

NEW MEXICO HAS A CIVIL RIGHTS ACT!!!!

**THE PROCESS--
PREFILING, VENUE, AND PROCEDURAL
DETERMINATIONS**

ACLU CLE PRESENTATION

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So--- a potential client comes in to discuss his concerns about how he was treated by two employees (A and B) of a state agency and two employees of a school district (C and D). A contractor (E) for the state agency was also involved in the matter. The actions involved two high level managers (A and C), one from the state agency and one from the school district. Additionally, two lower-level staff (B and D) were involved, one from the agency and one from the school district. You suspect a NM Civil Rights Act claim might be feasible. So what questions do you need answered and what prefiling determinations do you need to make?

Below is my somewhat random list of things to think about:

WHO:

Possible Plaintiffs:

Person “injured”

Person experiencing loss of consortium as a result of injury to person injured

Parent, Personal Representative, GAL, Next Person, Conservator, or Guardian because of mental health, minority, disability or death

Partnership, Corporation or other entity

Possible Defendants:

Remember no individuals to be named defendants under NMCivil Rights Act

A

B

C

D

State Agency

School District

Other possible state actors—e.g. contractor E

WHAT:

New Mexico State Law

NM Civil Rights Act

Which provision of the NM Bill of Rights

Whistleblower Act

NM Human Rights Act

NM Tort Claims Act (waivers)

Federal Law

Section 1983

Section 1981

Title VII

WHEN:

Alleged bad act occurred before or after July 1, 2021

Continuing actions pre and post July 1, 2021

Statutes of Limitations for each of the possible claims

RELIEF:

Damages

Capped under NM Civil Rights Act and NM Tort Claims Act

No punitives under NM Civil Rights Act or NM Tort Claims Act

No pre-judgment interest under the NM Tort Claims Act

Title VII caps

Injunctive

Declaratory Judgment

Attorneys' Fees

WHERE TO FILE:

New Mexico State District Court

If only New Mexico statute claims and no diversity, then must be state district court meeting venue statutes requirements.

Check applicable venue statutes for state entities and other governmental agencies in addition to the general venue statutes

Possible Removal

Federal District Court—diversity or federal question

CONSIDERATIONS:

Damages recoverable

Jury pools

11th Amendment immunity

Qualified immunity

“Absolute” immunity

Potential judges

Summary judgment standards

Iqbal/Twombly

Distance

Standards for entity liability (Monell v. vicarious)

NM Civil Rights Act exclusions and limitations

NM Tort Claims Act waivers

PREFILING REQUIREMENTS:

EEOC/HRC

NM Tort Claims Act Notice

NM Civil Rights Act Law Enforcement Notice

PREFILING INVESTIGATION:

Inspection of Public Records requests

Interviews of those you can

BONUS ROUND:

Complaint drafting hints:

Generally be careful of language---avoid using standard language when you don't like that standard and want to argue for something else applying.

Iqbal

What claims against which Defendants.....be clear

Don't bite off more than you are required to chew

Avoid adverbs and adjectives unless required in some law

