Service Participants in the Magistrate Court*

**POLICY DIRECTIVE NO. 1**  
(Reissued April 2019)

**POLICY RELATING TO ACCEPTANCE OF PERSONAL CHECKS,  
RECEIPTING OF MONIES NOT READILY IDENTIFIABLE, AND THE  
RECEIPTING OF BAIL**

This policy is issued in accordance with NMSA 1978, Section 35-7-1 to provide guidelines and directions regarding acceptance of personal checks for the payment of court costs and fines and the posting of bail.

**Personal Checks.**

Magistrates may exercise their discretion when accepting personal checks for the payment of costs and fines, giving careful consideration to their knowledge of the payer. If an individual has presented a bad check to the court, the court shall not accept another check from that individual for twelve months. Courts shall send the AOC a quarterly report on bad checks.

**Monies Not Readily Identifiable.**

Any money received in the mail, which is not readily identifiable (as to defendant or docket number), must be receipted and deposited in the regular course of business. The "other" category must be checked on the receipt form and a short explanatory note must be sent with the deposit ticket to the accounting staff of the Administrative Office of the Courts (AOC). The accounting staff will need all available information pertaining to the money that cannot be identified (social security number, address, telephone number, etc.). If possible, provide the

1 accounting staff with a photocopy of the check or money order. When the  
2 payment is identified, the accounting staff must be notified and the proper accounts  
3 credited. If the payment is identified during the same month as receipted, the clerk  
4 will make an accounting entry to distribute properly the monies received. At the  
5 end of the month, magistrate courts must issue a check to the suspense fund for  
6 money that cannot be identified. If at a later date money deposited in the suspense  
7 fund is identified, the court will have to write a letter to the AOC accounting staff  
8 requesting that a state warrant be generated and sent to the court. The warrant will  
9 be sent to the court for deposit into the Trust Account. If the money does not  
10 belong to the court, the magistrate will issue a check to the proper individual or  
11 agency.

12 Money received in the mail, which is owed to the court but is payable to an  
13 agency other than the magistrate court, may either be sent back to the defendant  
14 (accompanied by a letter requesting the defendant to issue a new check to the  
15 magistrate court), or be sent to the payee agency with a request to make the check  
16 payable to the court.

17 If the defendant pays monies owed the magistrate court to another agency,  
18 the court may contact the agency and request that the agency transfer to the court  
19 those monies owed. The defendant continues to be responsible for the payment  
20 that is due the court. The court may give an appropriate extension to allow the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

defendant time to retrieve the money, but the responsibility of doing that should fall on the defendant. The court should also process all paperwork necessary to finalize the pending case.

**Bail.**

All bail accepted by the magistrate court shall be payable in American currency, or by cashier's check, certified check, money order, or surety bond only. No personal or company checks, or foreign checks or currency are to be accepted.

All magistrate courts shall review the Cash Bond Record distributed by the AOC accounting staff on a monthly basis to ensure that appropriate action has been taken on each bond posted and that bonds are removed from the Cash Bond Record when six months have elapsed unless the court has entered a written order documenting good cause for extending the time.

All unclaimed cash bonds shall be remitted to the AOC for deposit in the Magistrate Suspense Fund in accordance with Section 8.11-7 of the Magistrate Court Administrative Procedures Manual. (See Administrative Procedures Manual for processing instructions.)

This policy applies to all magistrate courts.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

**POLICY DIRECTIVE NO. 2**  
(Reissued April 2019)

**POLICY RELATING TO AUDIT EXCEPTIONS**

This policy is issued in accordance with NMSA 1978, Section 35-7-1, to provide guidelines and directions regarding audit exceptions as stated by either internal or independent auditors.

All audit exceptions shall be submitted in writing to the director of the Administrative Office of the Courts. All courts affected thereby shall be provided a copy of the exceptions and be given an opportunity to respond. All courts shall take the necessary corrective action within a time frame specified by the Director.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**POLICY DIRECTIVE NO. 3**  
(Reissued as amended April 2019)

**POLICY RELATING TO OVERAGES/SHORTAGES IN MONIES  
COLLECTED**

This policy is issued in accordance with NMSA 1978, Section 35-7-1 to provide guidelines and directions regarding any overages/shortages that may occur during the collection of monies by the magistrate courts.

