

TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
PART 3 CIVIL LEGAL SERVICES FUND

2.40.3.1 ISSUING AGENCY: Department of Finance and Administration, Local Government Division
[2.40.3.1 NMAC - N, 1/31/2002]

2.40.3.2 SCOPE: All eligible nonprofit organizations within the state of New Mexico applying for civil legal services funds.
[2.40.3.2 NMAC - N, 1/31/2002]

2.40.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 34-14-1 (2001); NMSA 1978, Section 34-6-40; and NMSA 1978, Section 35-6-1.
[2.40.3.3 NMAC - N, 1/31/2002]

2.40.3.4 DURATION: Permanent
[2.40.3.4 NMAC - N, 1/31/2002]

2.40.3.5 EFFECTIVE DATE: January 31, 2002
[2.40.3.5 NMAC - N, 1/31/2002]

2.40.3.6 OBJECTIVE: The objective is to establish procedures for the allocation and disbursement of revenue from the civil legal services fund.
[2.40.3.6 NMAC - N, 1/31/2002]

2.40.3.7 DEFINITIONS:

- A.** "Act" means NMSA 1978, Section 34-14-1 (2001), entitled civil legal services commission.
 - B.** "Civil legal services" means a full range of free legal services provided by attorneys or attorney-supervised staff in noncriminal matters to low-income persons living in New Mexico. The full range of services is subject to interpretation by the commission.
 - C.** "Civil legal services commission" means an appointed five-member commission, all members who must have experience with civil legal matters affecting low-income persons.
 - D.** "Civil legal services fund" or "fund" means an account created within the state treasury financed through designated court fees.
 - E.** "Code" means the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199.
 - F.** "Commission" means the civil legal services commission.
 - G.** "Contract" means the signed legal agreement between fund recipients and the division outlining specific requirements for use of fund monies.
 - H.** "DFA" means the executive agency department of finance and administration.
 - I.** "Division" means local government division within the department of finance and administration.
 - J.** "Impoverished New Mexicans" means low-income persons.
 - K.** "Low income person(s)" means a person(s) living in New Mexico lacking the financial ability to secure needed civil legal services. The specific financial criteria to define low-income persons shall be based on federal poverty guidelines and determined by the commission at intervals not to exceed three years.
 - L.** "New Mexicans living in poverty" means low-income persons.
 - M.** "New Mexican" means a person living in New Mexico at the time that person needs civil legal services.
 - N.** "Person(s) living in poverty" means a low-income person(s).
 - O.** "Request for proposal (RFP)" means a solicitation for a competitive proposal for services subject to the state Procurement Code.
- [2.40.3.7 NMAC - N, 1/31/2002]

2.40.3.8 INTRODUCTION AND PURPOSE: The 2001 New Mexico Legislature enacted Laws of 2001, Chapter 277, now codified as the act, creating the civil legal services fund and the civil legal services commission. The fund has been established in the state treasury and is to be used to pay for civil legal services to low-income

persons living in New Mexico. The fund is appropriated to the department of finance and administration local government division and the civil legal services commission. Disbursements from the fund shall be by warrant drawn by the secretary of DFA. The commission is required to establish and adopt rules and procedures for the fund, solicit proposals for the provision of civil legal services, and enter into contracts with eligible providers. The division, pursuant to the rules of the commission, shall administer the contracts and programs of the fund, and require an annual accounting from each recipient of disbursements from the fund. All commission rules, disbursements and expenditures involving the fund must be within the purview of the state code.

[2.40.3.8 NMAC - N, 1/31/2002]

2.40.3.9 ELIGIBLE SERVICE PROVIDERS: To be eligible to contract for monies with the commission service providers shall provide to the division documentation that they:

A. are nonprofit organizations, tax exempt under the Internal Revenue Code, Section 501(c) or its successor or organized and operated exclusively for non-profit activities within the categories recognized as such by the Internal Revenue Code, Section 501(c) or its successor; and

B. are registered with the state of New Mexico as a non-profit organization and listed on the state's web site; and

C. are organized and operated to provide free legal services to low income persons residing in New Mexico and do not engage in any other except related activity or are organized and operated as a separate department within a larger organization that has as its purpose the provision of free legal services to low income persons residing in New Mexico and that employs at least one full-time attorney dedicated solely to providing these services; and

D. are willing and able to cooperate with state and local bar associations, pro bono legal service programs, private attorneys, and similar persons or entities to increase the availability of free legal services to low income persons residing in New Mexico; or are willing and able to increase and coordinate statewide access to civil legal services to low income persons residing in New Mexico through innovative technology, subject to the limitations on appropriations set forth in 2.40.3.10 NMAC.

