

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
Mea
2012 APR 16 PM 12:32
DISTRICT COURT
DOÑA ANA COUNTY, NM

KEITH E. LAMONICA,

Petitioner,

vs.

LYNN ELLINS
as County Clerk of
DOÑA ANA COUNTY,

Respondent.

CV 2012-761
Judge Martin

ORDER OF SUMMARY DISMISSAL
FOR LACK OF JURISDICTION

THIS MATTER comes before Court upon the petitioner filing a *pro se* emergency petition for writ of *mandamus* on March 30, 2012 to require the respondent Clerk of Doña Ana County to place his name on the primary election ballot for the position of Magistrate Judge.

The Court examined the petition and the County's response filed April 11, 2012 and takes judicial notice of its file.

The Court FINDS that the following facts are not at issue:

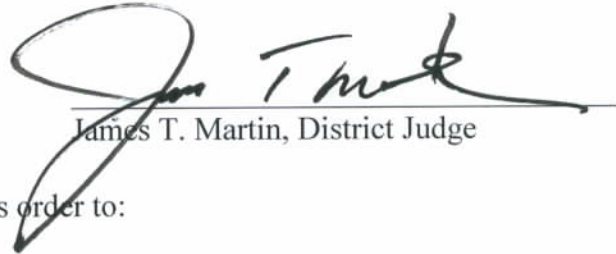
1. Doña Ana County has a total population exceeding 200,000 according to the last federal decennial census.
2. The petitioner is a resident of Doña Ana County but is not a member of the State Bar of New Mexico.
3. The respondent County Clerk refused to permit the petitioner's name to be placed on the

primary election ballot for the election on June 5, 2012. This petition follows.

The Court **CONCLUDES:**

1. The writ of *mandamus* is available to compel a public officer to perform a non-discretionary ministerial duty. NMSA 1978, §44-2-4.
2. Magistrate Judges in counties with a population exceeding 200,000 must be members of the bar and licensed to practice law in New Mexico. NMSA 1978, §35-2-1. The petitioner is not eligible to run for or occupy the office of Doña Ana County Magistrate Judge.
3. This Court lacks jurisdiction to compel a public officer to perform an official duty contrary to law. *Territory ex rel. Lester v. Suddith*, 15 N.M. 728, 110 P. 1038 (1910).
4. The petition is without merit as a matter of law and must be dismissed.

IT IS THEREFORE ORDERED the petition filed in this matter is **DISMISSED WITH PREJUDICE**. No evidentiary hearing is necessary.



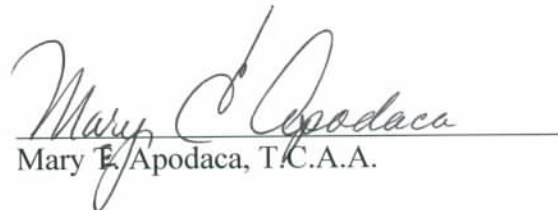
James T. Martin, District Judge

I certify that I mailed or delivered copies of this order to:

Keith E. Lamonica
1009 Cederdale
Las Cruces NM 88005

Fred Kennon
Assistant County Attorney
845 N. Motel Blvd.
Las Cruces NM 88001

this 16 day of April, 2012.



Mary E. Apodaca, T.C.A.A.

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
Mea
2012 APR 16 PM 12:32
DISTRICT COURT
DOÑA ANA COUNTY, N.M.

PAUL A. MARTINEZ,

Petitioner,

vs.

LYNN ELLINS
as County Clerk of
DOÑA ANA COUNTY and
HON. SUSANA MARTINEZ,
Governor of the State of New
Mexico,

Respondent.

CV 2012-878
Judge Martin

ORDER OF SUMMARY DISMISSAL
FOR LACK OF JURISDICTION

THIS MATTER comes before Court upon the petitioner filing a *pro se* emergency petition for preliminary injunction and writ of *mandamus* on April 11, 2012 to require the respondent Clerk of Doña Ana County to place his name on the primary election ballot for the position of Magistrate Judge.

The Court examined the petition and the County's response filed April 11, 2012 and takes judicial notice of its file.

The Court FINDS that the following facts are not at issue:

1. Doña Ana County has a total population exceeding 200,000 according to the last federal decennial census.
2. The petitioner is a resident of Doña Ana County but is not a member of the State Bar of

New Mexico.

3. The Legislature passed, but the Governor vetoed, legislation that would have allowed non-attorneys to serve as Magistrate Judges in counties with populations exceeding 200,000.
4. The respondent County Clerk refused to permit the petitioner's name to be placed on the primary election ballot for the election on June 5, 2012. This petition follows.

The Court **CONCLUDES:**

1. The writ of *mandamus* is available to compel a public officer to perform a non-discretionary ministerial duty. NMSA 1978, §44-2-4.
2. Magistrate Judges in counties with a population exceeding 200,000 must be members of the bar and licensed to practice law in New Mexico. NMSA 1978, §35-2-1.
3. The petition fails to demonstrate that the qualification provisions of §35-2-1 violate the constitutional principal of equal protection under the law.
4. In the absence of a veto override vote in both Houses of the State Legislature, a bill does not become a law without the consent of the Governor. N.M. Const. Art. IV Sec. 22.
5. The current version of §35-2-1 became effective in 1979. The time frames during which the Legislature passed its bill but the Governor withheld her consent are irrelevant to this case.
6. The petitioner is not eligible to run for or occupy the office of Doña Ana County Magistrate Judge.
7. This Court lacks jurisdiction to compel a public officer to perform an official duty contrary to law. *Territory ex rel. Lester v. Suddith*, 15 N.M. 728, 110 P. 1038 (1910).

8. The petition is without merit as a matter of law and must be dismissed.

IT IS THEREFORE ORDERED the petition filed in this matter is **DISMISSED**
WITH PREJUDICE. No evidentiary hearing is necessary.




James T. Martin, District Judge

I certify that I mailed or delivered copies of this order to:

Paul A. Martinez
2711 Winston Ave.
Las Cruces NM 88005

Fred Kennon
Assistant County Attorney
845 N. Motel Blvd.
Las Cruces NM 88001

this 16 day of April, 2012.



Mary E. Apodaca, T.C.A.A.