Civil Procedure Update

State Bar Annual Meeting 2022

Approved State Rule Amendments

Rule 1-003.3. Commencement of foreclosure action; certification of pre-filing notice required.

Rule 1-034 Production of documents and things and entry [~~upon~~] on land for inspection and other purposes.

Rule 1-054.2 Judgments in foreclosure actions; certification concerning [~~loan modification and~~] the absence of loss mitigation negotiations required.

Rule 1-093 Criminal Contempt (Suspended)

Approved State Rule Amendments

Rule 1-145 Conservatorship proceedings; professional conservators; procedures and time limits for filing reports and financial statements.

UJI 13-215 Request for Admission

Expungement-related Rule changes: **Rules 1-004, 1-077.1; 1-079**

LR2-603 Cases valued at $50,000 referred to arbitration

Proposed State Rule Amendments of note

- Rules 1-053.1 and 1-053.2 (see *Rawlings v. Rawlings*, below)
- Related to Kinship Guardian Act: Rules 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, and 1-156
- UJI 13-110 Conduct of Jurors

Federal Rules Amendment and Proposed Amendments

Rule 7.1 Disclosure Statement

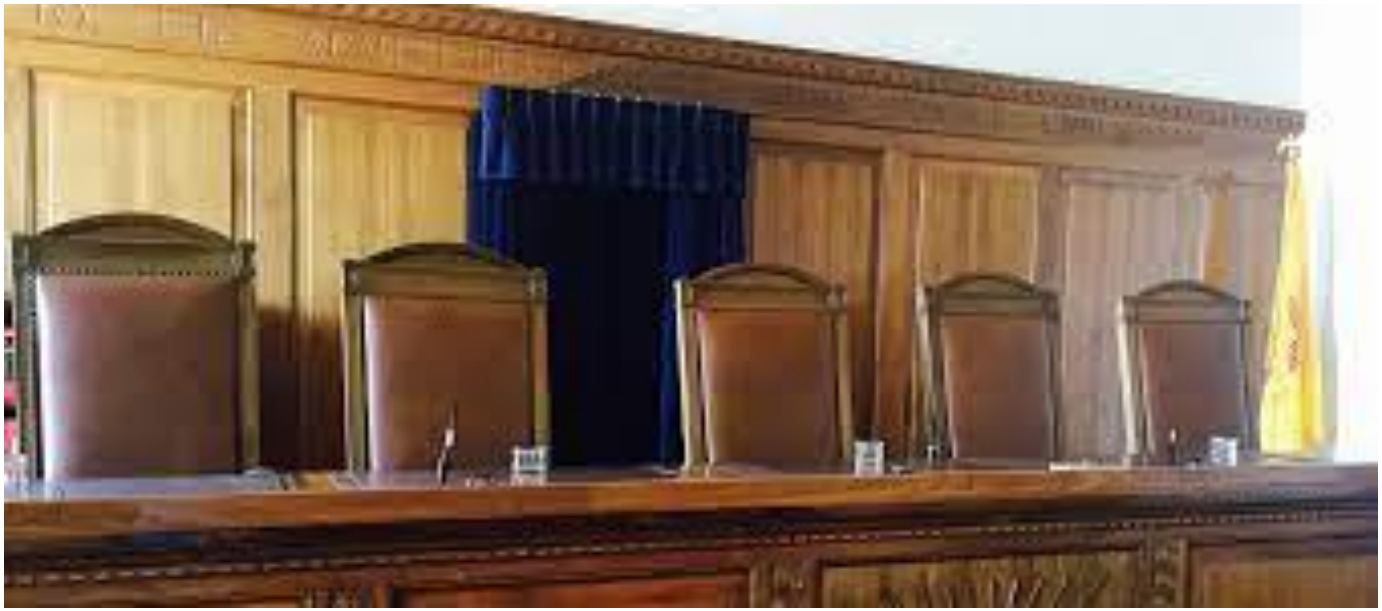
Proposed:

Rule 15 Amended and Supplemental Pleadings

Rule 72 Magistrate Judges: Pretrial Order

Rule 87 (New) Civil Rules Emergency

New Mexico Supreme Court Cases



Chavez v. Bridgestone Americas Tire Operations, LLC, 2022-NMSC-006

- The Court considered whether a foreign corporation that registers to transact business and appoints a registered agent under Article 17 of New Mexico's Business Corporation Act (BCA), thereby consents to the exercise of general personal jurisdiction in New Mexico.

