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**INTRODUCE LEGISLATION TO AMEND NM CONSTITUTION ARTICLE VII
SECTION 2**

**RECLASSIFY PROBATE COURT JUDICIAL REQUIREMENTS FOR
COUNTIES WITH A POPULATION OF 600,000 OR MORE**

The only current requirements to hold the office of probate judge in New Mexico are that a person be 18 and live in the County in which they are elected. However, Article 6, Section 23 of the New Mexico Constitution anticipates and specifically authorizes the legislature to prescribe additional qualifications for probate judges. The Bernalillo County Probate Court is distinguishable from all other probate courts in the quantity and complexity of probate cases that are submitted. In 2014 the Probate Court docketed 937 new cases. This is in contrast to many courts that only have 10 to 50 cases a year. The Santa Fe County, another class “A” county, docketed about 200 cases in 2010. Neither the magistrate courts nor the probate courts have legal education qualifications. Similarly, in establishing the Bernalillo County Metropolitan Court the legislature set specific legal qualifications for its judges. Metropolitan Court judges must be members of the bar and have 3 years practice experience. Current statutes setting out qualifications for magistrate court judges also require that in districts with a population over 200,000 in the last decennial census, that no person is eligible for election or appointment to the office of magistrate unless the person is “a member of the bar of this state and licensed to practice law in this state.”

The situation for Bernalillo County Probate Court is similar and thus warrants requiring some legal qualifications for the position. Additionally, the extensive use of the Court by lay people, non-attorney Pro Se applicants (two-thirds) makes having a judge with legal qualifications even more important to serving the public.

Therefore, the legislature has the authority to require that a candidate for probate judge in a Class A county with a population of over 600,000 to be a licensed attorney who is a member in good standing of the New Mexico State Bar, with at least 2 years of practice experience.

Current Probate Judge Qualifications:

NM Constitution Article VII Sec. 4

[Sec. 2. \[Qualifications for holding office.\]](#)

Fifty Second Legislature, First Session, 2015

A. Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any elective public office except as otherwise provided in this constitution.

B. The legislature may provide by law for such qualifications and standards as may be necessary for holding an appointive position by any public officer or employee.

C. The right to hold public office in New Mexico shall not be denied or abridged on account of sex, and wherever the masculine gender is used in this constitution, in defining the qualifications for specific offices, it shall be construed to include the feminine gender. The payment of public road poll tax, school poll tax or service on juries shall not be made a prerequisite to the right of a person to vote or hold office. (As amended September 20, 1921, September 19, 1961, and November 6, 1973.)

NM Constitution Article VI Sec. 23

Sec. 23. [Probate court.]

A probate court is hereby established for each county, which shall be a court of record, and, until otherwise provided by law, shall have the same jurisdiction as heretofore exercised by the probate courts of New Mexico and shall also have jurisdiction to determine heirship with respect to real property in all proceedings for the administration of decedents' estates. The legislature shall have power from time to time to confer upon the probate court in any county in this state jurisdiction to determine heirship in all probate proceedings, and shall have power also from time to time to confer upon the probate court in any county in this state general civil jurisdiction coextensive with the county; provided, however, that such court shall not have jurisdiction in civil causes in which the matter in controversy shall exceed in value three thousand dollars (\$3,000.00) exclusive of interest and cost; nor in any action for malicious prosecution, slander and libel; nor in any action against officers for misconduct in office; nor in any action for the specific performance of contracts for the sale of real estate; nor in any action for the possession of land; nor in any matter wherein the title or boundaries of land may be in dispute or drawn in question, except as title to real property may be affected by the determination of heirship; nor to grant writs of injunction, habeas corpus or extraordinary writs. Jurisdiction may be conferred upon the judges of said court to act as examining and committing magistrates in criminal cases, and upon said courts for the trial of misdemeanors in which the punishment cannot be imprisonment in the penitentiary, or in which the fine cannot be in excess of one thousand dollars (\$1,000). A jury for the trial of such cases shall consist of six men. The legislature shall prescribe the qualifications and fix the compensation of probate judges. (As amended September 20, 1949.)

NMSA 1978 34-7-1. Probate judge; authorized.

There shall be a probate judge in each county of this state. The position of probate judge shall be deemed a part-time position.

Metropolitan Court Examples of qualifications in contrast to Magistrate Courts

which do not have legal qualifications. :

NMSA 1978 34-8A-1

34-8A-1. Metropolitan court; established.

There is established within the boundaries of a class A county with a population of more than two hundred fifty thousand persons in the last federal decennial census the "metropolitan court". The name of the metropolitan district is the same as the name of the county in which it is located.

NMSA 1978 34-8A-4

34-8A-4. Metropolitan court; judges.

A. Metropolitan judges shall be elected as provided in [Section 34-8A-4.1](#) NMSA 1978. The governor shall fill vacancies in the office of metropolitan judge, by appointment of persons who possess the personal qualifications established by law, until the next general election.

B. No person shall be eligible for election or appointment to the office of metropolitan judge unless he is a member of the bar of and has practiced in this state for a period of three years. There shall be a chief metropolitan judge of a metropolitan court. The chief metropolitan judge shall designate each metropolitan judge position as a separate and consecutively numbered division, and any additional metropolitan judge authorized within a metropolitan court shall be designated as metropolitan judge of the next consecutive division. A district court judge may designate a metropolitan judge as a special master.

35-2-1. Qualification; personal qualifications. (2013)

A. Each magistrate shall be a qualified elector of, and reside in, the magistrate district for which the magistrate is elected or appointed.

B. No person is eligible for election or appointment to the office of magistrate unless the person has graduated from high school or has attained the equivalent of a high school education as indicated by possession of a certificate of equivalency issued by the public education department based upon the record made on the general educational development test [high school equivalency credential test].

C. In magistrate districts with a population of more than two hundred thousand persons in the last federal decennial census, no person is eligible for election to the office of magistrate unless the person:

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(1) is a member of the bar of this state and licensed to practice law in this state; or

(2) holds the office of magistrate in that district when the federal decennial census is published, as long as there is no break in service.

D. In magistrate districts with a population of more than two hundred thousand persons in the last federal decennial census, no person is eligible for appointment to the office of magistrate unless the person is a member of the bar of this state and licensed to practice law in this state.

E. A person holding the office of magistrate shall not engage in the private practice of law during tenure in office.

History: 1953 Comp., § 36-2-1, enacted by Laws 1968, ch. 62, § 41; 1979, ch. 7, § 1; 2013, ch. 26, § 1.