**Overages.**

Whenever overages occur and monies attributable to the overages cannot be identified, the overages amount collected must be deposited with regular daily receipts. Any excess money received, which cannot be identified, is to be receipted and deposited in the state general fund in the regular course of business. An explanatory letter from the magistrate must accompany the next regular report to the AOC.

**Shortages.**

A letter from the magistrate describing the circumstances surrounding any shortage must be filed with the AOC. Shortages over \$10.00 must be reported with the standardized monthly revenue report. A shortage over ten dollars (\$10.00) must be reported to the AOC immediately upon discovery.

If the aggregate total of all shortages for any magistrate court exceeds One Hundred Dollars (\$100.00) during any one fiscal year, or if the number of recorded

1 shortages during a fiscal year exceeds five (5) shortages even though the hundred  
2 dollar (\$100.00) limit is not breached, the director of the AOC may request that the  
3 AOC internal auditors perform an audit of the financial records of the court. A  
4 formal response to all audit findings by the magistrate will be required.

5 If the ceiling of One Hundred Dollars (\$100.00) per fiscal year is exceeded  
6 by any magistrate court, or if the aggregate number of shortages during a fiscal  
7 year exceeds five (5), depending on the circumstances, the internal auditors may  
8 conduct a formal audit or a review of court documents. The internal auditor will  
9 hold an exit audit conference with the magistrate, chief judge, and court executive  
10 officer and appraise them of the findings. A response by the magistrate to the  
11 audit findings must be filed with the AOC within ten (10) working days. The audit  
12 findings and the recommendations for corrective action will be presented to the  
13 AOC director.

14 The magistrate may be required to reimburse the State for the amount in  
15 controversy if, after an investigation and formal audit, negligence or impropriety is  
16 shown on the part of the judge. If the director determines adequate measures are  
17 being taken to prevent future shortages, the director may waive the required  
18 payment. If the director waives the required payment, the matter is concluded. If  
19 the director finds negligence or impropriety and does not waive the required  
20 payment, the Supreme Court shall determine whether the magistrate should

1  
2  
3  
4  
5  
6

reimburse the State. (See Administrative Procedures Manual for processing instructions.)

This policy applies to all magistrate courts; however, no newly-elected or appointed magistrate shall be responsible for a shortage existing at the time he or she takes office.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**POLICY DIRECTIVE NO. 4**  
(Reissued as amended April 2019)

**POLICY RELATING TO LEAVE TAKEN BY MAGISTRATES**

This policy is issued in accordance with NMSA 1978, Section 35-7-1, to provide guidelines and directions regarding the leave taken by magistrates.

A Magistrate judge is one “who holds office hours a minimum of (40) hours per week.” NMSA 1978, § 35-1-36.1. This Court regards that number as a minimum. As elected public servants, magistrate judges must be prepared to put in more than forty (40) hours per week if required.

All magistrates shall notify the district court chief judge of their judicial district of any absences longer than two days from the office and advise the chief judge as to whether or not the magistrate judge has been able to arrange for coverage by another magistrate during the absence so that the chief judge may prepare an orderly staffing plan as required by Rule 23-109(B)(12) NMRA.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**POLICY DIRECTIVE NO. 5**  
(Renumbered and reissued as amended April 2019)

**POLICY ESTABLISHING MANDATORY TRAINING REQUIREMENTS  
FOR MAGISTRATES AND MAGISTRATE COURT CLERKS**

This policy is issued in accordance with NMSA 1978, Section 35-7-1, to provide guidelines and directions regarding training and continuing education for magistrates and magistrate court clerks.

As a qualification for continued employment, and in furtherance of uniting the magistrate and courts and maintaining consistent procedure, each magistrate and magistrate court clerk shall attend the Conference sponsored by the Judicial Education Center, unless excused in writing.

Each clerk shall receive advance notice of the Conference. If the magistrate or clerk is unable to attend, a letter stating the reasons for excusal must be submitted to the Chief Justice. If the request is denied, the magistrate or clerk will be expected to attend and participate. If the request is granted, the person excused will make alternate arrangements with the Judicial Education Center to view the video tapes of the conference within four months of the conference.

