

2018 Family Law Institute: Hot Topics in Family Law

Friday, September 7 and Saturday, September 8, 2018



CLE Information



Overview

The Center for Legal Education (CLE) of the New Mexico State Bar Foundation is a self-sustaining, nonprofit entity dedicated to providing high quality, affordable, professional training and education programs to the legal community. Live credit options include live seminars, video webcasts, video replays and teleseminars. Self-study credit options include on-demand streaming videos from your computer and DVDs. CLE receives no subsidy from membership licensing fees.

CLE Credit Information

New Mexico

CLE will file New Mexico attorney CLE credits with the New Mexico Supreme Court MCLE Board within 30 days following programs. Credits for live programs and video replays are based on the attendee sign-in sheets at the registration desk. Credits for teleseminar and online courses—video webcasts and on-demand streaming videos—are based on phone call and website attendance reports accessed by staff. Certificates of attendance are not necessary. Credits for DVD courses must be filed by attendees.

Other States and Paralegal Division

CLE will provide certificates of attendance upon request. Attendees are responsible for forwarding certificates to the organizations to which they belong.

Center for Legal Education
New Mexico State Bar Foundation
P.O. Box 92860
Albuquerque, NM 87199-2860
505-797-6020 or 1-800-876-6227
cleonline@nmbar.org
www.nmbar.org



Purpose and Use of Materials

These materials reflect the opinions of the authors and/or the reference sources cited and are not necessarily the opinions of the Center for Legal Education (CLE) of the New Mexico State Bar Foundation (NMSBF), the State Bar of New Mexico (SBNM), or any Division, Committee or Section thereof. They were prepared to furnish the participants with a general discussion of certain specific types of legal issues and problems commonly incurred in connection with representing clients in matters related to the subject of these materials. The issues selected for comment, and the comment concerning the issues selected, are not intended to be all-inclusive in scope, nor a definitive expression of the substantive law of the subject matters.

The issues discussed herein are intended as illustrative of the types of issues which can arise in the course of representation and are not intended to address, nor do they address the broad range of substantive issues which could potentially arise in the scope of such representation.

The authors/speakers suggest that careful independent consideration, to include a review of more exhaustive reference sources, be undertaken in representation of a client regarding this subject, and therefore the practitioner should not solely rely upon these materials presented herein.

No representation or warranty is made concerning the application of the legal or other principles discussed by CLE instructors or authors to any specific fact situation, nor is any prediction made concerning how any particular judge, or other official, will interpret or apply such principles. The proper interpretation or application of these materials is a matter for the considered judgment of the individual practitioner, and therefore CLE, NMSBF and SBNM disclaim all liability.

Disclaimer

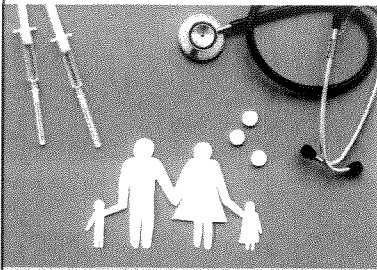
Publications of the Center for Legal Education of the NMSBF and the SBNM are designed to provide accurate and current information with regard to the subject matter covered as of the time each publication is printed and distributed. They are intended to help attorneys and other professionals maintain their professional competence. Publications are sold with the understanding that CLE, NMSBF and SBNM are not engaged in rendering legal, accounting, or other professional advice. If legal advice or other expert assistance is required, the service of a competent professional should be sought. Attorneys using CLE, NMSBF and SBNM publications in dealing with specific legal matters should also research the original source of authority cited in these publications.

© Copyright 2018 by
Center for Legal Education of the New Mexico State Bar Foundation

The Center for Legal Education of the NMSBF owns the copyright to these materials. Permission is hereby granted for the copying of individual pages or portions of pages of this by photocopy or other similar processes, or by manual transcription, by or under the direction of licensed attorneys for use in the practice of law. Otherwise, all rights reserved, and no other use is permitted which will infringe the copyright without the express written consent of the Center for Legal Education of the NMSBF.

Photo Release

The majority of CLE programs are videotaped for later showings and are webcast over the Internet. In addition, a State Bar photographer may take photos of participants. These photos are for NMSBF and SBNM use only and may appear in publications and on the website. Your attendance constitutes consent for videotaping, photographing and its subsequent usage.



2018 Family Law Institute: Hot Topics in Family Law



Friday, Sep. 7, 2018 • 8:30a.m.-4:15 p.m.
State Bar Center, Albuquerque

5.0 C **1.5 EP** (Friday Only)

11.0 C **1.5 EP** (Both Days)

One-day Registration Fees (Friday only)

\$99 Non-member not seeking CLE credit

\$241 Early bird fee (Registration must be received by August 8)

\$265 Co-sponsoring section members, government and legal services attorneys, and Paralegal Division members

\$295 Standard/Webcast Fee

Two-day Registration Fees (Friday and Saturday)

\$99 Non-member not seeking CLE credit

\$399 Early bird fee (Registration must be received by August 8)

\$438 Co-sponsoring section members, government and legal services attorneys, and Paralegal Division members

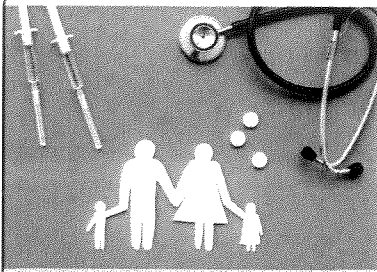
\$487 Standard/Webcast Fee

Registration and payment for the program must be received prior to the program date. A \$20 late fee will be incurred when registering the day of the program. This fee does not apply to live webcast attendance.

Co-sponsor: **Family Law Section, Solo and Small Firm Section**

Friday, September 7

- 8 a.m. Registration and Continental Breakfast
- 8:30 a.m. **Current Issues in Drug Use in Custody Cases**
Dr. Theresa Miller, Director Second Judicial District Court Clinic; Maxine Chavez, ABQ Drug Testing; Moderated by Lucy Sinkular, Atkinson & Kelsey PA
- 10 a.m. Break
- 10:15 a.m. **View from the Bench – Issues with Substances**
Judge Sylvia LaMar, First Judicial District Court; Judge Debra Ramirez, Second Judicial District Court; Judge Mary Rosner, Third Judicial District Court; Judge Allen Smith, 13th Judicial District Court; Moderated by Dorene Kuffer, Law Office of Dorene A Kuffer PC
- 12:15 p.m. Lunch (provided at the State Bar Center)
- 1 p.m. **Treatment and Testing – a Panel Discussion**
Bob Galligan, M.Ed LLPC, LADAC; Maxine Chavez
- 2:30 p.m. Break
- 2:45 p.m. **Employee Assistance Program/Lawyer Assistance Program and Self Care (1.5 EP)**
Briggs Cheney, Sheehan & Sheehan PA; Pamela Moore, New Mexico Judges and Lawyers Assistance Program
- 4:15 p.m. Adjournment and Reception
Sponsored by Atkinson & Kelsey, P.A.



2018 Family Law Institute: Hot Topics in Family Law



Saturday, September 8, 2018 • 8:30 a.m. – 3:45 p.m.
State Bar Center, Albuquerque

6.0 G (Saturday Only)

1.0 C 1.5 EP (Both Days)

One-day Registration Fees (Saturday only)

\$99 Non-member not seeking CLE credit

\$228 Early bird fee (Registration must be received by August 8)

\$251 Co-sponsoring section members, government and legal services attorneys, and Paralegal Division members

\$279 Standard/Webcast Fee

Two-day Registration Fees (Friday and Saturday)

\$99 Non-member not seeking CLE credit

\$399 Early bird fee (Registration must be received by August 8)

\$438 Co-sponsoring section members, government and legal services attorneys, and Paralegal Division members

\$487 Standard/Webcast Fee

Registration and payment for the program must be received prior to the program date. A \$20 late fee will be incurred when registering the day of the program. This fee does not apply to live webcast attendance.

Co-sponsor: **Family Law Section, Solo and Small Firm Section**

Saturday, September 8

- | | |
|------------|---|
| 8 a.m. | Registration and Continental Breakfast |
| 8:30 a.m. | Parental Alienation: What it is, What it is Not, and How to Avoid Contributing to the Problem
<i>Professor Jennifer Harman, Colorado State University; Dr. Beth Roth, Colorado State University</i> |
| 10 a.m. | Break |
| 10:15 a.m. | Alienation and Alienating Behaviors (Cont.) |
| Noon | Lunch (provided at the State Bar Center) |
| 12:45 p.m. | Resources around the State for Resolving Custody Issues
<i>Martha Kaser, Pregenzer Baysinger Wideman & Sale PC; Meredith Johnstone, Armstrong Roth Whitley Johnstone LLC</i> |
| 2:15 p.m. | Break |
| 2:30 p.m. | New Laws and Rules: Alimony, Taxes and GAL's
<i>Judge Jane Levy, Second Judicial District Court; Edward Street, REDW LLC The Rogoff Firm</i> |
| 3:45 p.m. | Adjournment |

Presenter Biographies

Presenter Biographies

Dr. Theresa Miller, Ph.D., is the court clinic director, which is staffed by licensed mental health professionals that conduct court ordered services ranging from mediation to advisory consultation. The services assist parents and the Court in determining custody and timesharing in the best interests of children.

Maxine Chavez started ABQ Drug Testing, Inc. 10 years ago to fill a niche of providing local drug testing and background checks with outstanding customer service.

Intrigued with the idea that standard drug testing was not showing the entire picture of a person's drug use, she investigated the various methods of drug testing and the methods that people were using to avoid drug use detection. She continues to add new drug tests as they become available to provide new tools to best serve her clients and the Courts. These tests provide a wide variety of drug detection, an increasing time range of usage, and a decreased opportunity for substitution or adulteration of client specimens.

Maxine Chavez is a native of Albuquerque who loves to hike and bike. Chavez is the proud mom of 23 year old daughter Devin and 18 year old son Curtis.

Lucy Sinkular is an associate attorney at Atkinson & Kelsey, PA. Lucy has a BA from the University of Nebraska and a JD from the University of Kansas. She was admitted to practice in N.M. in 1994, and worked for Atkinson & Kelsey, PA for two years during the 1990s. Thereafter, she moved with her military spouse to assignments around the world, while maintaining a solo practice in the areas of civil litigation and family law. Her career has focused on family law, as well as divorce and custody issues arising from military benefits, pensions and relocations. Avid bikers and hikers, the Sinkular family includes their daughter at Colorado State University and their son at New Mexico State University, as well as two Labs Paddy and Marzen, and Queenie the cat. Sinkular serves on the Board of Directors of the New Mexico Women's Bar Association and on the Board of Directors of the Family Law Section of the NM State Bar.

Judge Sylvia LaMar is a Family Law Judge in the First Judicial District serving Santa Fe, Rio Arriba and Los Alamos Counties. She has (as is true for all of the N.M. Judges) seen a drastic increase in the number of cases where substance use disorders have rendered one or both parents incapable of caring for the children.

Judge Deborah Ramirez joined the Court in 2014 as the Domestic Violence Judge. Prior to that, she served the Second Judicial District Court as the Domestic Violence Special Commissioner from 2001-2003 returning in 2009, serving until her appointment to the bench in 2014. She serves as the chair of the New Mexico Supreme Court's Domestic Relations Rules Committee and is a member of the New Mexico Intimate Partner Homicide Review Team

Judge Mary Rosner worked for the law firm of Toulouse, Moore and Walters from 1970-1978 while finishing her undergraduate and law school degrees from UNM. After law school, she worked as counsel

for a Federal labor union on the union side, and as an associate attorney for Farrow, Schieldhouse, Wilson and Rains, a First Amendment law firm, both in Washington D.C. She returned home to Albuquerque in 1986, where she opened a private practice. She became a Board Recognized Specialist in Family Law in 1991. She moved her practice to Las Cruces in 1992. For many years as a solo practitioner and then in 2003, with her husband Frank N. Chavez as Rosner and Chavez for five years. Health forced an early retirement in July, 2009, but with a new hip, she went back into practice as Rosner Family law Center in 2010 and stayed there until she was recruited by the Democratic Party to run for District Court Judge for the Third Judicial District Court. Rosner has been on the bench since Jan. 2, 2013, focusing primarily on family law, and civil law. She says of her legal career, "from my days as a secretary to my term as a judge, I have loved all aspects of the legal profession."

Judge Allen Smith is a District Court Judge for the Thirteenth Judicial District Court.

Dorene Kuffer is the senior and principle attorney with over 30 years practicing all aspects of criminal and family law in N.M. and I.L..

Kuffer earned an LL.M. (an advanced law degree) in Child and Family Law from Loyola University, Chicago School of Law. In I.L., Kuffer handled cases ranging from traffic, misdemeanor, felony and death penalty cases, to divorce, custody, adoption, business litigation and contract disputes. She was also an adjunct professor at Loyola University teaching family law to graduate level students.

In 2007, Kuffer moved to N.M., where she is licensed to practice before the 10th District Court, the United States Supreme Court and the United States Tax Court as well as all magistrate, metropolitan and district courts in New Mexico.

Robert Galligan Jr., MED, is a counselor in Albuquerque, N.M.

Briggs F. Cheney practices with Sheehan & Sheehan PA. His practice focuses on the representation of lawyers. He is recognized in *Best Lawyers in America and Southwest Super Lawyers*. He has been active in local, state and national bar associations: the State Bar of New Mexico's Board of Bar Commissioners, president, New Mexico Bar Foundation and Albuquerque Bar Association, the House of Delegates of the American Bar Association and the ABA's Standing Committee on Lawyer Professional Liability and the Supreme Court's Client Protection Commission, Code of Professional Conduct Committee and the Proactive Attorney Regulation Committee. Recognitions: the Albuquerque Bar Association's Outstanding Lawyer of the Year, the State Bar of New Mexico Distinguished Bar Service Award and CLE Sandia Award, the UNM Law School *Distinguished Achievement Award*, the **University of New Mexico Alumni Association Zia Award** and the **ABA's Solo and Small Firm Division Making a Difference Through Service to the Profession Award**.

Pamela Moore MA, LPCC, currently serves as the clinician and Program Director of the State Bar of New Mexico Judges and Lawyers Assistance Program (NMJLAP) where she operates a 24-hour helpline for judges, lawyers and law students, provides assessments, referral and monitoring services, conducts training and wellness programs for legal professionals and organizations, and facilitates formal interventions with individuals in need. Moore's professional career includes a BS in Industrial

Engineering and eight years of engineering and project management work with Intel, a Masters Certificate in Human Resources Management, and work as an HR Manager for a local tech company. She has over five years of experience in substance abuse and mental health treatment and management. She is most proud of her role as a mother to two wonderful teenagers. Moore enjoys hiking, traveling, and reading, and is passionate about coaching, guiding and supporting those that seek to get curious about their story and invite change.

Professor Harman received her Ph.D. in Social Psychology from the University of Connecticut in 2005, and specializes in the study of intimate relationships. She also has two master's degrees from Teacher's College, Columbia University in psychological counseling, and served as a family and substance abuse counselor for several years prior to her entry into academia. She is currently an associate professor of psychology at Colorado State University and also has a consulting firm, Harman, Hogan & Shelley, LLC. Harman is an accomplished and awarded teacher, and has published many peer-reviewed articles and text books on intimate relationships, such as *The Science of Relationships: Answers to your Questions about Dating, Marriage and Family*. She is also frequently interviewed as a relationship expert by national and international news outlets (Chicago Tribune, the Denver Post, NY Magazine, datingadvice.com, and the Irish Independent) and writes for media outlets such as *The Conversation*, and is republished on thousands of other news sites (e.g. Associated Press, Raw Story).

Dr. Beth Roth is a clinical psychologist in Albuquerque, N.M.

Martha Kaser has more than 30 years of legal experience and represents clients in the areas of family law, divorce, mediation, settlement facilitation, adoption, co-parenting coordination and Guardian ad Litem appointments. In addition, she also served as a therapist and mediator at the Samaritan Center for Changing Families at the Samaritan Counseling Center.

Kaser holds both a Juris Doctor and Master's Degree in Social Work and is a Licensed Independent Social Worker (LISW). She has a Martindale-Hubbell® AV Preeminent™ Rating.

Kaser is the immediate past president of the Family Law Section of the New Mexico State Bar. In her free time, Kaser enjoys reading, cooking, gardening and jazz.

Meredith Johnstone is Partner at Armstrong, Roth, Whitley, Johnstone, LLC.

Meredith A. Johnstone is a native New Mexican and a graduate of the University of New Mexico School of Law. Johnstone also earned her Master's in Business in Administration from the University Of New Mexico Robert O. Anderson School Of Management. Since her admission to the State Bar of New Mexico in 2010, Johnstone has practiced exclusively in the area of family law.

Johnstone has a proud and long history of involvement in the family law community in New Mexico as her father practiced family law here for almost forty years. Johnstone grew up working in her father's law firm, and so she understands, and has carried with her into her own practice, the compassion, knowledge, care and advocacy that is required when representing a client in a family law matter. Johnstone believes it is very important to make an early determination in how best to proceed in each

family law matter, as no case is the same. Whether it be litigation, mediation, or collaboration, Johnstone's priority is to get her client through their legal issue in the most efficient way possible. The relationships and reputation that Johnstone has developed due to her long-standing dedication and commitment to the family law community are invaluable when assisting her clients in resolution of their legal issues.

Judge Jane Levy was appointed by Gov. Susana Martinez in 2016 to Division XXV of the Second Judicial District Court. Judge Levy has practiced law for more than ten years, with a focus on advocating for New Mexico families. In addition to her legal experience, Judge Levy has spent time volunteering for organizations that help domestic abuse victims and the homeless. Judge Levy holds a Juris Doctorate from Lewis and Clark Law School in Portland, Oregon and a Bachelor's Degree from Beloit College in Beloit, Wisconsin.

Edward Street has approximately 35 years of experience in public accounting, including business valuations, litigation support, audit, and taxation. His valuation work has included valuations and related services for gift and estate purposes, purchase and sales analysis and negotiations, employee stock ownership plans, marital dissolution cases, dissenting and oppressed stockholder actions, eminent domain, and various other matters. He has also performed and supervised numerous forensic, litigation, and consulting projects which have involved valuation matters, fraud investigations, analysis of claims for commercial and personal damages, professional malpractice, insurance disputes, trademark and patent infringement, reasonable compensation, marital dissolution, and matters involving partner and shareholder disputes. He has served as an expert witness in cases before the U.S. District Court, U.S. Bankruptcy Court, and State District Courts in New Mexico, including service as a court-appointed (Rule 11-706) neutral expert in numerous cases. He has appeared on behalf of clients in arbitration and mediation settings and he has served as a mediation facilitator in commercial disputes and marital dissolution cases.

Current Issues in Drug Use in Custody Cases: Cannabis- Related Disorders

Friday, September 7

Cannabis-Related Disorders

Cannabis Use Disorder
Cannabis Intoxication
Cannabis Withdrawal
Other Cannabis-Induced Disorders
Unspecified Cannabis-Related Disorder

Cannabis Use Disorder

Diagnostic Criteria

- A. A problematic pattern of cannabis use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:
1. Cannabis is often taken in larger amounts or over a longer period than was intended.
 2. There is a persistent desire or unsuccessful efforts to cut down or control cannabis use.
 3. A great deal of time is spent in activities necessary to obtain cannabis, use cannabis, or recover from its effects.
 4. Craving, or a strong desire or urge to use cannabis.
 5. Recurrent cannabis use resulting in a failure to fulfill major role obligations at work, school, or home.
 6. Continued cannabis use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of cannabis.
 7. Important social, occupational, or recreational activities are given up or reduced because of cannabis use.
 8. Recurrent cannabis use in situations in which it is physically hazardous.
 9. Cannabis use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by cannabis.
 10. Tolerance, as defined by either of the following:
 - a. A need for markedly increased amounts of cannabis to achieve intoxication or desired effect.
 - b. Markedly diminished effect with continued use of the same amount of cannabis.
 11. Withdrawal, as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for cannabis (refer to Criteria A and B of the criteria set for cannabis withdrawal, pp. 517–518).

- b. Cannabis (or a closely related substance) is taken to relieve or avoid withdrawal symptoms.

Specify if:

In early remission: After full criteria for cannabis use disorder were previously met, none of the criteria for cannabis use disorder have been met for at least 3 months but for less than 12 months (with the exception that Criterion A4, "Craving, or a strong desire or urge to use cannabis," may be met).

In sustained remission: After full criteria for cannabis use disorder were previously met, none of the criteria for cannabis use disorder have been met at any time during a period of 12 months or longer (with the exception that Criterion A4, "Craving, or a strong desire or urge to use cannabis," may be present).

Specify if:

In a controlled environment: This additional specifier is used if the individual is in an environment where access to cannabis is restricted.

Code based on current severity: Note for ICD-10-CM codes: If a cannabis intoxication, cannabis withdrawal, or another cannabis-induced mental disorder is also present, do not use the codes below for cannabis use disorder. Instead, the comorbid cannabis use disorder is indicated in the 4th character of the cannabis-induced disorder code (see the coding note for cannabis intoxication, cannabis withdrawal, or a specific cannabis-induced mental disorder). For example, if there is comorbid cannabis-induced anxiety disorder and cannabis use disorder, only the cannabis-induced anxiety disorder code is given, with the 4th character indicating whether the comorbid cannabis use disorder is mild, moderate, or severe: F12.180 for mild cannabis use disorder with cannabis-induced anxiety disorder or F12.280 for a moderate or severe cannabis use disorder with cannabis-induced anxiety disorder.

Specify current severity:

305.20 (F12.10) Mild: Presence of 2–3 symptoms.

304.30 (F12.20) Moderate: Presence of 4–5 symptoms.

304.30 (F12.20) Severe: Presence of 6 or more symptoms.

Specifiers

"In a controlled environment" applies as a further specifier of remission if the individual is both in remission and in a controlled environment (i.e., in early remission in a controlled environment or in sustained remission in a controlled environment). Examples of these environments are closely supervised and substance-free jails, therapeutic communities, and locked hospital units.

Changing severity across time in an individual may also be reflected by changes in the frequency (e.g., days of use per month or times used per day) and/or dose (e.g., amount used per episode) of cannabis, as assessed by individual self-report, report of knowledgeable others, clinician's observations, and biological testing.

Diagnostic Features

Cannabis use disorder and the other cannabis-related disorders include problems that are associated with substances derived from the cannabis plant and chemically similar synthetic compounds. Over time, this plant material has accumulated many names (e.g., weed, pot, herb, grass, reefer, mary jane, dagga, dope, bhang, skunk, boom, gangster, kif, and ganja). A concentrated extraction of the cannabis plant that is also commonly used is hashish. *Cannabis* is the generic and perhaps the most appropriate scientific term for the psychoactive substance(s) derived from the plant, and as such it is used in this manual to refer to all forms of cannabis-like substances, including synthetic cannabinoid compounds.

Synthetic oral formulations (pill/capsules) of delta-9-tetrahydrocannabinol (delta-9-THC) are available by prescription for a number of approved medical indications (e.g., for nausea and vomiting caused by chemotherapy; for anorexia and weight loss in individuals with AIDS). Other synthetic cannabinoid compounds have been manufactured and distributed for nonmedical use in the form of plant material that has been sprayed with a cannabinoid formulation (e.g., K2, Spice, JWH-018, JWH-073).

The cannabinoids have diverse effects in the brain, prominent among which are actions on CB1 and CB2 cannabinoid receptors that are found throughout the central nervous system. Endogenous ligands for these receptors behave essentially like neurotransmitters. The potency of cannabis (delta-9-THC concentration) that is generally available varies greatly, ranging from 1% to approximately 15% in typical cannabis plant material and 10%–20% in hashish. During the past two decades, a steady increase in the potency of seized cannabis has been observed.

Cannabis is most commonly smoked via a variety of methods: pipes, water pipes (bongs or hookahs), cigarettes (joints or reefers), or, most recently, in the paper from hollowed out cigars (blunts). Cannabis is also sometimes ingested orally, typically by mixing it into food. More recently, devices have been developed in which cannabis is "vaporized." Vaporization involves heating the plant material to release psychoactive cannabinoids for inhalation. As with other psychoactive substances, smoking (and vaporization) typically produces more rapid onset and more intense experiences of the desired effects.

Individuals who regularly use cannabis can develop all the general diagnostic features of a substance use disorder. Cannabis use disorder is commonly observed as the only substance use disorder experienced by the individual; however, it also frequently occurs concurrently with other types of substance use disorders (i.e., alcohol, cocaine, opioid). In cases for which multiple types of substances are used, many times the individual may minimize the symptoms related to cannabis, as the symptoms may be less severe or cause less harm than those directly related to the use of the other substances. Pharmacological and behavioral tolerance to most of the effects of cannabis has been reported in individuals who use cannabis persistently. Generally, tolerance is lost when cannabis use is discontinued for a significant period of time (i.e., for at least several months).

New to DSM-5 is the recognition that abrupt cessation of daily or near-daily cannabis use often results in the onset of a cannabis withdrawal syndrome. Common symptoms of withdrawal include irritability, anger or aggression, anxiety, depressed mood, restlessness, sleep difficulty, and decreased appetite or weight loss. Although typically not as severe as alcohol or opiate withdrawal, the cannabis withdrawal syndrome can cause significant distress and contribute to difficulty quitting or relapse among those trying to abstain.

Individuals with cannabis use disorder may use cannabis throughout the day over a period of months or years, and thus may spend many hours a day under the influence. Others may use less frequently, but their use causes recurrent problems related to family, school, work, or other important activities (e.g., repeated absences at work; neglect of family obligations). Periodic cannabis use and intoxication can negatively affect behavioral and cognitive functioning and thus interfere with optimal performance at work or school, or place the individual at increased physical risk when performing activities that could be physically hazardous (e.g., driving a car; playing certain sports; performing manual work activities, including operating machinery). Arguments with spouses or parents over the use of cannabis in the home, or its use in the presence of children, can adversely impact family functioning and are common features of those with cannabis use disorder. Last, individuals with cannabis use disorder may continue using despite knowledge of physical problems (e.g., chronic cough related to smoking) or psychological problems (e.g., excessive sedation or exacerbation of other mental health problems) associated with its use.

Whether or not cannabis is being used for legitimate medical reasons may also affect diagnosis. When a substance is taken as indicated for a medical condition, symptoms of

tolerance and withdrawal will naturally occur and should not be used as the primary criteria for determining a diagnosis of a substance use disorder. Although medical uses of cannabis remain controversial and equivocal, use for medical circumstances should be considered when a diagnosis is being made.

Associated Features Supporting Diagnosis

Individuals who regularly use cannabis often report that it is being used to cope with mood, sleep, pain, or other physiological or psychological problems, and those diagnosed with cannabis use disorder frequently do have concurrent other mental disorders. Careful assessment typically reveals reports of cannabis use contributing to exacerbation of these same symptoms, as well as other reasons for frequent use (e.g., to experience euphoria, to forget about problems, in response to anger, as an enjoyable social activity). Related to this issue, some individuals who use cannabis multiple times per day for the aforementioned reasons do not perceive themselves as (and thus do not report) spending an excessive amount of time under the influence or recovering from the effects of cannabis, despite being intoxicated on cannabis or coming down from its effects for the majority of most days. An important marker of a substance use disorder diagnosis, particularly in milder cases, is continued use despite a clear risk of negative consequences to other valued activities or relationships (e.g., school, work, sport activity, partner or parent relationship).

Because some cannabis users are motivated to minimize their amount or frequency of use, it is important to be aware of common signs and symptoms of cannabis use and intoxication so as to better assess the extent of use. As with other substances, experienced users of cannabis develop behavioral and pharmacological tolerance such that it can be difficult to detect when they are under the influence. Signs of acute and chronic use include red eyes (conjunctival injection), cannabis odor on clothing, yellowing of finger tips (from smoking joints), chronic cough, burning of incense (to hide the odor), and exaggerated craving and impulse for specific foods, sometimes at unusual times of the day or night.

Prevalence

Cannabinoids, especially cannabis, are the most widely used illicit psychoactive substances in the United States. The 12-month prevalence of cannabis use disorder (DSM-IV abuse and dependence rates combined) is approximately 3.4% among 12- to 17-year-olds and 1.5% among adults age 18 years and older. Rates of cannabis use disorder are greater among adult males (2.2%) than among adult females (0.8%) and among 12- to 17-year-old males (3.8%) than among 12- to 17-year-old females (3.0%). Twelve-month prevalence rates of cannabis use disorder among adults decrease with age, with rates highest among 18- to 29-year-olds (4.4%) and lowest among individuals age 65 years and older (0.01%). The high prevalence of cannabis use disorder likely reflects the much more widespread use of cannabis relative to other illicit drugs rather than greater addictive potential.

Ethnic and racial differences in prevalence are moderate. Twelve-month prevalences of cannabis use disorder vary markedly across racial-ethnic subgroups in the United States. For 12- to 17-year-olds, rates are highest among Native American and Alaska Natives (7.1%) compared with Hispanics (4.1%), whites (3.4%), African Americans (2.7%), and Asian Americans and Pacific Islanders (0.9%). Among adults, the prevalence of cannabis use disorder is also highest among Native Americans and Alaska Natives (3.4%) relative to rates among African Americans (1.8%), whites (1.4%), Hispanics (1.2%), and Asian and Pacific Islanders (1.2%). During the past decade the prevalence of cannabis use disorder has increased among adults and adolescents. Gender differences in cannabis use disorder generally are concordant with those in other substance use disorders. Cannabis use disorder is more commonly observed in males, although the magnitude of this difference is less among adolescents.

Development and Course

The onset of cannabis use disorder can occur at any time during or following adolescence, but onset is most commonly during adolescence or young adulthood. Although much less frequent, onset of cannabis use disorder in the preteen years or in the late 20s or older can occur. Recent acceptance by some of the use and availability of "medical marijuana" may increase the rate of onset of cannabis use disorder among older adults.

Generally, cannabis use disorder develops over an extended period of time, although the progression appears to be more rapid in adolescents, particularly those with pervasive conduct problems. Most people who develop a cannabis use disorder typically establish a pattern of cannabis use that gradually increases in both frequency and amount. Cannabis, along with tobacco and alcohol, is traditionally the first substance that adolescents try. Many perceive cannabis use as less harmful than alcohol or tobacco use, and this perception likely contributes to increased use. Moreover, cannabis intoxication does not typically result in as severe behavioral and cognitive dysfunction as does significant alcohol intoxication, which may increase the probability of more frequent use in more diverse situations than with alcohol. These factors likely contribute to the potential rapid transition from cannabis use to a cannabis use disorder among some adolescents and the common pattern of using throughout the day that is commonly observed among those with more severe cannabis use disorder.

Cannabis use disorder among preteens, adolescents, and young adults is typically expressed as excessive use with peers that is a component of a pattern of other delinquent behaviors usually associated with conduct problems. Milder cases primarily reflect continued use despite clear problems related to disapproval of use by other peers, school administration, or family, which also places the youth at risk for physical or behavioral consequences. In more severe cases, there is a progression to using alone or using throughout the day such that use interferes with daily functioning and takes the place of previously established, prosocial activities.

With adolescent users, changes in mood stability, energy level, and eating patterns are commonly observed. These signs and symptoms are likely due to the direct effects of cannabis use (intoxication) and the subsequent effects following acute intoxication (coming down), as well as attempts to conceal use from others. School-related problems are commonly associated with cannabis use disorder in adolescents, particularly a dramatic drop in grades, truancy, and reduced interest in general school activities and outcomes.

Cannabis use disorder among adults typically involves well-established patterns of daily cannabis use that continue despite clear psychosocial or medical problems. Many adults have experienced repeated desire to stop or have failed at repeated cessation attempts. Milder adult cases may resemble the more common adolescent cases in that cannabis use is not as frequent or heavy but continues despite potential significant consequences of sustained use. The rate of use among middle-age and older adults appears to be increasing, likely because of a cohort effect resulting from high prevalence of use in the late 1960s and the 1970s.

Early onset of cannabis use (e.g., prior to age 15 years) is a robust predictor of the development of cannabis use disorder and other types of substance use disorders and mental disorders during young adulthood. Such early onset is likely related to concurrent other externalizing problems, most notably conduct disorder symptoms. However, early onset is also a predictor of internalizing problems and as such probably reflects a general risk factor for the development of mental health disorders.

Risk and Prognostic Factors

Temperamental. A history of conduct disorder in childhood or adolescence and antisocial personality disorder are risk factors for the development of many substance-related disorders, including cannabis-related disorders. Other risk factors include externalizing

or internalizing disorders during childhood or adolescence. Youths with high behavioral disinhibition scores show early-onset substance use disorders, including cannabis use disorder, multiple substance involvement, and early conduct problems.

Environmental. Risk factors include academic failure, tobacco smoking, unstable or abusive family situation, use of cannabis among immediate family members, a family history of a substance use disorder, and low socioeconomic status. As with all substances of abuse, the ease of availability of the substance is a risk factor; cannabis is relatively easy to obtain in most cultures, which increases the risk of developing a cannabis use disorder.

Genetic and physiological. Genetic influences contribute to the development of cannabis use disorders. Heritable factors contribute between 30% and 80% of the total variance in risk of cannabis use disorders. It should be noted that common genetic and shared environmental influences between cannabis and other types of substance use disorders suggest a common genetic basis for adolescent substance use and conduct problems.

Culture-Related Diagnostic Issues

Cannabis is probably the world's most commonly used illicit substance. Occurrence of cannabis use disorder across countries is unknown, but the prevalence rates are likely similar among developed countries. It is frequently among the first drugs of experimentation (often in the teens) of all cultural groups in the United States.

Acceptance of cannabis for medical purposes varies widely across and within cultures. Cultural factors (acceptability and legal status) that might impact diagnosis relate to differential consequences across cultures for detection of use (i.e., arrest, school suspensions, or employment suspension). The general change in substance use disorder diagnostic criteria from DSM-IV to DSM-5 (i.e., removal of the recurrent substance-related legal problems criterion) mitigates this concern to some degree.

Diagnostic Markers

Biological tests for cannabinoid metabolites are useful for determining if an individual has recently used cannabis. Such testing is helpful in making a diagnosis, particularly in milder cases if an individual denies using while others (family, work, school) purport concern about a substance use problem. Because cannabinoids are fat soluble, they persist in bodily fluids for extended periods of time and are excreted slowly. Expertise in urine testing methods is needed to reliably interpret results.

