February 10, 2016 • Volume 55, No. 6



Old But Beautiful, by Barry Schwartz

www.flickr.com/photos/barryabq

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Family Law— Changing Rules for Changing Times

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The Bar Bulletin (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to Bar Bulletin, PO Box 92860, Albuquerque, NM 87199-2860.

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Meetings

February

Animal Law Section BOD,

Noon, State Bar Center

Children's Law Section BOD,

Noon, Juvenile Justice Center

10

Taxation Section BOD,

11 a.m., teleconference

Business Law Section BOD,

4 p.m., teleconference

Public Law Section BOD.

noon, Montgomery & Andrews, Santa Fe

Prosecutors Section BOD,

Noon, State Bar Center

Solo and Small Firm Section BOD,

11 a.m., State Bar Center

19

Family Law Section BOD,

9 a.m., teleconference

19

Trial Practice Section BOD,

Noon, State Bar Center

Intellectual Property Law Section BOD,

Noon, teleconference

State Bar Workshops

February

Family Law Clinic:

10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

Consumer Debt/Bankruptcy Workshop:

6-9 p.m., State Bar Center, Albuquerque, 505-797-6094

March

Divorce Options Workshop:

6-8 p.m., State Bar Center, Albuquerque, 505-797-6003

Civil Legal Clinic:

10 a.m.-1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

Legal Clinic for Veterans:

8:30-11 a.m., New Mexico Veterans Memorial, Albuquerque, 505-265-1711, ext. 3434

Family Law Clinic:

10 a.m.-1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

Consumer Debt/Bankruptcy Workshop:

6-9 p.m., State Bar Center, Albuquerque, 505-797-6094

Cover Artist: Barry Schwartz photographs what he sees in daily life to bring out the unusual beauty of usual things. He especially likes shooting older buildings and businesses, salvage yards, ghost towns and cemeteries to preserve the beauty and ruggedness of the past. He uses angles, colors, lighting, shapes and shadows to bring out the uniqueness and beauty. Schwartz is a member of the Albuquerque Enchanted Lens Camera Club, which has been a great help with his photography. A summary of his photography is available at www.flickr.com/photos/barryabq.

Notices

STATE BAR NEWS

Attorney Support Groups

- March 14, 5:30 p.m.
 UNM School of Law, 1117 Stanford NE,
 Albuquerque, King Room in the Law
 Library (the group meets on the second
 Monday of the month). To increase
 access, teleconference participation is
 now available. Dial 1-866-640-4044 and
 enter code 7976003#.
- March 21, 7:30 a.m.
 First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
- April 4, 5:30 p.m.
 First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Animal Law Section Judges Needed for National Animal Law Appellate Moot Court

UNM School of Law Professor Marsha Baum is coaching two teams participating in the National Animal Law Appellate Moot Court Competition. The Animal Law Section is looking for volunteers to serve as judges for the students' practice sessions, held on Tuesdays (7–9 p.m.), Thursdays (7–9 p.m.) and Sundays (5–7 p.m.) through Feb. 17. To volunteer, contact Gwenellen Janov at gjanov@janovlaw.com or 505-842-8302. Materials and bench briefs will be provided.

Rescue Adoption Contracts Animal Talk

Guy Dicharry will present "Animal Rescue Adoption Contracts and the Uniform Commercial Code" at the next Animal Talk at noon on Feb. 24 at the State Bar Center. Cookies and drinks will be provided. R.S.V.P. to Evann Kleinschmidt, ekleinschmidt@nmbar.org.

Board of Bar Commissioners Third Bar Commissioner District Vacancy

A vacancy exists in the Third Bar Commissioner District, representing Los Alamos, Rio Arriba, Sandoval and Santa Fe counties. The Board will make the appointment at its Feb. 26 meeting to fill the vacancy, with a term ending Dec. 31, 2016, until the next regular election of Commissioners. Active status members with a principal place of practice located

Professionalism Tip

With respect to my clients:

I will counsel my client that initiating or engaging in settlement discussions is consistent with zealous and effective representation.

in the Third Bar Commissioner District are eligible to apply. Applicants should plan to attend the 2016 Board meetings scheduled for May 6, Aug. 18 (in conjunction with the State Bar of New Mexico Annual Meeting at Buffalo Thunder Resort), Sept. 30 and Dec. 14 (Santa Fe). Members interested in serving on the Board should submit a letter of interest and résumé to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 7199-2860; fax to 828-3765; or email to jconte@nmbar. org by Feb. 12.

Entrepreneurs in Community Lawyering

Announcement of New Program

The New Mexico State Bar Foundation announces its new legal incubator initiative, Entrepreneurs in Community Lawyering. ECL will help new attorneys to start successful and profitable, solo and small firm practices throughout New Mexico. Each year, ECL will accept three licensed attorneys with 0-3 years of practice who are passionate about starting their own solo or small firm practice. ECL is a 24 month program that will provide extensive training in both the practice of law and how to run a law practice as a successful business. ECL will provide subsidized office space, office equipment, State Bar licensing fees, CLE and mentorship fees. ECL will begin operations in October and the Bar Foundation will begin accepting applications from qualified practitioners on March 1. To view the program description, www.nmbar.org/ ECL.

Public Law Section Accepting Award Nominations

The Public Law Section is accepting nominations for the Public Lawyer of the Year Award, which will be presented at the state capitol on April 29. Visit www. nmbar.org > About Us > Sections > Public Lawyer Award to view previous recipients and award criteria. Nominations are due no later than 5 p.m. on March 10. Send nominations to Sean Cunniff at scunniff@nmag.gov. The selection committee will

consider all nominated candidates and may nominate candidates on its own.

Solo and Small Firm Section 'Verbal Alchemy of a Trial Lawyer' with Randi McGinn

New Mexico trial lawyer Randi McGinn will present "The Verbal Alchemy of a Trial Lawyer: Challenges, Mistakes and Funny Stories from 36 years in the Courtroom" at noon, Feb. 16, at the State Bar Center in Albuquerque. The luncheon is free and open to all members of the bench and bar. Lunch is provided to those who R.S.V.P. to Evann Kleinschmidt at ekleinschmidt@nmbar.org.