Chavez

- The Supreme Court noted that pre-*International Shoe* authority finding general jurisdiction on the grounds of consent by registration takes an expansive view of general personal jurisdiction that appears inconsistent with the "at home" standard for general personal jurisdiction in recent U.S. Supreme Court precedent.

Chavez

- Foremost to our decision, we conclude that the plain language of the BCA does not require a foreign corporation to consent to jurisdiction.

- **At no point does the BCA state that a foreign corporation consents to general personal jurisdiction by registering and appointing a registered agent under the Act**.

- We will not graft a requirement of this consent onto the language of the statute, as we conclude that the Legislature **has not clearly expressed an intent to require foreign corporations to so consent**.

Chavez

- Thus, we conclude that any legislative intent to require a foreign corporation to consent to general personal jurisdiction should be "**clearly, unequivocally[,] and unambiguously express[ed]**" in the statutory text.

- Remanded to consider *specific personal jurisdiction* in light of *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).

Ridlington v. Contreras, 2022-NMSC-002

- In 2015, Alvino Contreras (Father) signed twenty-six quitclaim deeds conveying nearly 1900 acres of property to Bobby Contreras (Son). A year later, Linda Contreras Ridlington (Daughter) filed suit to void the deeds, alleging in part that they were obtained through undue influence.

- Son filed a motion for summary judgment, relying on the presumption that a duly executed conveyance is valid and arguing that Daughter's claim of undue influence therefore required dismissal.

Ridlington

- Ultimately, a nonmoving party does not need to "establish all elements of the claim" in order to prevail on summary judgment.
- The United States Supreme Court decision in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), has not been adopted by New Mexico courts.
- All that is required is that the nonmoving party presents evidence "sufficient to give rise to several issues of fact."
- "Summary judgment should not be granted when material issues of fact remain or when the facts are insufficiently developed for determination of the central issues involved."

Ridlington

- "[O]nce a presumption of undue influence is raised, the contestant's burden of going forward with the evidence is satisfied and he or she is not susceptible to a motion for judgment as a matter of law."

- Here, there were sufficient circumstances in the record demonstrating "a confidential or fiduciary relation" and "suspicious circumstances" surrounding the deed conveyances.

New Mexico Court of Appeals

Sandoval v. Gurley Properties Ltd., 2022-NMCA-004 *cert. denied* (Dec. 27, 2021)

- UNMH argued that the district court erred in failing to bifurcate the trial after the court determined that Mr. Chavez had suffered separate and distinct injuries, and thus, that Gurley and UNMH are successive tortfeasors.

Sandoval

- Rule 1-042(B) NMRA, states in relevant part that "[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim [or issue.]"

Sandoval

- The law does not categorically require bifurcation under the circumstances presented.
- On the contrary, the Uniform Jury Instructions specifically contemplate that a plaintiff may litigate against both the original tortfeasor and the successive tortfeasor(s) in a single action.
- *See* UJI 13-1802D NMRA.

Sandoval

- Denying the motion to bifurcate was not an abuse of discretion, since Plaintiffs' complaint alleged alternative theories of successive tortfeasor liability and concurrent tortfeasor liability and there was conflicting evidence about the divisibility of the injury—the key issue in determining which theory applied.

Cent. Mkt., Ltd., Inc. v. Multi-Concept Hosp., LLC, No. A-1-CA-38131, 2022 WL 168797 (N.M. Ct. App. Jan. 19, 2022)

- Naik and Gianopoulos started a restaurant business, forming MCH, a limited liability company. In November 2010, MCH entered into a seven-year commercial lease agreement with Central Market to rent a commercial space in downtown Albuquerque, New Mexico.

- The Lease included, as an addendum, a personal guaranty (Guaranty Agreement) under which Gianopoulos and Naik guaranteed MCH's payment under the Lease.

Central Market

- Central Market argued that the district court erred in offsetting amounts owed to MCH under the Lease for tenant improvements against the amount Central Market proved remained unpaid in rent.