Functional Consequences of Cannabis Use Disorder

Functional consequences of cannabis use disorder are part of the diagnostic criteria. Many areas of psychosocial, cognitive, and health functioning may be compromised in relation to cannabis use disorder. Cognitive function, particularly higher executive function, appears to be compromised in cannabis users, and this relationship appears to be dose dependent (both acutely and chronically). This may contribute to increased difficulty at school or work. Cannabis use has been related to a reduction in prosocial goal-directed activity, which some have labeled an *amotivational syndrome*, that manifests itself in poor school performance and employment problems. These problems may be related to pervasive intoxication or recovery from the effects of intoxication. Similarly, cannabis-associated problems with social relationships are commonly reported in those with cannabis use disorder. Accidents due to engagement in potentially dangerous behaviors while under the influence (e.g., driving, sport, recreational or employment activities) are also of concern. Cannabis smoke contains high levels of carcinogenic compounds that place chronic users at risk for respiratory illnesses similar to those experienced by tobacco smokers. Chronic cannabis use may contribute to the onset or exacerbation of many other mental disorders. In particular, concern has been raised about cannabis use as a causal factor in schizophrenia and other psychotic disorders. Cannabis use can contribute to the onset of an acute psy-

chotic episode, can exacerbate some symptoms, and can adversely affect treatment of a major psychotic illness.

Differential Diagnosis

Nonproblematic use of cannabis. The distinction between nonproblematic use of cannabis and cannabis use disorder can be difficult to make because social, behavioral, or psychological problems may be difficult to attribute to the substance, especially in the context of use of other substances. Also, denial of heavy cannabis use and the attribution that cannabis is related to or causing substantial problems are common among individuals who are referred to treatment by others (i.e., school, family, employer, criminal justice system).

Other mental disorders. Cannabis-induced disorder may be characterized by symptoms (e.g., anxiety) that resemble primary mental disorders (e.g., generalized anxiety disorder vs. cannabis-induced anxiety disorder, with onset during intoxication). Chronic intake of cannabis can produce a lack of motivation that resembles persistent depressive disorder (dysthymia). Acute adverse reactions to cannabis should be differentiated from the symptoms of panic disorder, major depressive disorder, delusional disorder, bipolar disorder, or schizophrenia, paranoid type. Physical examination will usually show an increased pulse and conjunctival injection. Urine toxicological testing can be helpful in making a diagnosis.

Comorbidity

Cannabis has been commonly thought of as a "gateway" drug because individuals who frequently use cannabis have a much greater lifetime probability than nonusers of using what are commonly considered more dangerous substances, like opioids or cocaine. Cannabis use and cannabis use disorder are highly comorbid with other substance use disorders. Co-occurring mental conditions are common in cannabis use disorder. Cannabis use has been associated with poorer life satisfaction; increased mental health treatment and hospitalization; and higher rates of depression, anxiety disorders, suicide attempts, and conduct disorder. Individuals with past-year or lifetime cannabis use disorder have high rates of alcohol use disorder (greater than 50%) and tobacco use disorder (53%). Rates of other substance use disorders are also likely to be high among individuals with cannabis use disorder. Among those seeking treatment for a cannabis use disorder, 74% report problematic use of a secondary or tertiary substance: alcohol (40%), cocaine (12%), methamphetamine (6%), and heroin or other opiates (2%). Among those younger than 18 years, 61% reported problematic use of a secondary substance: alcohol (48%), cocaine (4%), methamphetamine (2%), and heroin or other opiates (2%). Cannabis use disorder is also often observed as a secondary problem among those with a primary diagnosis of other substance use disorders, with approximately 25%–80% of those in treatment for another substance use disorder reporting use of cannabis.

Individuals with past-year or lifetime diagnoses of cannabis use disorder also have high rates of concurrent mental disorders other than substance use disorders. Major depressive disorder (11%), any anxiety disorder (24%), and bipolar I disorder (13%) are quite common among individuals with a past-year diagnosis of a cannabis use disorder, as are antisocial (30%), obsessive-compulsive, (19%), and paranoid (18%) personality disorders. Approximately 33% of adolescents with cannabis use disorder have internalizing disorders (e.g., anxiety, depression, posttraumatic stress disorder), and 60% have externalizing disorders (e.g., conduct disorder, attention-deficit/hyperactivity disorder).

Although cannabis use can impact multiple aspects of normal human functioning, including the cardiovascular, immune, neuromuscular, ocular, reproductive, and respiratory systems, as well as appetite and cognition/perception, there are few clear medical conditions that commonly co-occur with cannabis use disorder. The most significant health

effects of cannabis involve the respiratory system, and chronic cannabis smokers exhibit high rates of respiratory symptoms of bronchitis, sputum production, shortness of breath, and wheezing.

Cannabis Intoxication

Diagnostic Criteria

- A. Recent use of cannabis.
- B. Clinically significant problematic behavioral or psychological changes (e.g., impaired motor coordination, euphoria, anxiety, sensation of slowed time, impaired judgment, social withdrawal) that developed during, or shortly after, cannabis use.
- C. Two (or more) of the following signs or symptoms developing within 2 hours of cannabis use:
 - 1. Conjunctival injection.
 - 2. Increased appetite.
 - 3. Dry mouth.
 - 4. Tachycardia.
- D. The signs or symptoms are not attributable to another medical condition and are not better explained by another mental disorder, including intoxication with another substance.

Specify if:

With perceptual disturbances: Hallucinations with intact reality testing or auditory, visual, or tactile illusions occur in the absence of a delirium.

Coding note: The ICD-9-CM code is 292.89. The ICD-10-CM code depends on whether or not there is a comorbid cannabis use disorder and whether or not there are perceptual disturbances.

For cannabis intoxication, without perceptual disturbances: If a mild cannabis use disorder is comorbid, the ICD-10-CM code is **F12.129**, and if a moderate or severe cannabis use disorder is comorbid, the ICD-10-CM code is **F12.229**. If there is no comorbid cannabis use disorder, then the ICD-10-CM code is **F12.929**.

For cannabis intoxication, with perceptual disturbances: If a mild cannabis use disorder is comorbid, the ICD-10-CM code is **F12.122**, and if a moderate or severe cannabis use disorder is comorbid, the ICD-10-CM code is **F12.222**. If there is no comorbid cannabis use disorder, then the ICD-10-CM code is **F12.922**.

Specifiers

When hallucinations occur in the absence of intact reality testing, a diagnosis of substance/medication-induced psychotic disorder should be considered.

Diagnostic Features

The essential feature of cannabis intoxication is the presence of clinically significant problematic behavioral or psychological changes that develop during, or shortly after, cannabis use (Criterion B). Intoxication typically begins with a "high" feeling followed by symptoms that include euphoria with inappropriate laughter and grandiosity, sedation, lethargy, impairment in short-term memory, difficulty carrying out complex mental processes, impaired judgment, distorted sensory perceptions, impaired motor performance, and the sensation that time is passing slowly. Occasionally, anxiety (which can be severe),

dysphoria, or social withdrawal occurs. These psychoactive effects are accompanied by two or more of the following signs, developing within 2 hours of cannabis use: conjunctival injection, increased appetite, dry mouth, and tachycardia (Criterion C).

Intoxication develops within minutes if the cannabis is smoked but may take a few hours to develop if the cannabis is ingested orally. The effects usually last 3–4 hours, with the duration being somewhat longer when the substance is ingested orally. The magnitude of the behavioral and physiological changes depends on the dose, the method of administration, and the characteristics of the individual using the substance, such as rate of absorption, tolerance, and sensitivity to the effects of the substance. Because most cannabinoids, including delta-9-tetrahydrocannabinol (delta-9-THC), are fat soluble, the effects of cannabis or hashish may occasionally persist or reoccur for 12–24 hours because of the slow release of psychoactive substances from fatty tissue or to enterohepatic circulation.

Prevalence

The prevalence of actual episodes of cannabis intoxication in the general population is unknown. However, it is probable that most cannabis users would at some time meet criteria for cannabis intoxication. Given this, the prevalence of cannabis users and the prevalence of individuals experiencing cannabis intoxication are likely similar.

Functional Consequences of Cannabis Intoxication

Impairment from cannabis intoxication may have serious consequences, including dysfunction at work or school, social indiscretions, failure to fulfill role obligations, traffic accidents, and having unprotected sex. In rare cases, cannabis intoxication may precipitate a psychosis that may vary in duration.

Differential Diagnosis

Note that if the clinical presentation includes hallucinations in the absence of intact reality testing, a diagnosis of substance/medication-induced psychotic disorder should be considered.

Other substance intoxication. Cannabis intoxication may resemble intoxication with other types of substances. However, in contrast to cannabis intoxication, alcohol intoxication and sedative, hypnotic, or anxiolytic intoxication frequently decrease appetite, increase aggressive behavior, and produce nystagmus or ataxia. Hallucinogens in low doses may cause a clinical picture that resembles cannabis intoxication. Phencyclidine, like cannabis, can be smoked and also causes perceptual changes, but phencyclidine intoxication is much more likely to cause ataxia and aggressive behavior.

Other cannabis-induced disorders. Cannabis intoxication is distinguished from the other cannabis-induced disorders (e.g., cannabis-induced anxiety disorder, with onset during intoxication) because the symptoms in these latter disorders predominate the clinical presentation and are severe enough to warrant independent clinical attention.

Cannabis Withdrawal

Diagnostic Criteria

292.0 (F12.288)

- A. Cessation of cannabis use that has been heavy and prolonged (i.e., usually daily or almost daily use over a period of at least a few months).
- B. Three (or more) of the following signs and symptoms develop within approximately 1 week after Criterion A:

1. Irritability, anger, or aggression.
 2. Nervousness or anxiety.
 3. Sleep difficulty (e.g., insomnia, disturbing dreams).
 4. Decreased appetite or weight loss.
 5. Restlessness.
 6. Depressed mood.
 7. At least one of the following physical symptoms causing significant discomfort: abdominal pain, shakiness/tremors, sweating, fever, chills, or headache.
- C. The signs or symptoms in Criterion B cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- D. The signs or symptoms are not attributable to another medical condition and are not better explained by another mental disorder, including intoxication or withdrawal from another substance.

Coding note: The ICD-9-CM code is 292.0. The ICD-10-CM code for cannabis withdrawal is F12.288. Note that the ICD-10-CM code indicates the comorbid presence of a moderate or severe cannabis use disorder, reflecting the fact that cannabis withdrawal can only occur in the presence of a moderate or severe cannabis use disorder. It is not permissible to code a comorbid mild cannabis use disorder with cannabis withdrawal.

Diagnostic Features

The essential feature of cannabis withdrawal is the presence of a characteristic withdrawal syndrome that develops after the cessation of or substantial reduction in heavy and prolonged cannabis use. In addition to the symptoms in Criterion B, the following may also be observed postabstinence: fatigue, yawning, difficulty concentrating, and rebound periods of increased appetite and hypersomnia that follow initial periods of loss of appetite and insomnia. For the diagnosis, withdrawal symptoms must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning (Criterion C). Many cannabis users report smoking cannabis or taking other substances to help relieve withdrawal symptoms, and many report that withdrawal symptoms make quitting difficult or have contributed to relapse. The symptoms typically are not of sufficient severity to require medical attention, but medication or behavioral strategies may help alleviate symptoms and improve prognosis in those trying to quit using cannabis.

Cannabis withdrawal is commonly observed in individuals seeking treatment for cannabis use as well as in heavy cannabis users who are not seeking treatment. Among individuals who have used cannabis regularly during some period of their lifetime, up to one-third report having experienced cannabis withdrawal. Among adults and adolescents enrolled in treatment or heavy cannabis users, 50%–95% report cannabis withdrawal. These findings indicate that cannabis withdrawal occurs among a substantial subset of regular cannabis users who try to quit.

Development and Course

The amount, duration, and frequency of cannabis smoking that is required to produce an associated withdrawal disorder during a quit attempt are unknown. Most symptoms have their onset within the first 24–72 hours of cessation, peak within the first week, and last approximately 1–2 weeks. Sleep difficulties may last more than 30 days. Cannabis withdrawal has been documented among adolescents and adults. Withdrawal tends to be more common and severe among adults, most likely related to the more persistent and greater frequency and quantity of use among adults.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Current Issues in Drug Use in Custody Cases: Albuquerque Drug Testing Infographics

Friday, September 7

Omega Laboratories Hair Drug Panels & Cutoff Levels

Hair 5-Panel (H5P)

Screening Cutoff

Confirmation Cutoff

Amphetamines <i>Amphetamine</i> <i>Methamphetamine</i> <i>Ecstasy (MDMA)</i> <i>MDA</i>	500 pg/mg hair	500 pg/mg hair 500 pg/mg hair 500 pg/mg hair 50 pg/mg hair
Cocaine <i>Cocaine</i> <i>Benzoylcegonine</i> <i>Cocaethylene</i> <i>Norcocaine</i>	500 pg/mg hair	500 pg/mg hair 50 pg/mg hair 50 pg/mg hair 50 pg/mg hair
Opiates <i>Codeine</i> <i>Morphine</i> <i>6-MAM (Heroin metabolite)</i>	200 pg/mg hair	200 pg/mg hair 200 pg/mg hair 200 pg/mg hair
Phencyclidine <i>PCP</i>	300 pg/mg hair	300 pg/mg hair
Marijuana <i>Carboxy-THC</i>	1 pg/mg hair	0.1 pg/mg hair

Hair 5- Panel plus Extended Opiates

Screening Cutoff

Confirmation Cutoff

(H5PEO) (In Addition to 5-Panel)

Extended Opiates <i>Oxycodone (OxyContin, Percodan/Percocet)</i> <i>Oxymorphone (Opana, Numorphan, Numophone)</i> <i>Hydrocodone (Vicodin, Lortab/Lorcet)</i> <i>Hydromorphone (Dilaudid)</i>	200 pg/mg hair	200 pg/mg hair 200 pg/mg hair 200 pg/mg hair 200 pg/mg hair
--	----------------	--

pg/mg = picogram per milligram of hair

Omega Laboratories Hair Drug Panels & Cutoff Levels

Hair 17-Panel (H17P)

Screening Cutoff

Confirmation Cutoff

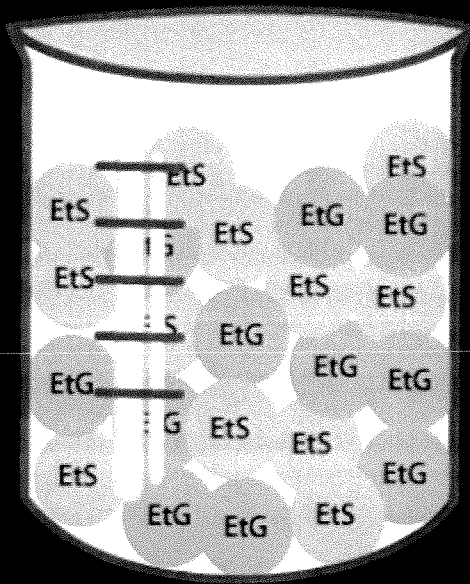
Amphetamine		300 pg/mg hair	300 pg/mg hair
Methamphetamines		500 pg/mg hair	
<i>Methamphetamine</i>	<i>Ecstasy (MDMA)</i>		500 pg/mg hair
<i>MDA</i>	<i>MDEA</i>		50 pg/mg hair
Cocaine		500 pg/mg hair	
<i>Cocaine</i>			500 pg/mg hair
<i>Benzoylcegonine</i>			50 pg/mg hair
<i>Norcocaine</i>			50 pg/mg hair
<i>Cocaethylene</i>			50 pg/mg hair
Opiates		200 pg/mg hair	
<i>Codeine</i>			200 pg/mg hair
<i>Morphine</i>			200 pg/mg hair
<i>6-MAM (Heroin metabolite)</i>			200 pg/mg hair
Phencyclidine (PCP)		300 pg/mg hair	300 pg/mg hair
Marijuana		50 pg/mg hair	
<i>Carboxy-THC</i>			0.1 pg/mg hair
Extended Opiates		200 pg/mg hair	
<i>Hydrocodone</i>	<i>Hydromorphone</i>		200 pg/mg hair
<i>Oxycodone</i>	<i>Oxymorphone</i>		200 pg/mg hair
Benzodiazepines		100 pg/mg hair	
<i>Alprazolam</i>	<i>Clonazepam</i>		100 pg/mg hair
<i>Diazepam</i>	<i>Oxazepam</i>		100 pg/mg hair
<i>Temazepam</i>	<i>Nordiazepam</i>		100 pg/mg hair
<i>Bromazepam</i>	<i>Lorazepam</i>		100 pg/mg hair
Barbiturates		200 pg/mg hair	
<i>Butalbital</i>	<i>Amobarbital</i>		1000 pg/mg hair
<i>Pentobarbital</i>	<i>Phenobarbital</i>		1000 pg/mg hair
<i>Secobarbital</i>			1000 pg/mg hair
Methadone		200 pg/mg hair	
<i>Methadone</i>			200 pg/mg hair
<i>EDDP</i>			50 pg/mg hair
Propoxyphene		40 pg/mg hair	
<i>Propoxyphene</i>			200 pg/mg hair
Meperidine		40 pg/mg hair	
<i>Meperidine</i>			200 pg/mg hair
<i>Normeperidine</i>			50 pg/mg hair
Tramadol		40 pg/mg hair	200 pg/mg hair
Fentanyl		40 pg/mg hair	
<i>Fentanyl</i>			100 pg/mg hair
<i>Norfentanyl</i>			50 pg/mg hair
Ketamine		500 pg/mg hair	
<i>Ketamine</i>			500 pg/mg hair
<i>Norketamine</i>			50 pg/mg hair
Buprenorphine		40 pg/mg hair	
<i>Buprenorphine</i>			200 pg/mg hair
<i>Norbuprenorphine</i>			50 pg/mg hair
Zolpidem		40 pg/mg hair	200 pg/mg hair

pg/mg = picogram per milligram of hair

Direct Alcohol Biomarker Testing

Urine EtG/EtS

EtG (Ethyl Glucuronide) and EtS (Ethyl Sulfate) are metabolites formed by the body following exposure to ethanol, also called ethyl alcohol, making them direct alcohol biomarkers.



Testing for the combination of EtG and EtS in urine eliminates concern for things such as:

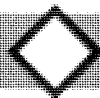
- False positive results due to fermentation following collection
- Presence of bacteria that may compromise results
- Potential problems caused by elevated enzymes.

If both biomarkers are present then ethanol has, in some way, been metabolized by the body.

Sensitivity



Window of Detection



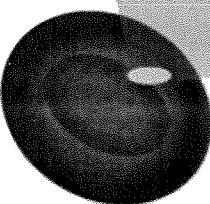
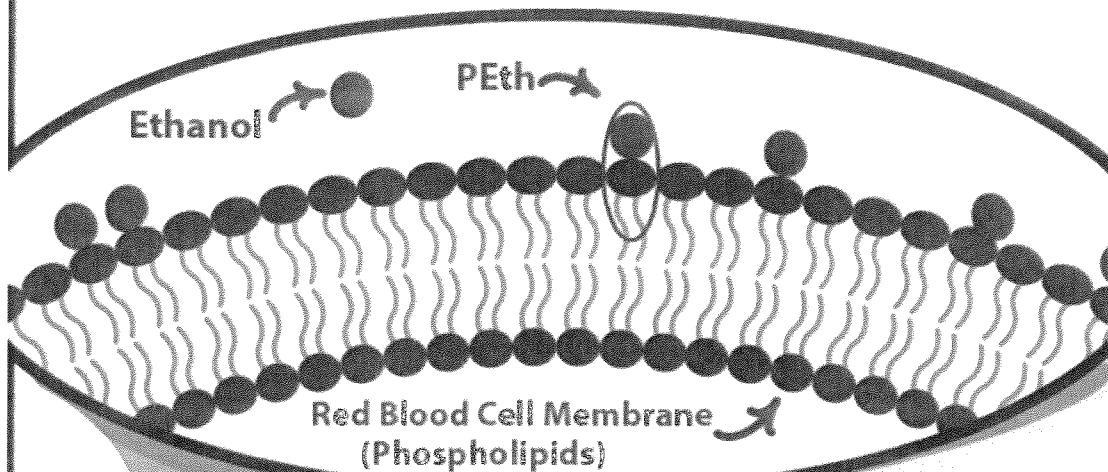
Pros: Extremely sensitive, large number of substances detected, moderate advanced notice needed for collection.

Cons: Very short window of detection

Direct Alcohol Biomarker Testing

Phosphatidylethanol (PEth)

During a series of processes, Phosphatidylethanol (PEth) accumulates in human red blood cells when the body is exposed to ethanol. Since it is formed only when the body is exposed to ethanol it is called a direct alcohol biomarker. The accumulation in red blood cells make it easy to test by collecting blood specimens.



Red Blood Cell

Unlike other markers...

PEth concentrations don't seem to be influenced by¹:

- Age
- Gender
- Certain Diseases
- Other Substances

Half-life
3-5 Days¹

Detectability
28 Days¹

According to a combination of research, analysis demonstrates good efficiency of PEth for detecting chronic heavy drinking¹

Sensitivity



Window of Detection



Benefits:

Highly sensitive, collection can be done anywhere*, no notice needed for collection*, mid-term window of detection

¹ Guido Viel, (et al.) (2012) *International Journal of Molecular Sciences*, 13,14788-14812, doi: 10.3390/ijms131114788

* When collected via USDTL BloodSpot® collection

Reservoir Matrices

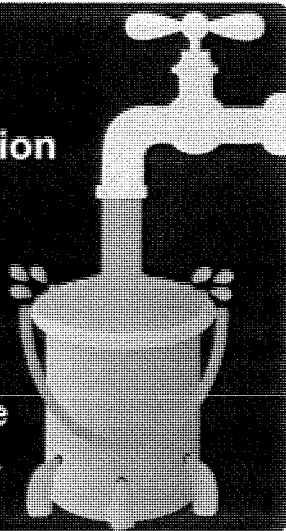
Specimen types known as reservoir matrices:

● **Fingernail** ● **Hair** ● **Urine** ● **Meconium** ● **Umbilical Cord**

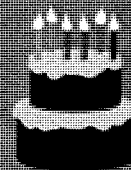
We define reservoir matrix as a material or substance which can accumulate and retain drug and alcohol biomarkers.

When a person uses drugs or alcohol, there is an ongoing process of biomarker absorption and loss.

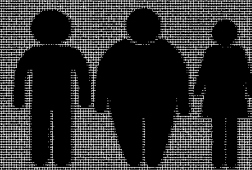
Build-up and break-down of drug and alcohol biomarkers happens at the same time, making it impossible to accurately determine the amount of substance ingested.



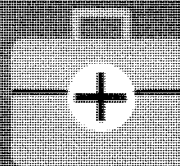
Factors that can affect how much of a substance may get trapped in a reservoir matrix:



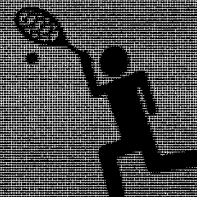
Age



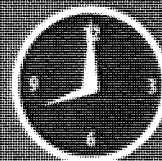
Body Mass



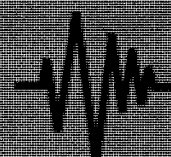
Overall Health



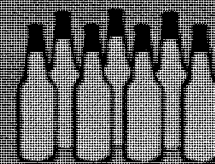
Personal Metabolism



Time



Frequency



Amount

Windows of Detection

Fingernail

Up to 6 Months for Drugs
Up to 3 Months for Alcohol

Hair

Up to 3 Months

Urine

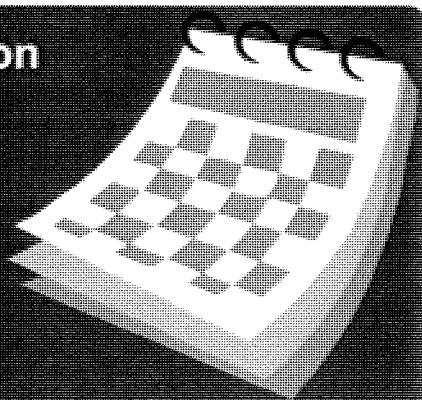
2-3 Days

Meconium

Up to 20 Weeks

Umbilical Cord

About 20 Weeks¹



Attempting to determine the amount, manner, or timing of the substance ingested from the test results is speculation at best. Care should be taken to avoid these interpretations.

1. Montgomery D, Plate C, Alder SC, Jones M, Jones J, Christensen RD. (2006) Testing for fetal exposure to illicit drugs using umbilical cord tissue vs meconium. J Perinatol. 26(1):11-4



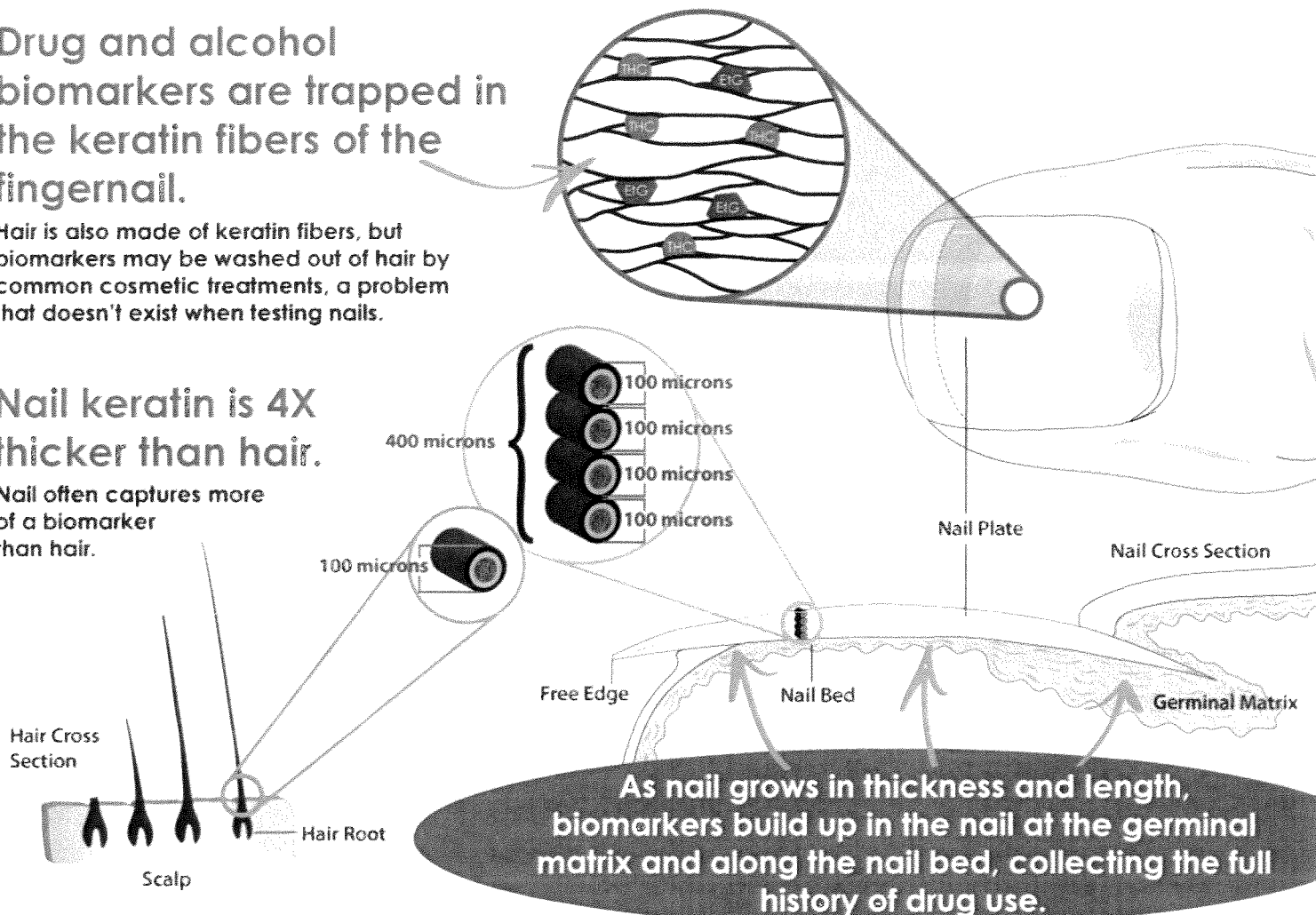
The Benefits of Fingernail Testing

Drug and alcohol biomarkers are trapped in the keratin fibers of the fingernail.

Hair is also made of keratin fibers, but biomarkers may be washed out of hair by common cosmetic treatments, a problem that doesn't exist when testing nails.

Nail keratin is 4X thicker than hair.

Nail often captures more of a biomarker than hair.



Non-intrusive, donor collected sample.

Nail and hair samples capture the same drugs.

1:1

Minimal impact on the donor's appearance.



+

We confirm all presumptive positives on state-of-the-art instruments.



Nails provide 3-6 months of drug and alcohol use history.

Biomarkers are detectable in nail one week after drug or alcohol use.

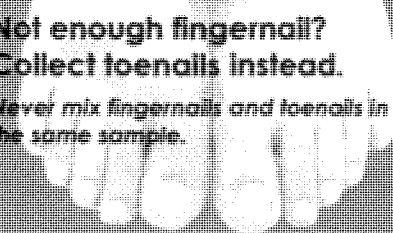
A 2-3mm clipping from each fingernail provides the perfect sample.

About the width of a quarter.



Not enough fingernail? Collect toenails instead.

Never mix fingernails and toenails in the same sample.



United States Drug Testing Laboratories, Inc.

Scan to visit our website www.USDTL.com



How Drugs Are Incorporated In Hair

Hair is a reservoir matrix, which provides a long-term window of detection for drug and alcohol (ab)use.

Hair can trap drug and alcohol biomarkers through multiple routes:



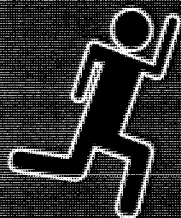
Blood

Biomarkers traveling through blood vessels enter the root of the hair and become trapped in the core as the hair grows.



Sebum

Sebaceous glands in the hair follicles deposit an oily substance, known as sebum, that lubricates the growing hair shaft. Drug and alcohol biomarkers in the sebum can be deposited and absorbed by hair.



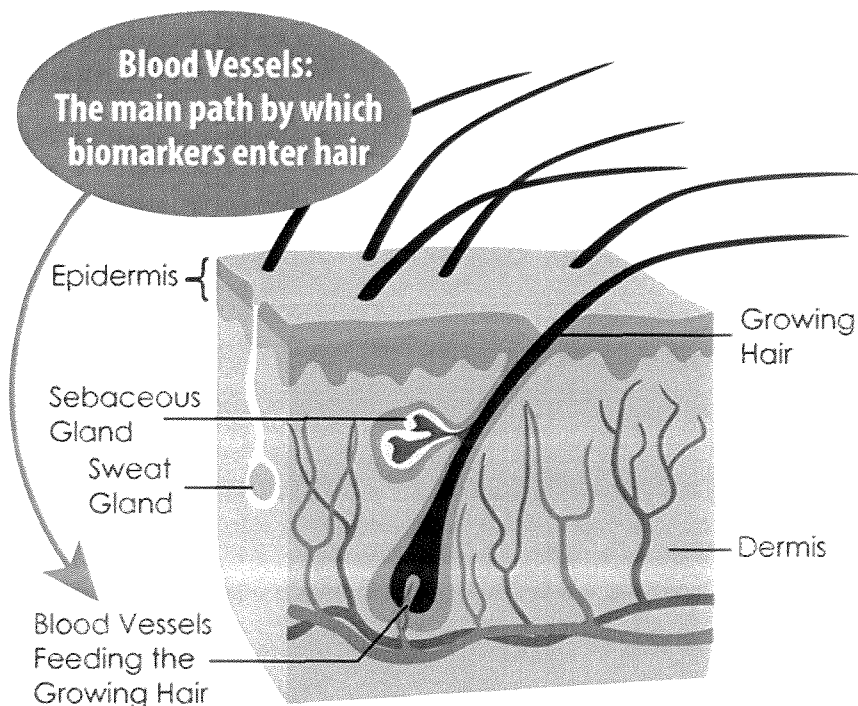
Sweat

Hair becomes saturated with sweat as we perspire. Biomarkers can be secreted through the sweat glands and are absorbed by the hair shaft.



Environmental Exposure

When drugs such as marijuana, methamphetamine, or crack cocaine are smoked, drug residue in the air can be deposited on, and incorporated into, the hair shaft.



10-14
Days

It takes 10-14 days for drug and alcohol biomarkers to be deposited in the hair root and then emerge past the scalp line.

3
Months

Optimal samples will provide a 3 month window of detection for drug and alcohol (ab)use.



The average rate of growth for hair is a half inch per month.

An optimal sample is a 1.5 inch hair sample of about 200 strands, cut close to the scalp (the width of a #2 pencil).

Kintz, P., Villain, M., and V. Cirimele. (2006). Hair analysis of drug detection. The Drug Monitor, 28(3), 442-446.

Choosing The Right Drug Test:

Direct Alcohol Biomarkers and Other Substances of Abuse

Window of Detection / History of Use

When Choosing a Test That's Right For You, Consider These 5 Factors:

1. Substance being tested
2. Desired window of detection
3. Specimen type
4. Level of adulteration potential
5. Notice required before collection

Alcohol

Fingernail
Detection: Up to 3 Months
Biomarker: EtG
Adulteration Level: Difficult
Collection: May Need Notice

Hair
Detection: Up to 3 Months
Biomarker: EtG
Adulteration Level: Moderate
Collection: May Need Notice

Dried Blood Spot
Detection: 2-3 Weeks
Biomarker: PEth
Adulteration Level: Difficult
Collection: No Notice Required

Urine
Detection: 2-3 Days
Biomarker: EtG & EtS
Adulteration Level: Easy
Collection: Requires Notice

Other Substances of Abuse

Fingernail
Detection: Up to 6 Months
Adulteration Level: Difficult
Collection: May Need Notice

Hair: Exposure
Detection: Up to 3 Months
Adulteration Level: Moderate
Collection: May Need Notice

Hair
Detection: Up to 3 Months
Adulteration Level: Moderate
Collection: May Need Notice

Urine
Detection: 2-3 Days
Adulteration Level: Easy
Collection: Requires Notice

Whole Blood
Detection: 1-3 Days
Adulteration Level: Difficult
Collection: No Notice Required

Oral Fluid
Detection: 1-3 Days
Adulteration Level: Difficult
Collection: No Notice Required



United States Drug Testing Laboratories, Inc.