UNM Law Library Hours Through May 14

Building & Circulation

Monday-Thursday

Friday

Saturday

Sunday

Reference

8 a.m.-8 p.m.

8 a.m.-6 p.m.

10 a.m.-6 p.m.

Noon-6 p.m.

Monday–Friday 9 a.m.–6 p.m. Saturday–Sunday Closed

Women's Law Caucus Justice Mary Walters Award

Each year the Women's Law Caucus at UNM School of Law chooses two outstanding women in the New Mexico legal community to honor in the name of former Justice Mary Walters, who was the first woman appointed to the New Mexico Supreme Court. In 2016 the WLC will honor Judge Cynthia Fry and Bonnie Stepleton. The WLC invites the New Mexico legal community to the awards dinner on Feb. 24 at Hotel Andaluz in Albuquerque. Individual tickets for the dinner can be purchased for \$90. Tables can be purchased for \$600 and seat approximately eight people. Event sponsorship is also available for \$600 and includes a table for eight. To purchase tickets, visit www.lawschool.unm.edu/students/ organizations/wlc/. For more information, contact WLC President Dana Beyal at beyalda@law.unm.edu.

OTHER BARS **First Judicial District Court Bar Association** Ski Day in Santa Fe

Join the First Judicial District Bar Association at Ski Santa Fe on Feb. 27. Families are welcome. Enjoy discounted half- and fullday lift tickets (half-day: \$35, full-day: 45, beginner's chairlift: \$20). To purchase tickets, contact Erin McSherry at erin.mcsherry @state.nm.us. Payment for all guests is due by Feb. 25. Discounted tickets may not be purchased through Ski Santa Fe.

New Mexico Defense Lawyers Association Seeking New Members for Board of Directors

The New Mexico Defense Lawyers Association seeks interested civil defense lawyers to serve on its board of directors. Board terms are five years with quarterly meetings. Board members are expected to take an active role in the organization by chairing a committee, chairing or participating in a CLE program, contributing to Defense News or engaging in other duties and responsibilities as designated by the board. Those who want to be considered for a board position should send a letter of interest to NMDLA Board President, Sean Garrett at sg@conklinfirm.com by Feb. 12.

New Mexico Chapter of the Federal Bar Association CLE and Movie

The New Mexico Chapter of the Federal Bar Association will present its annual CLE and movie at 1 p.m., Feb. 11, at the Regal Theaters in Albuquerque. The movie will be CitizenFour followed by a panel discussion including Dana Gold from the Government Accountability Project and local practitioners. Citizen-Four is the story of filmmaker Laura Poitras and journalist Glenn Greenwald's encounters with Edward Snowden as he hands over classified documents providing evidence of mass indiscriminate and illegal invasions of privacy by the National Security Agency. MCLE approval is pending. For more information, contact Kiernan Holliday at kiernanholliday@ mac.com.

OTHER NEWS **Center for Civic Values Judges Needed for High School Mock Trial Competition**

The Gene Franchini New Mexico High School Mock Trial Competition is in need of judges for the regional rounds. The regional competition will be held Feb. 19-20 and will be hosted by the Bernalillo County Metropolitan Court. Every year, hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. To sign up, visit www.civicvalues.org/judge-volunteer-registration by Feb. 12. For more information, contact Kristen at CCV at 505-764-9417 or Kristen@civicvalues. org.

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Legal Education

February

10 BYOD (Bring Your Own Device vto Work) and Social Media— Employment Law Issues in the Workplace

1.0 EP Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

11 Advocating for Justice: Family Law in the Pro Bono Context

3 0 G

Live Seminar, Albuquerque Volunteer Attorney Program 505-797-6040

11 Management and Voting Agreements in Business

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

12 26th Annual Appellate Practice Institute

5.0 G, 2.0 EP Live Replay

Center for Legal Education of NMSBF www.nmbar.org

12 Hot Topics in Real Property Issues (2015 Real Property Institute)

1.5 G, 1.0 EP Live Replay

Center for Legal Education of NMSBF www.nmbar.org

12 A Practical Guide to Trial Practice Part 1 (2015 Trial Know-How! Courtroom Skills from A to Z)

3.5 G Live Replay

Center for Legal Education of NMSBF www.nmbar.org

12 EEOC Update, Whistleblowers and Wages (2015 Employment and Labor Law Institute)

3.2 G

Live Replay

Center for Legal Education of NMSBF www.nmbar.org

18 Special Issues in Small Trusts

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

19 Current Immigration Issues for the Criminal Defense Attorney (2015 Immigration Law Institute)

5.0 G, 2.0 EP Live Replay

Center for Legal Education of NMSBF www.nmbar.org

19 Estate Planning and Ethical Considerations for Probate Lawyers (2015 Probate Institute)

3.0 G, 1.0 EP Live Replay

Center for Legal Education of NMSBF www.nmbar.org

19 Intellectual Property and Entrepreneurship (Representing Technology Start-ups in New Mexico 2015)

3.5 G Live Replay

Center for Legal Education of NMSBF www.nmbar.org

19 A Practical Guide to Trial Practice Part 2 (2015 Trial Know-How! Courtroom Skills from A to Z)

3.5 G

Live Replay

Center for Legal Education of NMSBF www.nmbar.org

19 Civil Rights and Diversity: Ethics Issues

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

20 Tenth Circuit Winter Meeting & Social Security Disability Practice Update

5.0 G, 1.0 EP

Live Seminar and Webcast

Center for Legal Education of NMSBF www.nmbar.org

22 Drafting Promissory Notes to Enhance Enforceability

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

25 Introduction to the Practice of Law in New Mexico

4.5 G, 2.5 EP Live Seminar

Center for Legal Education of NMSBF www.nmbar.org

March

4 How Ethics Still Apply When Lawyer's Act as Non-Lawyers

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

10 Estate and Gift Tax Audits

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

11 Navigating New Mexico Public Land Issues (2015)

5.5 G, 1.0 EP Live Replay

Center for Legal Education of NMSBF www.nmbar.org

March

11 Federal Practice Tips and Advice from U.S. Magistrate Judges (2015)

2.0 G, 1.0 EP Live Replay Center for Legal Education of NMSBF www.nmbar.org

Law Practice Succession-A Little 11 Thought Now, a Lot Less Panic Later (2015) 2.0 G