This policy applies to all magistrate clerks.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**POLICY DIRECTIVE NO. 6**  
(Renumbered and reissued as amended April 2019)

**POLICY RELATING TO RECORDS INSPECTION REQUESTS**

This policy is issued in accordance with NMSA 1978, Section 35-7-1, to provide guidelines for implementing the Inspection of Public Records Act (IPRA).

All IPRA requests submitted to a magistrate court shall be processed according to the direction of the district court chief judge of the judicial district in which the magistrate court is located.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**POLICY DIRECTIVE NO. 7**  
(Renumbered and reissued as amended April 2019)

**POLICY RELATING TO THE USE OF VOLUNTEERS OR COMMUNITY SERVICE PARTICIPANTS IN THE MAGISTRATE COURT**

This policy is issued in accordance with NMSA 1978, Section 35-7-1, to provide guidelines regarding the use of volunteers and community service participants in the magistrate courts.

**A. Volunteers.**

The magistrate courts may allow volunteers to assist the court provided that the courts adhere to the following directives. A “volunteer” is any person who performs any type of clerical or other work for the court who is not a judicial branch employee or who is not paid for the work by funds appropriated to the Administrative Office of the Courts. A person assigned to the court under a DWI local program grant is a court volunteer.

1. Volunteers must comply with all laws, rules, directives, and regulations governing court procedure.
2. The judge must have each volunteer sign a waiver before the volunteer begins work at the court (Waiver form follows). All signed waivers must be filed with the district court clerk of the judicial district and the waiver requirement will be subject to audit.
3. Should a volunteer be a party to a case in the magistrate court, either during service to the court or within a reasonable time thereafter, the judge must recuse from the case to avoid the appearance of impropriety.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

4. Volunteers shall not perform tasks that involve access to confidential information, such as screening results in DWI cases or affidavits in support of search and arrest warrants, or that are required to be performed by a bonded state employee, such as receiving and receipting funds or issuing notices under seal. Examples of the type of work that volunteers may perform include filing of public records and documents and routine typing of forms or notices that the judge or clerk will sign and serve. If you have any questions about whether a particular task is appropriate for a volunteer, please call the district court executive officer of the judicial district.

**B. Community Service Participants.**

Paragraphs 1 and 4 above also apply to community service participants. Those persons performing community service for the court are not required to sign the waiver because statutory immunity from liability is provided by NMSA 1978, Section 31-12-3. This statute also states that persons performing community service shall not be entitled to any of the benefits of state employment.

**FORM FOR POLICY DIRECTIVE NO. 8**

**WAIVER FOR VOLUNTEERS IN THE MAGISTRATE COURT**

I offer to assist the \_\_\_\_\_ County Magistrate Court at my own risk and with full knowledge and understanding that I will receive no remuneration from the court or from the judicial branch of New Mexico state government in any form, that I cannot receive any of the benefits of state employment such as workers' compensation should I be injured, and that I hold the State of New Mexico harmless from any claim for damages, injuries or other losses that may

1 arise during the course of my assistance at the court or as a consequence of my  
2 assistance at the court.

3 I further understand that I will work at the pleasure of the magistrate and the  
4 chief judge of the judicial district. I agree to comply with instructions from him or  
5 her or from the chief clerk and to refrain from performing any task that I have not  
6 been specifically permitted or directed to perform.

7 I will comply to the best of my ability with all rules, regulations, directives  
8 and instructions regarding court procedure. I will keep information confidential to  
9 the same extent as court employees are required to do. I am aware that I have no  
10 authority to act as agent for the court or for the State of New Mexico and will not  
11 represent myself to be or purport to be an agent of the court or the State.

12 I willingly sign this waiver to provide assistance to the court for so long as I  
13 am willing to volunteer or for so long as my services are needed by the court.

14 \_\_\_\_\_  
15 PRINT VOLUNTEER'S NAME SIGNATURE

16 \_\_\_\_\_  
17 DATE

18 APPROVED BY:

19 \_\_\_\_\_  
20 MAGISTRATE DATE

21 \_\_\_\_\_  
22 CHIEF JUDGE DATE

23  
24  
25  
26

1  
2  
3  
4  
5  
6

Complete the following only if the volunteer is assigned to the court through a  
DWI local program grant:

PAID BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUPERVISOR: \_\_\_\_\_