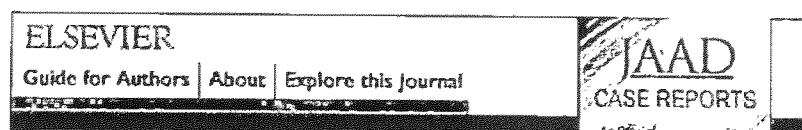
Scan to visit our website www.USDTL.com



This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Views from the Bench – Issues with Substances



JAAD Case Rep. 2016 Mar; 2(2): 174–176.

PMCID: PMC4864092

Published online 2016 Apr 22. doi: [10.1016/j.jdcrr.2016.02.007](https://doi.org/10.1016/j.jdcrr.2016.02.007)

PMID: [27222881](https://pubmed.ncbi.nlm.nih.gov/27222881/)

A new drug with a nasty bite: A case of krokodil-induced skin necrosis in an intravenous drug user

Alessandra Haskin, BS,^a Noori Kim, MD,^b and Crystal Aguh, MD^{b,*}

^aHoward University College of Medicine, Washington, DC.

^bDepartment of Dermatology, Johns Hopkins School of Medicine, Baltimore, Maryland

Crystal Aguh: cagi1@jhmi.edu

*Correspondence to: Crystal Aguh, MD, Johns Hopkins Bayview Medical Center, Mason F. Lord Bldg Center Tower Suite 2500, 5200 Eastern Ave, Baltimore, MD 21224. Johns Hopkins Bayview Medical Center Mason F. Lord Bldg Center Tower Suite 2500 5200 Eastern Ave Baltimore MD 21224 cagi1@jhmi.edu

Key words: desomorphine, intravenous drug abuse, krokodil, substance abuse, ulceration, wound healing

Copyright © 2016 by the American Academy of Dermatology, Inc. Published by Elsevier, Inc.

This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

This article has been cited by other articles in PMC.

Introduction

Go to:

Krokodil is a commonly used street name for desomorphine, an injectable opioid derivative that is associated with severe dermatologic effects. We report a case of a woman who had extensive ulcerations after a single use of this narcotic. To our knowledge, this is the first case report of the cutaneous manifestations of krokodil use in the dermatologic literature.

Case report

Go to:

A 23-year-old woman with a history of intravenous drug abuse presented to the emergency department complaining of increased pain and swelling in her hands and forearms secondary to nonhealing ulcers. These ulcers were present for approximately 12 months and appeared shortly after the patient used a new injection street drug called *krokodil* for the first time. She injected this substance into both forearms and immediately noticed a burning sensation during infusion. Within 24 hours, significant pain and swelling developed in both arms in addition to purulent drainage from puncture sites. The patient noted gradual progression of the ulcers over several months, which eventually became malodorous with areas of necrosis. Although she has not injected *krokodil* since, she does admit to occasionally injecting heroin into other body parts, which has not resulted in a similar reaction.



Krokodil Drug Facts

Medically reviewed on Aug 21, 2018 by L. Anderson, PharmD.

Common or street names: Crocodile, Russian Magic, Poor Man's Heroin, Zombie drug

What is krokodil (desomorphine)?

Desomorphine, known by the street name krokodil, is an opioid derivative of **codeine**. Like heroin and other **opioids**, it has a sedative and analgesic effect and is highly addictive. Those who inject these caustic agents into their veins can develop extreme skin ulcerations, infections, and **gangrene** -- a discolored (green, grey, black) scale-like skin that resembles a crocodile, hence the street name "krokodil". Krokodil is also called "Russian Magic", referring to its short duration of opioid intoxication (euphoria).

Krokodil is reported to contain desomorphine, a synthetic morphine analogue synthesized in the 1930s. Due to illicit, home-based manufacturing it may contain other unknown ingredients. It is typically abused via the intravenous route. Desomorphine is a Schedule I substance in the U.S., meaning it has high abuse potential with no accepted medical use.

Homemade versions of the drug start with codeine, and can be 'cooked' similar to illicit methamphetamine ("meth") production. Organic solvents such as gasoline, paint thinner, or lighter fluid, iodine, hydrochloric acid, and red phosphorus (from matches) are used in homemade synthesis. These dangerous chemicals are not always fully "cooked" out of the concoction when used to make illicit krokodil. Krokodil also refers to **chlorocodide**, a codeine derivative in the synthetic path to desomorphine.

What are the side effects of krokodil?

According to reports, the drug is fast-acting within 2 to 3 minutes and 10 to 15 times more potent than morphine, and three times as toxic. In fact, when the toxic chemicals are removed, quite often what is left is desomorphine, a compound very similar to heroin. After a rapid onset, the euphoric effects may last less than two hours. Due to the short duration of the "high", many users find themselves in a rapid repetition of drug use to avoid withdrawal symptoms that resemble heroin. Due to the drug's rapid onset but short duration of action and frequent administration, quick **physical dependence** may occur.

There have been multiple unconfirmed news reports of users in the U.S. who have had extreme skin ulcerations, infections and scale-like skin due to use of krokodil. Indeed, the most common complications reported thus far from krokodil injection appears to be the serious vein damage, soft tissue infections, necrosis and gangrene. According to reports, the localized soft tissue effects occur relatively quickly after the use of krokodil. There have been news reports of

PSYCHIATRY
online

PSYCHIATRIC NEWS

SECTIONS DEPARTMENTS

FROM THE EXPERTS

Krokodil: 'Zombie Drug' Scare Hits U.S.

VISHESH AGARWAL, M.D., , PETROS LEVOUNIS, M.D., M.A.

Published Online: 7 Mar 2014 | <https://doi.org/10.1176/appi.pn.2014.3a23>



Krokodil, the so called “flesh-eating zombie drug,” is the newest addictive drug to reportedly hit the United States. Scary photographs showing deep wounds on people’s extremities abound on the Internet. Television news programs have given us a number of interviews with emergency room physicians who have alerted the public on the dangers of this latest drug menace. How much of this is true, and how much is simply hype?

Krokodil (Russian: крокодил, crocodile) takes its name either from the green scale-like appearance of the skin of its users or from its derivation from alpha-chlorocodide, an intermediate compound during its production from codeine. It was initially reported in Russia in 2003, and its current prevalence is estimated to be around 5 percent to 7 percent among people who inject drugs in Russia and Ukraine. Since Russia banned over-the-counter sale of codeine-containing tablets starting on June 1, 2012, Krokodil use has reportedly been declining.

Krokodil is a mixture of several substances with the primary opioid component being desomorphine and is highly impure due to contamination with multiple toxic ingredients used during its production. Desomorphine (dihydrodesoxymorphine) was first developed in the United States in 1932 and is as much as 10 times more potent than morphine. It was marketed in Switzerland until 1952, under the trade name Permonid, as a postoperative analgesic. Interestingly, its production continued until 1981 for analgesic needs of a single patient with a rare disorder. Desomorphine has a rapid onset of action and shorter elimination half-life, accounting for its increased addictive potential and leading krokodil users to perform more applications as compared with heroin users. krokodil can be conveniently produced from codeine-containing tablets, iodine, and red phosphorous (phosphate source is usually obtained from striking pads of matchboxes), with paint thinner or gasoline (organic solvent) and hydrochloric acid. The inferior chemistry involved in its production results in serious injuries such as thrombophlebitis, skin and soft tissue infections, tissue necrosis, and gangrene. Krokodil-addicted patients die within an estimated two years of addiction.

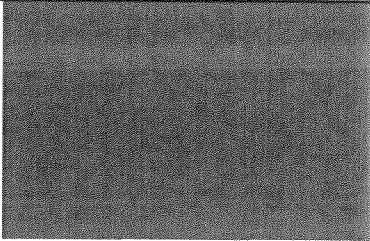
In September 2013, reports from Phoenix claimed that local hospitals treated two people for "symptoms consistent with Krokodil use," following which USA Today reported that "Flesh-rotting 'Krokodil' Drug Emerges in USA" (<http://www.usatoday.com/story/news/nation/2013/09/26/heroin-krokodil-flesh-rotting-arrives-us-arizona/2879817/>). Since then, Time magazine has published more than 10 articles on both suspected and reportedly confirmed reports of Krokodil use in the

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible]


Treatment and Testing – A Panel Discussion

Friday, September 7



Drug Testing Options

Choosing the right test



Instant UA versus Lab UA tests

<ul style="list-style-type: none">• Results in 5 minutes• 98% accurate• To prevent having a false positive result, this will be sent on to a lab for confirmation for an additional charge• Cost \$28 to \$30	<ul style="list-style-type: none">• Sent overnight to Lab• Negative results 24-72 hours• Positive-2nd testing (Confirmation) and sent on to the Medical Review Officer MRO• The MRO will contact client and verify prescriptions etc.• Costs start At \$35 on up
--	---

What drugs are tested in UA tests

- 5-panel - Marijuana/Amphetamines/Methamphetamines/Cocaine/Opiates (Codeine, Morphine, 6-MAM-Heroin Metabolite), PCP
- 10-panel - Same as above with the addition of Benzodiazepine, Barbiturates, Methadone, Propoxyphene, Methaqualone
- There are many combinations of lab and instant tests. A number of drugs can be added - Extended opiates (Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone), Fentanyl, Tramadol, Buprenorphine (Suboxone), Demerol, Zolpidem (Ambien) Spice, Mephedrone (Bath Salts), Steroids, GHB, Kratom, LSD, Ketamine, Clonidine, Alcohol, ETG/ETS

Hair Testing

- Hair testing has come to be seen as a powerful tool for the detection of drug and alcohol abuse. Hair provides a long-term history of drug and alcohol abuse by trapping biomarkers in the fibers of the growing hair strand. Drug and alcohol biomarkers can appear in scalp hair 7-10 days after the last use. A 1.5 inch sample of about 200 strands of hair (about the size of a #2 pencil) closest to the scalp will give 100mg of hair, the ideal sample for screening and confirmation. For EtG, add-ons and/or tests above 10-panel, 150mg of specimen is recommended. If scalp hair is not available, an equal amount of body hair may be collected. When referring to head hair, we are referring to scalp hair only. Body hair refers to all other types of hair (Arms, Legs, axillary, etc).
- Hair Test costs start at \$120 + tax for a 5-panel and \$150 + tax 5-panel with Extended Opiates.
- 17-panel comprehensive hair test are at \$440.00 + tax

Omega Laboratories Hair Drug Panels & Cutoff Levels

Hair 5-Panel (HSP)

	Screening Cutoff	Confirmation Cutoff
Amphetamines	500 pg/mg hair	
Amphetamine		500 pg/mg hair
Methamphetamine		500 pg/mg hair
Ecstasy (MDMA)		500 pg/mg hair
MDA		50 pg/mg hair
Cocaine	500 pg/mg hair	
Cocaine		500 pg/mg hair
Benzoylcegonine		50 pg/mg hair
Cocacethylene		50 pg/mg hair
Norcocaine		50 pg/mg hair
Opiates	200 pg/mg hair	
Codeine		200 pg/mg hair
Morphine		200 pg/mg hair
6-MAM (Heroin metabolite)		200 pg/mg hair
Phencyclidine	300 pg/mg hair	
PCP		300 pg/mg hair
Marijuana	1 pg/mg hair	
Carboxy-THC		0.1 pg/mg hair

Hair 5-Panel plus Extended Opiates (HSPEO) (In Addition to 5-Panel)

	Screening Cutoff	Confirmation Cutoff
Extended Opiates	200 pg/mg hair	
Oxycodone (OxyContin, Percodan, Percocet)		200 pg/mg hair
Oxymorphone (Opana, Numorphan, Numorphone)		200 pg/mg hair
Hydrocodone (Vicodin, Lorcet, Lorcet)		200 pg/mg hair
Hydromorphone (Dilaudid)		200 pg/mg hair

pg/mg = picogram per milligram of hair

Omega Laboratories Hair Drug Panels & Cutoff Levels

Hair 17-Panel (H17P)

	Screening Cutoff	Confirmation Cutoff
Amphetamine	300 pg/mg hair	300 pg/mg hair
Methamphetamines	500 pg/mg hair	
Methamphetamine		500 pg/mg hair
MDA		50 pg/mg hair
Cocaine	500 pg/mg hair	
Cocaine		500 pg/mg hair
Benzoylcegonine		50 pg/mg hair
Norcocaine		50 pg/mg hair
Cocacethylene		50 pg/mg hair
Opiates	200 pg/mg hair	
Codeine		200 pg/mg hair
Morphine		200 pg/mg hair
6-MAM (Heroin metabolite)		200 pg/mg hair
Phencyclidine (PCP)	300 pg/mg hair	300 pg/mg hair
Marijuana	50 pg/mg hair	0.1 pg/mg hair
Carboxy-THC		
Extended Opiates	200 pg/mg hair	
Hydrocodone		200 pg/mg hair
Oxycodone		200 pg/mg hair
Oxymorphone		200 pg/mg hair
Benzodiazepines	100 pg/mg hair	
Alprazolam		100 pg/mg hair
Clonazepam		100 pg/mg hair
Diazepam		100 pg/mg hair
Flunitrazepam		100 pg/mg hair
Lorazepam		100 pg/mg hair
Barbiturates	200 pg/mg hair	
Barbital		1000 pg/mg hair
Phenobarbital		1000 pg/mg hair
Secobarbital		1000 pg/mg hair
Methadone	200 pg/mg hair	
Methadone		200 pg/mg hair
EDDP		50 pg/mg hair
Propoxyphene	40 pg/mg hair	
Propoxyphene		200 pg/mg hair
Meperidine	40 pg/mg hair	
Meperidine		200 pg/mg hair
Nalmeprexidone		50 pg/mg hair
Tramadol	40 pg/mg hair	200 pg/mg hair
Fentanyl	40 pg/mg hair	
Fentanyl		100 pg/mg hair
Sufentanil		50 pg/mg hair
Ketamine	500 pg/mg hair	
Ketamine		500 pg/mg hair
Salutaridin		50 pg/mg hair
Buprenorphine	40 pg/mg hair	
Buprenorphine		200 pg/mg hair
Norbuprenorphine		50 pg/mg hair
Zolpidem	40 pg/mg hair	200 pg/mg hair

Alcohol testing

Breathalyzer

UA

ETG/ETS

Hair

Nail

PEth

Breathalyzer

- Short window of detection
- Generally used for reasonable suspicion
- \$25.00 + tax

Urine Screen Instant or Lab

- Window of detection 12-24 hours
- Used for pre-employment, reasonable suspicion, post-accident and random testing.
- \$30 + tax on up depending on the addition of drugs

ETG/ETS

Direct alcohol metabolites of ethanol

- Window of detection is
 - 80 hours in Urine
 - 3 months in Hair
 - 3 months in Nail
 - Urine \$50 + tax
 - Hair \$185 + tax
 - Nail \$185 + tax

Hair/Nail ETG Alcohol Testing

- Window of detection for hair is 3 months
- \$185 and up when combined with hair drug tests
- Is an indicator of multiple occurrences of excessive drinking

Nail Testing

- Same drugs are tested in nails as for hair.
- Fingernails go back 6 months for drugs and 3 months for alcohol.
- Toenails go back 10-12 months for drugs and 3 months for alcohol.

PEth (Phosphatidylethanol) Alcohol test

PEth is an abnormal phospholipid formed in cell tissues following alcohol exposure. Specimen collected with a lancet and 5 blood spots are collected on a special card.

- Used to determine risky or binge drinking behavior
- Risky /Binge Drinking is: Males 5-6 drinks in a 2 hour period
Females 4-5 drinks in a 2 hour period.
- A positive result indicates that drinking occurred up to approximately 2-4 weeks prior to collection.
- At this time there have been no credible instances of false positives.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Employee Assistance Program/Lawyer Assistance Program and Self Care Presentation

Friday, September 7

8/30/2018

A Struggling Profession and How NMJLAP Assists

Briggs Cheney, Esq
Sheehan and Sheehan, P.A.

Pamela Moore, Director
NM Judges and Lawyers Assistance Program

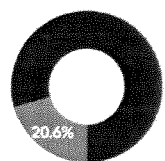
Learning Objectives

- Awareness and education of recent studies
- Understand resources that are available
- What happens when you do nothing
- What happens when you do something

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

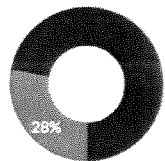
- Study by:
 - Hazelden Betty Ford Foundation
 - ABA Commission on Lawyer Assistance Programs
- 15 state bar associations and the 2 largest counties of 1 additional state
 - A sample of 12,825 licensed, employed attorneys
 - Alcohol use, drug use, and symptoms of depression, anxiety, and stress.
 - Awareness, utilization and barriers of treatment services

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"



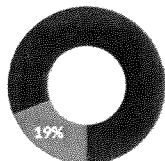
20.6% of respondents scored at a level consistent with problematic drinking.

In comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure.



28% of respondents reported experiencing mild or higher levels of depression.

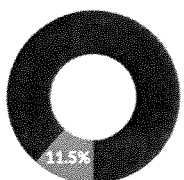
46% reported concerns with depression at some point in their career.



19% of respondents reported experiencing mild or higher levels of anxiety.

61% reported concerns with anxiety at some point in their career.

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

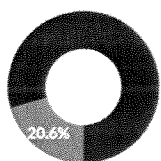


11.5% of respondents reported suicidal thoughts at some point during their career.

2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

A closer look



20.6% of respondents scored at a level consistent with problematic drinking.

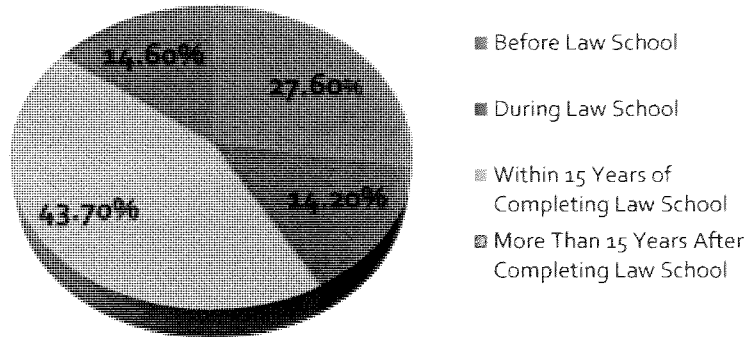
In comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure.

- Men > Women
- Younger Lawyers > Older Lawyers
- Early In Career > Later In Career
- Working In Private Firm or for the Bar Assn > Other Environments
- Junior or Senior Associate > Other Positions

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

A closer look

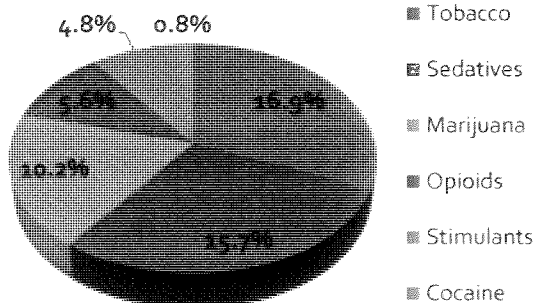
When Problematic Alcohol Use Manifested



"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

A closer look

Licit and Illicit Substance Use in the Past 12 Months



Rates of Weekly Use

Stimulant	74.1%
Sedative	51.3%
Tobacco	46.8%
Marijuana	31%
Opioids	21.6%

"The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys"

A closer look



28% of respondents reported experiencing mild or higher levels of depression.
46% reported concerns with depression at some point in their career.



19% of respondents reported experiencing mild or higher levels of anxiety.
61% reported concerns with anxiety at some point in their career.

Depression higher in men
Stress, Anxiety higher in women

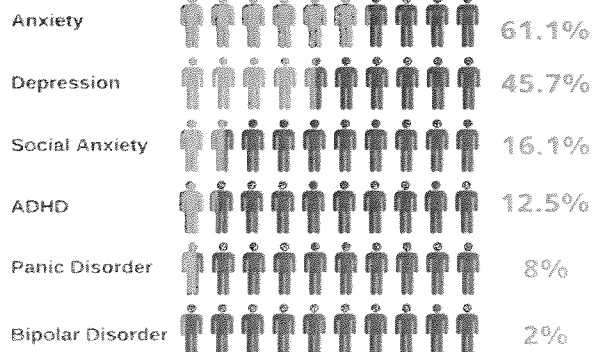
Depression, Anxiety, Stress scores decreased with increasing age or years worked in law
In private firms, also lower in those in senior positions

Depression, Anxiety, Stress
significantly higher in those scoring in
the problematic drinking range

Concerns

Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the **most common mental health concerns over the course of an entire career self-reported as:**

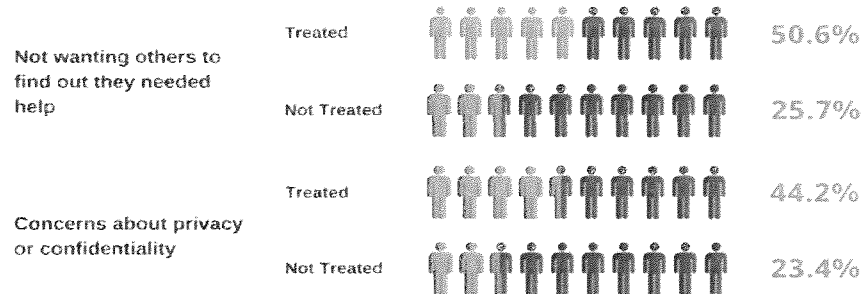


Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol 10(1), Jan/Feb 2016, pp. 46-52. Notes: The DASS-21 is a 21-item questionnaire with three seven-item subscales designed to assess symptoms of depression, anxiety and stress.

Barriers

Treatment

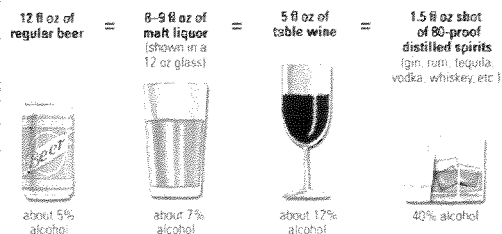
Those who got treatment were asked about barriers that impacted their ability to obtain treatment. Those with no prior treatment were asked about hypothetical barriers in event they were to need future treatment.



Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol 16(1), Jan/Feb 2016 pp. 46-52

Low Risk Alcohol Consumption

Standard Drink



Females

- 1 standard drink per day
- No more than 3 in one day
- No more than 7 in a week

Males

- 2 standard drinks per day
- No more than 4 one day
- No more than 14 in a week

Exceeding these amounts is considered **RISKY DRINKING**:
Increased risk of cancer, serious injury, heart attack, or stroke

Treatment works!

- Psychiatric disorders & Substance Use Disorders are medical illnesses
- Good/Bad has nothing to do with it.
- You can't simply think yourself to a solution; action is required
- Getting help is NOT a sign of weakness

Ask For Help

*Getting help won't
sabotage your
career, but not
getting help can!*



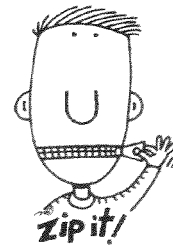
RUOK?

- https://www.ruok.org.au/signs?mc_cid=d3473d1269&mc_eid=of64bab815

Created by www.RUOK.org.au

About NMJLAP...

- **We are CONFIDENTIAL!**
- Anonymous calls are welcome
- We do not get people in trouble
- We care and we take action
- We help, support, provide resources.



Resources

- NMJLAP
 - (505) 228-1948, mobile and Helpline
 - (505) 797-6003, office
 - pmoore@nmbar.org
 - **CONFIDENTIAL and anonymous, FREE**
- EAP – The Solutions Group
 - (505) 254-3555 or (866) 254-3555
 - 4 FREE counseling sessions/person/issue/year
 - Identify with NMJLAP
 - **CONFIDENTIAL, No diagnosis, Insurance not needed**

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Employee Assistance Program/Lawyer Assistance Program and Self Care

2018 Family Law Institute: Hot Topics in Family Law

Presentation by the State Bar's JLAP

September 7, 2018

If Pam didn't get your attention...

By Briggs Cheney

Sheehan & Sheehan, P.A.

INDEX

- *Denial is a River in Egypt*
- *It didn't have to be this way...* from 6/24/04 New Mexico Bar Bulletin
- *My David Kelsey Story*
- Selected Rules from the Rules of Professional Conduct
- Excerpt from *Sanders, Bruin, Coll & Worley, P.A. v. McKay*, 123 N.M. 457, 943 P.2d 104 (1997)
- *Substance Abuse and the Attorney*

DENIAL IS A RIVER IN EGYPT
by Briggs Cheney

ADenial is a river in Egypt doesn't make any sense, but then again, how law firms address alcoholism and substance abuse within their firms often does not make much sense either.

If you have suffered from alcoholism or substance abuse and spent any amount of time in recovery, you're familiar with the old phrase ADENIAL is not a river in Egypt. It's a cute phrase and for this recovering alcoholic, and the first time or two I heard it, I laughed along with everyone else. But as the years have gone by the significance of denial in the disease process has become no laughing matter. But denial is not limited just to the suffering alcoholic or addict; it inflicts the family and friends of the addict - and with the suffering lawyer - his or her law firm. That is the focus of this article.

I have practiced law in New Mexico for 29 years. I have kidded folks from outside the Land of Enchantment, as we call it here, that Awe're still waiting for *Gone With the Wind* to come to our local movie house. While I generally say that kiddingly, for purposes of these comments, it probably has far greater meaning. This article is not a warm and fuzzy article about the suffering lawyer. I can talk long and convincingly about the disease, but the intent here is *down and dirty*. I want to talk money. In New Mexico, when it comes to dollars and cents, we are waiting for *Gone With the Wind* to make it to the Land of Enchantment. The money invested in training and compensating a lawyer in New Mexico can probably be tripled, quadrupled and more in Los Angeles, New York, Denver, Houston, and the list goes on. The point being to have a suffering lawyer suffer very long, to a law firm means money. To have a suffering lawyer putting the firm at risk with clients, both from a business standpoint, not to mention legal malpractice, means money. But that is exactly what law firms do, in the name of DENIAL, they throw money away and, more importantly, place their firm's

clients at risk.

How does this happen? How can DENIAL have this grip on the law firm too? Probably for the same reasons why a spouse or family can end up enabling a suffering alcoholic or addict. For the family it is love; they don't want to think their family member suffers from this disease. For the law firm, it is friendship, collegiality, and loyalty. And if it is not in the name of love in the family setting or friendship in the law firm setting, often it is ignorance. Ignorance of the disease or ignorance of what to do if the disease is appreciated. Raise your hands, how many of us wants to rat on their fellow lawyer, how many of us want to be responsible for a fellow lawyer losing their job at the firm when you know that the lawyer's child just started college, and how many of us are even sure if our law firm pal is really an alcoholic or addict - maybe he/she has just had a rough six months, a rough case or whatever. If you are being honest, letting DENIAL do its thing, you raised your hand.

I said this was a *down and dirty* article - here is what every law firm should consider doing and probably in this order:

- ***Mandatory Law Firm Awareness Programs*** - On an annual basis, require all firm employees to attend a program on alcoholism and substance abuse. This can be done at a firm lunch or at the end of a day or as part of an annual CLE of the firm. I strongly recommend a video vignette which has been produced by the State Bar of Pennsylvania' Lawyers Concerned for Lawyers Committee entitled *No Immunity*. (800/335-2572 or lcipa@epix.net)

- ***Encourage and educate lawyers and staff (more importantly staff) on what to do if they have a concern*** - The concerned lawyer or staff has to be able to express concern to someone. It would be great if there was someone within every firm where a concerned lawyer or staff member could go with concerns. But this only works if the employee feels that the concern will be kept

confidential. Beyond the firm, every state presently has an active Lawyer's Assistance Program, either voluntary or organized under the auspices of the State Bar. There is generally a confidential hot line where a concerned employee can call with concerns.

- ***The firm should develop a program to assist the suffering lawyer or staff member -***

All of this works only if the firm will recognize that alcoholism and substance abuse is a disease which can be treated. If the law firm employee believes that raising concern will put the suffering employee's employment at risk, DENIAL will continue to live and breathe in your law firm. Addiction is a disease and can be treated, if it is not ignored. The ABA's Commission on Lawyer Assistance Programs (COLAP) has developed a Model Program which is a starting point. (800/238-2667 ext. 5359 or www.abanet.org/Code of Professional Responsibility/COLAP/home.html) I said this was *down and dirty* - view this just from the standpoint of money - put a pencil to the investment you have made in your professionals. If you want to throw that away, let DENIAL live and breathe in your law firm.

I don't expect these few words to make DENIAL really a river in Egypt, but I hope you will ask for help.

It didn't have to be this way...

BY BRIGGS CHENEY

Our friend and colleague did not have to find his personal and professional bottom the subject of front page news in every newspaper in this state. Our profession and its very cornerstone, the judiciary, did not have to be the focus of investigative reporters and radio talk shows. It didn't have to be that way and we all bear some responsibility.

There will be those who will take issue with my last statement. I understand. Let me explain. For the last nine years, at the request of our Supreme Court, I have talked at every swearing-in ceremony about the disease of addiction. I have talked to bar associations in this state and around the country. And I have not been alone. Other members of the State Bar's Lawyer Assistance have joined me. As I generally begin my talks, "If you will indulge me for a moment ..., let me make the same request here.

I am an AV-rated lawyer and have been for many years. I am listed in four editions of *Best Lawyers in America*. I have been a local, state and national bar leader. I have been honored with kind awards for my service. I have been married for 35 years, I have three very wonderful children, I have a dog and a cat (both strays), I own two used cars with more than 350,000 miles between them, I used to wear a 40-regular suit, and to many, I look pretty normal, pretty plain vanilla — "Mr. Bell Curve." I am all those things... I am also an alcoholic. I suffer from the disease of alcoholism — the disease of addiction.

In 1987, while serving on the Board of Bar Commissioners, I helped create what we today call the Lawyers Assistance Committee (LAC). At the time, I was not in recovery. That is part of my own story and beyond this article. Ironically, it was that very committee which later intervened for me — the result of friends and family who had the courage to seek help from the LAC. That intervention probably saved my life.

Since its inception, the LAC has maintained a confidential hotline. Many on the committee who suffer from the disease of addiction have put aside their own anonymity to speak publicly about their own struggle with this disease. In 1991, the Supreme Court amended our Code of Professional Responsibility to relieve lawyers of the duty to report ethical violations when they are seeking help for a lawyer from the LAC. Many lawyers have been helped. Much has been done to address this disease in our profession. But the events of the last several weeks have made me realize that there is much more to be done.

For those who do not suffer from this disease, it makes no sense; it does not compute. Last weekend, I tried to respond to my barber's frustration: "How could this judge do this — throw away his career? What was he thinking?" Joe, my barber, could not understand. But I did. I understood our judge's insanity. I understood because it had made no sense for me to put those I loved so dearly and cared for so much through the torture I did. How could seemingly normal appearing individuals engage in such abnormal behavior? Because it is a disease.

I have struggled this last week trying to understand why we never had the opportunity to help our friend, our colleague, our judge. No effort was made to intervene. Why did no one call the LAC with concern? My guess: Denial. And, maybe, a fear that a call to the hotline or a member of the LAC is not really confidential.

The person who suffers from the disease of addiction is not the only one in the equation who suffers from denial; so does the spouse, the coworker, the partner, the legal assistant. No one wants to think a loved one, a partner, a friend, a boss is a drunk or an addict. They couldn't be. Lawyers, certainly judges, are above such problems. And if it is not that kind of thinking that causes us to look the other way — to make excuses for the destructive behavior of this disease — it is our lack of understanding about the disease.

I can understand the denial. It is harder to understand the fear or reluctance to call the hotline or one of us on the committee. Our Supreme Court's 1991 amendment to Rule 16-803(E) of the Code of Professional Responsibility and corresponding amendment to Rule 21-300(D) of the Judicial Code of Conduct, has paved the way for helping the lawyer or judge who may be in trouble.

There is possibly a lack of understanding about what happens when a call is made to the hotline or to a committee member. First, the call is **absolutely confidential**. Secondly, nothing happens **unless** and until the caller feels comfortable. In many instances, a caller will not (and often does not) identify the person about whom he or she is concerned. Often the call is an opportunity for the concerned caller to ask if what is being observed is truly something to be concerned about — an opportunity to get a little education about this disease. If a decision is made for one of the committee members to call on the lawyer, the individual is simply told that there has been a call of concern to the hotline. It is emphasized that the caller(s) must be someone who cares about them. But most importantly, the individual is accused of nothing. The person is not told he/she is an alcoholic or addict. Much to the contrary, the committee member simply explains what he/she has gone through personally in his or her life, that there are many of us who suffer from the disease of addiction, and if the individual would like help, or might in the future, that help is available. That is all that happens. Nothing more than to let the individual know that someone cares and that help is available.

It doesn't have to be this way. We can exercise some courage and reach out to help the suffering lawyer or we can let the lawyer find his or her bottom on their own. Our profession has witnessed first hand the consequences of our taking no action. The choice is ours.

Briggs Cheney is the chair of the State Bar Lawyers' Professional Liability Committee.

BAR BULLETIN

OFFICIAL PUBLICATION OF THE STATE BAR OF NEW MEXICO

JUNE 24, 2004 • VOLUME 43, No. 25

Supreme Court Announces Intolerance for Drug Use by Judges

The New Mexico Supreme Court recently announced the filing of a Supreme Court Order entitled "Reporting Judicial Misconduct Involving Unlawful Drugs." The order (see page 23) emphasizes a Code of Judicial Conduct Rule requiring a judge to comply with the law at all times. Chief Justice Petra Jimenez Maes speaking for the court said, "Use of illegal drugs by a judge reflects directly on a judge's fitness for office and will not be tolerated."

The order also clarifies existing reporting requirements by detailing a procedure for reporting such misconduct to the Judicial Standards Commission, a body charged with the responsibility of investigating complaints against judges. "Public confidence in the judiciary is vital to our democracy. The justices believe that failing to report a judge for such misconduct could only erode public confidence in the orderly administration of justice," said Chief Justice Maes.