Live Replay Center for Legal Education of NMSBF www.nmbar.org

11 The Future of Crosscommissioning: What Every Tribal, State and County Lawyer Should Consider post Loya v. Gutierrez

2.5 G, 1.0 EP Live Replay Center for Legal Education of NMSBF www.nmbar.org

Estate and Trust Planning for Short 15 Life Expectancies

1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org

18 2015 Tax Symposium (2015)

7.0 G Live Replay Center for Legal Education of NMSBF www.nmbar.org

18 The Trial Variety: Juries, Experts and Litigation (2015)

6.0 G Live Replay Center for Legal Education of NMSBF www.nmbar.org

Ethically Managing Your Practice 18 (Ethicspalooza Redux -Winter 2015)

1.0 EP Live Replay Center for Legal Education of NMSBF www.nmbar.org

18 Civility and Professionalism (Ethicspalooza Redux - Winter 2015)

1.0 EP Live Replay Center for Legal Education of NMSBF www.nmbar.org

18 **Ethics and Keeping Your Paralegal** and Yourself Out of Trouble

1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org

Avoiding Family Feuds in Trusts 23

1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org

29 **Drafting Demand Letters**

1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective January 29, 2016

Published Opinions

No. 33425	3rd Jud Dist Dona Ana CR-12-39, STATE v L GARCIA (affirm)	1/25/2016
Unublishe	ed Opinions	
No. 34690	3rd Jud Dist Dona Ana CR-14-489, STATE v J MEYERS (affirm)	1/25/2016
No. 33962	11th Jud Dist San Juan JR-13-193, STATE v DAMON C (affirm)	1/25/2016
No. 34641	13th Jud Dist Sandoval CR-14-31, STATE v D CASTILLO (affirm)	1/25/2016
No. 34698	2nd Jud Dist Bernalillo LR-13-94, STATE v A GALLEGOS (affirm)	1/25/2016
No. 34601	13th Jud Dist Valencia CR-09-103, STATE v E HUMPHREY (affirm)	1/26/2016
No. 34490	12th Jud Dist Otero JR-13-66, STATE v DANIEL R (affirm)	1/27/2016
No. 33724	11th Jud Dist San Juan LR-13-94, STATE v H HARVEY (affirm in part, dismiss in part)	1/27/2016
No. 34152	12th Jud Dist Otero CV-13-738, G GAFFNEY v ROBIN HOOD WATER (dismiss)	1/27/2016
No. 34982	13th Jud Dist Sandoval CV-13-1730, PENNYMAC v P SALAZAR (affirm)	1/27/2016
No. 34974	11th Jud Dist San Juan LR-14-130, STATE v D WISNER (affirm)	1/28/2016
No. 33723	8th Jud Dist Taos CR-12-149, STATE v J SIMPSON (affirm)	1/28/2016
No. 34391	2nd Jud Dist Bernalillo PB-12-318, L ALDOFF v D BEAL (affirm)	1/28/2016
No. 34593	2nd Jud Dist Bernalillo JQ-11-53, CYFD v MONICA L (affirm)	1/28/2016

Slip Opinions for Published Opinions may be read on the Court's website: http://coa.nmcourts.gov/documents/index.htm





Holly Agajanian

Luke Salganek

Holly Agajanian and Luke Salganek were elected shareholders with the Miller Stratvert Law Firm. Agajanian joined the firm in 2014 as of counsel in the Santa Fe office. She attended the University of California (B.A., 1997) and the American University, Washington

College of Law (J.D., 2002, *cum laude*). She practices in the areas of civil rights and public sector law, employment and human relations law, insurance coverage and bad faith law, liquor liability defense law and civil litigation. Salganek joined the firm as an associate in 2010 in the Santa Fe office. he attended Fort Lewis College in Durango, Colo. (B.A, 2001, *cum laude*) and the University of New Mexico (J.D., 2009). He practices in the areas of administrative law, appellate law, civil rights and public sector law, employment and human relations law, Indian law and civil litigation.



Tim Atler

Tim Atler has formed Atler Law Firm, PC, an individual law practice focusing primarily on appellate work. Atler serves on the board of directors of the State Bar Appellate Practice Section and is the newest member of the New Mexico Supreme Court's Appellate Rules Committee. He is rated AV Preeminent by Martindale-Hubbell and is a Southwest Super Lawyers "Rising Star" for 2016.



Stefan R. Chacón

Stefan R. Chacón has become a shareholder at Montgomery & Andrews, PA. Chacón's practice will concentrate on health law and civil litigation. Chacón earned his Bachelor of Science in economics from the University of La Verne and his law degree from the George Washington University Law School in 2009. He is licensed to practice law in California and New Mexico.



Denise M. Chanez

Denise M. Chanez has become a fellow of the American Bar Foundation. Chanez is a director in the Albuquerque office of the Rodey Law Firm. She practices in the litigation department with an emphasis on health law and medical malpractice. Chanez also has experience in the areas of employment, civil rights, education, personal injury and media law.







Charles J. Piechota

Sutin, Thayer & Browne law firm shareholders Eduardo A. Duffy and Charles J. Piechota recently were elected to serve on the firm's board of directors, starting Jan. 1. Duffy has practiced law at the firm since 2011 (also, previously from 2000-2003) and

has been a firm shareholder since 2014. He belongs to the firm's commercial group, practicing primarily in corporate and securities law, business transactions and public finance. He earned his Bachelor of Arts and law degree from the University of New Mexico. Piechota has practiced law at the firm since 2007 and has been a firm shareholder since 2014. He belongs to the firm's commercial group, practicing primarily in mergers and acquisitions, estate planning and probate, state and federal taxation, intellectual property and liquor licensing. He earned his Bachelor of Science in microbiology (honors scholar) from Colorado State University and a law degree from the University of Colorado Law School.