- Central Market argued that a "setoff" is either an affirmative defense or a counterclaim, which must be specifically pleaded in the answer to the complaint or in the pretrial order.

An aside

- The Court of Appeals noted that Central Market failed to include in its statement of proceedings a single citation to the trial transcript.

- More importantly, both in its statement of proceedings and in its argument, Central Market described only the evidence that **supported its claims**, while **failing** to bring to the Court's attention and provide citation to the evidence supporting the district court's findings.

Central Market

- So long as the inclusion of a contention in the pretrial order or the litigation of the issue at trial is with the consent or implied consent of the opposing party the pleadings will be deemed amended, Rule 1-015(B).

- Finally, "[e]ven if the [opposing] party has not consented to amendment, a trial court is required to allow it freely if the objecting party fails to show he will be prejudiced thereby."

Central Market

- The pretrial order entered by the district court in this case, without objection by Central Market, and without any subsequent request for modification of the order, included the following claim in MCH's list of contentions: "**There are unpaid tenant improvements, which should be credited to [MCH and Guarantors]**."

- In its list of contested issues of fact, the pretrial order included the following issue: "**Whether Plaintiff [Central Market] compensated Defendants [MCH and Guarantors] for the improvements that were completed**."

Central Market

- Even where a claim is an affirmative defense or a counterclaim, the district court's rules of civil procedure are not rigidly applied to bar a claim based on a technical error in the pleadings.

- Rule 1-008(E)(1) ("No technical forms of pleading ... are required.").

- "The theory of pleadings is to give the parties fair notice of the claims and defenses against them, and the grounds on which they are based."

Central Market

- The pretrial order, under the circumstances of this case, was adequate to put Central Market on notice of MCH's affirmative defense or counterclaim of setoff of money owed MCH under the Lease for tenant improvements.

- No prejudice found.

Deutsche Bank Nat'l Tr. Co. as Tr. for New Century Home Equity Loan Tr. 2004-3 v. Valerio, 2021-NMCA-035

- The Supreme Court's previous holdings make clear that final judgments in mortgage foreclosure cases cannot be declared void for lack of standing under Rule 1-060(B).

- However, these cases do not otherwise prohibit the district court, in its discretion, from reopening default judgments pursuant to any of the other grounds set forth in Rule 1-060(B) in order to allow parties to litigate their cases on the merits.

Rule 1-060(B) provides:

B. Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and on such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 1-059 NMRA;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment[.]

Deutsche Bank Nat'l Tr. Co.

- Standing in these cases is prudential and not jurisdictional, and our district courts are not without subject matter jurisdiction to hear a mortgage foreclosure case though the plaintiff may lack standing.

- It follows that a judgment in this type of case cannot be void for lack of subject matter jurisdiction.

Deutsche Bank Nat'l Tr. Co.

- We conclude that although litigants in mortgage foreclosure cases may not seek to have a final judgment declared void due to lack of prudential standing under Rule 1-060(B),

- they may nevertheless seek to have a default judgment reopened **on the other grounds set forth in Rule 1-060(B)**, and if successful, **are not precluded from raising lack of standing as a defense in the ongoing proceedings**.

Hernandez v. Parker, No. A-1-CA-38635, 2022 WL 336419 (N.M. Ct. App. Feb. 1, 2022)

Collateral estoppel:

(1) the party to be estopped was a party to the prior proceeding,

(2) the cause of action in the case presently before the court is different from the cause of action in the prior adjudication,

(3) the issue was actually litigated in the prior adjudication, and

(4) the issue was necessarily determined in the prior litigation.

Once the movant "has produced sufficient evidence to meet all four elements, the district court must determine whether the party to be estopped had a full and fair opportunity to litigate the issue in the prior litigation."

Hernandez

- In *Deflon*, our New Mexico Supreme Court gave two reasons why an issue was not actually litigated and necessarily decided in a prior federal proceeding.

- One reason was that the "threshold showing" for the federal claims was "different from what [was] needed to establish" the state claims.

- Another reason was that "a substantial portion of [the p]laintiff's evidence was excluded in federal court but would not be excluded in state court."