The Chief Justice also explained that the Judicial Standards Commission has an orderly process in place for investigating complaints against judges, emphasizing the importance of allowing this independent body to conduct a fair and thorough investigation of any complaint made against a sitting judge. The commission makes recommendations to the Supreme Court concerning appropriate disciplinary action to be taken against a judge found to have violated the Code of Judicial Conduct.

Chief Justice Maes reassures the public of the Supreme Court's continued confidence in the judiciary: "The court urges the public to keep in mind that our entire state is blessed with qualified and experienced judges who are honest and dedicated public servants."

Writs of Certiorari

In the Matter of Reporting Judicial Misconduct
Involving Unlawful Drugs

FROM THE NEW MEXICO COURT OF APPEALS

2004-NMCA-064: State v. Randy Johnson

2004-NMCA-062: Ellis B. and Laverne
Herrington v. State of New Mexico ex rel. Office
of the State Engineer

2004-NMCA-060: The Coulston Foundation v.
Patricia A. Madrid, Attorney General, State of
New Mexico



9 1 240 1054

MR. BRIGGS F. CHENEY
BRIGGS F. CHENEY ESQ.

PO BOX 271

ALBUQUERQUE NM 87103-0271

West's New Mexico Statutes Annotated

State Court Rules

16. Rules of Professional Conduct

Article 5. Law Firms and Associations

NMRA, Rule 16-501

RULE 16-501. RESPONSIBILITIES OF PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

Currentness

A. Necessary Measures. A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

B. Compliance with Rules. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

C. Responsibility for Other Lawyer's Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Credits

[Amended effective November 3, 2008.]

Editors' Notes

COMMITTEE COMMENTARY

[1] Paragraph A applies to lawyers who have managerial authority over the professional work of a firm. *See* Paragraph C of Terminology of the Rules of Professional Conduct. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, members of other associations authorized to practice law and lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency,

and lawyers who have intermediate managerial responsibilities in a firm. Paragraph B applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph A requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in Paragraph A can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* Rule 16-502 of the Rules of Professional Conduct. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the rules.

[4] Paragraph C expresses a general principle of personal responsibility for acts of another. *See also* Paragraph A of Rule 16-804 of the Rules of Professional Conduct.

[5] Subparagraph (2) of Paragraph C defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of Paragraph B on the part of the supervisory lawyer even though it does not entail a violation of Paragraph C because there was no direction, ratification or knowledge of the violation.

[7] Apart from this rule and Paragraph A of Rule 16-804 of the Rules of Professional Conduct, a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

[8] The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. *See* Paragraph A of Rule 16-502 of the Rules of Professional Conduct.

Notes of Decisions (2)

RULE 16-501. RESPONSIBILITIES OF PARTNERS,.... NM R RPC Rule 16-501

NMRA, Rule 16-501, NM R RPC Rule 16-501

State court rules are current with amendments received through June 1, 2018.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's New Mexico Statutes Annotated

State Court Rules

16. Rules of Professional Conduct

Article 5. Law Firms and Associations

NMRA, Rule 16-502

RULE 16-502. RESPONSIBILITIES OF A SUBORDINATE LAWYER

Currentness

A. Responsibility for Own Actions. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

B. Arguable Question of Duty. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Credits

[Amended effective November 3, 2008.]

Editors' Notes

COMMITTEE COMMENTARY

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 16-107 of the Rules of Professional Conduct, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Notes of Decisions (3)

RULE 16-502. RESPONSIBILITIES OF A SUBORDINATE..., NM R RPC Rule 16-502

NMRA, Rule 16-502, NM R RPC Rule 16-502

State court rules are current with amendments received through June 1, 2018.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's New Mexico Statutes Annotated

State Court Rules

16. Rules of Professional Conduct

Article 8. Maintaining the Integrity of the Profession

NMRA, Rule 16-803

RULE 16-803. REPORTING PROFESSIONAL MISCONDUCT

Currentness

A. Misconduct of other lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the New Mexico Disciplinary Board.

B. Misconduct of judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the New Mexico Judicial Standards Commission.

C. Confidential information. This rule does not require disclosure of information otherwise protected by Rule 16-106 NMRA, or information gained by a lawyer or a judge while participating in the New Mexico Lawyers and Judges Assistance Program, unless the information pertains to those communications requiring disclosure under Paragraph E.

D. Cooperation and assistance; required. A lawyer shall give full cooperation and assistance to the Supreme Court and to the New Mexico Disciplinary Board, hearing committees, and disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline and disciplinary procedures.

E. Alcohol, drugs, addiction, or other physical or mental health-related disorders exception. The reporting requirements of Paragraphs A and B of this rule do not apply when a lawyer believes a judge or lawyer is impaired due to alcohol or substance abuse, or for mental, emotional, or psychological reasons, if such impairment is reported to the New Mexico Lawyers and Judges Assistance Program. The exception is inapplicable to

(1) information required by law to be reported, including information that must be reported under Paragraph G of this rule;

(2) threats of future criminal acts or violations of these rules; or

(3) disclosures of past criminal acts or violations of these rules that are believed to have resulted in substantial harm to a client.

Such information, threats, or disclosures shall be reported to the New Mexico Disciplinary Board or the New Mexico Judicial Standards Commission, even if the impairment is also reported to the New Mexico Lawyers and Judges Assistance Program. Paragraph (E)(3) of this rule does not apply to any communication that is made to, by, or among members or representatives of the New Mexico Lawyers and Judges Assistance Program.

F. Immunity. The duties and responsibilities of the Program Manager of the New Mexico Lawyers and Judges Assistance Program, its members of the Board, employees, agents, designees, volunteers, or reporting parties are owed to the Supreme Court and the public in general, not to any individual lawyer or another person. Nothing in this rule is to be construed as creating a civil cause of action against the aforementioned individuals, and they are immune from liability for any omission or conduct in the course of carrying out their official duties and responsibilities or failing to fulfill their duties and responsibilities under this rule. Any person who in good faith reports information in connection with the program is immune from suit for reporting the information.

G. Judicial misconduct involving unlawful drugs; reporting requirement. Notwithstanding the provisions of Paragraph E, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct.

Any lawyer who has specific objective and articulable facts or reasonable inferences that can be drawn from those facts, that a judge has engaged in such misconduct, shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:

- (1) name of person filing the report;
- (2) address and telephone number where the person may be contacted;
- (3) a detailed description of the alleged misconduct;
- (4) dates of the alleged misconduct; and
- (5) any supporting evidence or material that may be available to the reporting person.

The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.

Credits

[Amended effective April 1, 1991; November 3, 2008; Dec. 31, 2017.]

Editors' Notes

COMMITTEE COMMENTARY

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve a violation of Rule 16-106 NMRA. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules of Professional Conduct, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer privilege.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved support group. A lawyer may also receive such information when a lawyer or judge who has a problem with alcohol or substance abuse or is impaired due to mental, emotional, or psychological reasons, reports the problem in order to seek help. Another individual may also report the problem or make a recommendation to seek help for the affected lawyer or judge. Providing for an exception to the reporting requirements of Paragraphs A and B of this rule encourages lawyers and judges to seek treatment through such programs and encourages lawyers and judges to report alcohol or substance abuse or possible mental, emotional, or psychological impairment of other lawyers and judges in order to get counseling or treatment for them. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs or report possible alcohol or substance abuse, or possible mental, emotional, or psychological problems of other lawyers and judges, which may then result in additional harm to the affected lawyers' or judges' professional careers and additional injury to the welfare of clients and the public.

Subject to Paragraphs (E)(1) and (E)(2) of this rule, a lawyer who is on the New Mexico Lawyers and Judges Assistance Program or who is a member of any committee or subcommittee of the New Mexico Lawyers and Judges Assistance Program designed to assist lawyers or judges with alcohol, drugs, addiction, and other physical or mental health-related disorders shall not be under any obligation to disclose any knowledge or evidence acquired from any other person (including lawyers and judges) during communications made by that other person for the purpose of seeking help of the sort the New Mexico Lawyers and Judges Assistance Program was intended to give. The lawyer's failure to disclose the knowledge or evidence acquired during such communications may not be a basis for any claim or disciplinary action.

[6] Notwithstanding the provisions of Paragraph E, Paragraph G sets forth the requirements for reporting judicial misconduct

RULE 16-803. REPORTING PROFESSIONAL MISCONDUCT, NM R RPC Rule 16-803

involving unlawful drugs. *See In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876. In addition to these reporting requirements set forth in Paragraph G, the Supreme Court encourages any judge, employee of the judiciary, or lawyer who has a good faith basis to believe a judge is engaged in such misconduct, but does not have specific and articulable facts regarding such conduct, to report such belief to the New Mexico Lawyers and Judges Assistance Program hotline. The suggested reporting is to encourage members of the judiciary to seek appropriate help for alcohol and/or substance abuse problems.

[Commentary adopted effective November 3, 2008. Amended effective December 31, 2017.]

Notes of Decisions (17)

NMRA, Rule 16-803, NM R RPC Rule 16-803

State court rules are current with amendments received through June 1, 2018.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's New Mexico Statutes Annotated

State Court Rules

21. Code of Judicial Conduct

NMRA, Rule 21-214

RULE 21-214. DISABILITY AND IMPAIRMENT

Currentness

A. A **judge** who has a reasonable belief that the performance of a lawyer or another **judge** is impaired by drugs or **alcohol**, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to the Lawyer's Assistance Committee of the State Bar, **Alcoholics Anonymous**, Narcotics Anonymous, or other support group recognized by the New Mexico Disciplinary Board or the New Mexico Judicial Standards Commission.

B. Notwithstanding the provisions of Paragraph A of this rule, any incumbent **judge** who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct.

C. Any **judge** who has specific, objective, and articulable facts, or reasonable inferences that can be drawn from those facts, that a **judge** has engaged in the misconduct described in Paragraph B of this rule shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:

- (1) the name of the person filing the report;
- (2) the address and telephone number where the person may be contacted;
- (3) a detailed description of the alleged misconduct; and
- (4) any supporting evidence or material that may be available to the reporting person.

The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.

Credits

[Adopted effective Jan. 1, 2012.]

Editors' Notes

COMMITTEE COMMENTARY

(1) "Appropriate action" means action intended and reasonably likely to help the **judge** or lawyer in question address the problem and prevent harm to the justice system or the public at large. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

(2) Taking or initiating corrective action by way of referral to an assistance program may satisfy a **judge's** responsibility under this rule. Assistance programs have many approaches for offering help to impaired **judges** and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending on the gravity of the conduct that has come to the **judge's** attention, however, the **judge** may be required to take other action, such as reporting the impaired **judge** or lawyer to the appropriate authority, agency, or body. *See* Rule 21-215 NMRA.

NMRA, Rule 21-214, NM R CJC Rule 21-214

State court rules are current with amendments received through June 1, 2018.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Sanders, Bruin, Coll & Worley, P.A. vs. McKay Oil Corporation, et al., 123 N.M. 457, 943 P.2d 104 (1997).

In this case, the professional issue at hand was the appropriateness of a lawyer/law firm unilaterally terminating representation of a client on the eve (six weeks) of commencement of a multimillion dollar arbitration in which the client was a defendant.

The firm wrote the client, McKay, citing the firm partner's health concerns (the partner in charge of the case) as the basis for the decision to terminate. Evidence elicited in the case suggested other reasons. The client was forced to retain new counsel to takeover; obviously at great expense. The new counsel successfully defended the claims.

Subsequently, the firm filed suit against the terminated client seeking collection of fees for work performed on the arbitration proceeding in question. The client counterclaimed, naming among the counter defendants each of the individual shareholders in the firm. The trial court granted the individual shareholders' motion for summary judgment. On certification from the Court of Appeals, the Supreme Court reversed summary judgment.

The court on certification reviewed the following issues: 1) whether attorneys can limit liability to clients while practicing within a professional corporation and whether the conduct of the attorneys in this case is of the type that should be shielded by corporate status, and 2) whether the trial court erred in granting the firm's summary judgment motion on the basis that no grounds for personal liability on the part of the attorney-shareholders could be found.

In reversing summary judgment for the individual shareholders, the court held:

We hold that, as a general matter, membership or shareholder status in a professional corporation does not shield an attorney from individual liability for his own mistakes or professional misdeeds. However, it remains unclear from the record whether the actions taken by the attorney-shareholders in this case rose to the level of a breach of duty of any type. Therefore, we reverse the trial court's grant of summary judgment, finding material issues of fact exist as to whether the attorney-shareholders should be personally liable for their actions regarding the representation of McKay.

SUBSTANCE ABUSE AND THE ATTORNEY

Briggs Cheney
of counsel
Sheehan & Sheehan, P.A.
Albuquerque, New Mexico

I. A Candid Discussion: *The Impaired Attorney* - A problem which seems to make little sense to the average person.

A. The disease in a few words.

This disease of alcoholism (or substance abuse) just does not make sense to the average person. It doesn't compute. "Why don't you just stop?" is the common refrain from those who are confronted by the disease. "Why not just stop?" If it were just that easy. It is a disease and it has been recognized as such by the medical community. There is science to back that statement, but the explanation and discussion, in a CLE setting, is a "killer", unless you just love that stuff.

The best description of the disease of addiction, in a few paragraphs or less, this presenter has found is in a law review article referred to later in this paper¹. They describe the disease of alcoholism as follows:

The syndrome of alcoholism results from the prolonged overuse of alcohol. It typically is characterized by a "high risk" individual who develops self-perpetuating behaviors. The combination leads to an addiction. Genetic, social and psychological predisposing factors exist which contribute to a susceptibility to alcoholism and create a high risk individual.

Alcoholics (and other substance abusers as well) also tend to have a certain psychological profile. Whether this profile is a cause or effect of addiction is not clear.

¹ Michael A. Bloom & Carol Lynn Wallinger, *Lawyers and Alcoholism: Is it time for a new approach*, 61 Temple Law Review 1409 (1988).

The hallmark traits of every addiction appear to be poor self-esteem and a general feeling of inadequacy. Many addicts were children from dysfunctional families and, in the absence of strong family support structures, the addict typically is left with psychological scars for which he or she can spend years trying to compensate by addictive use of alcohol and other substances, or addictive activities such as gambling.

The process of healing oneself begins when the person admits to being an addict. This is the most crucial part in recovery of an addict because denial is the cornerstone of addiction. Breaking through this denial is the most important step in the recovery process and often is the most difficult task if treatment is to be successful.

B. The story of a fellow lawyer. My story.

C. The Statistics

Proving the impact of addiction on the profession and the practice of law has been elusive and difficult to establish. As will be discussed, the *conspiracy of silence* and the concept of denial (both on the part of the suffering lawyer and the lawyer's colleagues) have made very difficult quantifying the problem. Studies and surveys by the American Bar Association and various state bars have revealed the following:

1. 18% of the bar is impaired to some degree (Washington State Bar²)
2. Of 28 Occupations surveyed, lawyers are most likely to suffer from depression and 3.6 times more likely to suffer depression than the average person. (as shown in a *John Hopkins University* study)
3. 40 - 75% of disciplinary complaints/cases involve chemically dependent or mentally ill practitioners. (Illinois Survey)
4. 80% of Client Protection Fund cases involve chemical dependency or gambling component. (Louisiana and Oregon³ Studies)
5. The Oregon Attorney Assistance Program's 2001 Study on the incidence of malpractice claims against Oregon lawyers who suffer from the disease of

² This same Washington State Bar study revealed that 19-37% of lawyers suffer from depression. Of these 25% suffer *physical* symptoms of depression or anxiety.

³ Oregon is the only state which has mandatory professional liability insurance. This has made Oregon a "test tube" of sorts in terms of assessing the causes and cures for professional liability claims.

addiction. The study examined their malpractice claim rate during the five years before sobriety and five years after sobriety:

- i. Annual malpractice rate before sobriety - 30%
- ii. Annual malpractice rate after sobriety - 8%
- iii. Average annual malpractice claim rate for Oregon lawyers in private practice - 13.5%

6. The Oregon Attorney Assistance Program's 2001 Study on disciplinary complaints filed against Oregon lawyers who suffer from the disease of addiction. Again, the study examined their malpractice claim rate during the five years before sobriety and five years after sobriety:

- i. Annual disciplinary complaint rate before sobriety - 28%
- ii. Annual disciplinary complaint rate after sobriety - 7%
- iii. Average annual disciplinary complaint rate for lawyers - 9%

C. The Cost of the Disease of Addiction

II. The Ethical and Professional Considerations Presented by the Disease of Addiction - **the conspiracy of silence and the concept of denial.**

A. The Code of Professional Responsibility and how it deals with the disease.

- 1. 16-803. Reporting professional conduct.
- 2. 21-300. A judge shall perform the duties of office impartially and diligently.
- 3. 16-501. Responsibilities of a partner or supervisory lawyer.
- 4. 16-502. Responsibilities of a subordinate lawyer.

[The above Rules or pertinent excerpts attached]

B. *Denial is a River in Egypt*

The attached article entitled, *Denial is a River in Egypt*, was prepared some years ago, at the request of the American Bar Association. It was later included in one professional liability carrier's national newsletter. The article focuses on the denial component of the disease of addiction. The thrust of this article is that the denial truly is a two-way street: denial by the suffering lawyer and denial by those who live and work with that lawyer.

- C. It is not just a matter of helping a fellow lawyer - it may be your own personal liability .

1. *Sanders, Bruin, Coll & Worley, P.A. vs. McKay Oil Corporation, et al.*, 123 N.M. 457, 943 P.2d 104 (1997).

In this case, the professional issue at hand was the appropriateness of a lawyer/law firm unilaterally terminating representation of a client on the eve (six weeks) of commencement of a multimillion dollar arbitration in which the client was a defendant.

The firm wrote the client, McKay, citing the firm partner's health concerns (the partner in charge of the case) as the basis for the decision to terminate. Evidence elicited in the case suggested other reasons. The client was forced to retain new counsel to take over the defense of the case; obviously at great expense. The new counsel successfully defended the claims.

Subsequently, the law firm filed suit against the terminated client seeking collection of fees for work performed on the arbitration proceeding in question. The client counterclaimed, naming among the counter defendants each of the individual shareholders in the firm. The individual shareholders' filed motions for summary judgment on the grounds that they were insulated from personal or individual liability by the professional corporation. The trial court granted the shareholder's motions. On certification from the Court of Appeals, the Supreme Court reversed summary judgment.

The court on certification reviewed the following issues: 1) whether attorneys can limit liability to clients while practicing within a professional corporation and whether the conduct of the attorneys in this case is of the type that should be shielded by corporate status, and 2) whether the trial court erred in granting the firm's summary judgment motion on the basis that no grounds for personal liability on the part of the attorney-shareholders could be found.

In reversing summary judgment for the individual shareholders, the court held:

We hold that, as a general matter, membership or shareholder status in a professional corporation does not shield an attorney from individual liability for his own mistakes or professional misdeeds. However, it remains unclear from the record whether the actions taken by the attorney-shareholders in this case rose to the level of a breach of duty of any type. Therefore, we reverse the trial court's grant of summary judgment, finding material issues of fact exist as to whether the attorney-shareholders should be personally liable for their actions regarding the representation of McKay.

The court went on to observe that the record contained evidence that each attorney-shareholder individually participated in the termination of the client. "Furthermore, we hold that professional status was not intended to confer, nor does it confer, upon an attorney-shareholder a limitation on liability for the attorney's own improper behavior, even in the context of corporate activities and decisions." And most pertinent to this discussion of substance abuse and the lawyer, the court directly held, "... we premise our decision upon the individual participation of each of the attorneys in the termination of McKay, and thus each attorney's involvement in the attorney-client relationship, as furnishing a basis implicating *the attorney's ethical and professional duties to the client.* (Emphasis supplied).

It is suggested that Rules 16-501; 16-502; and 16-803 create duties in all lawyers. Denial is the touchstone of the disease of addiction. The "conspiracy of silence" which the colleague, partner, shareholder, fellow lawyer engages in can be called "enabling" - that's what the fellow lawyer does when they choose to ignore the disease. Enabling is just "denial." But it also violates our duties and obligations under New Mexico's Code of Professional Responsibility and could be the basis for liability, as it was in the *Sanders, Bruin* case, against the partner or shareholder of a suffering lawyer.

2. Rules 16-501; 16-502; and 16-803 probably create duties which may expose the lawyer to civil liability.

Denial is the touchstone/cornerstone of the suffering lawyer's disease of addiction. The "conspiracy of silence" which the colleague, partner, shareholder, fellow lawyer engages in (or suffers from) - generally referred to as "enabling" - is really no different. The sad part is that the colleague, partner, shareholder, fellow lawyer justifies his or her ignoring of the suffering lawyer's disease on the grounds of "being a friend," understanding, and a host of other excuses - all of which are used to justify looking the other way and ignoring what is so obvious.

The fact of the matter is, however, that the failure to take action violates our duties and obligations under New Mexico's Code of Professional Responsibility and could be the basis for liability against the partner or shareholder of a suffering lawyer, as it was in the *Sanders, Bruin* case.

III. Is There a Solution? Not a perfect one.

In a now rather outdated law review article, Michael A. Bloom & Carol Lynn Wallinger, *Lawyers and Alcoholism: Is it time for a new approach?*, 61 Temple Law Review 1409 (1988), the writers explore and discuss how different disciplinary systems have dealt with the disease. Greatly oversimplifying, the jurisdictions are divided between those which

will not accept the disease of addiction as a mitigating factor and those which recognize the disease as a mitigating consideration, applying a "but for test." (But for the disease, the lawyer would not have engaged in the improper conduct). They suggest, however, that neither approach has protected the public from impaired lawyers.

In their criticism, they suggest that in the states where the courts have accepted the disease as a mitigating factor, the courts have failed to define or quantify "rehabilitation" or "abstinence." They go on to recommend a new Model Rule that specifically deals with impaired lawyers and a rule which would provide ethical penalties for failure to report an impaired.

This law review article was written in 1988. In terms of the disease of addiction and the legal profession's efforts to address the same; that is a long time ago. In 1988, it has to be imagined that this proposed Model Rule was viewed with great skepticism. Surely, many questioned how difficult it would be to administer such a rule and how it would place an unfair burden and obligation on fellow lawyers. Certainly fair criticism and concern.

As has already been discussed, New Mexico has made an effort to address the disease of addiction and amended in 1991 Rule 16-803 of the Code of Professional Responsibility - a rule which has been modified to address "substance abuse" directly. The change to Rule 16-803 did not come easily here in New Mexico. The court was very reticent to adopt the rule, but not because the court viewed this as an unfair imposition on fellow lawyers. Rather, the resistance to this rule came in trying to convince the court that alcoholism and addiction were, in fact, problems confronting the legal profession⁴.

This presenter was involved in that effort to change Rule 16-803. Looking back, maybe it is not strong enough. Possibly, as the 1988 law review writers suggest, the rule should impose sanctions on the fellow lawyer who ignores the disease. While the 1991 amendment to the rule has helped, **denial** is still "alive and well" in the New Mexico legal profession.

In addition to this rule change, the New Mexico Supreme Court, in a relatively recent decision *In the Matter of Zamora*, 130 N.M. 161, 21 P.3d 30 (2001), has taken the next step in terms of dealing with the disease of addiction in our profession.

In the Matter of Zamora, our court was presented with a record from the disciplinary system which recognized for the first time in this jurisdiction that this disease was a "disease for life." Decisions predating *Zamora*, had focused on the lawyer's demonstrating long term recovery and abstinence. The court seemingly announced the lawyer "cured" and allowed for re-entry into the practice. However, in *Zamora* the court was presented with an extensive record which included testimony from a board certified addictionologist. Referencing the Physicians' Assistance Program, the court recognized "that following appropriate inpatient treatment **and return to work** (emphasis added) the elements to a successful recovery from addiction consist of a program that (1) is

⁴ The Supreme Court's Committee on the Rules of Professional Conduct is currently considering modifications to this Rule.

mandatory, (2) requires regular participation in a twelve step recovery program, (3) incorporates random drug testing and/or screening, and (4) requires participation for five years. The random drug testing and screening is believed to be the key to the protection of the public that the profession serves. Because of the nature of chemical dependency, the random testing/ screening is essential to assure that an individual will not escape detection in the event of relapse.” *Id* at 163.

A. *In the Matter of Diego Zamora*, 130 N.M. 161, 21 P.3d 30 (2001).

1. The *Zamora* decision is probably one of the leading and most comprehensive decisions dealing with the disease of addiction and the practice lawyer. Not only does it set forth this State’s approach to the disease, our Supreme Court provides a road map for returning the lawyer back into the practice.
2. Our Supreme Court has made clear that “it is not the purpose of the disciplinary system to punish attorneys, but to protect the public.”

As the Court stated *In the Matter of Michael M. Ordaz*, 1996-NMSC-034, 121 N.M. 779, 918 P.2d 365 (1996), and has stated before and since:

Attorneys must realize that is not the purpose of the disciplinary system to punish attorneys, but to protect the public. *See, e.g., In re Tapia*, 110 N.M. 693, 799 P.2d 129 (1990); *In re Sullivan*, 108 N.M. 735, 779 P.2d 112 (1989); *In re Nails*, 105 N.M. 89, 728 P.2d 840 (1986); *In re Morris*, 74 N.M. 679, 397 P.2d 475 (1964). If attorneys cooperate with the disciplinary process, the chance that he or she may retain his or her license to practice law is increased dramatically. This is not to say, however, that this Court will not continue to take serious action such as disbarment when an attorney so seriously violates his or her client’s trust as when he or she converts client funds.

In *In re Tapia*, after observing that the “purpose of attorney disciplinary is not to punish attorneys for past wrongs or to prevent them from ever again using their training and skills to serve the public,” the Court went on to state that “[w]here there is some evidence, * * *, that factors over which an attorney had no control may have contributed to the misconduct or that rehabilitation could be effected, then [the Court] hesitates to impose the ultimate sanction of disbarment.” 110 N.M. at 697.

To that end, what the Court has required is that a lawyer demonstrate that by clear and convincing evidence that he/she has (1) the moral qualifications; (2) that the attorney is once again fit to resume the practice of law; and (3) that the resumption of the attorney’s practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice or the public interest. *In the Matter of*

Gerard F. Canevaro, 1997-NMSC-033, 123 N.M. 576, 578, 943 P.2d 1029 (1997).

3. Our Supreme Court has also made clear in *Zamora* and earlier decisions that although disability such as substance abuse and addiction will not provide a defense to unethical conduct, recovery from such conditions can be considered in mitigation, if the attorney can demonstrate a prolonged period of rehabilitation.

Our Supreme Court has addressed attorney disability, substance abuse and addiction in a number of decisions. One of the most often cited of those decisions is *In the Matter of Leo C. Kelly*, *supra*. In that case, the attorney suffered from alcohol addiction. As a result of his disease, Kelly misappropriated client funds. That case and the proceedings leading up to the Court's ordered discipline have already been discussed briefly herein, but on the issue of attorney disability and, in particular, addiction, the Court stated as follows:

Among the mitigating circumstances is Kelly's demonstration of recovery from alcohol addiction. During the period in which he converted client funds, Kelly was suffering from acute alcoholism. Although addiction cannot provide a defense to unethical conduct, *In re Siler*, 106 N.M. 292, 742 P.2d 504 (1987), recovery from such conditions as substance abuse or mental illness can be considered in mitigation if the respondent can demonstrate a prolonged period of rehabilitation. *In re Jones*, 119 N.M. 229, 889 P.2d 837 (1995); *In re Smith*, 115 N.M. 769, 858 P.2d 857 (1993). In February 1994, about the time the disciplinary board began receiving complaints about his misappropriation of client funds, Kelly responded positively to a substance abuse intervention conducted by members of the State Bar of New Mexico Lawyers' Assistance Committee and other concerned individuals. Kelly sought help for his addiction by attending psychological counseling through Veterans Administration Hospital and by attending Alcoholics Anonymous meetings once and sometimes twice a day. Kelly demonstrated the requisite period of rehabilitation necessary for this to be considered a mitigating factor.

Other mitigating factors include Kelly's cooperation throughout the disciplinary process, his voluntary partial restitution, his good reputation, and his show of remorse.

The Court has considered disability as a mitigating factor in other cases in varying degrees depending on the attorney's response to the alleged disability. *In the Matter of Rudy Martin*, 1999-NMSC-022, 127 N.M. 321, 980 P.2d 646 (1999) (Where attorney suffered from chronic fatigue syndrome); *In the Matter of Michael A. Righter*, 1999-NMSC-009, 126 N.M. 730, 975 P.2d 343 (1999) (Attorney suffered from alcoholism and depression, but had failed and refused to avail

himself from help offered by the State Bar's Lawyer Assistance Committee and for these reasons, the Court ordered indefinite suspension); *In the Matter of Forrest R. Carlton, II*, 2000-NMSC-001, 39 N.M. St. B. Bull. 2 (1/4/2000) (Attorney suffered from bipolar mental condition which resulted in his ethical violations, but the Court found that the attorney had failed to present sufficient evidence to demonstrate a meaningful and sustained period of successful rehabilitation and to show that the condition had been controlled and that a recurrence of the misconduct was unlikely.)

B. State Bar's Lawyer Assistance Committee

1. The Twelve Step Call
2. Intervention
3. Treatment
4. Form *Monitoring Agreement* (Attachment)

C. State Bar of New Mexico *Risk Management Self-Audit* (The pertinent excerpt is attached. The entire audit is available on line at www.nmbar.org)

1. Excerpt from the *Risk Management Self-Audit* is a start on assessing how your firm is acknowledging the problem.
2. "Does your firm have a drug, alcohol and mental health policy designed to encourage impaired employees and their co-workers to deal with such problems, without undue fear of punitive action?"

D. *Impaired Attorneys: The Firm as Employer*, by Paula A. Barran, Esq. of Barran Liebman, LLP, Portland, Oregon - as presented to the National Legal Malpractice Conference of the ABA Standing Committee on Lawyer Professional Liability (Spring 2003)

The importance of action on the part of a fellow lawyer or law firm when it is believed that a fellow lawyer is suffering from the disease of addiction has been stressed in this presentation. It has been suggested that the New Mexico Code of Professional Responsibility requires action and it has been further suggested that the failure to act or to fulfill a lawyer's ethical and professional duties and obligations could expose the fellow lawyer and/or firm to legal liability. And although beyond the scope of this presentation, mention should be made to some legal and statutory considerations:

1. Americans With Disabilities Act, 42 USC § 12101, *et seq.*
2. Family Medical Leave Act, 29 USC § 2601 *et seq.*

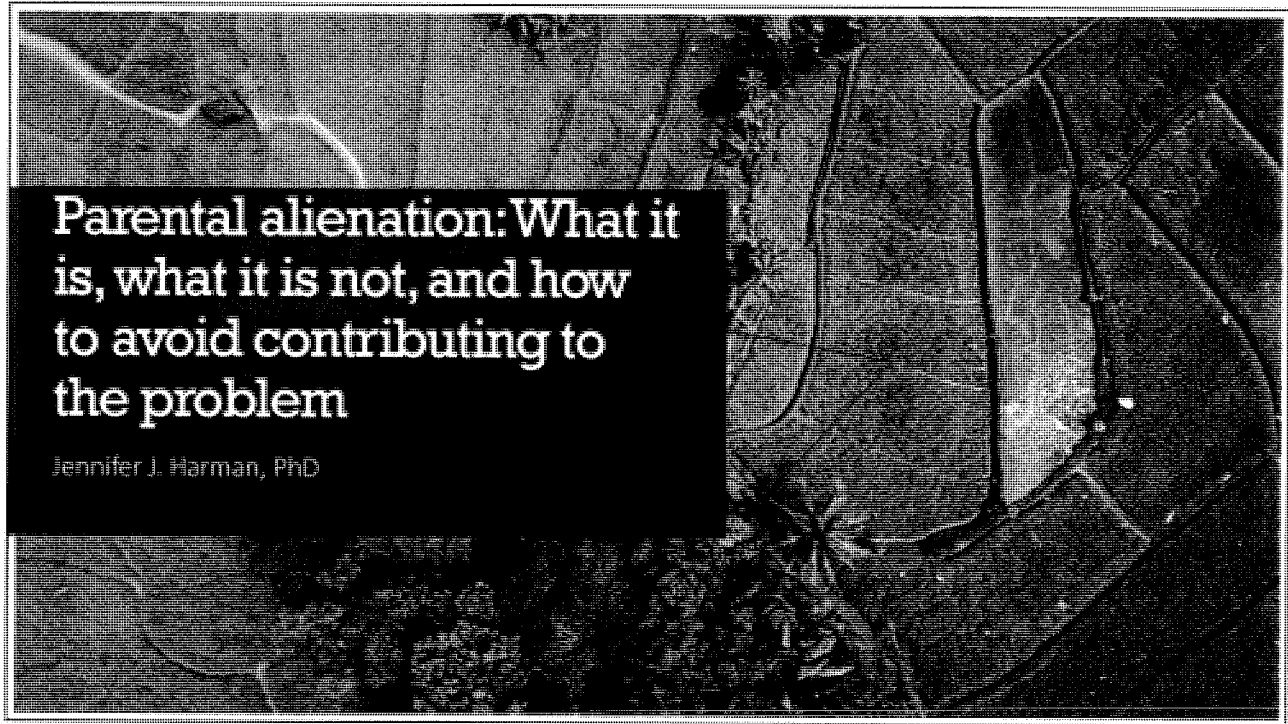
An excellent discussion of these statutory enactments and other employment law considerations are discussed in a paper presented by Paula A Barren, Esq. of the Portland, Oregon law firm, Barran Liebman LLP to the ABA Standing Committee on Lawyer Professional Liability's National Legal Malpractice Conference (Spring 2003). A copy of that paper can be obtained by contacting Ms. Barren (www.barran.com) or through the ABA Standing Committee on Lawyer Professional Liability (www.abanet.org)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Parental Alienation: What it is, What it is Not, and How to Avoid Contributing to the Problem

Saturday, September 8



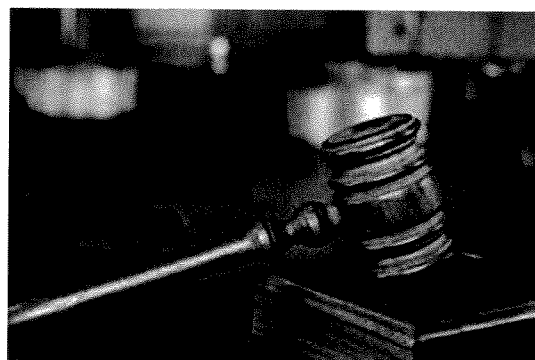
Parental alienation: What it is, what it is not, and how to avoid contributing to the problem

Jennifer J. Harman, PhD



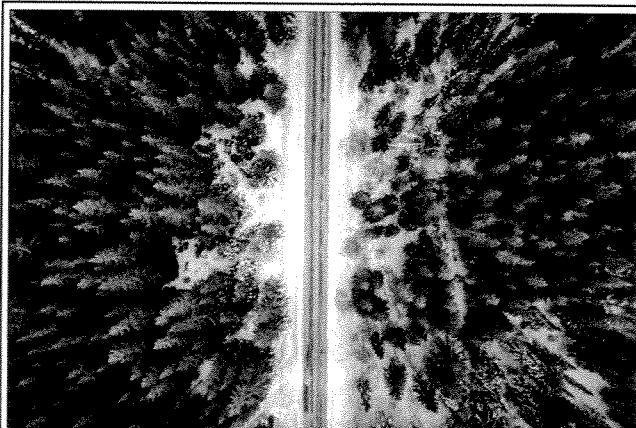
Jennifer J. Harman, PhD

2



Jennifer J. Harman, PhD

3



What is parental alienation?