Michael Eshleman, and inactive member of the State Bar, received a Master of Library Science degree from Indiana University in Bloomington, Ind., in December 2015. At Indiana University, he curated an exhibit at the Lilly Library, the university's rare books library, on "Pauline Kael & Her Citizen Kane Authorship Controversy" from the papers of Orson Welles, Pauline Kael and Peter Bogdanovich housed at the Lilly. He also worked as the graduate assistant to the copyright librarian at the University.



Christopher A. Holland

The Supreme Court of New Mexico has appointed Sutin, Thayer & Browne law firm shareholder **Christopher A. Holland** to the Rules of Civil Procedure for the District Courts Committee. Holland practices law in the firm's Albuquerque office, primarily in business litigation, Indian law, employment law, education law, civil litigation, regulatory and administrative law and appeals. He attended Eastern New Mexico University and the University of New Mexico School of Law. He has been with the firm since 1996.



Lynn Mostoller

The Supreme Court of New Mexico has appointed Lynn Mostoller to the Code of Judicial Conduct Committee. Mostoller practices law in Albuquerque and Santa Fe, primarily in commercial litigation, regulatory and administrative law, employment law and appeals. She has been with Sutin, Thayer & Browne since 2010 and was elected a shareholder in 2014. She earned her law degree from University of New Mexico School of Law, graduating summa cum laude in 2004 with the highest GPA on record at that time.

Hearsay_____www.nmbar.org



Edna Frances Sprague

Edna Frances Sprague has joined the law firm of Atkinson & Kelsey, PA, as a family lawyer. Sprague joins the team with 14 years as a practicing attorney. She holds a bachelor's degree in American and Women's Studies from University of New Mexico and a law degree from West Virginia University College of Law. Sprague's experience working as the deputy district attorney for the Second Judicial District Attorney's Office makes her a perfect addition to the Atkinson & Kelsey team.

Atkinson & Kelsey PA

2016 Southwest Super Lawyers: Jon A. Feder, Thomas Montoya and Virginia R. Dugan
2016 Southwest Super Lawyers Rising Stars:
Tatiana D. Engelmann



Christopher J. Tebo

Christopher J. Tebo has joined the City of Albuquerque as an assistant city attorney focusing on real estate, land use and zoning issues and has relocated to Albuquerque. Previously, he was a partner at Hatcher & Tebo, PA. A former Presidential appointee at the U.S. Department of State and legislative director in the U.S. House of Representatives, Tebo received his law degree from the University of Wisconsin Law School, and holds an master's degree from Johns Hopkins and a bachelor's degree from the California State University.

The Albuquerque office of **Brownstein Hyatt Farber Schreck** was named the Health Care Law Firm of the Year in *New Mexico by Corporate INTL* Magazine. This recognition commemorates leading firms in their chosen specialties throughout the world, encompassing successes over the past 12 months and excellence not only in expertise but in service. Brownstein's health care group is a cohesive team of experienced litigators, transactional attorneys and regulatory and government relations professionals with extensive industry and regulatory knowledge.

In Memoriam



Jennifer Stone

Jennifer Stone, loving wife, mother, grand-mother, dear friend to many, brilliant, hard-working and talented professional and dedicated member of her community, died on Monday, Jan. 18. Stone was diagnosed with ovarian cancer in 2013. She was born in Los Alamos on Nov. 1, 1965, to Peggy and Sid Pinkston. Always a brilliant student, she enrolled in the University of New Mexico in 1983, where she met her future husband, Chip Stone. She had an impressive, varied legal career that began and culminated at the

Rodey Law Firm where she was a director and shareholder. Her powerful intellect, professionalism and passion served many New Mexicans throughout her career. Jennifer and Chip were married on May 30, 1987, and have two children. Jordan, 25, lives and works in Denver, and Caitlin, 22, New Mexico Institute of Mining and Technology. Stone is especially remembered for her spirit of generosity, her deep empathy for people and animals, her knack for gracefully solving problems, her modesty about her many professional recognitions, her loyalty and her infectious sense of humor. She was also a world- class knitter, making beautiful creations for family and friends. Jennifer and Chip shared a passion for live music and the great outdoors. In recent years, Stone and her husband have been avidly involved in outdoor rock climbing, gym climbing, and camping throughout the Southwest. While undergoing cancer treatments in June 2014, Stone participated in the HERA Women's Cancer Foundation's Climb4Life in Boulder, Colorado, to raise funds for research to eliminate ovarian cancer. She was the only participant who climbed outdoors in Boulder Canyon despite active cancer treatment. In her professional life Stone was devoted to the practice of law at Rodey Law, and in her personal life she was ardently devoted to her family. Stone is survived by her husband, Chip; children, Jordan and Caitlin Stone; granddaughter Catarina; Caitlin's partner Jason Martinez; mother Peggy Pinkston; a brother and two sisters, in-laws, aunts, uncles, nieces and nephews. Stone's family and countless friends will celebrate her life and remember her with love and affection.

Milton C. Colia died unexpectedly on Dec. 1, 2015, in El Paso, Texas. He was born Jan. 28, 1954, in Shreveport, La., to Col. Ned I. Colia and Ursula Waldenhaur, both of whom preceded him in death. He obtained Bachelor of Business Administration from Texas Christian University in 1975, and a law degree from Texas Tech School of Law in 1977. Colia served as a judge advocate general in the U.S. Air Force for four years before continuing his legal career at Griffis, Colia, Motl & Junell in San Angelo, Texas. He moved to El Paso in 1991, where he joined the ScottHulse law firm. In 1996, Colia continued his legal career at Kemp Smith Law as a partner in the litigation department. He was board certified in civil trial law and personal injury trial law by the Texas Board of Legal Specialization. He was a fellow in the American College of Trial Lawyers and a member of the American Board of Trial Advocates. At the time of his death Colia was serving as president of the Texas Association of Defense Counsel. He was also a Fellow of the Texas Bar Foundation and a member of the El Paso Bar Association the State Bar of Texas, State Bar of New Mexico and Colorado Bar Association. Colia was listed in Best Lawyers in America in the area of commercial litigation and in the 2008-2015 editions listed in the areas of commercial litigation and personal injury litigation. In 2012 he was named commercial litigator of the year for El Paso. In 2013, he was named personal injury litigation: defendants, litigator of the year for El Paso. In the 2003-2014 editions he was recognized as a Texas Super Lawyer. In 2014, he was named a Top 50 Lawyer in the Central and West Texas Region. In 2005, Colia received the William Duncan-George McAlmon Civility Award for professionalism and civility in the practice of trial law from the American Board of Trial Advocates. Colia is survived by his wife of 40 years, Margaret Ann; son, Andrew, wife Hilary and grandson William Watson Colia, and his son, Matthew, all of Fort Worth, Texas. He is also survived by his brothers, Clifton Colia (Nancy) of Glenwood Springs, Colo., and Kenton Colia (Ginny) of Destin, Fla.; and numerous family members and friends. Colia was a man of his word, respected by all and loved by many. He will be remembered for his integrity, his tenacity and his loyalty to family and friends.

Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective January 29, 2016

Petitions for Writ of Certiorari Filed and Pending:			No. 35,671	Riley v. Wrigley		12/21/15	
	Date Petition Filed			No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,371	Citimortgage v. Tweed	COA 34,870		No. 35,641	Garcia v. Hatch Valley	201.	
No. 35,730	State v. Humphrey	COA 34,601			Public Schools	COA 33,310	
No. 35,727	State v. Calloway	COA 34,625		No. 35,661	Benjamin v. State		12/16/15
No. 35,728	Brannock v. Lotus Fund	-		No. 35,654	Dimas v. Wrigley	COA 35,654	
No. 35,725	State v. Ancira	COA 34,556		No. 35,635	Robles v. State		12/10/15
No. 35,724	State v. Donovan W.	COA 34,595		No. 35,674	Bledsoe v. Martinez		12/09/15
No. 35,723	State v. Lopez	COA 34,602		No. 35,653	Pallares v. Martinez		12/09/15
No. 35,722	James v. Smith	12-501	01/25/16	No. 35,637	Lopez v. Frawner		12/07/15
No. 35,711	Foster v. Lea County	12-501		No. 35,268	Saiz v. State		12/01/15
No. 35,714	State v. Vega	COA 32,835		No. 35,617	State v. Alanazi		11/30/15
No. 35,713	Hernandez v. CYFD	COA 33,549	01/22/16	No. 35,612	Torrez v. Mulheron		11/23/15
No. 35,710	Levan v.			No. 35,599	Tafoya v. Stewart	12-501	11/19/15
	Hayes Trucking	COA 33,858	01/22/16	No. 35,593	Quintana v. Hatch		11/06/15
No. 35,709	Dills v.	664 22 525	01/20/16	No. 35,588	Torrez v. State	12-501	11/04/15
37 07 700	N.M. Heart Institute	COA 33,725		No. 35,581	Salgado v. Morris	12-501	11/02/15
No. 35,708	State v. Hobbs	COA 33,715		No. 35,586	Saldana v. Mercantel	12-501	10/30/15
No. 35,718	Garcia v. Franwer	12-501		No. 35,576	Oakleaf v. Frawner	12-501	10/23/15
No. 35,717	Castillo v. Franco		01/19/16	No. 35,575	Thompson v. Frawner	12-501	10/23/15
No. 35,707	Marchand v. Marchand	COA 33,255		No. 35,555	Flores-Soto v. Wrigley	12-501	10/09/15
No. 35,706	State v. Jeremy C.	COA 34,482		No. 35,554	Rivers v. Heredia	12-501	10/09/15
No. 35,705	State v. Farley	COA 34,010		No. 35,540	Fausnaught v. State	12-501	10/02/15
No. 35,704	State v. Taylor	COA 33,951	01/15/16	No. 35,523	McCoy v. Horton	12-501	09/23/15
No. 35,701	State v. Asarisi	COA 33,531	01/14/16	No. 35,522	Denham v. State	12-501	09/21/15
No. 35,700	State v. Delgarito	COA 34,237	01/14/16	No. 35,515	Saenz v.		
No. 35,699	State v. Lundvall	COA 34,715	01/14/16		Ranack Constructors	COA 32,373	09/17/15
No. 35,698	State v. Carmona	COA 34,696	01/14/16	No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,703	Roblez v. N.M. Correction			No. 35,480	Ramirez v. Hatch	12-501	08/20/15
	Facility	COA 33,786		No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,692	State v. Wiggins	COA 33,915		No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,702	Steiner v. State		01/12/16	No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,694	State v. Baca	COA 34,133	01/12/16	No. 35,440	Gonzales v. Franco	12-501	07/22/15
No. 35,693	State v. Navarette	COA 34,687	01/12/16	No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,689	State v. Griego	COA 34,394		No. 35,416	State v. Heredia	COA 32,937	07/15/15
No. 35,686	State v. Romero	COA 34,264		No. 35,415	State v. McClain	12-501	07/15/15
No. 35,685	State v. Gipson	COA 34,552	01/07/16	No. 35,374	Loughborough v. Garcia	12-501	06/23/15
No. 35,680	State v. Reed	COA 33,426	01/06/16	No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,682	Peterson v. LeMaster	12-501	01/05/16	No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,678	TPC, Inc. v.			No. 35,353	Collins v. Garrett	COA 34,368	
	Hegarty COA	32,165/32,492	01/05/16	No. 35,335	Chavez v. Hatch		06/03/15
No. 35,677	Sanchez v. Mares	12-501	01/05/16	No. 35,371	Pierce v. Nance		05/22/15
No. 35,676	State v. Sears	COA 34,522	01/04/16	No. 35,266	Guy v.		
No. 35,675	National Roofing v.				N.M. Dept. of Correction	ns 12-501	04/30/15
	Alstate Steel	COA 34,006		No. 35,261	Trujillo v. Hickson		04/23/15
No. 35,669	Martin v. State	12-501	12/30/15	No. 35,159	Jacobs v. Nance		03/12/15
No. 35,665	Kading v. Lopez	12-501	12/29/15	No. 35,097	Marrah v. Swisstack		01/26/15
No. 35,664	Martinez v. Franco	12-501	12/29/15	No. 35,099	Keller v. Horton		12/11/14
No. 35,657	Ira Janecka	12-501	12/28/15	No. 35,068	Jessen v. Franco		11/25/14
No. 35,656	Villalobos v. Villalobos	COA 32,973	12/23/15		,	12 001	,_0,11