Hernandez

- Despite similar phrasing, the standard of care for police pursuits, informed by LESPA, is broader than the Fourth Amendment standard applied to allegations of excessive force in effectuating a seizure.
- The federal court balances the nature of the crime committed by the suspect, the threat posed by the suspect, and whether the suspect is fleeing.
- The negligence claim, on the other hand, considers the conduct in the context of the professional standard of care for police pursuits.

Hernandez

- The Fourth Amendment is famously a strictly objective test.
- The tort test has both subjective and objective components.

Opportunity to fully and fairly litigate?

- First, in state court, the question of reasonableness is generally reserved for the jury, while the federal court decides the constitutional "reasonableness" question as a matter of law in the excessive force context.

- Second, the federal and state causes of action allocate the burden of proof differently. The federal qualified immunity analysis shifts the entire burden of proof to the plaintiff.

Hernandez

- Third, the federal court explicitly did not consider the facts in the context of the state claims.
- The federal court stated: “[t]he facts set forth here are those critical to the qualified immunity analysis and the background of the case, not to the state law claims that may well permit the parties to consider [Driver's] state of mind as well as Sheriff Parker's.”
- With this comment, the federal court appears to be referring to the tort concept of comparative fault, in which those that contribute to an injury are held liable for only their own portion of the fault.

Sipp v. Buffalo Thunder, Inc., 2022-NMCA-015 *cert. granted* (Feb. 8, 2022).

- Sipp was an employee of Dial Electric, a vendor that sold lights to Buffalo Thunder for the facility's parking lot. Sipp delivered the lights and alleged that while he was moving in and out of a receiving area, a Buffalo Thunder employee abruptly lowered a garage door, causing Sipp to hit his head.

- Sipp claimed that he was knocked unconscious and suffered severe injuries, including a cervical spine injury that required major surgery.

Sipp

- First, Defendants asserted that the termination clause at the end of Section 8(A) was triggered by two federal court decisions, *Pueblo of Santa Ana v. Nash*, 972 F. Supp. 2d 1254 (D.N.M. 2013) (memorandum and order), and *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018), such that Section 8(A) no longer provides for state court jurisdiction.

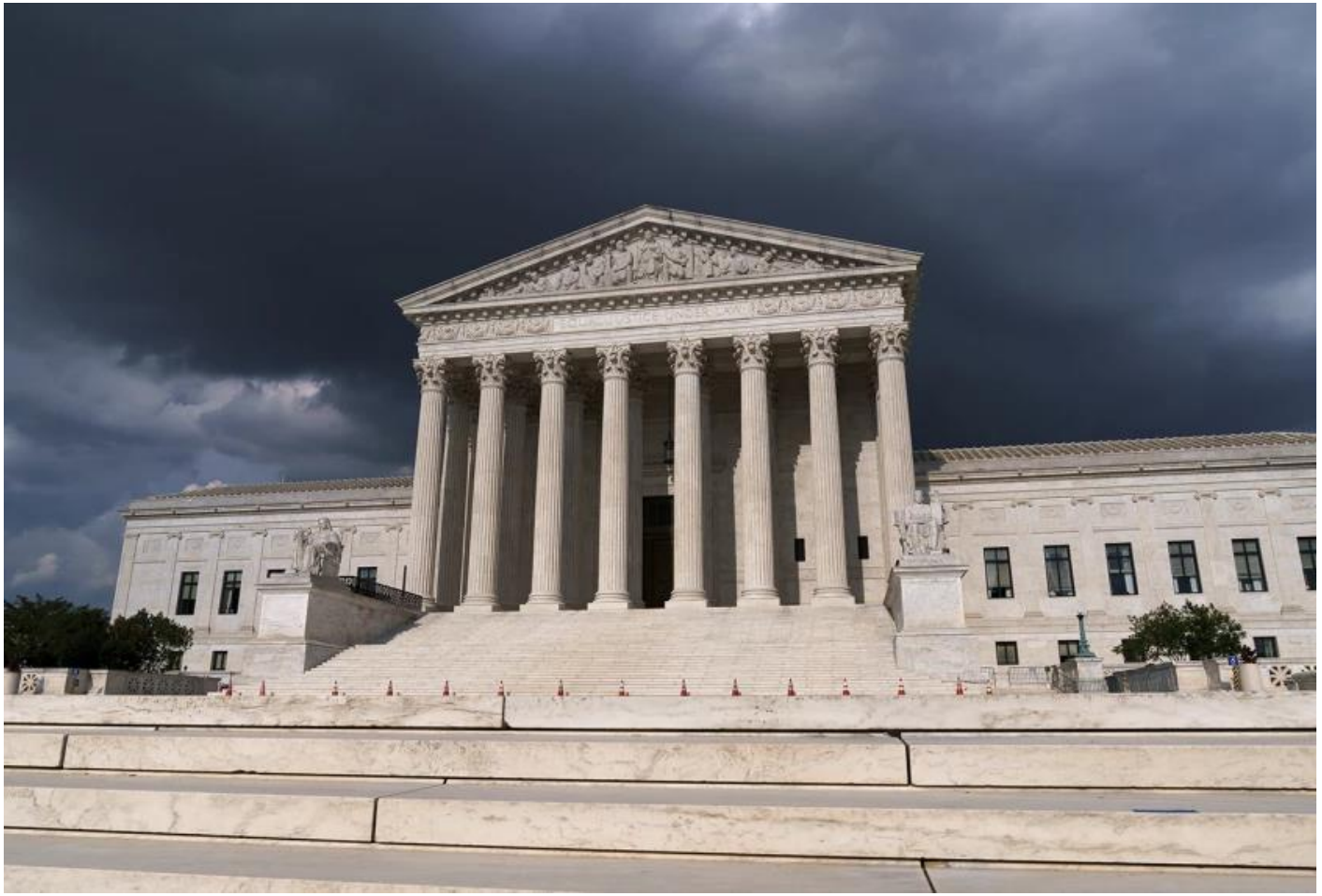
- Second, Defendants claim that Sipp does not qualify as a visitor to a gaming facility under Section 8(A) because (1) he had a business purpose for visiting Buffalo Thunder and not a gaming purpose, and (2) he was not injured in a "gaming facility."