It is an outcome that results from parental alienating behaviors

A child's reluctance or refusal to have a relationship with a targeted parent (TP) for *illogical, untrue or exaggerated reasons*.

Jennifer J. Harman, PhD

4

Severity



Mild

Child resists and criticizes the TP

Enjoys time with the TP when away from the alienating parent (AP)



Moderate

Child has consistently negative feelings towards the TP

Express open hostility towards the TP

Lack of guilt or ambivalence

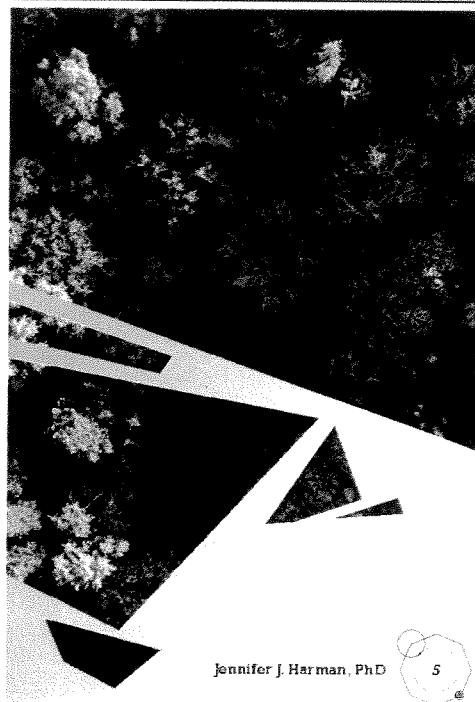


Severe

Extreme splitting in attitudes towards TP and AP

Refusal to see or have a relationship with the TP

Hostile and violent behavior towards the TP



Jennifer J. Harman, PhD

5

The Symptoms



Campaign of denigration



IRRATIONAL

Frivolous rationalizations for complaints about TP



Use of borrowed scenarios created by AP



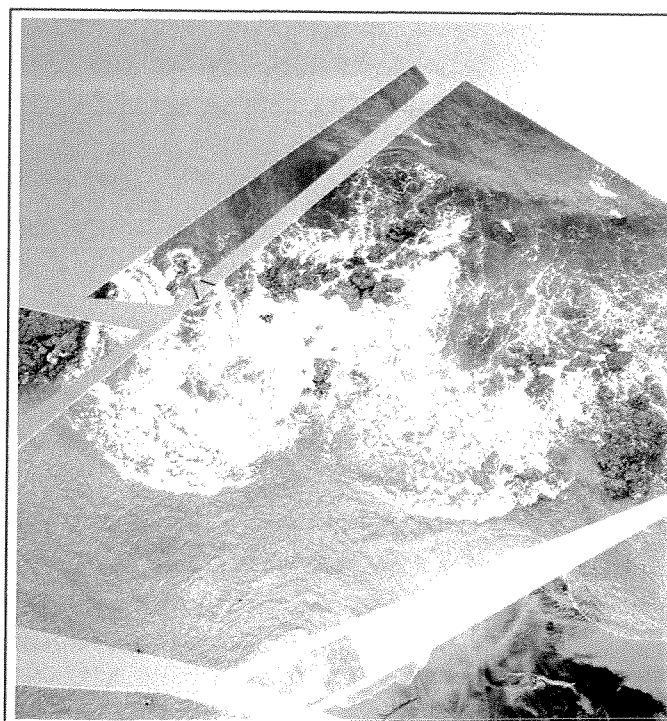
Lack of ambivalence, remorse or guilt for rejection of TP



Automatically side with AP

Jennifer J. Harman, PhD

6



Consequences of PA on children



PTSD, Adjustment Disorders



Internalizing problems

Anxiety, depression, suicidality

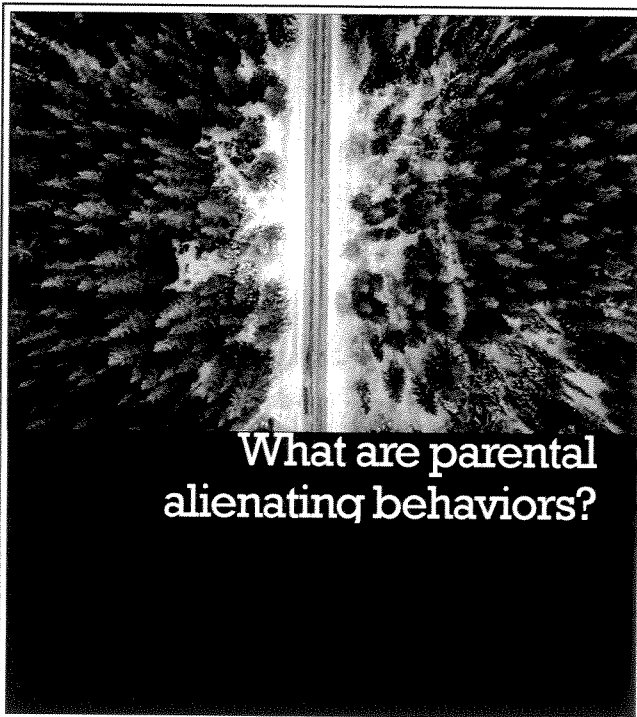


Externalizing problems

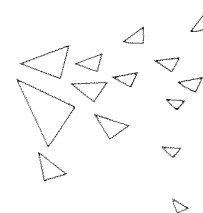
ADHD, academic decline, substance abuse

Jennifer J. Harman, PhD

7



What are parental alienating behaviors?



They are the cause

Clusters of behaviors enacted with the intent to harm, damage, or destroy the relationship between a child and a TP

Jennifer J. Harman, PhD

8

The Forest and Tree Problem

Cluster vs
Discrete

Enacted
over time

Intent



Jennifer J. Harman, PhD

9

What Types of Behaviors do Alienating Parents Use?

Child Abuse

- Emotional/Psychological Abuse
- Child Neglect
- Legal/Administrative Aggression

- Alienate the child from the other parent
- Create fear in the child the TP is dangerous or unsafe
- Neglect the child's emotional needs of the child
- Reward the child for rejecting the TP
- Interrogate children after visits with the TP
- Throw away gifts from TP
- Tell the child and/or be rewarded for lying about TP
- Make the child call another adult mom/dad
- Brainwashing/gaslighting
- Making a child choose between parents

Jennifer J. Harman, PhD

10

What Types of Behaviors do Alienating Parents Use?

Domestic Violence

- Psychological Aggression
- Physical & Sexual Violence
- Stalking
- Legal/Administrative Aggression

- Expressive aggression
 - Dependent on other's behavior in a threatening way
- Exploving the perpetrator's vulnerability
 - Behaviors used to maximize power by controlling the TP
- Gaslighting
 - Denying access to children, monitor whereabouts, interfere with communication, make threats to harm self or others
- Threat of physical or sexual violence
- Control of the production/sexual health
 - Courts, CPS, Police

Jennifer J. Harman, PhD

11

Reflections from an adult alienated child

"I cannot make a decision. I cannot work out what I want in my own life. I don't know how I feel from day to day and I am met with this feeling of paralysis; a sensation of being arrested in the moment when I am confronted by change.

I can't explain it. I am silenced by it and I have no idea what I can do about it.

It is only by looking at what happened to me during that time when I understand that those feelings of blackness which descended upon me each time I was to see my mother were not that I was going mad, but that I was trying to cope. Then I began to unravel why I felt such hatred for my mother for all those years. I didn't hate her, I loved her. And I am at times eaten alive by guilt and anger for all those lost years."

Ashley, aged 26, reunited with mother at age 22 after 9 years of alienation.

Jennifer J. Harman, PhD

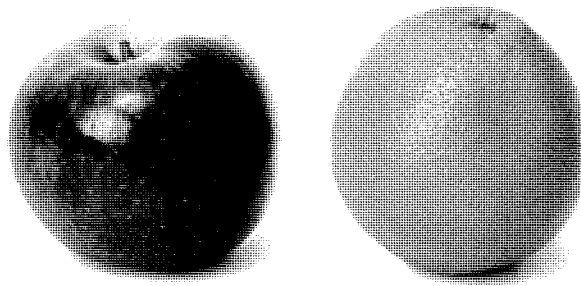
12

What parental alienation is NOT

Estrangement

Abused children do not behave the same way as alienated children

- Foster care children
- Clinical accounts
- Harlow research
- Memoirs
- New research

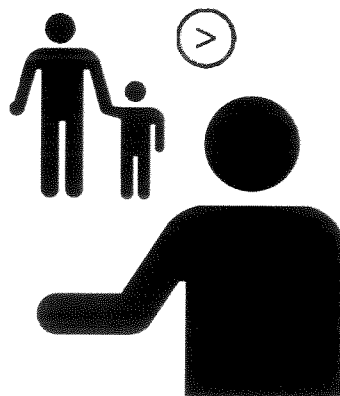


Bernet, W., Gregory, N., Reay, K. M., & Rohner, R. P. (2018). An objective measure of splitting in parental alienation: The parental acceptance-rejection questionnaire. *Journal of Forensic Sciences*, 63, 776-783. doi: 10.1111/1556-4029.13625

Jennifer J. Harman, PhD

13

Asymmetric Dependence



Jennifer J. Harman, PhD

14

Words from an adult alienated child

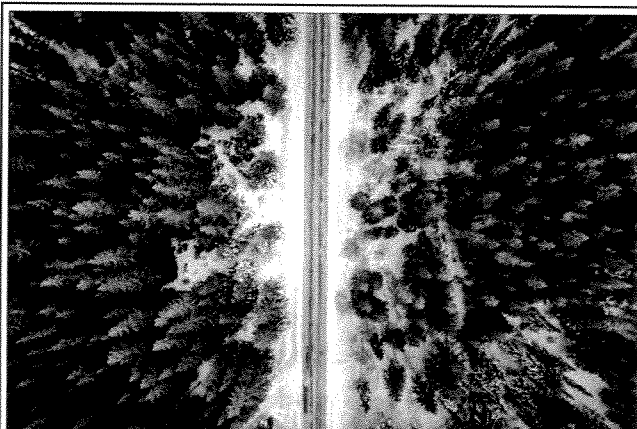
"How could anyone rely on a word I said back then? I was scared, I was terrified in fact, and I just wanted it all to stop. So much so that I would have said anything about my dad to make it stop. I thought they were going to help me but all they did was write down what I said and then they told my dad."

I was so ashamed because underneath I realized how much I had hurt him. I was so ashamed and scared that I made myself forget about it and I never saw him again, which of course made my mom really happy. I have had to live with that for nearly 15 years now. How could they do that to a child?"

--Patrick, aged 24

Jennifer J. Harman, PhD

15



How do courts get it wrong?

Admonishments to "play nice" and put kids first to stay out of court, blame parents equally, and order unstructured therapy plays into the hands of the alienator

Jennifer J. Harman, PhD

16

What parental alienation is NOT

Reciprocated

- Stop using “high conflict” to describe these families
- Power is highly imbalanced



Jennifer J. Harman, PhD

17

Power and DV

- | | |
|---|---|
| <ul style="list-style-type: none"> • Situational Couple Violence <ul style="list-style-type: none"> • Balanced power • Unpredictable • ~35% reciprocity • Interventions: <ul style="list-style-type: none"> • Psychoeducation • Couples counseling/mediation | <ul style="list-style-type: none"> • Intimate Partner Terrorism <ul style="list-style-type: none"> • Highly imbalanced power • Predictable cycles • Low reciprocity • Interventions: <ul style="list-style-type: none"> • Shelters, protection orders • Counseling for victim and batterer |
|---|---|

Jennifer J. Harman, PhD

18

Conventional therapy is contraindicated



Don't follow these rules of thumb:

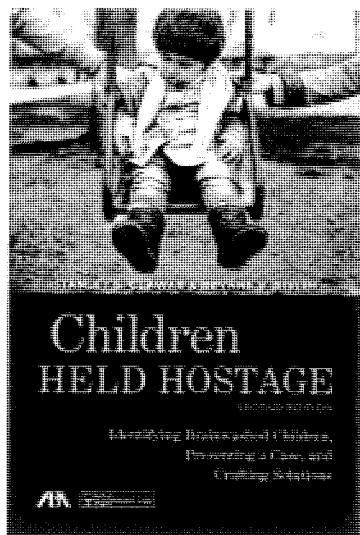
1. If 1 party wants to be there and the other does not, work with/focus on the one who wants to be there.
2. If one party has the capacity to change and the other does not, work with/focus on the one who has the capacity



Jennifer J. Harman, PhD

19

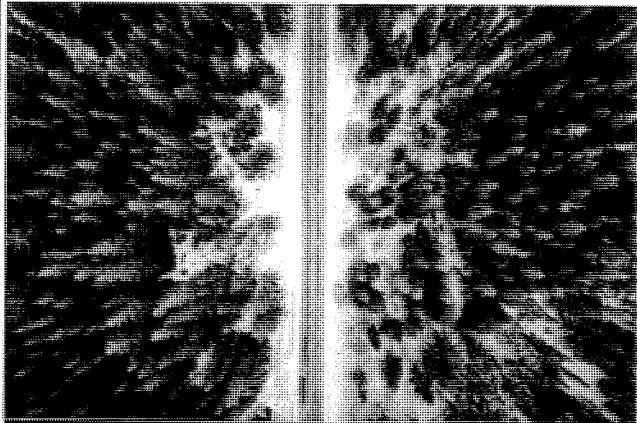
Clawar & Rivlin, 2013



- 2nd edition published by the American Bar Association
- “We added 300 new cases to our original sample of 700, for a total of 1,000 cases...Our research continues to confirm that, even under court order, traditional therapies are of little, if any, benefit in regard to children in treating this form of child abuse (Preface, page xxvii)”

Jennifer J. Harman, PhD

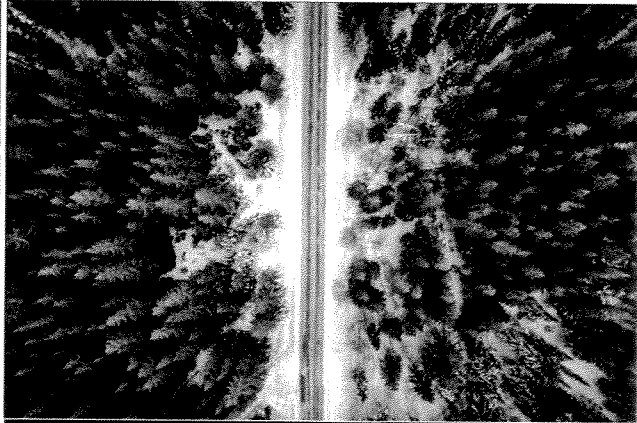
20



How do courts get it wrong?

Reflexive belief in children's hearsay statements despite studies of children lying to protect themselves or to influence as a result of erroneous delegation of the problem to third parties

Jennifer J. Harman, PhD 21



How do courts get it wrong?

Little understanding of urgency and potential impact of lost memory/history lost or impaired critical thinking skills, loss of sense of permanence of foundational relationships

Jennifer J. Harman, PhD 22

How do courts get it wrong?

Little understanding of
schools of therapy,
prerequisites for therapy,
pervasive failures of therapy

Jennifer J. Harman, PhD

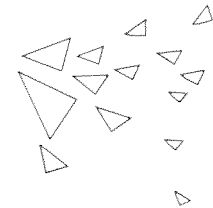
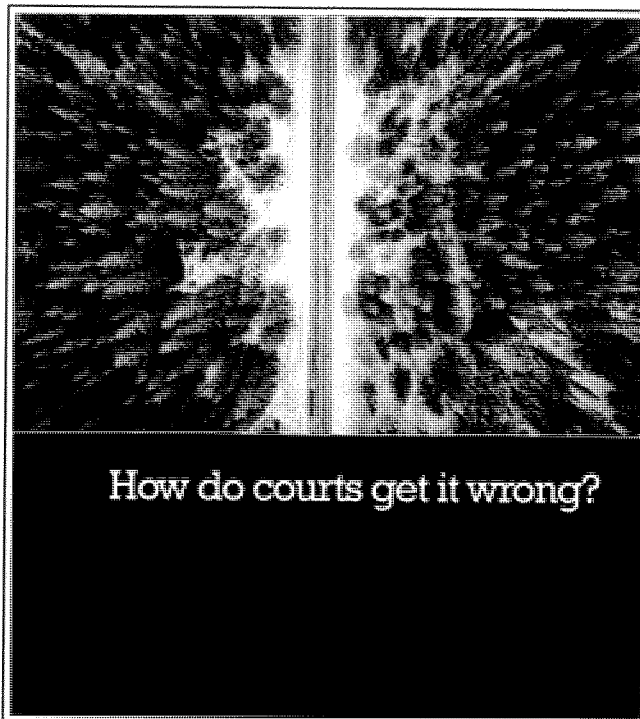
23

How do courts get it wrong?

Little understanding of
available diagnostics or
psychological processes,
despite reams of
jurisprudence

Jennifer J. Harman, PhD

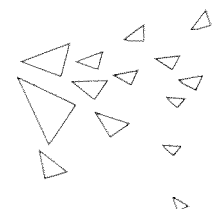
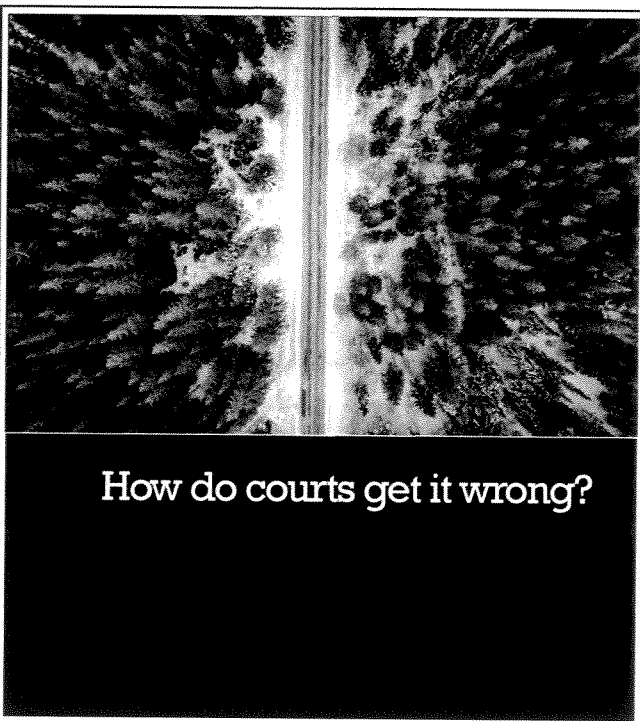
24



Lack of understanding of jurisprudence on parental duties to foster compliance with Court orders—
"encourage" vs "require;"

Jennifer J. Harman, PhD

25




Potential biases:

- Voice of the child
- Pre-separation division of parenting time governs
- Gender
- Undue caution
- Allegations true until disproved
- False allegations have no consequences

Jennifer J. Harman, PhD



26



How to avoid contributing to the problem

1. Parental alienation is family violence
Parents who use parental alienating behaviors are being abusive.


Jennifer J. Harman, PhD

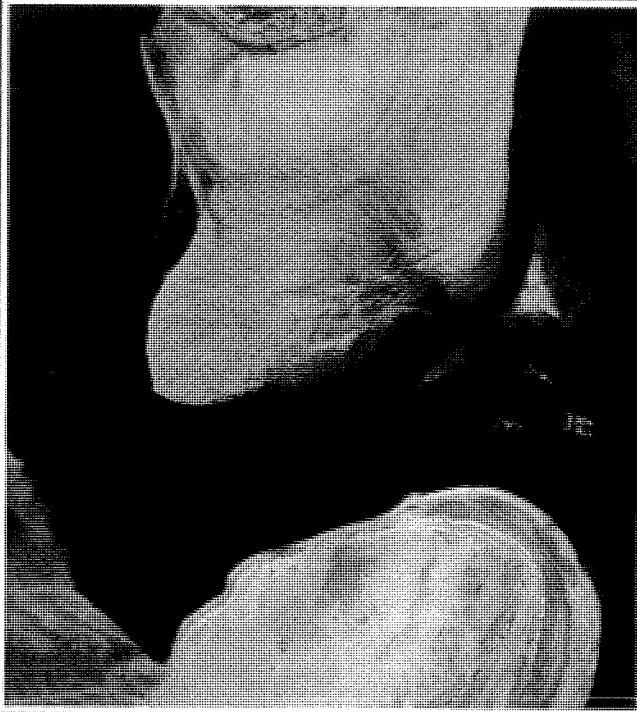


How to avoid contributing to the problem

2. Make sure there is clear and substantiated evidence for allegations

Jennifer J. Harman, PhD





How to avoid contributing to the problem

3. Utilize experts with training and familiarity with empirically based research and interventions

Jennifer J. Harman, PhD

Mistakes therapists make in treating PA

- Belief that they need to go slow.
- Fear of complaint made by alienating parent
- Belief it is not their job to enforce access orders
- Belief that typical approach will solve the problem despite past failure
- Afraid to push the alienating parent so push targeted parent instead
- Therapist Fragmentation
- Fail to use family systems approaches and be more directive/authoritative. Makes it worse
- Belief don't have to read everything the targeted parent gives them, speak with collaterals, or understand previous background
- Belief they need to observe therapeutic alliance even if goals of therapy are not met
- Refusal to call halt to therapy when there is lack of participation/write a letter to the court explaining why

Jennifer J. Harman, PhD

30

Where do you find an expert?

Home Member Websites About Us our Members Contact

pasg

Parental Alienation

Parental Alienation Study Group (PASG) is an international organization dedicated to the study and treatment of parental alienation. We provide a platform for professionals and parents alike to share their experiences and research. Our goal is to raise awareness and provide support for those affected by parental alienation.



Search



Parental Alienation Study Group

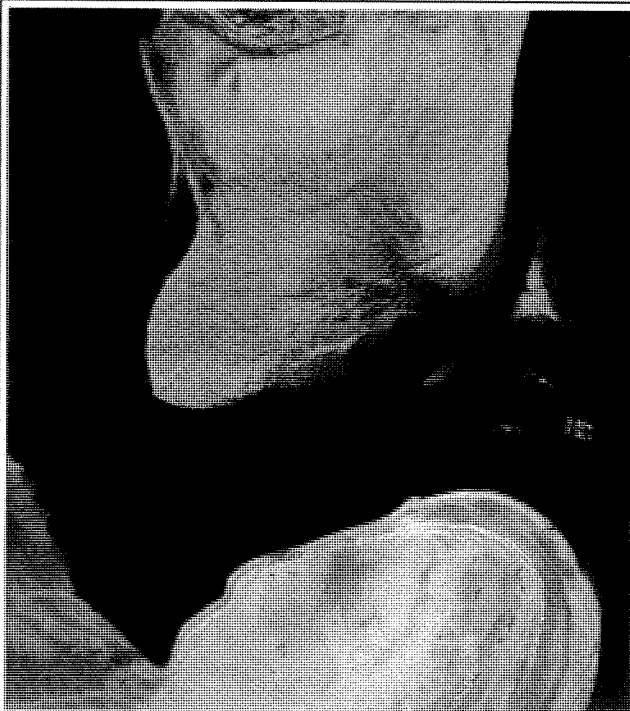
Parental Alienation Study Group (PASG) is an international organization dedicated to the study and treatment of parental alienation. We provide a platform for professionals and parents alike to share their experiences and research. Our goal is to raise awareness and provide support for those affected by parental alienation.

Parental Alienation Database

A comprehensive database regarding parental alienation cases, developed by PASG and its members. It is a resource for professionals and parents alike. For more information, visit <http://mc.vanderbilt.edu/pasg>.

Jennifer J. Harman, PhD

31



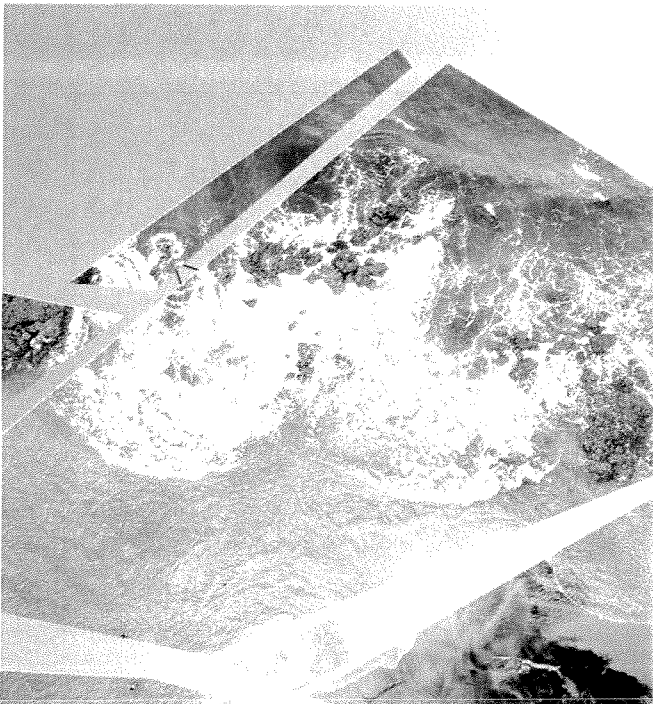
How to avoid contributing to the problem

4. Understand the needs of the TPs and APs you represent


Jennifer J. Harman, PhD

32






Consequences of PA on TPs




OTSD, Adjustment Disorders



Internalizing problems

Anxiety, depression, suicidality



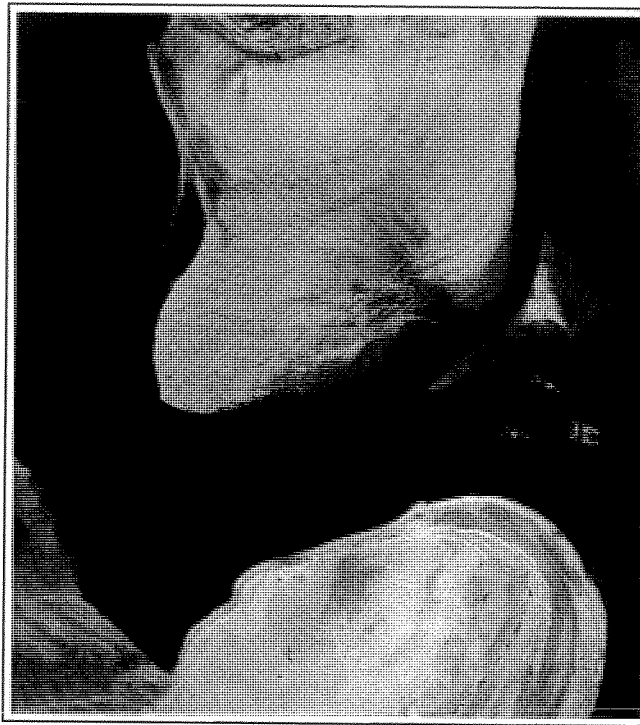
Externalizing problems

ADHD, work problems, substance abuse

Jennifer J. Harman, PhD 33

Understand what alienators do and why

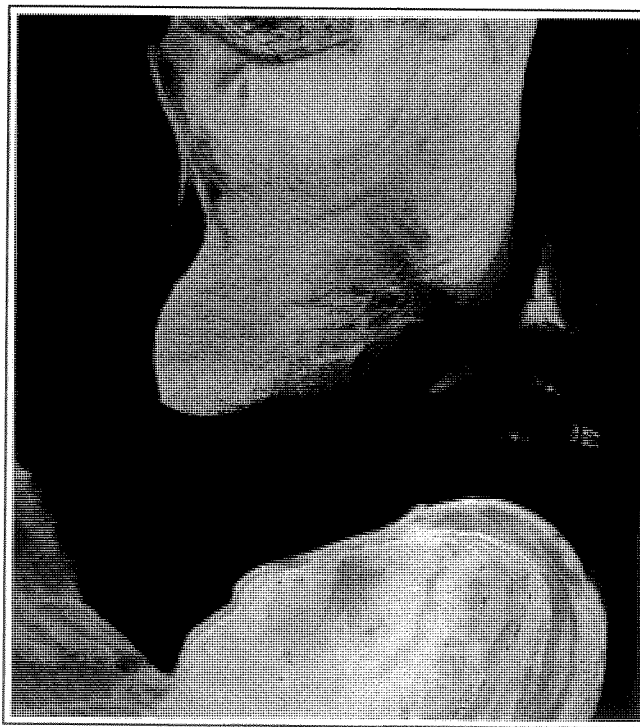

- Frame issues in a way that absolve them of responsibility for cause or solution
- Hypocritical assertions of “encouraging” access, despite alleging the targeted parent is abusive and so the child is justified in their rejection
- Elevate the child’s feelings and decision-making over all else
- Impose conditions on access and say the child needs to “feel safe and secure” or the child needs a “safe” environment for access, or needs an advocate or mediator in all interactions with the targeted parent with no substantiated reason
- Only agree to therapy that doesn’t involve them or just give the child a platform to make it seem they are interested in solutions.
- Parental access in parallel with therapy is rejected and the therapist is pulled in to agree to go slow in easing into access. Role confusion.
- No matter how much supportive evidence the targeted parent provides about their fitness, there is not change in the alienator’s views
- Parenting style conflict and refusal to consider the breadth of “normative” parenting



How to avoid contributing to the problem

5. Prevent delays as much as possible


Jennifer J. Hartman, PhD



How to avoid contributing to the problem

6. Restore access as soon as possible

Jennifer J. Hartman, PhD

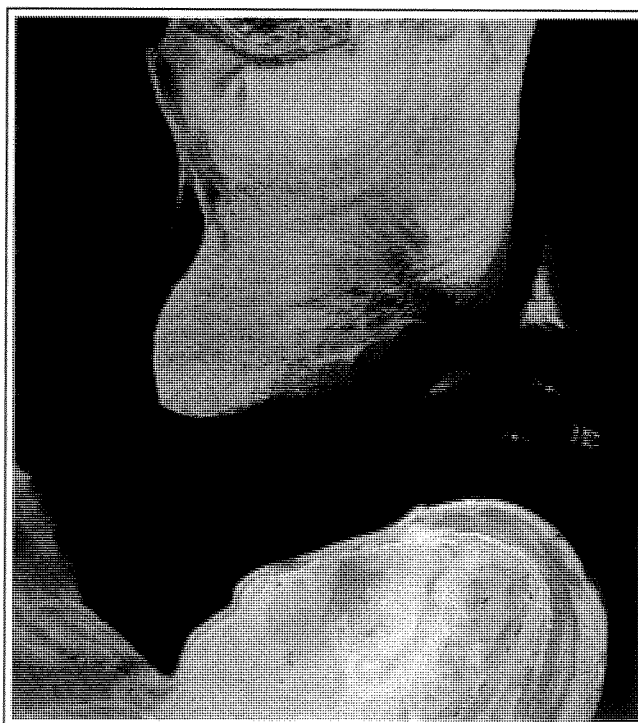


“ The most important advice to an alienated parent is to re-establish contact with the child as quickly as possible. There are no reports of successful treatment of mild/medium level of parental alienation that do not include the re-establishment of contact between the child and alienated parent...following a break in contact, it is extremely unlikely for a relationship to be re-established due to a change of perspective.”

Andritsky, W. (2002). Behavioural patterns and personality structure of alienating parents. In W. V. Boch-Galhau, U. Kodjoe, W. Andritsky, & P. Koeppel (Eds.), *The Parental Alienation Syndrome (PAS): An Interdisciplinary challenge for professionals involved in divorce* (pp. 293-314). Berlin: Verlag für Wissenschaft und Bildung.

Jennifer J. Harman, PhD

37



How to avoid contributing to the problem

7. Push for solutions that create a legal/mental health interlock

Jennifer J. Harman, PhD

What to do?

- Early diagnosis and appropriate intervention
- Continuity of magistrate/judge in the family
- Clear and firm orders with teeth
- Monitoring of progress; adjust as needed



Jennifer J. Harman, PhD

39

What penalties can be imposed for non-compliance?

- Unpaid work (volunteer) hours, curfews
- Compensation orders for losses sustained by failure without a reasonable excuse for non-compliance
 - E.g, legal fees
- Monitoring of contact by CPS for up to 12 months
- Child protection orders for follow-up
- Prison or a suspended order
- Transfer of living arrangements to other parent (or suspended order)
- Placement in foster care under an interim order as bridging replacement before transfer to other parent

Jennifer J. Harman, PhD

40

What models can we look to?



Family Bridges: A Workshop for
Troubled and Alienated Parent-Child Relationships

Turning Points For Families

Jennifer J. Harman, PhD

41

How to handle deniers and protectors of alienators

Argument

"Parental alienation is not recognized in medical or psychological settings."

Response

Parental alienation is highly recognized!