[2.40.3.9 NMAC - N, 1/31/2002; A, 7/31/2007]

2.40.3.10 ELIGIBLE SERVICES OR ACTIVITIES: All disbursements from the fund shall be used for the sole purpose of providing civil legal services to low income persons in accordance with the act, except to the extent that any statutory authorized fee for administrative costs shall be paid to DFA. No more than fifty percent of net appropriations (less the required administrative fee to DFA for operation of the civil legal services commission) shall be spent on activities solely directed to adapting innovative technology to increase access to free legal services for low income persons residing in New Mexico. Appropriations shall only be disbursed to service providers who meet the eligibility requirements set forth in 2.40.3.9 NMAC. Services provided to eligible persons must be in accordance with the New Mexico supreme court access to justice commission civil legal services plan and the critical legal needs of low income persons residing in New Mexico identified in the April 2006 New Mexico supreme court order, including, but not necessarily limited to, housing, consumer, domestic violence, family law, employment, and government benefits issues.

[2.40.3.10 NMAC - N, 1/31/2002; A, 7/31/2007]

2.40.3.11 INELIGIBLE SERVICES OR ACTIVITIES: Money disbursed from the fund cannot be used to:

A. bring suit against the state of New Mexico;

B. acquire land or buildings;

C. accumulate or transfer cash;

D. provide legal advice or representation on criminal matters; or

E. support lobbying, as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1

through 2-11-9.

[2.40.3.11 NMAC - N, 1/31/2002]

2.40.3.12 APPLICATION PROCEDURES: Under direction from the commission and pursuant to the state Procurement Code, the division will issue request for proposals (RFPs) for the provision of civil legal services to low-income persons. The form and content of the RFP(s) will be determined by the commission, with assistance from the division. The evaluation criteria used by the commission in determining RFP awards will be contained in the RFP. Civil legal service providers will be selected as fund recipients by the commission based on review and

rating of submissions by the division. Service providers will be required to formalize the award through a contract with the division, as required by state law.
[2.40.3.12 NMAC - N, 1/31/2002]

2.40.3.13 ADMINISTRATIVE PROCEDURES: All funded service providers will be required to adhere to state procurement laws, regulations and other procedures established by the division to ensure that all funds are expended in accordance with state law. The division shall require an annual accounting from each organization receiving funds. Funds will be distributed to recipients as specified in the contract. Fund disbursements must be included in the service provider's budget process and financial reports. Fund expenditure documentation must be provided to the division as outlined in the contract. The commission may request additional oral or written reports from service providers as deemed necessary.
[2.40.3.13 NMAC - N, 1/31/2002]

2.40.3.14 LIMITATIONS OF FUND: All disbursements from the fund are contingent upon sufficient revenue credited to the fund. Unexpended or unencumbered balances in the fund at the end of a fiscal year remain in the fund to carry out provisions of the Act in the next fiscal year.
[2.40.3.14 NMAC - N, 1/31/2002]

2.40.3.15 SUPPLEMENTAL FUNDING: Should additional fund monies become available, the commission may call for and act on additional RFPs from eligible service providers.
[2.40.3.15 NMAC - N, 1/31/2002]

2.40.3.16 SANCTIONS: Sanctions may include any administrative action, including contract termination, authorized by the commission against a fund recipient for improper, inadequate performance or noncompliance with one or more condition(s) of the contract. Examples of deficient performance by a service provider include but are not limited to: failure to correct monitoring or audit findings; failure to document and report to the division all expenditures of fund monies; failure to implement legal services in a timely manner; failure to execute activities in accordance with the contract; and implementation of a program change without prior approval of the commission.
[2.40.3.16 NMAC - N, 1/31/2002]

2.40.3.17 COMMISSION AUTHORITY: The commission may at any time waive or adjust any state imposed regulation relative to the fund rules and administration as long as the waiver or adjustment does not penalize or favor any eligible service provider or violate any state law or other regulation.
[2.40.3.17 NMAC - N, 1/31/2002]

2.40.3.18 PARTICIPATION IN COMMISSION MEETINGS: A commissioner may participate in a meeting of the commission by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the commissioner to attend the meeting in person, and participation by such means shall constitute presence in person at the meeting. When a commissioner participates in a meeting by conference telephone or other similar communications equipment, (1) each commissioner participating by telephone must be able to be identified when speaking, (2) all participants must be able to hear each other at the same time, and (3) members of the public attending the meeting must be able to hear any commissioner who speaks during the meeting. Arrangements to attend a meeting by telephone must be made sufficiently in advance to allow LGD to secure the necessary equipment to provide for a suitable telephonic connection.
[2.40.3.18 NMAC - N, 11/26/2003]

HISTORY OF 2.40.3 NMAC: [RESERVED]