



December 27, 2022

Honorable Marie Ward, Chief Judge
Honorable Brett R. Loveless, Presiding Criminal Judge
Second Judicial District Court
P.O. Box 488
Albuquerque, NM 87103-0488

SENT VIA EMAIL TO: albdmcw@nmcourts.gov; albdbrl@nmcourts.gov;
albdjaw@nmcourts.gov; albdmlt@nmcourts.gov; albdmmk@nmcourts.gov;
albdmng@nmcourts.gov; aldbaam@nmcourts.gov.

Dear Chief Judge Ward and Presiding Judge Loveless:

As you know, I will soon be taking the office of Attorney General to which I was elected at the most recent general election. It has been an honor and a pleasure to serve the people of Bernalillo County as their elected District Attorney, and I have been equally honored to be a justice partner with the Second Judicial District Court. The pursuit of justice is common to all stakeholders in the criminal justice system, and I want to assure you that I am taking steps to ensure a seamless transition – and an uninterrupted pursuit of justice in Bernalillo County – when I leave my current office.

Under Article XX, Section 4 of the New Mexico Constitution, the Governor must fill a vacancy in the office of district attorney by appointment. Governor Lujan Grisham will be conducting interviews for this appointment in early January. The Constitution directs that my term of office as Attorney General will begin on January 1, 2023, and accordingly, I will formally submit my letter of resignation as District Attorney to the Governor on December 31, 2022. Based on the timing of the interviews to appoint my successor, there will be a gap in time between my resignation and the Governor's appointment. Fortunately, New Mexico law is carefully designed to avoid vacancies in office and to prevent a disruption in government operations from a succession in office.

Article XX, Section 2 of the New Mexico Constitution provides that “[e]very officer, unless removed, shall hold his office until his successor has duly qualified.” This provision applies even when an official “has tendered his resignation and the same has been accepted” or when an official accepts “an incompatible office.” *Haymaker v. State ex rel. McCain*, 1917-NMSC-005, ¶¶ 14-15, 22 N.M. 400. Resignation from office does not become legally effective until a successor has qualified so “that the public convenience shall not suffer from a vacancy in such public offices, but that the office shall ever be full.” *Id.* ¶ 15 (quotation marks and quoted authority omitted); see N.M. Att’y Gen. Op. 60-154 (1960) (discussing *Haymaker* and observing that “[t]he creation of a vacancy in an office does not, ipso facto, terminate the right of the incumbent to hold the office.”).

Under this authority, a judge validly designated another judge to perform his duties and validly designated an individual to be the court clerk even though those designations occurred one day after the judge had resigned but before a successor had been appointed. N.M. Att’y Gen. Op. 64-146 (1964). The Constitution prevented the judge’s resignation from interrupting the performance of necessary judicial duties. Further, the New Mexico Supreme Court has held that, under this provision, an official remains a de facto officer until a successor has qualified for the office even after the official “is appointed to and accepts another office,” such that a judge retained the authority to preside over a murder trial despite actively serving as a colonel in the New Mexico National Guard. *State v. Blancett*, 1918-NMSC-091, ¶¶ 1-2, 24 N.M. 433.

Complementary to this constitutional scheme, an official in New Mexico that transitions from one office to another is not deemed to have abandoned office until “thirty successive days or more” of not performing that office’s duties. NMSA 1978, § 10-6-3 (1943). Under this statute, “it is not only the acceptance of another public office for which a salary or compensation is authorized that will automatically constitute the abandonment of the incumbent’s public office. In addition, it must be found that because of such other public office the incumbent fails for thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office.” N.M. Att’y Gen. Op. 64-73 (1964).

This authority means that the District Attorney’s Office will continue to function after my resignation with the appointments I have made pursuant to NMSA 1978, § 36-1-2 (1984). In reliance on this authority, as well as my statutory ability to assign the duties of my assistants under NMSA 1978, § 36-1-5(A)(1) (1988), I plan to delegate my decision-making authority upon my resignation to Deputy District Attorney Greer Staley, one of the office’s most experienced and trusted prosecutors. She will be in charge of the office and will, in effect, act as the interim District Attorney until my successor has qualified for office. I invite you to contact DDA Staley concerning any and all matters for which you would have contacted me as the Second Judicial District Attorney.

It is an honor to practice law and serve the public in the Second Judicial District, and I look forward to continuing this service in my new role as Attorney General in 2023.

Sincerely,

A handwritten signature in blue ink, consisting of stylized initials 'RT' followed by a long horizontal stroke.

Raúl Torrez
Second Judicial District Attorney
New Mexico Attorney General-Elect