- *Comprehensive Textbook of Psychiatry*
- *Encyclopedia of Clinical Psychology*
- *AACAP Practice Parameters for Child Custody Evaluations*
- *APA Handbook of Forensic Psychology*
- AAP "Helping Children and Families Deal with Divorce and Separation"
- APSAC Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence
- DSM-V: CAPRD
- World Health Organization: ICD-11

Jennifer J. Harman, PhD

42

How to handle deniers and protectors of alienators

Argument

"Parental alienation is based on 'junk science'"

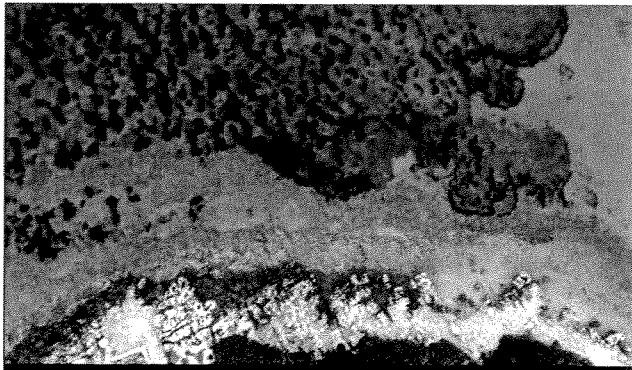
Response

Completely false

- > 1,000 published articles from every continent
- Saini et al (2013) conservative estimate
 - ~45 articles with strong methods
 - Strong consensus on outcomes and behaviors that create them

Jennifer J. Harman, PhD

43



Learn more

Stay up to date on the latest research



SIMPLY PARENT



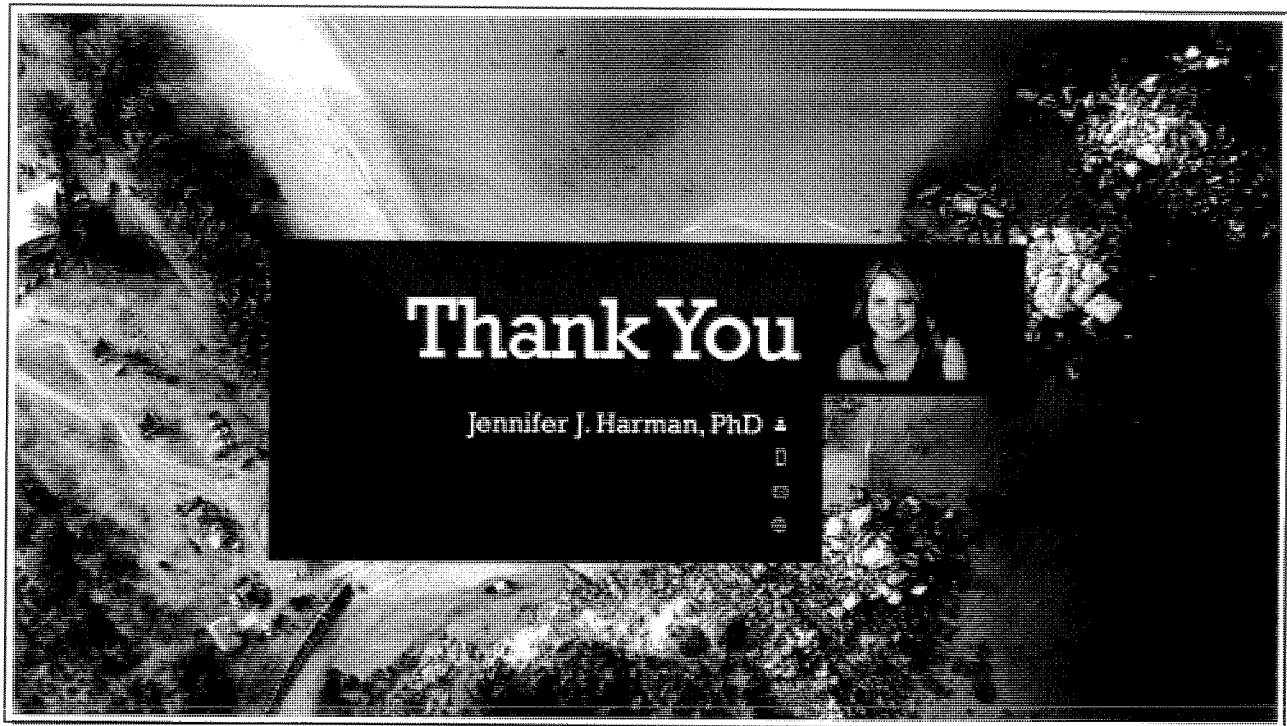
Harman, J. J., & Biringen, Z. (2016). *Parents acting badly: How institutions and societies promote the alienation of children from their loving families*. Fort Collins, CO: Colorado Parental Alienation Project, LLC.



Lorandos, D., Bernet, W., & Sauber, R. S. (Eds.). (2013). *Parental alienation: The handbook for mental health and legal professionals*. Springfield, IL: Charles C. Thomas Publisher, Ltd.

Jennifer J. Harman, PhD

44



Resources around the State for Resolving Custody Issues

Saturday, September 8

Resolving Custody Matters in New Mexico: A District by District Review

What happens in each
District?

A handy guide to processes
and procedures in New
Mexico.

Safe Exchange & Supervised Visitation (SESV)

- The Judiciary's Safe Exchange & Supervised (SESV) Program is operated by highly qualified and trained professionals. Each service provider has a contract with the local district court, administered through the Administrative Office of the Court (AOC), to deliver services to children and parents referred by the courts. Primarily, these case types involve divorce, separation, custody disputes, parentage and domestic violence, but others may also be referred.
- All service providers and their staff have undergone a national-level background check and child abuse/neglect screenings by the New Mexico Children, Youth and Families Department (CYFD) before rendering services. They are also required to meet state law requirements and follow the Supreme Court rules of the New Mexico Court Standards for Safe Exchange and Supervised Visitation. Services are typically provided in a warm home-like environment to assist families to maintain and develop close relationships.

SESV Providers

• First Judicial District:

- (Los Alamos, Rio Arriba, & Santa Fe)
- The Crisis Center of Northern NM
- www.crisiscenters.com
- Carol Merriweather – carolihn@yahoo.com
- 577 El Llano Road, Espanola NM 87532
- 911 Fifth Street, Santa Fe NM 87505
- (505) 753-1656 – Main Office, Espanola
- (505) 901-0976 – Santa Fe Office

• Second Judicial District: Bernalillo

- Youth Development, Inc. – Neutral Corner
- www.ydjinm.org
- Judy Pacheco – jpacheco@yjinm.org
- 1245 4th Street NW, Albuquerque NM 87102
- (505) 255-0007

• Third Judicial District Court: Dona Ana

- Families and Youth INC – www.fyjinm.org
- Deserey Medina – dmedina@fyjinm.org
- 1320 South Solano, Las Cruces NM 88001
- (575) 556-1551

• Fourth Judicial District: San Miguel

- Somos Familia – Tim Gallegos – tgalegos@somosfamilialv.org
- 312 Bibb Industrial Dr., Las Vegas, NM 87701

• Fifth Judicial District: Eddy, Chaves, Lea

- Casa de Oro-Golden Services: Carlsbad, Eddy County
- Kim Rogge Roger kim.rogge.rogers@gmail.com
- 800 West Pierce, Carlsbad, NM 88220 (575) 885-3082
- Chaves County CASA: Roswell, Chaves County
 - casakids.org - Amanda Luera amandaluera@casakids.org
 - 500 N. Main Str., Ste 310 Roswell, NM 88201
 - (575) 625-0112 Fax (575) 625-0213
- CASA of Lea County-Family Time Visitation Center (Hobbs, Lea County)
 - casaofleacounty.org - Adriana Catano casafvvc@gmail.com
 - 501 N Linam, Hobbs, NM 88240
 - (575) 393-0661

SESV Providers, Cont.

- **Eight Judicial District Court:** Colfax, Taos & Union
 - Youth Heartline –
 - Po-Ching Chen director@youthheartline.org
 - 224 Cruz Alta, Taos, NM 87571
 - (575) 758-0108 Fax (575) 751-7621
- **Ninth Judicial District Court:** Curry and Roosevelt
 - Family & Children Court Services
 - LaDona Beevers - ninthidfccs@gmail.com
 - 1200 Thornton St., Ste B, Clovis, NM 8810
 - (575) 769-3227 or (575) 769-2656
- **Eleventh Judicial District Court:** San Juan
 - Time 4 Family
 - Tracy McRight time4family@hotmail.com
 - 309 No. Behrend Ave., Farmington, NM 88401
 - 505-330-0785
- **Thirteenth Judicial District Court:** Cibola, Sandoval & Valencia
 - Family Services for Children - Rio Rancho, Sandoval County
 - familyservicesforchildren.org
 - Lisa Castillo execdir@familyservicesforchildren.org
 - 1520 Deborah Rd. SE, Ste K, Rio Rancho, NM 87124
 - (505) 994-4931 Fax (505) 994-4660
 - Small Steps Visitation (Los Lunas, Valencia County)
 - Tasa Stromei & Caroline Spicher smallstepsvisitation@yahoo.com
 - 267 Courthouse Rd., Ste B, Los Lunas, NM 87031
 - (505) 261-3530
 - Youth Visions – Come Visit With Me: Grants, Cibola
 - Lynn Cannon admin@youthvisionsnm.org
 - 310 West High St. Ste D, Grants, NM 87020
 - (505) 290-0359 or (505) 287-9470

Family Law Resources – Southern New Mexico

3rd Judicial District Dona Ana County: Las Cruces

Court Related Services

CASA Usual CASA services with some brief therapy, safe house interviews, and supervised visitation through the court's Safe Exchange and Supervised Visitation (SESV) program. SESV is run by AOC which contracts with individual providers, such as CASA.

Special Masters

ADR Family Court Services Include:

Mediation

Arbitration

Early Neutral Evaluation

Settlement Conference

Settlement Facilitation

Family Attorneys

Jill V. Johnson Vigil

Michael Cain

Michael J. Dugan

Angelina Baca

Therapists

Lori Camali Caplan (therapist, parent coordinator)

Marc Caplan, PhD (custody evaluations)

Alameda Behavioral Health

Counseling Las Cruces

5th Judicial District
Chaves County: Roswell
Lea County: Hobbs & Lovington
Eddy County: Carlsbad, Artesia

Court Related Services:

CASA Usual CASA services with some brief therapy, safe house interviews, and supervised visitation through the court's Safe Exchange and Supervised Visitation (SESV).

Special Masters

ADR Family Court Services Include:

Mediation

Arbitration

Early Neutral Evaluation

Settlement Conference

Settlement Facilitation

Family Law Attorneys

Susan Cuddy-Moore (Carlsbad)

Martin, Dugan, Martin (Carlsbad)

Denise Madrid Boyer (Carlsbad)

Therapists

Cf Roswell

**9th Judicial District
Curry County: Clovis
Roosevelt County: Portales**

Court Related Services

CASA Usual CASA services with some brief therapy, safe house interviews, and supervised visitation through the court's Safe Exchange and Supervised Visitation (SESV) program. SESV is run by AOC which contracts with individual providers, such as CASA.

Special Masters

ADR Family Court Services Include:

Mediation

Arbitration

Early Neutral Evaluation

Settlement Conference

Settlement Facilitation

Family Attorneys

Sanders Law Firm

Grandjean Law Firm

Therapists

Clovis Counseling Center

Marriage & Family Mediation

Nancy Davis & Associates

12th Judicial District
Otero County: Alamogordo
Lincoln County: Carrizozo, Ruidoso

Court Related Services

CASA Usual CASA services with some brief therapy, safe house interviews, and supervised visitation through the court's Safe Exchange and Supervised Visitation (SESV) program. SESV is run by AOC which contracts with individual providers, such as CASA.

Special Masters

ADR Family Court Services Include:

Mediation

Arbitration

Early Neutral Evaluation

Settlement Conference

Settlement Facilitation

Family Attorneys

Freda Howard McSwane (Ruidoso)

Lori Gibson Willard (Ruidoso)

Erinna (Erin) Atkins Alamogordo

Gail Brownfield (Alamogordo)

Therapists

Alamogordo Counseling Services (Alamogordo)

Kenneth C. Kenney, Ph.D., MSW (Ruidoso, custody evaluations)

Robin LaRoque (Alamogordo)

Katherine Scott (Ruidoso)

Sierra Counseling Services (Ruidoso)

Community & Legal Services (Free and/or low cost)

TYPE OF LEGAL PROBLEM	NAME OF ORGANIZATION
Civil rights discrimination, employment, housing	American Civil Liberties Union www.aclu-nm.org 286-8816
	NM State Human Rights Division Statewide 1-800-888-7743
	Equal Employment Opportunity Commission (EEOC) www.eeoc.gov 1-800-888-2420
Consumer auto sales, debt collection, mail order, auto repair, door-to-door sales, mobile home sales, title and payday loans, telephone sales, home repairs	Attorney General's Office Consumer Protection www.nmcsa.org 248-5201
	Better Business Bureau of the Southwest 222-8000
	Consumer Credit Counseling Services 346-0110
	www.monahanmanagement.com 884-6801
	Law Access New Mexico www.lawaccessnm.org 888-41AW(988-4528)
	State Bar of New Mexico www.sbnm.org 800-340-8771
	(monthly free consumer debt workshops with volunteer attorneys) 787-8000
Criminal	NM State Public Defender Department www.lsdnm.org Felony Unit 388-3800
	Misdemeanor Unit 388-3600
Domestic Violence Counseling, advocacy services, court services (restraining orders and divorce/custody), emergency services and referrals to shelters	Albuquerque Family Advocacy Center 243-2333
	www.sbsa.org/families/albuquerque-family-advocacy-center
	Domestic violence: 248-3168
	Sexual assault/rape: 884-7263 or 268-7711
	Child sexual assault: 884-7263
	Domestic Violence Division 2nd Judicial District Court 841-8737
	Domestic Violence Legal Resources Hotline Statewide 1-877-874-3400
	Enlace Comunitario www.enlacenm.org 246-8872
	La Casa www.lacasanm.org Statewide 1-800-376-2272
	Crisis Line 575-528-8513
	NM Legal Aid www.helpinthenmlegalaid.org Statewide 1-877-874-3400
	Help line 243-4300
	NM Asian Family Center www.infoasfam.org 717-2877
	NM Coalition Against Domestic Violence www.nmcsdv.org 246-8240
Foreclosure Counseling	Peacekeepers Domestic Violence Statewide 1-800-400-8884
	San Juan Public 783-4780
	Domestic Violence Resources Center www.dvrcnm.org 884-1241
	Help line 243-4300
	Crisis line 788-2104
	El Paso House Statewide www.safeshousesnm.org
	1-800-773-3645 Crisis line 247-4218
Immigration	United South Broadway 784-8887 or 1-888-227-5114
	www.unitedsouthbroadway.org
Landlord/Tenant	Catholic Charities of Central New Mexico (immigration status for victims of domestic violence only) catholiccharitiesnm.org 726-8848
	247-0442
	New Mexico Immigrant Law Center nmile.org 247-1023
	Latin America El Paso 915-544-5126
	Displaced Migrant & Refugee Services El Paso 915-532-3875
	Boricua In Pueblo Unido www.boricuaunited.org 424-7832
	Law Access New Mexico (Landlord/Tenant Hotline) www.lawaccessnm.org 988-4528
	Statewide: 1-800-340-8771
	New Mexico Legal Aid www.nmlegalaid.org 243-7671
	Apartment Association of New Mexico www.aanm.org 822-1114
	Statewide: 1-800-687-0983
	New Mexico Landlord/Tenant Hotline Santa Fe 806-883-8447
	Disability Rights NM (Fair Housing) 286-3100 1-800-432-4882
	www.drmn.org

ATTORNEY REFERRAL PROGRAMS

Albuquerque Bar Association's Lawyer Referral Service	30-minute consultation with a private attorney for \$50.00 www.ababar.com 243-2615
State Bar of New Mexico Lawyer Referral Program	30-minute consultation with a private attorney for \$35.00 www.nmbar.org 797-8086

SENIOR CITIZEN/ELDERLY PROGRAMS

Lawyer Resources for the Elderly Program	If you are age 65 or older - provide legal advice and information, as well as referrals to attorneys or agencies by telephone. www.nmbar.org 797-8005
Senior Citizens Law Office	Bernalillo County, age 60 or older - SSI, VA, benefits, power of attorney, guardianship/conservatorship; wills and transfer on death deeds, foreclosure, landlord/tenant, housing benefits, financial/consumer exploitation. No personal injury, divorce, criminal or bankruptcy. www.sclp.org 266-2300

OTHER IMPORTANT CONTACTS

Disability Rights New Mexico	www.dnm.org
El Centro de Igualdad y Derechos	Statewide 1-800-432-4682 Albuquerque 256-3100
NM Center on Law and Poverty	Latino immigrants' rights organization www.abantrcnm.org 246-1827
NM Crime Victims Reparation Commission	www.nmccv.org/law.org 265-2840
NM Public Regulations Commission	Statewide 1-800-308-6262 Albuquerque 841-8432
UNM School of Law Library	www.nmrc.state.nm.us Insurance Complaints Statewide 1-888-427-5772 Albuquerque 827-4592 Utilities Complaints 827-8940 www.lawlibrary.unm.edu 277-0935
Client Attorney Assistance Program	Dispute with attorney www.nmbar.org 797-8000

SELF-HELP OFFICES

Metropolitan Court Self-Help Center	www.metrocourt.state.nm.us 841-8817
Forms for civil email claims, landlord/tenant, criminal and traffic	
Center for Self-Help and Dispute Resolution (2nd Judicial District Court)	www.assendistrictcourt.nm.courts.gov 841-8702
Forms for divorce, custody, name change	
Court of Wills, Estate and Probate	www.bencc.gov/probate-court 468-1234
Informal, uncontested probates	www.nmb.uscourts.gov 348-2500
United States Bankruptcy Court	
Forms and Instructions	

INFORMATIVE WEBSITES

www.lawhelpnewmexico.com	Court forms, Renter's Guide, legal information and statewide legal resources
Statewide legal resources	
www.nmbar.org	Public resources, including attorney referrals and free public legal workshops
State Bar of New Mexico	
www.supremecourtlib.org	New Mexico Statutes, Local Rules, Albuquerque Ordinances
New Mexico Supreme Court Law Library	
www.nmccourts.gov	Statewide case lookup, court forms, and court directory
New Mexico Courts	Access to Justice Information sources
www.nmjustice.net	Criminal Justice Information
Criminal Justice Information	

Created and updated by Metropolitan Court Self-Help Center Revised 04/06; Updated 07/15; 11/15 Q:Pro SocCommunity and Legal Services/Referral Resource List/ Referral

First Judicial District

Santa Fe, Los Alamos, Rio Arriba

- In camera interviews? Rarely done; more likely to be through Court Services or a GAL or as part of an evaluative process. Recently, all children over 14 are interviewed unless both parents disagree.

- Do they use Parenting Coordinators? Yes – By Court Order

James Bristol 505-992-3456 Patrick Whelan 505-983-4810

Ned Siegel 505-983-3757 Gen Glover – 505-424-7840

Sarah Stout 505-424-1905 John and Sati Kohn 505-982-1906

- Who are the GALs?

James Bristol 505-992-3456 Kristina Martinez 505-986-9641

Catherine Khiser-Ellington 505-986-0677 Julie Wittenberger 505-988-4476

- Custody Evaluations:

• Candace Kern LISW 505-438-2004 Ned Siegel PhD 505-988-3757

• Gayle Ziemann PhD Elliot Rappaport PhD 505-983-3757

• Susan Cave (forensic work) 505-988-7616

- Counselors/Therapists?

• Catherine Rice, LISW 505-438-2004 Troy Fernandez LISW 505-310-2183

• Sheila Vaughn PhD 505-629-3034 Santa Fe Psychotherapy/Pastoral Counseling Assoc. 505-988-4131

- Local Rules and Other Resources: Under Review, See "Family Court Services and Mediation" on the Court website.

First Judicial District

Santa Fe, Los Alamos, Rio Arriba

- In camera interviews? Rarely done; more likely to be through Court Services or a GAL or as part of an evaluative process. Recently, all children over 14 are interviewed unless both parents disagree.
- Do they use Parenting Coordinators? Yes – By Court Order
 - James Bristol 505-992-3456 Patrick Whelan 505-983-4810
 - Ned Siegel 505-983-3757 Geri Glover – 505-424-7840
 - Sarah Stout 505-424-1906 John and Sati Kohn 505-982-1906
- Who are the GALs?
 - James Bristol 505-992-3456 Kristina Martinez 505-986-9641
 - Catherine Kinser-Ellington 505-986-0677 Julie Wittenberger 505-988-4476
- Custody Evaluations:
 - Candace Kern LISW 505-438-2004 Ned Siegel PhD 505-983-3757
 - Gayle Ziemann PhD Elliot Rappaport PhD 505-983-3757
 - Susan Cave (forensic work) 505-988-7616
- Counselors/Therapists?
 - Catherine Rice, LISW 505-438-2004 Troy Fernandez LISW 505-310-2183
 - Shelia Vaughn PhD 505-629-3034 Santa Fe Psychotherapy/Pastoral Counseling Assoc. 505-988-4131
- Local Rules and Other Resources: Under Review, See “Family Court Services and Mediation” on the Court website.

First Judicial District, Cont.

- **ADR: Paths to Settlement - Serving Santa Fe, Los Alamos & Rio Arriba Counties**
- Programs - "Alternative Dispute Resolution" or "Family Court Services & Mediation"
 - **Family Court Services**
- Domestic Relations Mediation - Assists with development of Parenting Plans for custody and/or visitation
- Priority Consultation - Provides brief, focused child custody evaluations
- Advisory Consultation - Provides comprehensive child custody evaluations
- Child Abuse and Neglect Mediation Assists parents and the CYFD to create agreements for legal and treatment issues
- Open Adoptions Mediation - Assists with post-adoption child visitation arrangements
- Contact: Gary Lombardo, Director, Phone: 505-455-8238, Email: sfedgtl@nmcourts.gov
- **Court Constituent Services Division (CCSD) – ADR for Civil Cases:**
 - **Self-Help Center:** Serves people without attorneys. Provides forms, information about court procedures, document review services (for divorce and parenting cases), and a monthly orientation class. *Does NOT provide legal advice.*
 - **Mediation, Foreclosure cases**
- **Settlement Facilitation:** Domestic cases – assistance with property and debt division, all civil cases, including probate and foreclosure
 - **Contact: Joanne Trujillo, Phone: 505-455-8145 Email: sfedixt@nmcourts.gov**

•

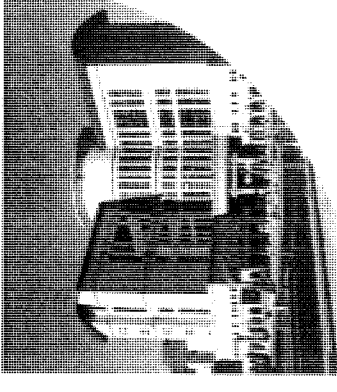
First Judicial District, Cont.

- **Resolution Day:** In Domestic Relations cases, assistance is available twice monthly to quickly resolve some issues in the case. The issues raised by *Motions for Orders to Show Cause, Motions to Enforce, Simple Pro se Divorces*, and other relatively simple matters are resolved by the agreement of the parties, or by a same-day decision of the judge.

Second Judicial District:

Bernalillo County

- Timesharing:
 - Any Motion to establish timesharing will be set on a Summary Calendar. At that hearing, the intent is to get a temporary timesharing order into place. (Offers of proof/status quo, etc)
 - Court will discuss with parties how expensive process can be. Court will look for mediation services, then GAL, custody evaluations.
 - Court Clinic: Court will only sign off on orders for mediation through Court Clinic. If mediation fails, parties must go back before the judge to determine next steps (AC/PC/SOC) or GAL, Custody Evaluation, or determination of issues by Judge.
 - AC – like a custody evaluation, about 20 hours of work. Only used in cases with significant issues. Recommendations will be filed and a hearing heard.
 - PC – Statutory process, requires less time than AC. No psychological testing, but there is a full report issued, recommendations, and a hearing.
 - SOC – Same as a PC, but there is no report, the Clinician simply comes to Court to testify.
 - Please read the statutes and rules on the Mediation Services
- Notes
 - Judges are trying to best utilize resources of Court and parties.
 - There are very limited resources. There are now 12 people referring cases to the Court Clinic.
 - Cases of all income levels can be heard at the Court Clinic.
 - Generally no in camera interviews – generally only if children or older, and it is a long standing case. The judges want to leave it to the professionals to make recommendations as to children.
- Evaluators
- GALs
- Parenting Coordinators/Wiseperson – difficult as there is no statute to follow for these specific appointments. Special Master rule must be used. The PC should be used as a person after custody and timesharing determinations made, to keep people out of Court.
- PHJ Day/Law la Palooza/Free Legal Clinics held monthly.
- Self Help Center



Second Judicial District, Cont. Notes Page for Discussion

Third Judicial District: Dona Ana County

Lisa Betancourt 575-523-8267: lcrdlvb@nmcourt.gov Director of Mediation

- Custody Evaluations:

- Marc Caplan 575-526-4222

- Therapists:

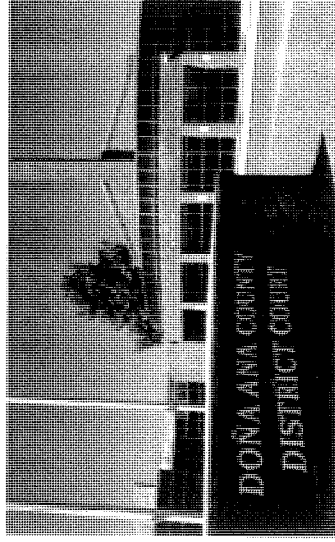
- Lori Camallie Caplan 575-219-2444
 - Parenting Coordination and Reunification
- Marc Caplan, 575-526-4222
- Alameda Behavior Health: 575-366-8025
- Counseling Las Cruces, 575-526-9878

- Much Information available on Third Judicial District Court website

- Domestic Relations Mediation is required.

- Court Related Services: CASA usual services with brief therapy, safe house interviews and supervised visits SESV

- ADR Family Court Services Include: Mediation, Arbitration, Early neutral evaluation, settlement conference, settlement facilitation.



Developmental Needs of Children of Divorce – From the 3rd Judicial District

The children must be the primary focus when developing a time-sharing plan.

Each child's developmental needs, and signs of stress must be considered before the parents needs are met. Each child must be considered as an individual as some go through a stage more quickly, some are developmentally delayed and others have special needs. Ongoing stress causes serious and lifelong problems for a child. Parents must remember that children will survive separation, divorce, developmentally appropriate time-sharing plans, but will suffer by ongoing conflict.

The relationship between the child and each parent must be taken into consideration when developing a parenting plan when a parent has been actively involved in a child's life, the plan should reflect it. If a parent has had little or no contact with the child, the plan should be developed slowly to reduce the child's stress. If the parent has a significant problem such as drug/alcohol abuse, mental illness, anger control or lack of parenting skills, this must be remedied first. At no time should the child be overly stressed, or be exposed to a dangerous situation such as domestic violence.

Parents should be aware that their attitude and willingness for the child to have a relationship with both parents plays a large role in the child's adjustment. If a child knows a parent does not want him/her to go to the other parent, the child may act out and have adjustment problems. Children must not be used to get even with the other parent. Children needs parents to encourage ongoing relationships with both parents/extended family life. A child caught in the conflict will develop serious life-long problems. The goal is to build a relationship with the child that is positive and lasting into adulthood.

The following guidelines should be used to develop a time-sharing plan that reflects the needs of the child, the relationship with each parent. If the parents have a low level of conflict and both have been actively involved with the child, there may be alternatives to what is outlined as follows:

INFANTS: 0 to 6 months old

Developmental Task: To establish trust that basic needs, such as food and nurturing, will be available.

Characteristics of this Stage: Child is dependent upon others. Child cries to get needs met. Child cannot purposely disobey or willfully misbehave. Mood can change quickly from happy to sad. Child often reflects the care giver's level of stress.

Signs of Stress: Excessive crying, problems with eating and or sleeping.

Child's Needs: Child needs consistent responding from care givers and a predictable schedule to satisfy basic needs. Child responds to being held and loved consistently.

Time-Sharing Schedule: One primary home with consistent care giver. No overnights away from primary care giver. If conflict is low, frequent short visits at least three times a week with the non-primary parent.

Long Distance Time-Sharing: Non-primary parent must go to the child as often as possible.

INFANTS: 6 to 18 months old

Developmental Task: To establish an attachment bond with at least one care giver.

Characteristics of this Stage: 6-9 months, child normally shows separation/stranger anxiety (a healthy sign of attachment). Children who go with strangers are at risk for being hurt by them. Child may show distress when leaving primary care giver to go with any other person (INCLUDING the other loving parent). Child often takes cue from the primary parent as to how to react.

Signs of Stress: Crying, clinginess, fear of separations, tantrums, eating/sleeping problems.

Child Needs: Consistency with no long separations from care giver in a predictable/safe environment.

Time-Sharing Schedule: One primary home and regular time (several times a week) with the other parent, returning to the primary home at night. If the child knows the other parent and has spent regular periods of time with him/her, the child can begin to spend longer periods of time away from the primary home. The child's behavior should be monitored to determine adjustment.

Long-Distance Time-Sharing Schedule: The non-primary parent should travel to see the child as often as possible. The care giver should try to take the child to the other parent. If there has been significant involvement by the non-primary parent, the child may spend time similar to the other one outlined above. If there has been little involvement, the schedule should be gradually increased to meet the child's needs. The goal is to establish a positive relationship not one marked by traumatic separations.

TODDLERS: 18 months to 3 years old

Developmental Task: Child is developing a sense of independence, autonomy, and a sense of self as separate and different from the parent.

Characteristics of this Stage: Child will test limits constantly, be uncooperative and self-centered at times while learning a sense of his/her own personal power and separateness.

Signs of Stress: More irritable than most children this age. Demonstrate anxiety, fears and worries as seen in the child's behavior of being clingy, eating/sleeping problems and crying frequently. There may be regression to earlier behaviors, fear of separation and asking for the absent parent.

Child Needs: A predictable, consistent and safe environment is critical. Clearly defined and enforced limits will help the child feel safe and secure.

Time-Sharing Schedule: After age 2 child may tolerate overnights if the non-primary parent has been an active and regular participant in the child's life. The schedule should continue to be predictable with frequent contact with the non-primary parent to maintain a strong relationship.

Long-Distance Time-Sharing Schedule: Parents continue to have the responsibility to encourage and develop the parent-child relationship. Each case must be assessed to determine the child's ability to tolerate change, and previous involvement/ commitment to the child.

PRESCHOOLERS: 3 to 6 years old

Developmental Task: To learn to take the initiative, gain some impulse control, interact and play cooperatively with peers, and to begin the socialization process.

Characteristic of this Stage: Focus is on social roles and mimicking adult behaviors. Stage may include nightmares, invented monsters/fantasies, and magical thinking (If I think it, it will happen) which create anxiety. There is acute sensitivity to parental conflicts, moods and feelings. Time perception is limited. Child benefits from frequent contact by phone/in person with absent parent.

Signs of Stress: Excessive fears/anxieties including fear of separation/abandonment. Blames self for adult actions (including the divorce). Shows regressive behaviors like thumb-sucking, bed wetting, tantrums, clinginess, etc. Shows distress at transition times.

Child Needs: Reassurance with hugs and words like "I love you, you'll be OK, your mom and dad will make sure things are OK". Child needs consistent and predictable routines with some advanced warning of change in the routine. Calendars may be helpful in giving child visual cues.

Time-Sharing Schedule: Schedule should continue to be predictable/consistent. If a parent has been an active participant, overnights can be considered. The child's behavior should be monitored for signs of stress when changes are made. The goal is to ensure the child's comfort level.

Long-Distance Time-Sharing Schedules: Actual schedules will vary depending on the child's temperament, parent's ability to work together and focus on the needs of the child, and if there are older siblings. Generally the preschooler who has a parent that has been actively involved and has a

good bond with the child can tolerate short periods of time of a few days initially up to a few weeks by age 6. The child's behavior should always be the key as to when to increase or decrease the time.

ELEMENTARY SCHOOL AGE CHILDREN: 6 to 10 years old

Developmental Task: To learn skills to be competent, industrious and productive. This age group is focused on school, outside activities and peer relationships.

Characteristics of this Stage: Child begins to think logically, take the perspective of others, and show true empathy, no longer being purely self-centered. Time perception is developed, child can maintain close relationships with a parent even with more extended time away. Child may express the desire for things to be fair even if it costs the child in areas of development.

Signs of Stress: Problems with school performance and/or peer relationships. With new empathy ability, child reacts strongly to parent's pain. Child may act sad, angry, blaming, morally and righteously indignant, and avows loyalty to the parent that is perceived to need help.

Child Needs: Help with solving school/peer problems early in the stage. Give child reassurance with clear, understandable explanations. Remove child from parental disputes and/or from being a caretaker for a parent. Continue consistency in routines. Make allowances with the time-sharing schedule to let the child engage in outside activities and for friendships to develop.

Time-Sharing Schedule: Most appropriate schedule will depend on the child's relationship with both parents, child's temperament, and developmental progress. This age can tolerate 50/50 timesharing plans IF both parents agree that it is a good idea, have similar parenting styles, good communication, and live in close proximity to that the child can easily go to school and maintain friendships.

Long-Distance Time-Sharing Schedule: Varies depending on the child's developmental needs, maturity, relationship with each parent, parent's ability to communicate and commitment to make it work.

Typically a plan will be limited to school holidays and summer. Parents must consider the child's activities and need for time with friends in addition to time with each parent. Children may resent a parent they see as interfering with activities/friendships.

PRE-ADOLESCENCE: 11 to 12 years old

Developmental Task: To gain a sense of control and comfort with peers and emerging sexuality.

Characteristics of this Stage: Child begins development of true abstract thinking and can think about hypothetical ideas. Child can now understand the real reasons for the divorce. Child can understand a variety of time-sharing schedules, without needing to directly experience them.

Signs of Stress: Development of intense loyalty conflicts. Acting prematurely adolescent, which retards true maturation. Depression, anxiety and school problems.

Child Needs: Flexibility to time-sharing schedule so the child can develop friendships and outside activities.

Time-Sharing Schedule: The parents must be aware of the child's schedule and routine. While some can continue on the schedule for the elementary school child, others may need to move toward one primary home or longer periods of time between transitions.

Long-distance Time-Sharing: Similar to elementary school children. Parents must consider issues involving the beginning of adolescence, importance of friends.