No. 34,937	Pittman v.			No. 35,249	Kipnis v. Jusbasche	COA 33,821	06/19/15
	N.M. Corrections Dept.	12-501	10/20/14	No. 35,214	Montano v. Frezza	COA 32,403	06/19/15
No. 34,932	Gonzales v. Sanchez	12-501	10/16/14	No. 35,213	Hilgendorf v. Chen	COA 33056	06/19/15
No. 34,907	Cantone v. Franco	12-501	09/11/14	No. 35,279	Gila Resource v. N.M. V		
No. 34,680	Wing v. Janecka		07/14/14			/33,237/33,245	
No. 34,777	State v. Dorais	COA 32,235		No. 35,289	NMAG v. N.M. Water (
No. 34,790	Venie v. Velasquz	COA 33,427				/33,237/33,245	07/13/15
No. 34,775	State v. Merhege	COA 32,461	06/19/14	No. 35,290	Olson v. N.M. Water Qu		0=11011=
No. 34,706	Camacho v. Sanchez	12-501	05/13/14	37 27 242		/33,237/33,245	0//13/15
No. 34,563	Benavidez v. State	12-501	02/25/14	No. 35,349	Phillips v.	COA 22 F96	07/17/15
No. 34,303	Gutierrez v. State	12-501	07/30/13	No. 25 202	N.M. Tax. & Rev. Dept.		
No. 34,067	Gutierrez v. Williams		03/14/13	No. 35,302	Cahn v. Berryman State v. Dunn	COA 33,087	
No. 33,868	Burdex v. Bravo	12-501	11/28/12	No. 35,318	State v. Dunn State v. Cordova	COA 34,273	
No. 33,819	Chavez v. State	12-501	10/29/12	No. 35,386		COA 32,820	
No. 33,867	Roche v. Janecka	12-501	09/28/12	No. 35,278	Smith v. Frawner	12-501	08/26/15
No. 33,539	Contreras v. State	12-501	07/12/12	No. 35,398	Armenta v. A.S. Homer, Inc.	COA 33,813	08/26/15
No. 33,630	Utley v. State	12-501	06/07/12	No. 35,427	State v.	COA 33,613	00/20/13
				110. 33,427		31,941/28,294	08/26/15
Certiorari G	ranted but Not Yet Submit	ted to the Cou	rt:	No. 35,446	State Engineer v.	31,711/20,271	00/20/13
				110.00,110	Diamond K Bar Ranch	COA 34,103	08/26/15
	paring briefs)		Vrit Issued	No. 35,451	State v. Garcia	COA 33,249	08/26/15
No. 33,725	State v. Pasillas	COA 31,513		No. 35,438	Rodriguez v. Brand Wes		
No. 33,877	State v. Alvarez	COA 31,987				33,104/33,675	08/31/15
No. 33,930	State v. Rodriguez	COA 30,938		No. 35,426	Rodriguez v. Brand Wes	st	
No. 34,363	Pielhau v. State Farm	COA 31,899			Dairy COA	33,675/33,104	08/31/15
No. 34,274	State v. Nolen		11/20/13	No. 35,499	Romero v.		
No. 34,443	Aragon v. State		02/14/14		Ladlow Transit Services	COA 33,032	09/25/15
No. 34,522	Hobson v. Hatch		03/28/14	No. 35,456	Haynes v. Presbyterian		
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No. 34,669	Hart v. Otero County Pr		06/06/14	No. 35,395	State v. Bailey	COA 32,521	09/25/15
No. 34,650	Scott v. Morales	COA 32,475	06/06/14				
No. 34,784	Silva v. Lovelace Health Systems, Inc.	COA 31,723	09/01/14	Certiorari G	Granted and Submitted to	the Court:	
No. 34,812	Ruiz v. Stewart		10/10/14	(C1::	D.4. 1.4f1		
No. 34,812 No. 34,830	State v. Mier	COA 33,493		•	Date = date of oral	C1:	D.4.
	Freeman v. Love	COA 33,493 COA 32,542		-	briefs-only submission)	Submi	ssion Date
No. 34,929	State v. Carroll	COA 32,342 COA 32,909		No. 33,969	Safeway, Inc. v. Rooter 2000 Plumbing	COA 30,196	08/28/13
No. 35,063 No. 35,016	State v. Garron State v. Baca	COA 32,909 COA 33,626		No. 33,884	Acosta v. Shell Western	· ·	00/20/13
No. 35,010	Progressive Ins. v. Vigil	COA 33,020 COA 32,171		110. 33,004	and Production, Inc.	COA 29,502	10/28/13
No. 35,130	Dalton v. Santander	COA 32,171 COA 33,136		No. 34,093	Cordova v. Cline	COA 30,546	
No. 35,101	El Castillo Retirement R		03/23/13	No. 34,287	Hamaatsa v.	331100,010	01/10/11
110. 33,140	Martinez	COA 31,701	04/03/15	1 (0, 0 1,20,	Pueblo of San Felipe	COA 31,297	03/26/14
No. 35,198	Noice v. BNSF	COA 31,935		No. 34,613	Ramirez v. State	COA 31,820	
No. 35,183	State v. Tapia	COA 32,934		No. 34,798	State v. Maestas	COA 31,666	
No. 35,145	State v. Benally	COA 31,972		No. 34,630	State v. Ochoa	COA 31,243	
No. 35,121	State v. Chakerian	COA 32,872		No. 34,789	Tran v. Bennett	COA 32,677	
No. 35,121	State v. Martinez	COA 32,516		No. 34,997	T.H. McElvain Oil & Ga		
No. 34,949	State v. Chacon	COA 33,748		-	Benson	COA 32,666	08/24/15
				No. 34,993	T.H. McElvain Oil & Ga	as v.	
	State v. Holt	(JC)A 33.090			_		
No. 35,298	State v. Holt Montano v. Frezza	COA 33,090 COA 32,403			Benson	COA 32,666	08/24/15
No. 35,298 No. 35,297	Montano v. Frezza	COA 32,403	06/19/15	No. 34,726	Deutsche Bank v.		
No. 35,298 No. 35,297 No. 35,296	Montano v. Frezza State v. Tsosie	COA 32,403 COA 34,351	06/19/15 06/19/15		Deutsche Bank v. Johnston	COA 31,503	08/24/15
No. 35,298 No. 35,297	Montano v. Frezza	COA 32,403 COA 34,351	06/19/15 06/19/15 06/19/15	No. 34,726 No. 34,826 No. 34,866	Deutsche Bank v.		08/24/15 08/26/15