Sipp

- The Court of Appeals found the termination clause had not been triggered by the two referenced opinions, which were limited to their facts.

- Secondly, Plaintiffs' amended complaint alleged that Sipp was on the premises with the permission of Defendants. Thus, consistent with the Court's precedent, Sipp's status as a visitor was well-pleaded and should have withstood Defendants' motion for dismissal.

U.S. Supreme Court Cases



Kemp v. United States, 142 S. Ct. 1856 (2022) – *Rule 60(b)*

- Federal Rule of Civil Procedure 60(b)(1) allows a party to seek relief from a final judgment based on, among other things, a "mistake."

- The question presented was whether the term "mistake" includes a judge's error of law.

- The Court concluded that, based on the text, structure, and history of Rule 60(b), that a judge's errors of law are indeed "mistake[s]" under Rule 60(b)(1).

- The Court rejected the Government's argument that only "obvious legal errors" by a judge were covered.

- It rejected Kemp's argument that Rule 60(b)(1) was limited to non-legal or non-judicial errors.

Berger v. N. Carolina State Conf. of the NAACP, 142 S. Ct. 2191 (2022)
Cameron v. EMW Women's Surgical Ctr., P.S.C., 142 S. Ct. 1002 (2022)

- Intervention! Common theme:

- States possess "'a legitimate interest in the continued enforce[ment] of [their] own statutes,' " . . . and States may organize themselves in a variety of ways.

- When a State chooses to allocate authority among different officials who do not answer to one another, different interests and perspectives, all important to the administration of state government, may emerge.

- Appropriate respect for these realities suggests that federal courts should rarely question that a State's interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law.

Hood v. American Auto Care, LLC, 21 F.4th 1216 (10th Cir. 2021) – *Specific Personal Jurisdiction*

- Following *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017 (2021).

- Even if ACC's call to Mr. Hood was not a direct result of its telemarketing efforts directed at Colorado, **Mr. Hood was still injured there by activity essentially identical to activity that AAC directs at Colorado residents**.

- If AAC places telemarketing calls to sell service contracts to Vermont and Colorado residents alike, it does not matter that they called Mr. Hood from a list of apparent Vermont residents rather than a list of apparent Colorado residents.

- We might not apply that proposition if there was a substantial relevant difference between calls placed to residents of the two states. But here **Mr. Hood alleged that other Colorado residents received the same type of solicitation call that he did**.

QUESTIONS?