ADOLESCENCE: 13 to 18 years old

Developmental Task: To develop identities that are separate from the parents. To grow away from the family and prepare for adulthood.

Characteristics of this Stage: Adolescents normally pull away from the family, physically, socially and emotionally to become independent. They resist family activities and challenge adult ideas.

Signs of Stress: Breaking rules, acting out, withdrawal, isolation, depression, abuse of alcohol and or drugs, suicide threats/attempts, and poor school performance. Loyalty conflict which leads to cutting off contact with one or both parents. Loyalty may change between the parents over time. May become pseudo mature and become the care giver for a hurting parent.

Child Needs: Protection from loyalty conflicts. Consistency of rules between households. Timely professional attention to significant emotional problems.

Time-Sharing: Flexible schedule that shows respect to the adolescent's needs first and the parent's second. Usually adolescents prefer one home and flexible time sharing.

Long-Distance Time-Sharing Schedule: Parents must focus on the needs of the adolescent. During this stage, even in intact families, the children move away from interacting as often with the parents and are more focused on friends/activities. An adolescent who is forced to spend time away from the primary home where friends/activities are, will resent the parents.

Fourth District Court:

Guadalupe, Mora, San Miguel

- Judges: Chief Judge Gerald Baca, Judge Abigail Aragon. Division III is currently vacant and those cases are being handled by pro-tempore judges.
- Two child support hearing officers shared with the 4th, 8th, 10th, and 9th Districts will preside over cases that involve CSED.
- No usage of Parenting Coordinators.
- GALs will be appointed if deemed necessary by Court and parties must share cost.
 - Flora Gallegos, Corrie Darr, and Arthur Bustos.

• Mediation: Ordered by Judge or requested by parties using 4A-204

- The Court contracts with SR Solutions – they also provide Priority consults and Advisory consults.

• 727 7th Street, Las Vegas NM 87701

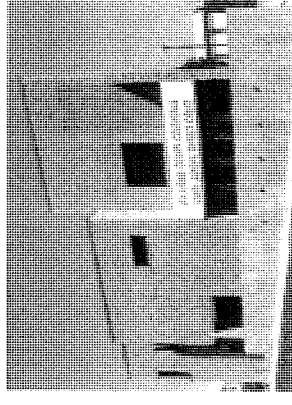
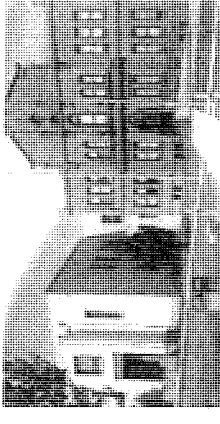
- Kids Counseling
- La Familia- Namaste

• Supervised Visits: SESV

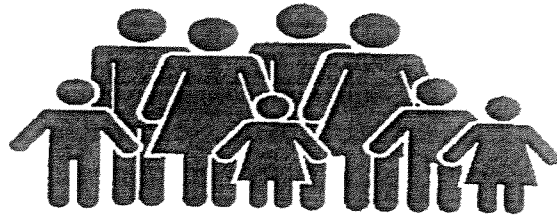
• Local Rules of Note:

- When a DM case is filed, counsel must submit a Temporary Domestic Order (TDO) even when the case is stipulated to and the parties are in agreement on all matters. The TDO must be served with the Petition upon the respondent.
- Submitting the Interim Order of Income and Expenses - even when the parties stipulate and are in agreement.
- Submitting final Orders to chambers through proposed text emails.

• Self-Help Clinic or referral to NM Legal Aid, Pegasus



FREE FAMILY LAW CLINIC



THIRD THURSDAY and FOURTH WEDNESDAY

of each month

Attorneys will be available to provide free 30 minute legal consultations on **family law** issues including:

- Divorce
- Child Support
- Custody
- Visitation
- Domestic Violence
- Paternity
- Kinship/Guardianship
- Mediation
- Adoption

10 AM until 12 noon & 1 PM until 3 PM

Fourth Judicial District Court

496 W. National Ave., Las Vegas, New Mexico 87701

Pre-registration is REQUIRED!!!

Attendance is limited to 8 appointments per clinic

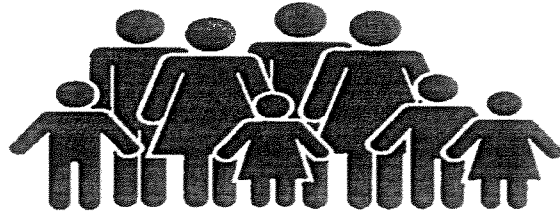
To pre-register, speak with Court Staff at the Self-Help Desk

Don't wait to get help on your case!

Questions? Call (505)425-7281

Sponsored by the Fourth Judicial District Court Pro Bono Committee and New Mexico Legal Aid

TALLERES GRATUITOS DE DERECHOS DE FAMILIA



EL TERCER JUEVES y EL CUARTO MIÉRCOLES de cada mes
Abogados estarán disponibles para proporcionarle consultas
legales gratuitos de treinta minutos en temas familiares:

- Divorcio
- Supervisión
- Patria Potestad
- Manutención
- Violencia Doméstica
- Mediación
- Tutela
- Paternidad
- Adopción

DE 10 AM HASTA 12 MEDIODÍA Y DE 1 PM HASTA 3 PM
Edificio de la Corte del Cuarto Distrito Judicial
496 W. National Ave., Las Vegas, New Mexico 87701

¡Para recibir este servicio, uno tiene que registrarse de
antemano!

Servicio limitado a ocho consultas para cada taller

Para registrarse, hable con personal de la corte en el
departamento de autoayuda*

¡No espere para pedir ayuda!

¿Preguntas? Llame (505)425-7281

Fifth Judicial District:

Chaves, Eddy, Lea

In Camera Interviews:

Parenting Coordinators:

Guardian ad Litem:

Custody Evaluations:

Counselors/Therapists: Jared Sloan 575-397-6333 or 575-397-3082

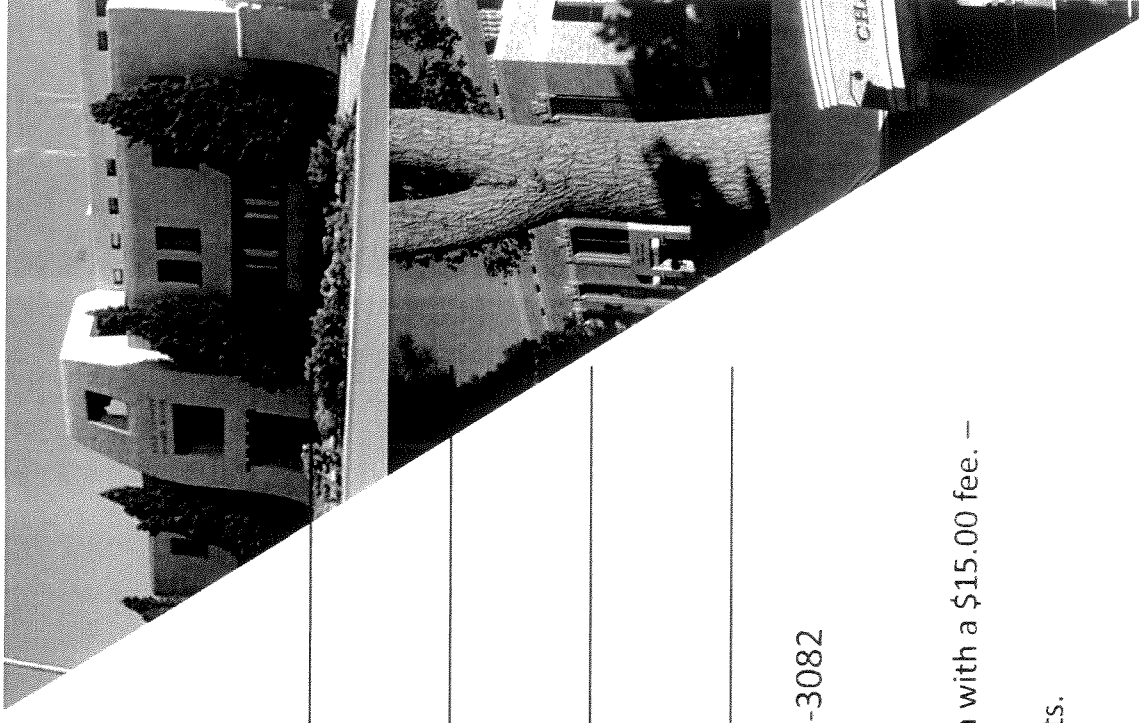
Palmerdrugabuseprogram.org

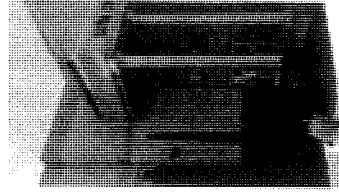
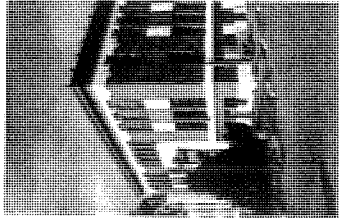
Services: PACT – Parents and Children Together

A Parenting and mediation workshop held in Roswell one Saturday per month with a \$15.00 fee. –
Education for separating parents.

SESV – Parenting Coordination, mediation, supervised visits.

Local Rule LR5-504 – Domestic Relations Mediation.





Sixth Judicial District: Grant, Hidalgo, Luna

- **Mediation Services:**

- Parties or Court request mediation in a DR case. Request to be made by Request for Mediation Form or by Motion.
- Notice of Mediation issued.
- Fee for mediation may be waived by Court or set by mediator.
- Must attend 3 hours of mediation. After mediation, mediator issues report. If unresolved issues remain, parties need to request a hearing. If all issues resolved, the parties or attorney is responsible for seeking final order from the Court.

- **Supervised Visitation and Exchange:**

- KISS – Kids in Need of Supportive Services. A Court Order is required.
- Susanne Kee – Executive Director –
 - Silver City, NM – Grant/Hidalgo Counties 575-388-2414
 - Deming, NM – Luna County 575-545-2138

- **Family Law Judges/Hearing Officers:** Judges hear all court matter in respective communities.

- **Therapists/Counseling:**

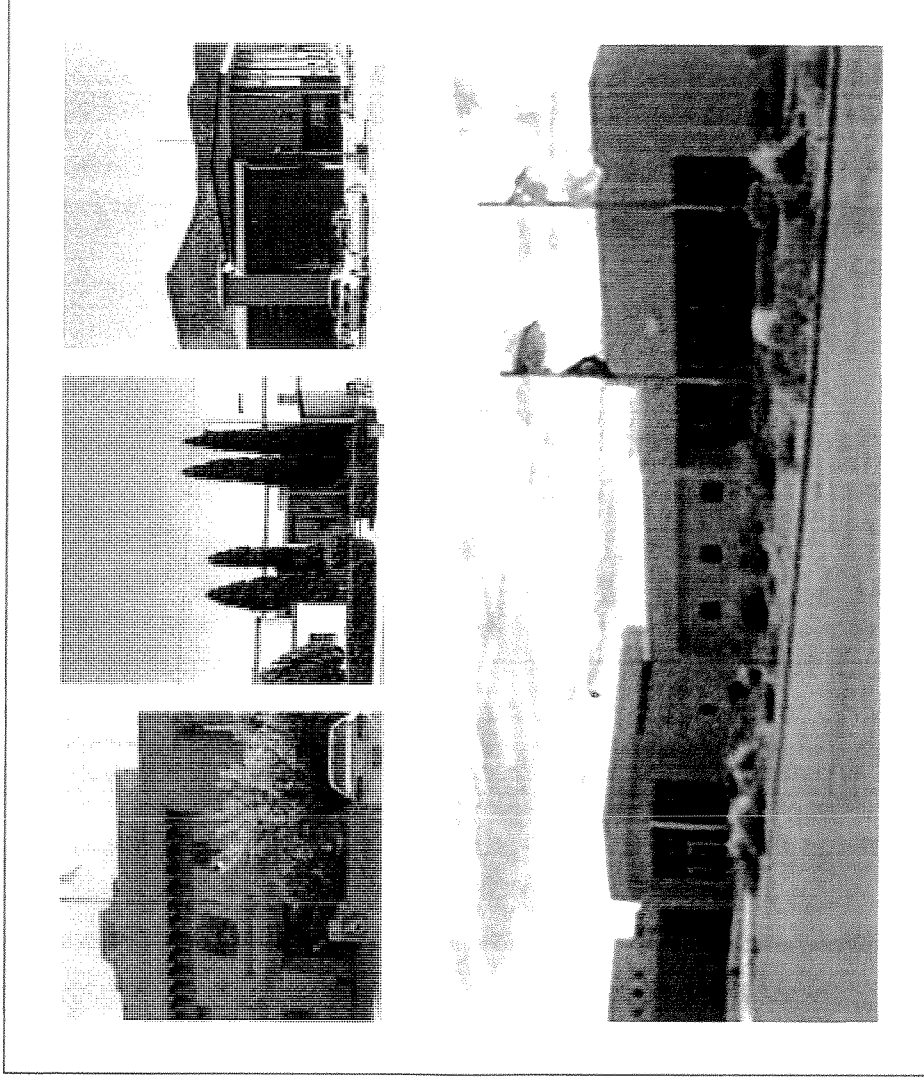
- Foundations Family Counseling – Silver City, Angela Toyota-Sharpe & Mary Hokom
 - 575-590-1072 or 575-538-6805

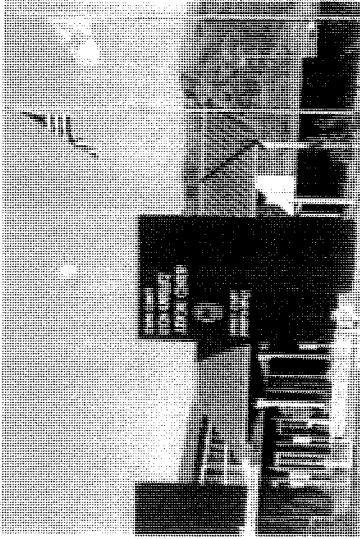
- Clerk's Office has legal forms and packets available for self-help. An appointment can be scheduled through the Clerk's office to meet with a pro-se attorney for assistance with filing pro se forms (no legal advice given).



Seventh Judicial District:

- Catron, Socorro, Sierra, Torrance
- GALs – A few, but must be Court Ordered.
- Mediation Services:
 - Court ordered, or initiated by Form 4A-205
 - Parties will submit case information to mediator.
 - \$25.00 fee for mediation. Mediation then scheduled within 60 days. If no pay, the Judge will set a hearing.
 - Mediator will submit a report to the Judge regarding the outcome. If agreement, parties must get agreement into order form, or must request a hearing if no agreement.
- Supervised Visits:
- Family Law Judges/Hearing Officers: Judges hear all Court matters in respective counties.
- Therapist/Counselors:
- Other Resources/Services.





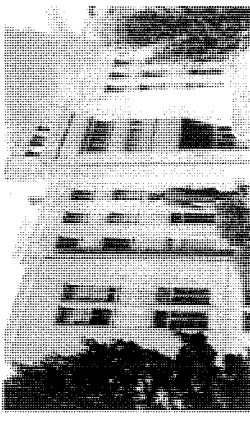
Eighth Judicial District: Taos, Colfax, Union

- Catherine Oliver – Spec Commissioner DR cases – 575-751-8614
- No court-based services available, except a Help Desk for pro se litigants, limited hours.
- In Camera Interviews: very infrequent by judges; Ms. Oliver does them and will report.
- Parenting Coordinators/Services:
 - Dr. Caryle Zorumski: (575) 751-0449
 - Greta Carson, LPCC: (575) 587-1596
 - En Suenos Y Los Angelitos: (575) 758-4274
 - Part of the Family, Infant, Toddler program - Early childhood services
 - Amber Ohlinger, Director: (575) 758-1680
 - William Kotsch, Ph.D.: (575) 770-1873 (575) 758-2961 (therapy, mediation)
- Guardian ad Litems: generally, not used
- Custody Evaluations: Elizabeth Dinsmone, Ph.D.: (575) 613-0493
- Service Agencies:
 - **Youth Heartline**: (575) 758-0106
 - (also Raton) Safe Exchange, supervised visits, family counseling, foster and abused children.
 - **Nonviolence works**: (575) 758-4297. Supervised visits, groups, anger management, therapy restorative parenting and fatherhood classes.
 - **Taos First Steps**: (575) 751-5764 - Home visiting, services prenatal to 3 years old.

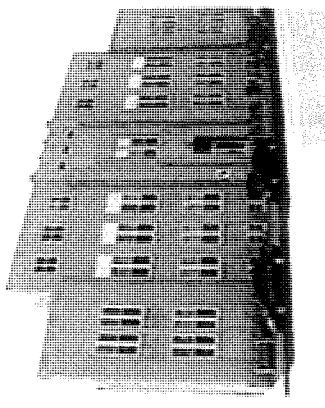


Ninth Judicial District: Curry, Roosevelt

- Ben Cross, 575-742-7539, Court Attorney or Theresa 575-742-7539
- In Camera Interviews: Yes
- Parenting Coordination/Services:



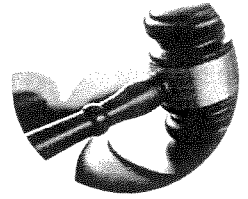
- Guardian ad Litem: The Ninth Judicial District Court Judges require GALs in certain family law cases. The Court appoints a GAL in abuse and neglect cases and maintains a contract with the GALs. In other types of family law cases, the parties arrange for the services of a GAL (hire their own).
- Mediation: The District Court Mediation Program provides a much needed, low-cost, high quality mediation option in our community. The program predominately serves pro se litigants but is utilized by attorneys often. The Court Attorney serves as the sole Mediator in this program. Well in excess of 100 cases are mediated each year. An attorney wishing to utilize this program makes a request to the Presiding Judge for a referral into the program. Additional family law cases are mediated in our district outside of the Court's Mediation Program by mediators chosen by the parties. To find out information related to the Court Mediation Program, please contact Teresa Ancira at the Ninth Judicial District Court at 575-742-7536.



Curry/Roosevelt/De Baca Counties * Ask-A-Lawyer



FREE Consultations with Attorneys



- Divorce
- Custody/Visitation
- Landlord/Tenant
- Bankruptcy
- Creditor/Debtor
- Child Support
- Guardianship/Kinship
- Wills/Probate
- Personal Injury
- Power of Attorney
- Public Benefits
- Unemployment
- Immigration
- Name Change

First Come, First Served Basis

Bilingual attorneys and staff available

Friday, October 12, 2018

1:30 PM–4:00 PM

Traci's Greenhouse

2600 Mabry Dr.

Clovis, NM, 88101

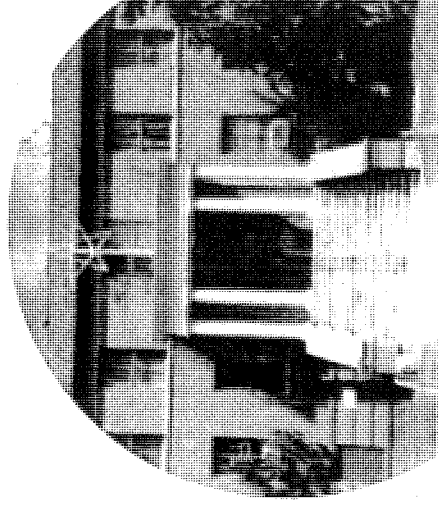
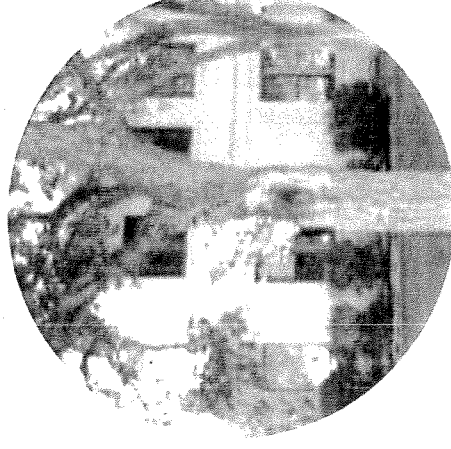
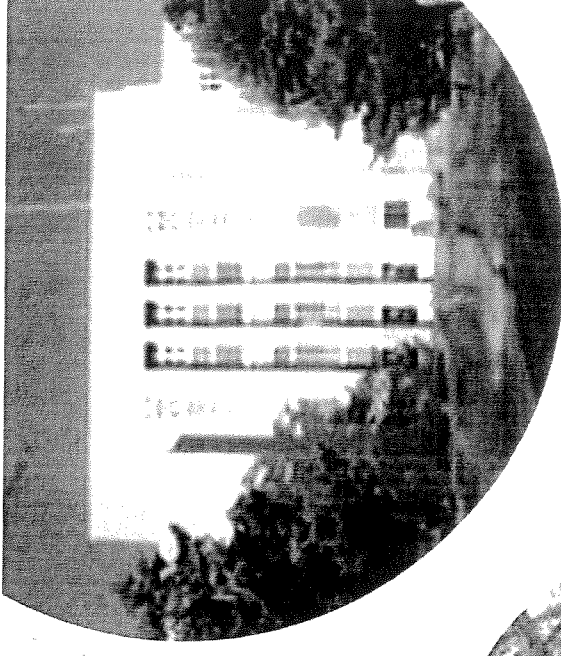
**If you would like more information about this event, please call the
Volunteer Attorney Program at (505) 814-5033.**

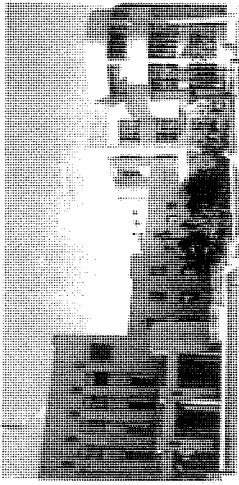
**If you need a Sign Language Interpreter for this event, please notify us in
advance by contacting Eldora Morris at
eldora@nmcenterforlanguageaccess.org.**

Presented by the 9th Judicial District Pro Bono Committee and the Volunteer Attorney Program

Tenth Judicial District: Quay, Harding, Debaca

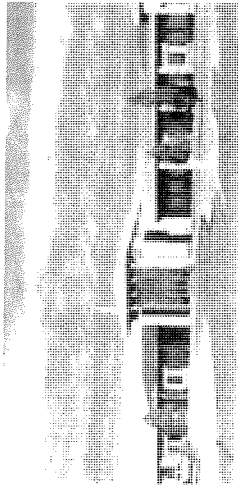
- Guardian ad Litem:
- Mediation Services:
 - No mediation services through the court.
- Therapists/Counselors:
 - TUCUMCARI: No counselors through the court.
 - Dave Crane: 505-461-6200
 - DEBACA COUNTY:
 - DeBaca Family Clinic 575-355-2414
 - Family Law Judges/Hearing Officers: Judge hear all court matters in respective counties.
- Other Resources:



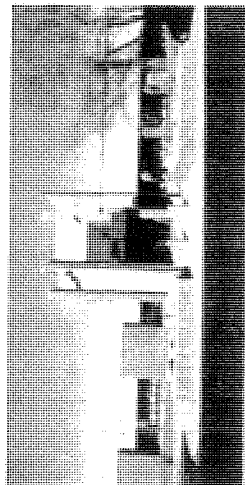


Eleventh Judicial District: McKinley, San Juan

- Mediation Services: Mediators will report to the Court
 - San Juan County
 - George Harris – 505-326-5103 familivsys@spin.net
 - Angie Buchanan 970-426-4600 abuchananlaw@yahoo.com
 - Jan Culp 505-330-2068 jhculp@yahoo.com
 - Bill Birdsall birdsallwilliam@gmail.com
 - Laura McClenny 505-419-9530 lauramcclenny@gmail.com
 - Pete Kinnas 801-923-4101 bluedovemediation@outlook.com
 - McKinley County
 - John Michael Stewart 505-870-6344
 - Yvonne Mandagaran 505-240-1290



- San Juan County Free Legal Fair – 9/21/18 12pm-5pm held at Farmington District Court.



- GALs:
- Parenting Coordinators:
- Therapists/Counselors:

2018
SELF-REPRESENTED LITIGANTS
LEGAL ADVICE CLINICS

FARMINGTON DISTRICT COURT
851 ANDREA DRIVE
FARMINGTON, NM 87401

CLINIC BEGINS AT 5:00 P.M./SIGN-UP BEGINS AT 4:00 P.M.
ALLOTTED TIME WITH AN ATTORNEY IS LIMITED.

JANUARY 16, 2018

FEBRUARY 20, 2018

MARCH 20, 2018

APRIL 17, 2018

MAY 15, 2018

JUNE 19, 2018

JULY 17, 2018

AUGUST 21, 2018

***SEPTEMBER 21, 2018 – 12pm-5pm SAN JUAN COUNTY LEGAL
FAIR AZTEC DISTRICT COURTHOUSE – 103 S. OLIVER – AZTEC, NM 87410**

OCTOBER 16, 2018

NOVEMBER 13, 2018

DECEMBER 18, 2018

JANUARY 15, 2019

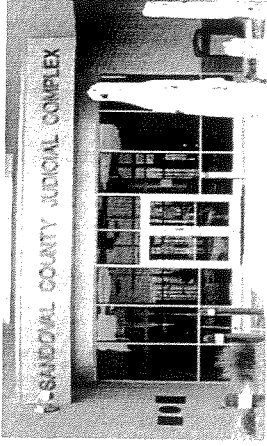
Twelfth Judicial District: Lincoln, Otero

- In Camera Interviews: yes, frequently, including hearing officers.
- Mediators/Settlement Facilitators:
 - Lori Gibson Willard: (575) 247-1010
 - Hon. Karen Parsons (ret.): (575) 257-1460
 - Hon. Frank Wilson (ret.): (575) 442-1354
 - Rick Kraft: (575) 625-2000
- Mediation Program (court sponsored):
 - Lucy Bell and Andrea Carillo: (575) 437-7310, ext: 146 and 147
 - Self help
 - Mediation services for parties Not mandatory; must be requested and court ordered
- Parenting Coordinators:
 - Freda Howard McSwane: (575) 257-1515
 - Erin Atkins: (575) 437-3042
 - Lori Gibson Willard: (575) 247-1010



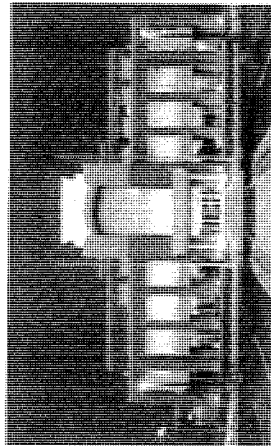
Twelfth Judicial, Cont:

- Guardian ad Litem:
 - Freda Howard McSwane: (575) 257-1515
 - Lori Gibson Willard: (575) 247-1010
- Evaluations:
- Therapists:
 - Kenneth C. Kenney, Ph.D. (Ruidoso): (505) 363-8293
 - Robin La Rocque, LPCC (Alamogordo): (505) 434-9764
 - Katherine Scott, LMHC (Ruidoso): (575) 937-6736
 - Sierra Blanca Counseling Services (Ruidoso): (575) 630-0523
- Additional Information:
 - Michael Keedey: (575) 434-3622 Will do some free domestic work; staff attorney at COPE, a DV shelter.
 - **All** domestic cases are automatically sent to the DHO's first for all matters including trials. This has slowed the docket. The DHO's also hears all DV, miscellaneous custody and support matters, and CSED child support cases.



Thirteenth Judicial District: Cibola, Sandoval, Valencia

- Domestic Relations Mediation – Sonya Duke 505-867-1170 13thadr@nmcourts.gov
- **The Domestic Matters Mediation Program** is available throughout the 13th Judicial District for DR cases. Mediators appointed by the Court. The mediator may ask the parties to fill out a Mediation Questionnaire prior to the first mediation session or to review co-parenting guidelines to help with the development of a parenting plan.
- The parties or the Court may request mediation.
- Each party must pay fifty dollars (\$50.00) directly to the Clerk's office. Each party is required to get a receipt from the Clerk that the \$50.00 was paid. Mediation will not begin until the entire one hundred dollars (\$100.00) is received by the Clerk. The fee may be waived at the discretion of the Court. The parties must contact the mediator within ten (10) days after the Order of Referral for Mediation is filed.
- The mediators will be paid by the court for up to eight (8) hours of mediation. The parties must ask the court for additional time, if needed.
- Upon completion of the mediation, the mediator will submit a final report to the court, indicating if an agreement was reached and any unresolved issues. After mediation is complete, either party can request a hearing on unresolved issues. If all issues are resolved, the parties are responsible for seeking a final order or decree from the court.



Thirteenth Judicial District, Cont.

- Therapists/Counselors:
- Family Law Judges/Hearing Officers: Judge Johnston and Hearing Officer Collela.
- Other Resources:
 - Co-Parenting Workshops: Provided by Besito Mental Healthcare of New Mexico
 - Free, but mandatory Seminars offered 2nd Friday of each month from 1-4pm 13th Judicial District Courthouse – Jury Lounge
 - COURT CLINICS: Clinics are held from 10am – 2pm on a first come first served basis. Names are taken until 2pm and the court tries to see everyone on the list by 5pm.
 - Sandoval County: 3rd Friday of the month
 - Cibola County: 3rd Tuesday of the month
 - Valencia County: 2nd Thursday of the month
 - Dads Against Discrimination: Assists fathers through custody options and court procedures
 - 12301 Manitoaba NE, Abq., NM 87111 505-299-2673
 - Guardianship Legal Helpline: The Guardianship Legal Helpline provides legal services to grandparents raising grandchildren and other kinship caregivers of children whose parents are unwilling or unable to take care of them. Types of legal services include: information and advice about kinship guardianship, help for people representing themselves and representation by a lawyer. This helpline is provided by Law Access New Mexico and Pegasus Legal Services for Children. 505-217-1660 or 800-980-1165

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible]

New Laws and Rules: Alimony, Taxes and GAL's Presentation

Saturday, September 8

New Laws and Rules: Alimony, Taxes, and GALs

September 8, 2018

Ed Street, CPA/ABV/CFE, CVA, ASA
Principal
REDW

Jane C. Levy
Family Court Judge
Second Judicial District Court


The information provided herein is for informational purposes only and should not be construed as financial, investment, tax, accounting or legal advice.

today's agenda

- Implications of Tax Cuts and Jobs Act of 2017 ("TCJA"):
 - Families
 - Businesses
 - Business Valuation
- Statewide Alimony Guideline Committee Report – August 2018 (a):
 - Revisions to Alimony Guidelines
 - Summary of Supporting Analysis
- New Rule for GALs

(a) Recommended to Supreme Court, but not yet approved.

so. many. changes!



- H.R. 1, informally known as The Tax Cuts and Jobs Act of 2017, enacted a large overhaul of the Internal Revenue Code.
 - Specifically, it made 573 revisions/additions to the Code.
- Most provisions are effective after 12/31/17 (excluding alimony deduction repeal).
- Most individual changes are temporary and sunset after 2025.
- Corporate tax rate deductions are permanent.

some items stayed the same.

These items were not changed by HR 1:

- Current tax treatment of dividends and capital gains
- Credit for plug-in electric vehicles and other energy credits
- Current general rules for 401(k) and other retirement plans
- Affordable Care Act taxes – 3.8% net investment income tax and .9% additional Medicare tax on compensation

Families

families.

Overview of changes for families:

- Divorce and alimony
- Personal exemptions
- Standard deduction
- Child Tax Credit
- Tax rates
- Deduction limitations
- Other key provisions

divorce and alimony.

- Alimony deduction repealed for divorce or separation agreements executed after 12/31/2018.
- SEC. 11051. Repeal of Deduction for Alimony Payments (the end of Section 11051 of H.R. 1 contains the following):
 - *“Effective Date – the amendments made by this section shall apply to-*
 - Any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and*

divorce and alimony.

- Any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.”*

In other words, existing alimony and separate maintenance agreements (including agreements executed through December 31, 2018) are grandfathered in, as are any modifications to existing agreements unless the parties to a modification expressly provide that the new rules should apply to the modified agreement.

additional changes for individuals and families.

Personal Exemptions:

- 2017: \$4,050 each
- 2018: reduced to zero for 2018-2025

Standard Deduction:

2017	
Married Filing Jointly	\$12,700
Head of Household	\$9,350
Single	\$6,350

2018	
Married Filing Jointly	\$24,000
Head of Household	\$18,000
Single	\$12,000

additional changes for individuals and families.

Child Tax Credit:

- 2017: \$1,000 for Qualified Child
 - Phase out begins at \$75,000 for Single/Head of Household, \$110,000 for Married Filing Jointly
- 2018: \$2,000 for Qualified Child
 - Phase out begins at \$200,000 for Single/Head of Household, \$400,000 for Married Filing Jointly
 - Also adds \$500 credit for other qualifying dependents
 - Increases refundable amount of the credit to \$1,400 per child

additional changes for individuals and families.

Tax Rates:

Married Filing Jointly - 2017	
\$0 - \$18,650	10%
\$18,651 - \$75,900	15%
\$75,901 - \$153,100	25%
\$153,101 - \$233,350	28%
\$233,351 - \$416,700	33%
\$416,701 - \$470,700	35%
Over \$470,700	39.6%

Married Filing Jointly - 2018	
\$0 - \$19,500	10%
\$19,501 - \$77,400	12%
\$77,401 - \$165,000	22%
\$165,001 - \$315,000	24%
\$315,001 - \$400,000	32%
\$400,001 - \$600,000	35%
Over \$600,000	37%

additional changes for individuals and families.

Deduction Limitations:

- State and Local tax deduction limited to \$10,000
 - This includes state income tax, real property tax, and personal property taxes
- Mortgage interest deduction – limited to \$750,000 in mortgage/credit line debt
 - Previously there was a \$1 million limit
 - Interest on home equity loans is no longer deductible if not used to buy, build, or substantially improve the residence
- Misc. itemized deductions subject to 2% Adjusted Gross Income threshold are no longer deductible
 - This includes unreimbursed employee expenses, tax preparation and planning fees, investment fees/expenses, legal fees related to producing income, and safe deposit fees

additional changes for individuals and families.

