

### **3-1-5. Petitions; examinations of signatures; purging; judicial review.**

A. All petitions, filing of petitions, verification of petitions and all other acts to be performed by petitioners, public officers or employees, regarding only those petitions that trigger a municipal special or regular election as authorized in the Municipal Code [**Chapter** 3 NMSA 1978] or otherwise authorized by law, shall comply with the terms of this section, except as otherwise expressly provided by law.

B. Each page or group of pages of a petition shall be accepted for filing by a municipal clerk, a county clerk, a governing body or a board of county commissioners only if:

(1) the municipal clerk has approved the form of petitions to be filed with the municipality prior to circulation of the petition; or

(2) the county clerk has approved the form of petitions to be filed with the county prior to circulation of the petition; and

(3) each page of the petition to be filed contains the approval or facsimile approval of the municipal or county clerk and the petition heading and penalty statement are legible when submitted for filing.

C. The municipal or county clerk shall approve a petition as to form if the proposed petition form contains:

(1) a heading that complies with a particular form of heading required by law; or

(2) a heading that clearly conveys the purpose for signing the petition if no particular form of heading is required by law;

(3) a place for the person signing the petition to write the date and the person's name (printed), address and signature, unless other requirements are mandated by law and then the petition shall comply with those requirements; and

(4) a statement that any person knowingly providing or causing to be provided any false information on a petition, forging a signature or signing a petition when that person knows that person is not a qualified elector in the municipality is guilty of a fourth degree felony.

D. The requirements of Subsection B of this section shall be deemed complied with if an original form of petition is submitted to a municipal or county clerk for approval prior to circulation and after approval by the clerk that original form is reproduced by photocopying or other similar means so that the form and clerk's approval are unchanged from the original and are legible on each page of the petition to be filed.

E. A petition filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners shall include all individual pages of a petition complying with the provisions of this section, regardless of whether the pages are filed singly or in a group. Pages complying with the provisions of this section may be filed at different times so long as filing is within the time period allowed by law for the filing of the particular petition to be filed. If no time period is established by law, petition signatures may not span a period of time greater than sixty days from the date of the earliest signature on the petition, and the petition shall be filed within sixty-five days from the date of the earliest signature on the petition.

F. Upon approval of a proposed petition as to form, the municipal clerk shall notify the county clerk of the approval, and the county clerk shall furnish a current voter registration list of qualified electors entitled to vote in municipal elections to the municipal clerk within fourteen days of the notification.

G. When a petition is filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners, the governing body or board of county commissioners shall

either certify the petition as valid or order an examination of the petition and the names, addresses and signatures on the petition.

H. When an examination of the petition and the names, addresses and signatures on the petition is ordered, the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) resolve issues of residency and major infractions in accordance with the rules set forth in the Municipal Election Code [[Chapter 3, Articles 8 and 9](#) NMSA 1978];

(2) determine the minimum number of valid names, addresses and signatures, as mandated by law, that must be contained in the particular petition filed in order for it to be declared a valid petition;

(3) examine the petition and the names, addresses and signatures on the petition, purge from the petition the signature of any person who is not shown as a qualified elector of the municipality on the list of registered voters provided by the county clerk, purge any signature that is a forgery or that is illegible, purge any signature that appears more than once or that cannot be matched to the name, address and signature as shown on the voter registration lists and the original affidavit of registration, purge the signature of any person who has not signed within the time limits set by law and purge the signature of any person who does not meet the qualifications for signing the petition as prescribed by law; and

(4) certify, no later than ten days after the petition is filed or after the expiration of the period within which the petition can be filed as prescribed by law, whichever occurs last, whether the petition contains the minimum number of valid names, addresses and signatures as mandated by law.

I. Nothing in this section shall preclude a person with a disability or an illiterate person from causing another person to sign a petition on a person with a disability's or an illiterate person's behalf, so long as the person signing for the person with a disability or illiterate person executes an affidavit acknowledged before a notary public that the person is authorized to sign the petition for the person with a disability or illiterate person. In order for the signature on behalf of the person with a disability or illiterate person to be counted and not purged, the original affidavit shall be submitted along with the petition containing the signature on behalf of the illiterate person or person with a disability.