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No. 35,035	State v. Stephenson	COA 31,273 10/15/15	No. 35,642	Rabo Agrifinance Inc. v.		
No. 35,478	Morris v. Brandenburg	COA 33,630 10/26/15		Terra XXI	COA 34,757	01/29/16
No. 35,248	AFSCME Council 18 v. 1	Bernalillo	No. 35,530	Hobson v. Benavidez	12-501	01/29/16
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			No. 35,369	Serna v. State	12-501	01/29/16
Writ of Certiorari Quashed:			No. 35,106	Salomon v. Franco	12-501	01/29/16
will of Cert	iorari Quasiicu.		No. 35,658	Bustos v. City of Clovis	COA 33,405	01/25/16
		Date Order Filed	No. 35,503	Saltwater v. Frawner	12-501	01/25/16
No. 34,728	Martinez v. Bravo	12-501 01/15/16	No. 35,490	Lopez v. Wrigley	12-501	01/25/16
			No. 35,644	State v. Burge	COA 34,769	01/20/16
Petition for Writ of Certiorari Denied:			No. 35,422	State v. Johnson	12-501	01/20/16
			No. 35,655	State v. Solis	COA 34,266	01/14/16
		Date Order Filed	No. 35,650	State v. Abeyta	COA 34,705	01/14/16
No. 35,672	State v. Berres	COA 34,729 01/29/16	No. 35,645	State v. Hart-Omer	COA 33,829	01/14/16
No. 35,668	State v. Marquez	COA 33,527 01/29/16	No. 35,652	Tennyson v.		
				Santa Fe Dealership	COA 33,657	01/12/16

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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Dated Jan. 20, 2016

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CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective January 13, 2016: **Daniel Avelar** 705 Texas Avenue El Paso, TX 79901 915-485-9100 915-828-9709 (fax)

danielavelar@hotmail.com

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Effective January 6, 2016: Richard E. Bowman 416 Ridge Place NE Albuquerque, NM 87106

Effective January 11, 2016: Judy A. Fry PO Box 2168 Albuquerque, NM 87103

Effective December 31, 2015: Sara Tuttle Harmon PO Box 568

Olympia, WA 98507

Effective December 28, 2015: Janet T. Kinniry PO Box 154 Gardner, CO 81040

Effective January 20, 2016: Jana S. Perry

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Effective January 4, 2016: Michelle Olszta Reeves PO Box 456 Cloudcroft, NM 88317

Effective January 6, 2016: Steven J. Vogel 341 Hokulani Street Makawao, HI 96768

Effective January 12, 2016: Patricia C. Rivera Wallace PO Box 4992 Santa Fe, NM 87502

Effective January 19, 2016: Kathe R. Zolman PO Box 94064 Baton Rouge, LA 70804

In Memoriam

As of December 1, 2015: Milton Carey Colia PO Box 2800 El Paso, TX 79999

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On January 19, 2016: Catherine L. Rivard PO Box 3220 Edgewood, NM 87015 661-713-5109 clrivard@zianet.com

On January 19, 2016: Robert C. Vartabedian Thompson & Knight LLP 801 Cherry Street, Unit #1 Fort Worth, TX 76102 817-347-1714 214-999-1687 (fax) rob.vartabedian@tklaw.com

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As of January 22, 2016: Trevor A. Rigler 121 Tijeras Avenue NE, **Suite 3500** Albuquerque, NM 87102 505-395-6268 trevor@tuviya.com

As of January 22, 2016: Jamye Boone Ward PO Box 920838 El Paso, TX 79902 915-539-3029 jamyebw@elp.rr.com

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On January 26, 2016: Scott M. Hendler Hendler Lyons Flores, PLLC 1301 West 25th Street Austin, TX 78705 512-439-3202 512-439-3201 (fax) shendler@hendlerlaw.com

On January 26, 2016: Michael E. Jacobs Hinkle Shanor LLP PO Box 2068 218 Montezuma Avenue (87501)Santa Fe, NM 87504 505-982-4554 505-982-8623 (fax) mjacobs@hinklelawfirm.com

On January 26, 2016: **Jacob Maule** Office of the Eleventh Judicial District Attorney 335 S. Miller Avenue Farmington, NM 87401 505-599-9810 505-599-9822 (fax) jmaule@da.state.nm.us

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As of December 25, 2015

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As of January 21, 2016 Natasha Ann Wesenberg f/k/a Natasha Ann Martinez City of Albuquerque PO Box 2248 One Civic Plaza NW, Room 4072 (87102) Albuquerque, NM 87103 505-768-4530 505-768-4440 (fax) nwesenberg@cabq.gov

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Recent Rule-Making Activity As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective February 10, 2016

PENDING PROPOSED RULE CHANGES **OPEN FOR COMMENT:**

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2015 NMRA:

Comment Deadline

SECOND JUDICIAL DISTRICT **COURT LOCAL RULES**

None to report at this time.

LR2-400 Case management pilot program for criminal cases.

02/02/16

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

Advance Opinions_

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2015-NMSC-032

No. S-1-SC-34768 (filed September 28, 2015)

NEW MEXICO ATTORNEY GENERAL, Appellant,

٧.

NEW MEXICO PUBLIC REGULATION COMMISSION, Appellee, and

SOUTHWESTERN PUBLIC SERVICE COMPANY, OCCIDENTAL PERMIAN LTD., and COALITION FOR CLEAN AFFORDABLE ENERGY, Intervenors-Appellees.

