



The Associated Students of New Mexico State University

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Office of the Attorney General

Official Opinion

TO: Danielle Duran, *ASNMSU Supreme Chief Justice*

FROM: Rahaf Ben Ali, *ASNMSU Attorney General*

DATE: August 5th, 2025

TITLE: "Errors with the resolutions concerning confirmations of the Supreme Court Justices"

Subject:

1. Since the typos in #1 and #2 were clear but unfortunately not caught until this time (August 5th, 2025), where the official actions taken by Chief Justice Duran and Associate Justice/Deputy Chief Justice Gonzalez during their terms proper and legal?
2. Do the typos in #1 and #2 invalidate the confirmations of CJ Duran and DCJ Gonzalez for the previous term?
3. What steps should be taken to correct this situation?

Further Information:

1. The Court never received the resolutions for Chief Justice Duran or Associate Justice Gonzalez.
2. Deputy Chief Justice Gonzalez used Crimson Connection to obtain the copies of the resolutions today, August 5th, in a routine review of records in preparation for the first Senate Meeting.
3. Deputy Chief Justice notified me of the issue today.

Applicable Bylaw:

ASNMSU Senate Legislation:



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Resolution_2_Diaz_.pdf



Resolution_3_Diaz_.pdf



Resolution_4_Diaz_.pdf



Sub_Resolution_18_.pdf

UNITED STATES Constitution:

(<https://shorturl.at/2754V>)

Article II, Section 2, Clause 3:

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

ASNMSU Bylaws:

1-5-1. SUPREME AND INFERIOR COURTS

The judicial power of the ASNMSU shall be vested in the Supreme Court and inferior Courts of the ASNMSU ordained and established by the Senate of the ASNMSU. The Supreme Court of the ASNMSU shall comprise of one (1) Chief Justice of the ASNMSU and four (4) Associate Justices of the ASNMSU, nominated by the President of the ASNMSU and confirmed by the Senate of the ASNMSU. The four (4) Associate Justices of the ASNMSU shall be nominated with the consent of the Chief Justice of the ASNMSU. All Justices of the ASNMSU shall be members of the ASNMSU, and no person shall be nominated or appointed a justice of the Supreme Court of the ASNMSU who has not been a member of the ASNMSU for the spring or fall semester prior to their appointment. The Chief Justice and two (2) Associate Justices of the ASNMSU shall be nominated by the outgoing President of the ASNMSU and confirmed at the spring semester's last Senate of the ASNMSU meeting. The term of the remaining two (2) Associate Justices of the ASNMSU shall be confirmed at the last Senate of the ASNMSU meeting of the fall semester. All the Supreme Court Justices of the ASNMSU shall serve a one (1) year term. When a vacancy occurs within the Supreme Court of the ASNMSU, the President of the ASNMSU, with the consent of the Senate of the ASNMSU, shall appoint a qualified member of the ASNMSU to fill the remainder of the unexpired term. A majority of the Justices of the ASNMSU shall constitute a quorum to render a decision.

4-2-2. OATH OF OFFICE FOR THE ASNMSU SUPREME COURT JUSTICES

The ASNMSU Supreme Court Justices are required to swear the oath, or affirmation, before assuming their respective office:

"I (state your name) do solemnly swear (or affirm) that I will support and interpret the bylaws of the Associated Students of New Mexico State University unbiasedly and will to the best of my ability perform the duties of Justice of the ASNMSU Supreme Court."



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4-2-3. HIRING OF THE ASNMSU SUPREME COURT JUSTICES

Upon the vacancy of the ASNMSU Supreme Court Chief Justice, the ASNMSU President shall hire an ASNMSU fee-paying member to the Office of the ASNMSU Supreme Court Chief Justice. Upon the vacancy of an ASNMSU Supreme Court Associate Justice, the ASNMSU Supreme Court Chief Justice shall hire an ASNMSU fee-paying member to the Office of the ASNMSU Supreme Court Associate Justice.

Opinion Rendered:

Background:

On **May 7, 2025**, former President Alhalholy appointed Chief Justice Duran. The last Senate meeting of the 68th session was on **May 2, 2025**. This appointment, therefore, qualifies as a **recess appointment** under the provisions of the U.S. Constitution (Article II, Section 2, Clause 3), which is incorporated into ASNMSU's operational principles. It is a valid exercise of presidential power to fill a vacancy when the Senate is not in session.

Deputy Chief Justice Gonzalez was also appointed and confirmed with a similar clerical error in the confirming resolution. The resolutions for both justices were not sent to the Court but were obtained through Crimson Connection on **August 5, 2025**. It was at this time that the clerical errors—specifically, the name "*Javen Hollins*" being mentioned in the "*therefore be it resolved*" section instead of the intended appointees' names—were discovered. The underlying intent of the resolutions was to confirm the appointments of Chief Justice Duran and Deputy Chief Justice Gonzalez.

Opinion:

1. **Where the official actions taken by Chief Justice Duran and Associate Justice/Deputy Chief Justice Gonzalez during their terms (Summer 2024 - Spring 25) proper and legal?**

Yes, the official actions taken by Chief Justice Duran and Deputy Chief Justice Gonzalez were proper and legal. The clerical errors in the resolutions do not invalidate the original **legislative intent**. The purpose of the resolutions was to confirm these specific individuals in their respective positions. The discovery of these errors after the fact does not retroactively invalidate the authority under which they have been operating. Chief Justice Duran's appointment is further supported by the doctrine of a recess appointment, which is legally binding until the end of the next Senate session.

2. **Do the typos in the resolutions invalidate the confirmations?**

No, the typos do not invalidate the confirmations. While the resolutions were flawed, the **intention of the Senate** to confirm Chief Justice Duran and Deputy Chief Justice



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Gonzalez is the binding element. The errors were clerical, not substantive. The will of the Senate, as evidenced by the passage of these resolutions, must be upheld. A clerical error does not nullify the entire legislative action. It's a fundamental principle of statutory interpretation that the intention of the law-making body supersedes minor technical flaws.

3. What steps should be taken to correct this situation?

The following steps should be taken to officially correct this situation:

- A new resolution for the 69th Senate should be introduced in the Senate to **ratify and affirm** the appointments of Chief Justice Duran and Deputy Chief Justice Gonzalez, clarifying that the original resolutions were intended to confirm them despite the clerical errors.
- These corrected resolutions should be properly sent to the Supreme Court before they are submitted to the Committee of the Whole.

Thank you for your attention to this matter. Please tell me if you have any further questions or need more information.

Best regards,

Rahaf A. Ben Ali - *she / her / hers*

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