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From: NM Land Grant Council <nmlandgrantcouncil@unm.edu>
Sent: Friday, January 5, 2024 3:46 PM
To: Info, HigherEd, HED
Cc: Enrique Romero; Arturo Archuleta; chililnmlgc@gmail.com
Subject: [EXTERNAL] Community Governance Attorney Program Rule Comments
Attachments: 5.7.36 NMAC Circulation Draft 12-5-23 LGC redlines 1.5.24.pdf

Importance: High

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The New Mexico Land Grant Council has worked with our legal counsel at the Attorney General's Office, Mr. Enrique Romero, to draft the attached redline comments and proposed changes to the Community Governance Attorney Program proposed rule. The Counsel would welcome the opportunity to meet with HED to explain our redline comments and proposed changes in detail prior to the upcoming rule adoption hearing. If you are interested in scheduling a meeting to discuss the redline comments and suggested edits please contact Mr. Enrique Romero at eromero@nmag.gov or via phone at (505) 546-8759.

- New Mexico Land Grant Council



TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 36 COMMUNITY GOVERNANCE ATTORNEY PROGRAM

5.7.36.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[5.7.36.1 NMAC - N, X/XX/2024]

5.7.36.2 SCOPE: Provisions of 5.7.36 NMAC apply to all participants of the conditional tuition waiver program described in this rule. Community Governance Attorney Act.
[5.7.36.1 NMAC - N, X/XX/2024]

5.7.36.3 STATUTORY AUTHORITY: Sections 21-21Q-1 through 21-21Q-5, ~~et seq.~~ NMSA 1978. [5.7.36.3 NMAC - N, X/XX/2024]

5.7.36.4 DURATION: Permanent.
[5.7.36.4 NMAC - N, X/XX/2024]

5.7.36.5 EFFECTIVE DATE: Month XX, 2024
[5.7.36.5 NMAC - N, X/XX/2024]

5.7.36.6 OBJECTIVE: The objective and purpose of ~~the Community Governance Attorney Act~~ 5.7.36 NMAC is to increase the number of community governance attorneys encourage law students to serve as community governance attorneys by making through the use of conditional tuition waivers. The conditional tuition waivers are available to law students commencing their final year of law school who commit to employment as a community governance attorney with a qualifying employer for two years. such service. In the event the student does not complete two years of employment as a community governance attorney. service, the waiver shall be repaid.

5.7.36.7 DEFINITIONS:

A. **“Commission”** means the Community Governance Attorney commission.

B. **“Community governance attorney”** means an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees.

B.C. **“Community Governance Attorney Act”** means Sections 21-21Q-1 through 21-21Q-5, NMSA 1978.

D. **“Conditional tuition waiver”** means a loan to cover law school tuition, fees and a reasonable living stipend that is forgiven in whole or in part if the participant renders service as a community governance attorney pursuant to this rule.

C.E. **“Course of study”** means a law student’s legal education, including clinical and internship programs and preparation courses for the state bar examination;

D.F. **“Department”** means the New Mexico higher education department.

G. **“Extenuating circumstances”** means circumstances not within the control of the recipient.

E.H. **“Good academic standing”** means...

F.I. **“Participant”** means an individual who has applied to participate in, has been accepted into and has a signed a contract agreeing to the terms of the program.

J. **“Program”** means the loan for service conditional tuition waiver program created by the Community Governance Attorney Act to provide legal services for land grants- mercedes, acequias and colonias.

K. **“Qualifying employer”** means:

(1) the university of New Mexico;

(2) a nonprofit organization whose mission is to provide a range of free legal services to low-income New Mexicans; or

~~G.~~(3) any other organization designated in the Community Governance Attorney Act.

[5.7.36.7 NMAC - N, X/XX/2024]

5.7.36.8 COMMUNITY GOVERNANCE ATTORNEY COMMISSION:

The commission is created to advise the department on matters relating to the administration of the Community Governance Attorney Act.

A. The commission shall be appointed and shall be composed of:

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- (1) The secretary of the department or secretary's designee;
- (2) The dean of the ~~law school at the~~ university of New Mexico school of law or the dean's designee;
- (3) Three members appointed by the governor:
 - (a) one member shall be a member of an acequia;
 - (b) one member shall be a current or past member of the New Mexico land grant council; and
 - (c) one member shall be a current or past member of the colonias infrastructure

board and a resident of a colonia.

B. The responsibilities of the commission shall include:

- (1) making recommendations to the department on applicants for the program; ~~and~~
- (2) advising the department on the adoption of rules to implement the provisions of the Community Governance Attorney Act;
- (3) soliciting proposals and entering into contracts for the expenditure of the community governance attorney and conditional tuition waiver fund; and
- (~~2~~)(4) adopting such rules as are necessary to carry out the provisions of Section 21-21Q-

4, NMSA, 1978.