J. If the petition is certified as valid pursuant to Subsection G of this section or is certified as containing in excess of the minimum number of valid names, addresses and signatures mandated by law, then such certification shall be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners.

K. If the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, then the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) cause the names, addresses and signatures that were purged from the petition to be posted in the municipal or county clerk's office no later than on the day the petition is certified;

(2) determine the total number of people signing the petition, the number purged, the number that were not purged and the minimum number of valid names, addresses and signatures required by law for such a petition and post this information along with and at the same time as the posting required in Paragraph (1) of this subsection;

(3) publish once, pursuant to the provisions of Subsection J of Section [3-1-2](#) NMSA 1978, within one week of the certification, the information compiled pursuant to Paragraphs (1) and (2) of this subsection; and

(4) cause the information compiled pursuant to Paragraphs (1) and (2) of this subsection and the date and place of publication pursuant to Paragraph (3) of this subsection to be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners after publication has occurred.

L. The following rules shall govern reinstatement of purged signatures:

(1) within ten days after the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, any person whose signature has been purged from a petition may present evidence to the clerk to show that the person's signature has been wrongfully purged;

(2) if the clerk fails to reinstate that person's signature within three days of demand, then that person may, within ten days of the clerk's refusal to reinstate, petition the district court for an order to reinstate the person's signature on the petition. Upon a prima facie showing by the petitioner of the right to have that person's signature included upon the petition, the district court shall issue an order to the municipal clerk, county clerk, governing body or board of county commissioners to require reinstatement of the signature of the petitioner;

(3) within ten days after receiving the order of the district court, the municipal clerk, county clerk, governing body or board of county commissioners shall reinstate the signature of the petitioner on the petition or show cause why the signature of the petitioner has not been reinstated. Upon hearing, if the district court finds that the person whose signature has been purged meets the qualifications for signing the petition, the district court shall make final its order of reinstatement to the municipal clerk, county clerk, governing body or board of county commissioners; and

(4) if a sufficient number of signatures are reinstated by the clerk, the district court or both to make the petition valid, then the reinstatement by the clerk or the district court, whichever occurs last, shall be deemed the date of certification of the validity of the petition for the purposes of adopting election resolutions, calling elections or for other matters as provided in the Municipal Code [[Chapter 3](#) NMSA 1978] or otherwise provided by law.

M. Any petition that contains an insufficient number of signatures after all signatures have been reinstated pursuant to Subsection L of this section is invalid.

N. When a petition governed by this section is filed with the municipal clerk or the governing body of a municipality, the governing body or municipal clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law. When a petition governed by this section is required to be filed with the county clerk or board of county commissioners, the board of county commissioners or county clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law.

O. Any person or any municipal or county official knowingly violating the provisions of this section, knowingly providing or causing to be provided any false information on a petition or forging a signature or otherwise signing a petition when that person knows the person is not a qualified elector in the municipality is guilty of a fourth degree felony.

P. The provisions of this section shall not be binding upon a municipality to the extent such provisions are inconsistent with or superseded by the terms and provisions of:

(1) the charter of a municipality incorporated by a special act;

(2) the charter of a municipality adopted pursuant to Article [10](#), Section [6](#) of the constitution of New Mexico;

(3) the charter of a municipality adopted pursuant to the Municipal Charter Act [[3-15-1](#) NMSA 1978]; or

(4) the charter of a combined municipal organization.

Q. Once a petition has been filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners, no name on the petition may be withdrawn except those names purged pursuant to Subsection H of this section.

History: 1978 Comp., § 3-1-5, enacted by Laws 1985, ch. 208, § 2; 1987, ch. 323, § 2; 1991, ch. 109, § 1; 2007, ch. 46, § 1.