Other Key Provisions:

- 529 Plans – Allows up to \$10,000 of expenses for tuition per beneficiary at an elementary or secondary public, private or religious school.
- ABLE Accounts – rollovers from 529 programs to ABLE programs allowed
- Affordable Care Act individual mandate reduced to \$0 (was 2.5% of Adjusted Gross Income or \$695/adult and \$347.50/child, whichever was higher, in 2017).
- Income levels are indexed for inflation for “Chained Consumer Price Index” instead of Consumer Price Index.

Businesses



businesses.

Overview of significant business changes:

There are potentially significant impacts to after-tax cash flows available to business owners and to business valuations.

- C Corporation rate changes
- 20% deduction and special rules for pass-through entities (Section 199A)
- Depreciation/immediate expensing changes

Less significant but noteworthy:

- Fringe benefits/entertainment expense changes



businesses.

C Corporation Rate Changes:

- Reduction in federal corporate tax rates from 35% maximum to a flat rate of 21%
 - This change is effective for years beginning after 12/31/17
 - Fiscal year corporations apply special rules
 - Personal service corporations now taxed at same rate
 - Corporate Alternative Minimum Tax reduced to 0%

businesses.

20% Pass-through Deduction:

- 20% of qualified business income (QBI)
 - For owners of partnerships, LLCs taxed as partnerships, S Corporations and sole proprietorships
 - Deduction limited for service business activity
- Qualified business income definitions:
 - Qualified trade/business income
 - Does not include investment income

businesses.

- Does not include reasonable compensation paid from S corporation or guaranteed payments paid to a partner
- Phase-out limitation
- Limitation of specified service businesses
 - “Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial services, performing arts, consulting, athletics, financial services, brokerage services or any trade or business where the principal asset is the reputation or skill of 1 or more of its employees.”

Specified Service and W-2 Wage/Basis Limitations

	Service	Non-Service
Taxable income less than or equal to \$157,500 (single)/\$315,000 (joint)	20% deduction	20% deduction
Taxable income greater than \$157,500 (single)/\$315,000 (joint) but less than \$207,500 (single)/\$415,000 (joint)	Deduction phased-out	Limitation phased-in
Taxable income greater than \$207,500 (single)/ \$415,000 (joint)	No deduction	W-2/Property limit applies*

*Deduction = lesser of (1) QBI x 20% or (2) the greater of W-2 wages x 50% or W-2 wages x 25% + 2.5% of unadjusted basis

businesses.

Depreciation/Immediate Expensing Changes:

- "Bonus" Depreciation
 - Bonus depreciation increased to 100% from 50%
 - For property placed in service between 9/27/17 and 1/1/2023
 - 20% phase down schedule then kicks in
 - Bonus depreciation is now allowed for new and used property
 - Qualified property is defined as tangible personal property with a recovery period of 20 years or less.

businesses.

Depreciation/Immediate Expensing Changes:

- Increases to Section 179 (\$1 million and investment limit of \$2.5 million)
- SUV limitation remains at \$25,000
- Limits are indexed for inflation
- Expansion for certain real property (roofs, HVAC) as long as improvements were put in service after the building was first placed in service.
- Allows tangible personal property used in residential rentals to take Section 179.

Changes to Fringe Benefits/Entertainment Expenses:

Items	2017	2018
Meals provided for the convenience of the employer	100%	50%
Business related entertainment expenses	50%	Zero
Meals incurred while traveling on business	50%	50%
Sponsorship agreement allocable to suites or tickets	50%	Zero
Meals with clients, customers or prospects at an entertainment activity	50%	Zero
Charitable sporting events (i.e golf outing)		
Cost allocated to golf and meals	100%	Zero
Charitable contribution	100%	100%

Business Valuation

Income Approach Example (Simplified)

	Prior Tax Rates	TCJA Rates
Pre-Tax Income	\$1,000,000	\$1,000,000
Less Taxes (a)	(400,000)	(260,000)
After-Tax Income	\$600,000	\$740,000
Capitalization ("Cap") Rate	20%	20%
Indicated Value – Income Approach	<u>\$3,000,000</u>	<u>\$3,700,000</u>
<i>Indicated Impact</i>		<i>23.3%</i>

(a) Using combined Federal/State tax rates (approximate) of 40% pre-TCJA and 26% post-TCJA

business valuation.

Additional Key Business Valuation Considerations:

- Market Approach – multiples derived from pre-TCJA sales of comparable companies may require adjustment
- Cash Flow Considerations – immediate expensing (bonus depreciation, Sec. 179) impacts timing of future cash flows

Statewide Alimony
Guideline Committee
Report (a) – August 2018

(a) Recommended to New Mexico Supreme Court by Domestic Relations Rules Committee, but not yet approved by Supreme Court.

Statewide Alimony Guideline Committee Report – August 2018

Statewide Alimony Guideline Committee

- Committee Chair – Muriel McClelland
- Additional Committee Members:
 - Honorable Deborah D. Walker
 - Twila B. Larkin
 - Barbara V. Johnson
 - Richard Wexler (CPA)
 - Randy W. Powers, Jr.
 - Ed Street (CPA)
 - Grace B. Duran (Las Cruces)
 - Janet Clow (Santa Fe)

Statewide Alimony Guideline Committee Report – August 2018

Highlights:

- Report dated 8/10/2018
- Issue Addressed:
 - Alimony no longer deductible – divorce or separation agreements executed after 12/31/2018
 - Negative impact generally – loss of deduction to higher earning (higher tax bracket) Party (Alimony Payor). Impact is greater for higher income taxpayers
 - Existing alimony guidelines were based on alimony being deductible to Payor
- Committee evaluated what other states were doing regarding guidelines (modifications)
- Committee evaluated and adopted approach based on adjustments to existing guidelines

Statewide Alimony Guideline Committee Report – August 2018

Proposed guidelines retain existing guidelines for “Step 1” of alimony guideline calculation

- 30% of Payor’s gross income minus 50% of Recipient’s gross income for Parties without children
- 28% of Payor’s gross income minus 58% of Recipient’s gross income for Parties with children for whom child support is paid

Statewide Alimony Guideline Committee Report – August 2018

Step 2 – reduce Step 1 calculation by following percentages – **in order to maintain same approximate share (%) of after-tax cash flow**

For Combined Yearly Gross Income Amount	Reduce Step 1 Calculated Amount By
Up to \$90,000	10%
\$90,001 to \$149,999	15%
\$150,000 to \$199,999	20%
\$200,000 and over	25%

Statewide Alimony Guideline Committee Report – August 2018

Recommended guideline reductions result in each party's **share (%)** of combined after tax cash flow (**comparing 2017 - before TCJA, to 2019 – after TCJA**) being:

- Within 1% for 14 of 15 examples analyzed with combined income up to \$300,000 for Parties with no children
- Within 1% for 14 of 15 examples analyzed with combined income up to \$300,000 for Parties with children for whom child support is paid
- See separate handout – two examples plus summary of example calculations analyzed

(Remaining examples indicated each party's **share** of combined after tax cash flow change of no more than 3%)

Statewide Alimony Guideline Committee Report – August 2018

- **Observation** – Negative impact of alimony no longer being deductible (agreements executed **after** 12/31/2018) is offset in many situations by other TCJA changes
 - Effect of lower income tax rates
 - Increase in child tax credits
- After-tax cash flow for purposes of example calculations equals:
 - Income to Party
 - Plus/minus Alimony Received/Paid
 - Plus/minus Child Support Received/Paid
 - Less Income Taxes
 - Less FICA Taxes

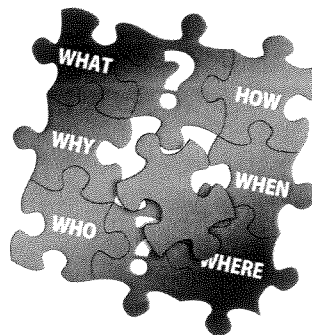
New Rule for GALs

New Rule – Guardian Ad Litem

Wrap-Up

Questions & Comments?

Thank You!



This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

New Laws and Rules: Alimony, Taxes and GAL's

Saturday, September 8

New Laws and Rules: Alimony, Taxes and GALs

Supplemental Handout Material

- I. Handouts Regarding Statewide Alimony Guideline Committee Report
 - a. Committee Report dated August 10, 2018 including exhibits (a)
 - i. Exhibit A – April 16, 2017 Order
 - ii. **Exhibit B – Amended Alimony Guideline Worksheet**
 - b. Supporting calculations reviewed by Committee (examples and summary)
 - i. Lower Income Example – No Children (10% Alimony Reduction)
 - ii. Higher Income Example with Children (25% Alimony Reduction)
 - iii. Summary of Example Calculations
- (a) Committee Report recommended to New Mexico Supreme Court by Domestic Relations Rules Committee, but not yet approved by Supreme Court*
- II. NMRA, Rule 1-053.3. Guardians Ad Litem; Domestic Relations Appointments

STATEWIDE ALIMONY GUIDELINE COMMITTEE
Ad Hoc Committee of the New Mexico Domestic Relations Rules Committee

REPORT

The Tax Cut and Jobs Act of 2017 (TCJA) made major changes in the way alimony (spousal support) would be treated effective January 1, 2019, radically changing the way alimony traditionally had been treated for IRS purposes. Alimony under the TCJA is no longer deductible to the Payor nor taxable to the Recipient. Deductibility to taxable income on a dollar-for-dollar basis had represented a considerable incentive to Payors to settle alimony claims.

The effect of the TCJA is to increase Payor's payments to a former spouse (by removing the tax deduction), while increasing the payment received by that spouse (since it is no longer taxable income). Feedback from family law practitioners accustomed to the previous alimony percentages approved by the New Mexico Supreme Court in 2007 (and used extensively in settlement negotiations especially in the Second Judicial District) was that obviating tax consequences would greatly impede future settlements and increase litigation.

Responding to this concern and considering the limited time period to effect adjustments, a committee was formed again as mandated in the earlier Order of the Supreme Court:

"4. The Committee may reconvene at reasonable intervals at the call of the chair, or at the direction of this Court, to gather feedback and review the use of the Statewide Alimony Guidelines and Commentaries, to make recommendation to this court for reviewing the guidelines or commentaries as may be warranted from time to time, and to make any other recommendations with regard to the

use and distribution of the guidelines that may be needed.” [Exhibit A, Order entered April 16, 2007]

The committee comprised five former statewide alimony guideline committee members (Muriel McClelland, Chair, the Honorable Deborah D. Walker, Twila B. Larkin, Barbara V. Johnson, Richard Wexler, CPA) and four new members (Randy W. Powers, Jr. and Edward R. Street, CPA [Albuquerque], Grace B. Duran [Las Cruces], and Janet Clow [Santa Fe]). This committee met every two weeks since its first meeting on March 27, 2018 through June 20, 2018. The goal of the committee was to maintain as closely as possible the original guideline percentages and adjust those percentages consistent with the TCJA alimony changes. Since time was of the essence, the goal was also to complete this work by September, 2018 in order to timely inform attorneys.

The committee first reviewed what other states were doing with respect to guidelines, some of which were statutory. Committee members communicated with counterparts in other states. Other states for the most part had not yet produced usable revisions at the time the committee researched states, with the exception of Illinois and Colorado. Illinois changed from using gross income to net income. The committee determined that using a net income formula would greatly encourage disputes about what is or is not deductible from gross income to arrive at net income. Colorado’s overall formula made sense: use their present guideline formula with adjustments based upon percentages of combined income. Colorado’s percentages of 20% and 25% adjustments did not, however, conform to New Mexico’s statutory requirements of ability to pay and need, especially for lower income families.

CPA Ed Street ran multiple analyses using present and possible future percentages and

produced multiple spreadsheets, all of which were reviewed in depth by the committee. The committee's recommended adjustment of four combined income categories came the closest to the original guideline formula results. Feedback obtained from the Family Law Section Board of Directors and other attorneys was positive.

The present spousal support income percentages are 30% of Payor's gross income minus 50% of Recipient's gross income for parties without children. For parties with children (since child support is additional) the income percentages are 28% of Payor's gross income minus 58% of Recipient's gross income. The proposed guidelines retain the original percentages and add one more calculation based upon the combined gross income of the parties.

The additional calculation is a percentage deduction for the applicable combined income bracket: 10% deduction to the established alimony guideline figure for combined incomes up to \$90,000; 15% for incomes up to \$149,000; 20% for incomes up to \$199,999; 25% for incomes \$200,000 and above. The resulting amount would reflect adjusted guideline amounts with zero tax consequences. The recommended guideline amounts are within 1% of the present guideline formula results in most cases. [Amended Worksheet attached hereto as Exhibit B]

While this work was in process the New Mexico Supreme Court referred this matter to the Domestic Relations Rules Committee. This Alimony Guideline Committee was designated as an *ad hoc* committee of the Rules Committee, which approved its analysis, formula and worksheet at a meeting on July 13, 2018, and voted that the Committee's Report and Attached Worksheet be recommended to the Supreme Court.

The Statewide Alimony Guideline Committee recommendations are:

1. Given the new IRS regulations (TCJA), the existing alimony guidelines required

review for necessary revisions.

2. That the Supreme Court issue an Order adopting the attached Alimony Guideline Worksheet for use effective January 1, 2019;

3. That this Report and the attached Worksheet be published in the Bar Bulletin for a period of four weeks (without including the original Commentaries);

4. That the New Mexico State Judiciary Website Alimony Commentaries include this Report and the attached Worksheet as an addendum to the 2007 Commentaries; and

5. That the Supreme Court Order adopting this Report and the attached Worksheet be disseminated to all Family Law Section members via email.

Dated: August 10, 2018



Muriel McClelland, Chair

ATTEST: A TRUE COPY

Joey D. Maya

Chief Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 07-8500

SUPREME COURT OF NEW MEXICO

FILED

APR 16 2007

IN THE MATTER OF THE REPORT OF THE
ALIMONY GUIDELINES STATEWIDE PILOT PROJECT
COMMITTEE AND ADOPTION OF ALIMONY
GUIDELINES FOR THE STATE COURTS OF NEW MEXICO

Letecia J. Hudson

ORDER

WHEREAS, the Supreme Court established the Alimony Guidelines Statewide Pilot Project Committee on October 1, 2004, for the purpose of studying and collecting data using the proposed alimony guidelines and commentaries in settlement negotiations in a pilot project in the First, Second, Third, and Eighth Judicial District Courts;

WHEREAS, the Committee submitted a report to this Court on September 26, 2006, setting forth the results of its study and data collection;

WHEREAS, the Committee's report also contained recommendations for expanding the use and availability of the alimony guidelines and commentaries statewide;

WHEREAS, at the request of this Court, the Domestic Relations Task Force commented on the Committee's report and agreed that the proposed alimony guidelines and commentaries should be published and their use in settlement negotiations should be encouraged and extended statewide; and

WHEREAS, this Court having considered the report and recommendations, and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson, concurring;

Exhibit

A

ATTEST: A TRUE COPY

Joey D. Mayo

Chief Clerk of the Supreme Court
of the State of New Mexico

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NOW, THEREFORE, IT IS ORDERED that the report of the Alimony Guidelines
Statewide Pilot Project Committee is hereby ACCEPTED;

IT IS FURTHER ORDERED that certain recommendations from the report
hereby are ADOPTED and shall be implemented as follows:

1. The Committee's proposed alimony guidelines and commentaries, as revised September 6, 2006, shall be formally known as the Statewide Alimony Guidelines and Commentaries;
2. All New Mexico Judicial Districts are authorized and encouraged to use the Statewide Alimony Guidelines and Commentaries for settlement negotiation purposes;
3. The Administrative Office of the Courts is authorized to publish and distribute the Statewide Alimony Guidelines and Commentaries throughout the State of New Mexico, which shall include posting them on the New Mexico State Judiciary Website; and
4. The Committee may reconvene at reasonable intervals at the call of the chair, or at the direction of this Court, to gather feedback and review the use of the Statewide Alimony Guidelines and Commentaries, to make recommendations to this Court for revising the guidelines or commentaries as may be warranted from time to time, and to make any other recommendations with regard to the use and distribution of the guidelines that may be needed.

IT IS SO ORDERED.

Done at Santa Fe, New Mexico, this 16th day of April, 2007.


Chief Justice Edward L. Chávez


Justice Pamela B. Minzner


Justice Patricio M. Serna


Justice Petra Jimenez Maes


Justice Richard C. Bosson

ALIMONY GUIDELINE WORKSHEET

(For Use After January 1, 2019)

Monthly Payment

(Use Only One Box. If Support Nondeductible, Then Make Reduction based on Combined Income)

If there are no children for whom support is paid, then use lines 1 through 6.

1. Payor's Gross Monthly Income _____
2. Multiply Line 1 by 0.3 X 0.30 = _____
3. Recipient's Gross Monthly Income _____
4. Multiply Line 3 by 0.5 X 0.50 = _____
5. Subtract Line 4 from Line 2 _____
6. Check a Box:
 - ☐ Line 5 is positive number. Payor pays this monthly alimony payment.
 - ☐ Line 5 is zero or negative. No monthly alimony is paid.

If there are children for whom child support is paid, use Lines A through F.

- A. Payor's Gross Monthly Income _____
- B. Multiply Line A by 0.28 X 0.28 = _____
- C. Recipient's Gross Monthly Income _____
- D. Multiply Line C by 0.58 X 0.58 = _____
- E. Subtract Line D from Line B _____
- F. Check a Box:
 - ☐ Line E is positive number. Payor pays this monthly alimony amount.
 - ☐ Line E is zero or negative. No monthly alimony is paid.

REDUCTION BASED ON COMBINED INCOME (ONLY USE IF SUPPORT IS NONDEDUCTIBLE)

Combined Yearly Gross Income Amount	Reduce the Above Calculated Amount By:
Up to \$90,000	10%
\$90,001 to \$149,999	15%
\$150,000 to \$199,999	20%
\$200,000 and over	25%

Exhibit
B

Lower Income Example - No Children (10% Alimony Reduction)
Statewide Alimony Guideline Committee

Before TCJA - Alimony Deductible (2017)

	Payor	Recipient	Combined
Annual Income	\$ 90,000	\$ -	\$ 90,000
Alimony	(27,000)	27,000	-
Child Support	-	-	-
Income Taxes	(11,193)	(2,310)	(13,503)
FICA	(6,885)	-	(6,885)
After Tax Cash Flow	\$ 44,922	\$ 24,690	\$ 69,612
Percent of Total	64.5%	35.5%	100%

After TCJA - Alimony Not Deductible (2019)

	Payor	Recipient	Combined
Annual Income	\$ 90,000	\$ -	\$ 90,000
Alimony	(24,300)	24,300	-
Child Support	-	-	-
Income Taxes	(16,439)	-	(16,439)
FICA	(6,885)	-	(6,885)
After Tax Cash Flow	\$ 42,376	\$ 24,300	\$ 66,676
Percent of Total	63.6%	36.4%	100%

Observations:

- 1 Combined net cash flow down \$2,936 or 4.2% due to increased taxes resulting from elimination of alimony deduction to Payor.
- 2 Each party's change in **share** of combined after-tax cash flow within 1%.

Higher Income Example With Children (25% Alimony Reduction)
Statewide Alimony Guideline Committee

Before TCJA - Alimony Deductible (2017)

	Payor	Recipient	Combined
Annual Income	\$ 180,000	\$ 30,000	\$ 210,000
Alimony	(33,000)	33,000	-
Child Support	(14,935)	14,935	-
Income Taxes	(36,183)	(8,600)	(44,783)
FICA	(10,496)	(2,295)	(12,791)
After Tax Cash Flow	\$ 85,386	\$ 67,040	\$ 152,426
Percent of Total	56.0%	44.0%	100%

After TCJA - Alimony Not Deductible (2019)

	Payor	Recipient	Combined
Annual Income	\$ 180,000	\$ 30,000	\$ 210,000
Alimony	(24,750)	24,750	-
Child Support	(15,773)	15,773	-
Income Taxes	(40,867)	(1,263)	(42,130)
FICA	(10,496)	(2,295)	(12,791)
After Tax Cash Flow	\$ 88,114	\$ 66,965	\$ 155,079
Percent of Total	56.8%	43.2%	100%

Observations:

- 1 Combined net cash flow increases \$2,653 or 1.7% due to TCJA tax cut (rate reduction) and increased child credits offsetting elimination of alimony deduction to Payor.
- 2 Each party's change in **share** of combined after-tax cash flow within 1%.

Summary of Example Calculations
Statewide Alimony Guideline Committee

Example Number:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Annual Income - Payor ("P")	60,000	60,000	90,000	90,000	90,000	120,000	120,000	120,000	150,000	150,000	150,000	180,000	180,000	180,000	300,000	300,000
Recipient ("R")	-	30,000	-	30,000	60,000	-	30,000	60,000	-	30,000	60,000	-	30,000	60,000	-	60,000
Combined Annual Income	60,000	90,000	90,000	120,000	150,000	120,000	150,000	180,000	150,000	180,000	210,000	180,000	210,000	240,000	300,000	360,000
Step 2 Adjustment Factor	90%	90%	90%	85%	80%	85.0%	80%	80%	80%	80%	75%	80%	75%	75%	75%	75%
Annual cash flow after income taxes and FICA taxes (no children):																
2017 - P	31,863	43,011	44,922	55,437	63,849	57,348	67,863	78,033	71,106	81,178	91,243	84,769	94,834	104,899	138,096	156,726
2017 - R	17,177	27,265	24,690	34,485	45,441	31,969	41,427	49,647	39,183	47,736	56,156	45,825	54,045	62,265	71,061	86,976
2017 P+R	49,040	70,276	69,612	89,922	109,290	89,317	109,290	127,680	110,289	128,914	147,399	130,594	148,879	167,164	209,157	243,702
2019 - P	30,841	44,341	42,376	56,476	66,676	55,201	69,001	81,001	70,250	82,250	95,000	83,105	97,055	108,305	129,188	151,688
2019 - R	16,200	28,245	24,300	35,745	47,373	30,600	42,345	52,173	36,000	49,545	58,623	43,200	54,795	65,373	67,500	92,373
2019 P+R	47,041	72,586	66,676	92,221	114,049	85,801	111,346	133,174	106,250	131,795	153,623	126,305	151,850	173,678	196,688	244,061
Annual cash flow after income taxes and FICA taxes (1 child):																
2017 - P	29,031	40,573	41,093	51,418	55,884	51,412	61,548	71,040	63,114	73,220	83,429	75,167	85,385	95,408	121,919	140,225
2017 - R	22,185	32,477	31,315	40,815	56,961	40,192	49,667	59,887	49,044	58,419	67,379	57,785	67,040	75,348	90,803	107,184
2017 P+R	51,216	73,050	72,408	92,233	112,845	91,604	111,215	130,927	112,159	131,639	150,809	132,953	152,426	170,756	212,723	247,409
2019 - P	28,302	42,493	38,609	53,349	59,454	49,670	63,810	75,653	62,625	75,348	88,490	73,790	88,113	99,955	110,301	133,972
2019 - R	21,071	33,322	30,399	42,101	58,953	38,463	50,765	61,879	45,957	59,675	69,490	54,847	66,965	78,080	86,662	112,390
2019 P+R	49,373	75,815	69,008	95,450	118,407	88,133	114,575	137,532	108,582	135,024	157,981	128,637	155,079	178,036	196,963	246,362
% of Annual cash flow after income taxes and FICA taxes (no children)																
2017 - P	65%	61%	65%	62%	58%	64%	62%	61%	64%	63%	62%	65%	64%	63%	66%	64%
2017 - R	35%	39%	35%	38%	42%	36%	38%	39%	36%	37%	38%	35%	36%	37%	34%	36%
2017 P+R	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
2019 - P	66%	61%	64%	61%	58%	64%	62%	61%	66%	62%	62%	66%	64%	62%	66%	62%
2019 - R	34%	39%	36%	39%	42%	36%	38%	39%	34%	38%	38%	34%	36%	38%	34%	38%
2019 P+R	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
% of Annual cash flow after income taxes and FICA taxes (1 child)																
2017 - P	57%	56%	57%	56%	50%	56%	55%	54%	56%	56%	55%	57%	56%	56%	57%	57%
2017 - R	43%	44%	43%	44%	50%	44%	45%	46%	44%	44%	45%	43%	44%	44%	43%	43%
2017 P+R	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
2019 - P	57%	56%	56%	56%	50%	56%	56%	55%	58%	56%	56%	57%	57%	56%	56%	54%
2019 - R	43%	44%	44%	44%	50%	44%	44%	43%	42%	44%	44%	43%	43%	44%	44%	46%
2019 P+R	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Note: Yellow highlighted examples show fluctuation of no more than 1% change in share of combined annual cash flow after income taxes and FICA taxes shift between Parties

Pink highlighted examples - no alimony under current guidelines

Green highlighted examples show fluctuation between 2017 and 2019 of no more than 3% change in share of combined annual cash flow after income taxes and FICA taxes between Parties.

Note: Adjustment Factor - Remaining portion after applying Step 2 reduction factor. For example, 90% equals Step 1 amount less 10% reduction factor (combined income up to \$90,000).

West's New Mexico Statutes Annotated
State Court Rules
1. Rules of Civil Procedure for the District Courts
Article 6. Trials

NMRA, Rule 1-053.3

RULE 1-053.3. GUARDIANS *AD LITEM*; DOMESTIC RELATIONS APPOINTMENTS

Currentness

A. Appointment. In any proceeding when custody of a minor child is contested under Chapter 40, NMSA 1978 the court may appoint a guardian *ad litem* on the court's motion or upon the motion of any party, as set forth in this rule. The guardian *ad litem* serves as an arm of the court and assists the court in discharging its duty to adjudicate the child's best interests.

B. Order. The appointment order shall be written in substantial conformity with Form 4-402 NMRA. The order shall specify the guardian *ad litem*'s role, tasks, duties, any limitations, the reasons for the appointment and the duration of the appointment. The order shall authorize communication between the guardian *ad litem* and any mental health professional, medical professional, or other individuals providing services to parents, children, or other parties in the case and shall order the parties and minor children over the age of fourteen (14) to sign any releases requested by the guardian *ad litem*.

C. Designation. The guardian *ad litem* appointed under this rule is a "best interests attorney" who shall provide independent services to protect the child's best interests without being bound by the child's or either party's directive or objectives and who shall make findings and recommendations. This rule shall not limit the court's ability to appoint an expert pursuant to Rule 11-706 NMRA or a special master pursuant to Rule 1-053 NMRA.

D. Prohibited delegation. In no event shall the court delegate the ultimate determination of the child's best interests, unless the parties have agreed to arbitrate such issues under Section 40-4-7.2 NMSA 1978.

E. Factors. In determining whether an appointment will be made, the court may consider relevant factors, including the following:

(1) the wishes of the parents or other parties;

(2) the age of the child;

(3) the contentiousness of the parties or other dynamics affecting the child, including past or present mental health issues of a party or a household member;

- (4) the extent to which the appointment will assist the court by providing factual information useful to the court in determining the child's best interest;
- (5) the ability of the parties to pay;
- (6) the views or concerns expressed by the child;
- (7) the requests for extraordinary remedies, including supervised visitation;
- (8) a proposed relocation;
- (9) the likelihood that the child will be called as a witness or be examined by the court in chambers;
- (10) past or present substance abuse, sexual abuse, emotional abuse, or domestic abuse by, or to, a party, the child, or a household member;
- (11) disputes as to paternity;
- (12) interference, or threatened interference, with custody or parenting time, including abduction;
- (13) special physical, educational, or mental health needs of the child;
- (14) inappropriate adult influence on, or manipulation of, the child;
- (15) the extent to which the litigation process is harmful to the child;
- (16) whether the child's needs can be protected through the limitation of the appointment to a specific issue; and
- (17) any other relevant factors.

F. Duties. The guardian *ad litem* shall have the following duties, in addition to other duties stated in the order:

- (1) if the child is age six (6) or older, interviewing the child face-to-face outside the presence of all parties and counsel; interviewing all parties in conformity with Rule 16-402 NMRA and the order appointing the guardian *ad litem*; interviewing any therapist for the child; and interviewing other lay persons, mental health professionals, medical professionals, or other individuals providing services to parents, children, or other parties in the case at the guardian *ad litem*'s or court's discretion. If the child is under the age of six (6), the guardian *ad litem* may interview the child outside the presence of the parties and counsel at the guardian *ad litem*'s discretion;

- (2) determining the child's wishes, if appropriate;
- (3) protecting the best interests of the child or children in the matter in which the guardian *ad litem* was appointed;
- (4) serving a written report of investigation and separate written recommendations to all parties and counsel at least eleven (11) days before the recommendations are filed with the court;
- (5) filing the recommendations with the court and providing written notice to the parties of the following:
 - (a) the deadline for submitting a stipulated order adopting the recommendations as provided in Subparagraph (G)(1) of this rule;
 - (b) the deadline for filing objections to the recommendations as provided in Subparagraph (G)(2) of this rule;
 - (c) that a failure to file timely objections shall be deemed a waiver of the right to object; and
 - (d) if no objections are filed, the court shall, without the necessity of holding a hearing, enter an order adopting the recommendations; and
- (6) in the case of an emergency, filing emergency recommendations with the court and requesting a hearing without regard to Subparagraphs (4) and (5) of this Paragraph.

G. Guardian *ad litem* recommendations.

- (1) If the parties agree to adopt the guardian *ad litem* recommendations, they shall submit a stipulated order adopting the recommendations within eleven (11) days after the recommendations are filed.
- (2) If one or both of the parties does not agree to adopt the recommendations, such party may file objections to the recommendations and a request for hearing on the objections within eleven (11) days after the recommendations are filed. Objections must identify the specific portions of the guardian *ad litem*'s recommendations to which the party objects. The court will set a hearing on the objections to be held as soon as practicable after the filing of the objections. If a party files objections to emergency recommendations filed by a guardian *ad litem* under Subparagraph (F)(6) of this rule, the court shall set a hearing to be held within twenty (20) days of the filing of the objections.
- (3) A failure to file timely objections to the recommendations of the guardian *ad litem* shall be deemed a waiver of the right to object, and the court shall, without the necessity of a hearing, enter an order adopting the guardian *ad litem*'s recommendations.

H. Duties to the child. A guardian *ad litem*, in a manner appropriate to the child's developmental level, shall:

- (1) explain the role of the guardian *ad litem* to the child;
- (2) inform the child that, in providing assistance to the court, the guardian *ad litem* may use information that the child gives to the guardian *ad litem*;
- (3) keep the child informed of the nature and status of the proceeding;
- (4) review and accept or decline to accept any proposed stipulation for an order affecting the child and explain to the court the basis for any opposition; and
- (5) consider the child's objectives in determining what to recommend.

I. Privilege; confidentiality.

- (1) *Communications.* All communications between the child and the guardian *ad litem* are privileged as provided in Rule 11-503 NMRA.
- (2) *Files.* Any materials in the guardian *ad litem*'s files that are not privileged under Subparagraph (1) of this paragraph.
 - (a) are confidential and are not subject to public disclosure; and
 - (b) are considered trial preparation materials and are subject to discovery only as provided in Rule 1-026(B)(5) NMRA.
- (3) *Who may claim the privilege; waiver.*
 - (a) The guardian *ad litem* may claim the privilege on behalf of the child.
 - (b) The guardian *ad litem* may waive the privilege on a limited basis on behalf of the child when necessary to represent the best interests of the child to the court, the child's parents or legal guardian, a mental health provider, a law enforcement agency, or the Children, Youth and Families Department. The guardian *ad litem*'s limited waiver of the privilege for these purposes does not constitute a waiver of the privilege for any matter not specifically disclosed or to any person or agency to whom the information is not specifically disclosed.
 - (c) The child's parent or legal guardian may not claim the privilege or interfere with the guardian *ad litem*'s assertion or waiver of the privilege.

(4) *Construction.* This paragraph shall be construed to protect the best interests of the child.

J. Presentation of report and recommendations; authority to call witnesses. The guardian *ad litem* may call and examine witnesses at any hearing at the guardian *ad litem*'s discretion. The guardian *ad litem* may provide a verbal report and recommendations at any hearing or trial in the matter.

K. Fees and costs. The order shall state the guardian *ad litem*'s authorized retainer and hourly rate, provide for itemized monthly statements to the parties, and designate the manner in which the parties bear the fees and costs. Either party or the guardian *ad litem* may request a hearing on the guardian *ad litem* fees and costs.

Credits

[Adopted effective Aug. 21, 2006. Amended effective Aug. 21, 2007; Dec. 31, 2017.]

Editors' Notes

COMMITTEE COMMENTARY

A guardian *ad litem*'s authority to claim or waive the privilege on behalf of the child under Subparagraph (I)(3) extends to any communication with the child that would be privileged if made by an adult. *See, e.g.*, Rule 11-504(C)(2)(d) NMRA (providing that the privilege for communications between a patient and the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist may be claimed by "any other person included in the communication to further the patient's interest").

Paragraph J permits a guardian *ad litem* to call witnesses and to provide a verbal report and recommendations at any hearing or trial in the matter in which the guardian *ad litem* is appointed. Such participation does not implicate Rule 16-307 NMRA, which prohibits a lawyer from acting as an advocate in any proceeding in which the lawyer is likely to be a necessary witness. A guardian *ad litem* is, by definition, a "best interests attorney" who acts as "an arm of the court" and therefore is not an advocate for the purposes of Rule 16-307. If a guardian *ad litem* chooses to provide a verbal report, facts or data relied on by a guardian *ad litem* in forming an opinion in the case need not be admissible for the guardian *ad litem*'s opinion to be admitted. *See* Rule 11-703 NMRA; *Thomas v. Thomas*, 1999-NMCA-135, ¶ 25, 128 N.M. 177, 991 P.2d 7.

Guardian *ad litem* fees and costs under Paragraph K are in the nature of support of the child and therefore are not dischargeable in a bankruptcy proceeding. *See, e.g.*, *In re Miller*, 55 F.3d 1487, 1490 (10th Cir. 1995) ("[D]ebts to a guardian *ad litem*, who is specifically charged with representing the child's best interests ... can be said to relate just as directly to the support of the child as attorney's fees incurred by the parents in a custody proceeding.") (citing *In re Jones* 9 F.3d 878, 881 (10th Cir. 1993) (holding that attorney's fees in a custody proceeding are not dischargeable in bankruptcy under 11 U.S.C. § 523(a)(5)).

[Commentary approved effective December 31, 2017.]

Notes of Decisions (14)

NMRA, Rule 1-053.3, NM R DIST CT RCP Rule 1-053.3

State court rules are current with amendments received through June 1, 2018.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.