[5.7.36.8 NMAC - N, X/XX/2024]

5.7.36.9 PARTICIPANT ELIGIBILITY: To be eligible for the ~~is~~ program, ~~an applicant student~~ must:

- A.** have completed the first two years of law school and be in good academic standing at the university of New Mexico school of law;
- B.** be a resident of New Mexico; and
- C.** declare an intent to serve as a community governance attorney in New Mexico.

[5.7.36.9 NMAC - N, X/XX/2024]

5.7.36.10 SELECTION OF CONDITIONAL TUITION WAIVER RECIPIENTS: ~~The department shall select conditional tuition waiver recipients. Selection shall be~~ based on the following considerations and preferences:

- A.** the ability, character and qualifications of each applicant ~~through the; to include a~~ review of the applicant's educational transcripts, letters of recommendation, and references; and
- B.** the demonstrated interest of the applicant in serving as a community governance attorney.

[5.7.36.10 NMAC - N, X/XX/2024]

5.7.36.11 RESPONSIBILITIES OF THE DEPARTMENT:

The department shall:

- ~~A.~~ A adopt rules as are necessary to carry out the provisions of the program;
- ~~A.~~ A ~~and~~

B. A administer the ~~waivers~~ program, including:

- (1) disbursing funds;
- (2) ~~keeping records~~ record keeping on program participants and processing of conditional tuition waiver contracts including contracts between participants and the department and contracts between the commission and qualifying employers;
- (3) administration of and record keeping on conditional tuition waiver repayments;
- (4) record keeping on participants, including a participant's current good academic

standing status, progress toward completion of final year of law school, and location and time of service-employment of as a community governance attorney participants who have completed their education and are serving as a community governance attorney in New Mexico;

- (5) verification of qualification for forgiveness; ~~for service;~~ and
- (6) preparing annually a report that includes the following information ~~annually~~:
 - (a) ~~number of the participants employed as community governance attorneys; who~~ serve as a community governance attorney after completion of their law school education;
 - (b) number of participants that have not completed their course of study;
 - (~~b~~)(c) names and addresses of participants; and
 - (~~e~~)(d) names and locations of practice of participants employed as community

governance attorneys; those who have completed their education and have become community governance attorneys in New Mexico;

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C. in consultation with the commission, create a standard application process; and
C.D. in consultation with the university of New Mexico and the commission, publicize the program to law students and prospective law students.
[5.7.36.11 NMAC - N, X/XX/2024]

5.7.36.12 CONDITIONAL TUITION WAIVERS: The department may select for a Cconditional tuition waivers may be made to one or two students-applicants each year who will be entering their final year of law school under the following conditions and limitations.

A. The department shall set the amount of the conditional tuition waiver after consulting with the university of New Mexico school of law regarding tuition and average living stipend and considering the availability of funds.

~~B. The department shall publicize the program to law students and prospective law students.~~

~~B. Upon approval of the waiver~~selection of an applicant to receive a conditional tuition waiver, a contract shall be drawn between the ~~student-applicant~~ and the department. The signed contract indicates the applicant's acceptance into the program, and signed by the student.

C. In its annual determination of the number of selections for the conditional tuition waivers, the department shall consider funding availability for waivers for current participants.
[5.7.36.12 NMAC - N, X/XX/2024]

5.7.36.13 CONDITIONAL TUITION WAIVER REPAYMENT AND FORGIVENESS: All conditional tuition waivers shall be repaid to the state together with interest or forgiven according to the following provisions:

A. The department shall forgive one hundred percent of the principal plus accrued interest for Pparticipants who meet their community governance attorney commitmentIf the participant, after completion of their law school educationcourse of study, servesare employed for two consecutive years as a community governance attorney by a qualified employer, in New Mexico, one hundred percent of the principal plus accrued interest shall be forgiven;

B. The department shall forgive fifty percent of the principal plus accrued interest for If the participants who, after completion of their law school educationcourse of study, servesare employed for one year as a community governance attorney by a qualified employer, in New Mexico, fifty percent of the waiver shall be forgiven;

C. Participants must serve-complete a full complete-year of employment serviee to receive credit for that year.

~~A~~ Pparticipants who do not meetfails to carry out their community governance attorney-commitmentemployment obligations, in whole or in part, is subject to the following provisions:

(1) If a ~~conditional tuition waiver recipient~~ participant completes their law school education and ~~does not serve~~ is not employed as a community governance attorney ~~by a qualified employer~~ for a period of at least one year, the department shall assess a penalty of the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the ~~student participant~~ cannot ~~serve and~~ comply with the ~~employment obligations forgiveness provisions~~ outlined in this section.

(2) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorated basis reasonably reached based upon the degree of control which the ~~recipient participant~~ has over the ~~failure to carry out their employment obligations, decision not to serve~~. The ~~recipient participant~~ shall have the burden of proof.

(3) If the department does not find acceptable extenuating circumstances for the participant's failure to carry out their ~~employment obligations, declared intent to serve in as a community governance attorney~~, the department shall require immediate repayment of the unpaid principal amount of the waiver plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

(4) In all other cases, ~~conditional tuition~~ waivers will bear interest at seven percent per year.

~~E. The contract shall further provide that immediately upon completion or termination of the student's law school education, all interest then accrued due shall be capitalized.~~

~~F.E. The maximum period of repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study. Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.~~

~~G.F. In the event it becomes necessary, the department may suspend waiver payments using the following forbearance and deferment provisions.~~

(1) If the participant is willing, but financially unable to make payments under the repayment schedule, the participant may request forbearance to allow for any of the following:

- (a) A short period during which no payments are made, interest would continue to accrue;
- (b) An extension of time for making payments, interest would continue to accrue; or
- (c) A period during which the participant makes smaller payments than were

Commented [ER1]: The statutory repayment period is ten years.

Commented [ER2]: Clarify whether the forbearance and deferment provisions only apply to those participants that have completed at least one year of employment but have failed to complete two.

originally scheduled, interest would continue to accrue on the unpaid principal.

(2) Except as provided in this section, forbearance following completion of program shall not be granted for periods extending beyond six months.

(3) The participant shall submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the participant, and other information as requested.

(4) Deferral of repayment obligation may be as follows, at the determination of the department:

- (a) the participant is serving up to a maximum of three years as an active-duty member of the armed forces of the United States;
- (b) the participant is temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;
- (c) the participant is seeking but unable to find full-time employment with a qualifying employer for a single period not to exceed twelve months;
- (d) the participant is unable to secure employment with a qualifying employer for a period not to exceed 12 months while caring for a disabled spouse;
- (e) the participant is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment with a qualifying employer in an eligible health profession, in a designated shortage area, for a single period not to exceed 27 months;
- (f) the participant is working in a judicial clerkship or fellowship;
- (g) other extenuating circumstances as provided for under the American Family Leave Act; or

(h) an extended forbearance as approved by the department.

H.G. Conditional tuition waivers may be prepaid at any time, subject to the penalty provision set forth in this Section. Payment on a conditional tuition waiver not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

I.H. Authorized charges and fees:

(1) Late charges: Participant may be charged a late charge in the amount of five percent of the installment payment or five dollars, whichever is less, on any payment made later than 10 days after it is due.

(2) Attorney's fees, other charges, and costs: Participant shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any waiver amount not paid when due.

J.I. Participant shall notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note. Participant's failure to notify the department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[5.7.36.13 NMAC - N, X/XX/2024]

5.7.36.14 CONTRACTS: A contract shall be drawn between each student-successful applicant receiving a waiver and the department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the department of a specified sum as determined in 5.7.36.13 NMAC;

B. state that immediately upon completion or termination of the student's-participant's law school education, all interest then accrued shall be capitalized;

C. state the conditions of repayment or forgiveness as detailed in 5.7.36.13 NMAC;

D. state that the conditional tuition waiver shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in 5.7.36 NMAC and state that interest will be charged on the unpaid balance of the principal;

E. state the legal responsibilities of the participant and that delinquent conditional tuition waivers shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

F. state that the participant's obligations of the contract with the department shall be binding on participant's estates;

G. state that the department may cancel any contract on 30 days written notice for any reasonable and sufficient cause;

H. state that in the event the participant fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

I. state that jurisdiction and venue shall be proper in Bernalillo County or Santa Fe County, New

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Commented [ER3]: If the program is fully completed, the loan/waiver is forgiven and forbearance is not applicable. Should this state "partial" completion for those participants that have completed at least one year of employment but are unable to complete the program?

Commented [ER4]: Typically, interest accrues during forbearance and not during deferrals. However, this forbearance provision appears under deferral options. Clarify whether interest accrues under the "extended forbearance option" and whether the intent is to have interest accrue during deferral periods as well.

Commented [ER5]: Shouldn't this be "upon termination of the participant's course of study"?

Commented [ER6]: Is this the correct citation?

Mexico for purposes of any suit to enforce the contract; and
I.J. be signed by the successful applicant prior to the beginning of the applicant's final year of law school.
[5.7.36.14 NMAC - N, X/XX/2024]

5.7.36.15 FUND FOR LEGAL SERVICES

- A. The commission shall solicit proposals from qualifying employers, the university of New Mexico or non-profit organizations whose mission is to provide a range of free services to low-income New Mexicans.
 - B. The commission shall enter into contracts with qualifying employers to provide community governance attorney services to acequias, land grants-mercedes and low-income residents of colonias on issues regarding the governance of colonias.
 - C. Each selected contractor shall demonstrate sufficient matching with non-state funding to provide a full-time community governance attorney position.
 - D. The contract shall provide no more than one-half of the funding for a full-time community governance attorney position. The maximum salary for such a position shall not exceed the salary rate provided in Section 21-21Q-3(G), NMSA 1978.
- [5.7.36.15 NMAC - N, X/XX/2024]

5.7.36.16 REPORTS:

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and provide an analysis of the progress of the Community Governance Attorney Act.
[5.7.36.16 NMAC - N, X/XX/2024]

History of 5.7.36 NMAC: [RESERVED]