APPEAL FROM THE NEW MEXICO PUBLIC REGULATION COMMISSION

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inclusion of the entire prepaid asset in the rate base is not supported by substantial evidence, and the PRC acted contrary to law in allowing SPS to recover the aforementioned renewable energy costs from non-capped customers. We affirm the PRC because (1) SPS is entitled to earn a reasonable rate of return on the investorfunded prepaid pension asset, and (2) SPS may recover its renewable energy costs in excess of the large customer cap from noncapped customers because such a recovery mechanism is the only viable method of cost recovery that is consistent with the purposes of the Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 (2004, as amended through 2011). I. THE INCLUSION OF SPS'S

are unjust and unreasonable because the

I. THE INCLUSION OF SPS'S PREPAID PENSION ASSET IN THE RATE BASE

{2} SPS applied to the PRC to include a prepaid pension asset in its rate base to allow its shareholders, who funded the asset, to receive a corresponding return on their investment. By including this prepaid pension asset in the rate base, the asset is treated as a capital investment, allowing SPS to recover the asset as an expense, thereby increasing SPS's revenue requirement. See Joseph P. Tomain, Symposium Article, "Steel in the Ground": Greening the Grid with the iUtility, 39 Envtl. L. 931, 945-46 (2009) (providing and discussing the rate making formula, which sets the amount of money utilities may receive for their investments and expenses). Importantly, inclusion of an investment asset in the rate base does not enable investors to recover the value of their investment, but instead only allows investors to earn a return on the asset. See id. (noting that utilities generally recover the value of an investment by treating the depreciation of the asset as an operating expense).

{3} The parties agree that a prepaid pension asset is the amount by which investor contributions to a pension trust and earnings on these contributions exceed pension expenses. S. Co. Servs., Inc., 122 FERC ¶ 61,218, at *62235, 2008 WL 630079, slip copy at 5 (FERC 2008) (order on tariff filing), order clarified by 128 FERC ¶ 61,276, 2009 WL 3043950 (slip copy) (FERC 2009); In re Delmarva Power & Light Co., 2014 WL 3964914, slip copy at 18, 315 P.U.R. 4th 10 (Del. P.S.C. 2014) ("A prepaid pension asset occurs when the accumulated contributions and

Opinion

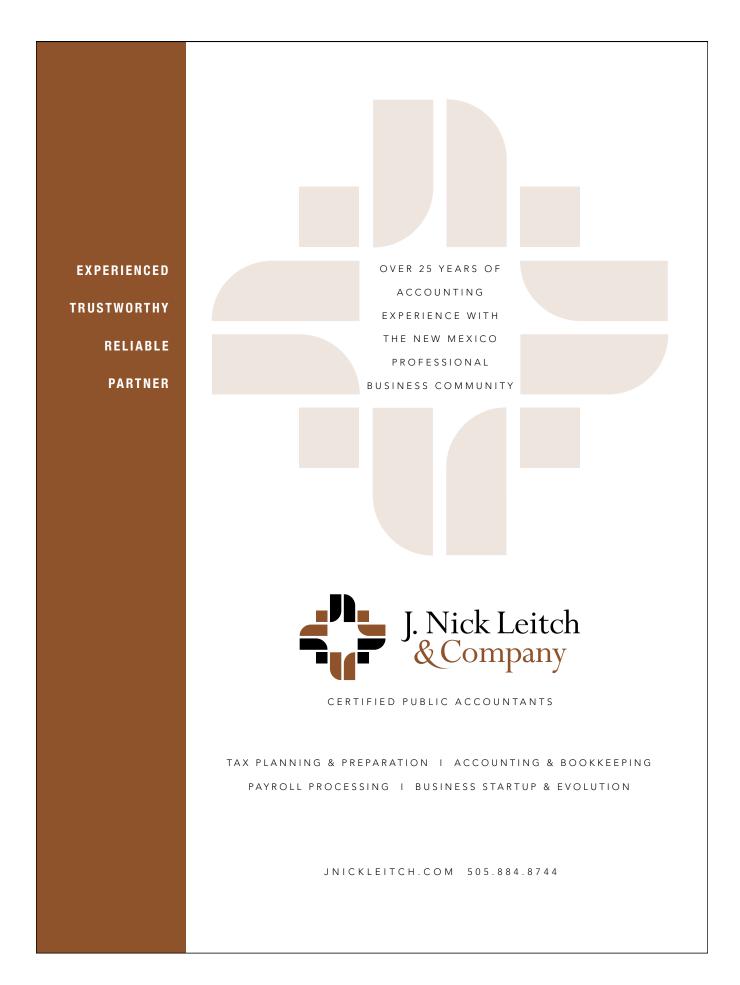
Edward L. Chávez, Justice

{1} The Public Regulation Commission (PRC) granted Southwestern Public Service Company's (SPS) application to (1) include a prepaid pension asset in its rate base in order for SPS to earn a return

on this asset, and (2) obtain a renewable energy cost rider to recover approximately \$22 million of renewable energy procurement costs from those customers who do not have a legislatively imposed limit on their renewable energy costs (non-capped customers). The Attorney General appeals the PRC's final order granting SPS's application, arguing that the approved rates

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fter the Supreme Court Decision: Same-sex Marriages Still Need Protections

By Dorene A. Kuffer

n June 26, 2015, the U.S. Supreme Court ruled in Obergefell v. Hodges, 576 U.S. ____, 135 S. Ct. 2584 (2015), that states must both permit same-sex couples to marry in their states and recognize same-sex marriages that were formed in other states. So, "marriage is marriage," right? Not necessarily. In some areas, the law is unclear, while in others, additional protections are necessary to protect same-sex couples and their families.

FAMILY CREATION

Prenuptial and Postnuptial Agreements

With some same-sex couples, the decision to draft a prenuptial agreement is critical. Because same-sex couples did not have the right to marry while they were living together as committed couples, some combined finances, assets and debts. For the purposes of inheritance and divorce, New Mexico law recognizes that a marriage begins as of the date of the legal marriage, not when the couple combined finances as a household. Yet, many of these couples have had five, 10, 20, even 30 years of commingling finances and life before they could marry. It is imperative that assets and debts obtained during these years be "brought into the community" and that is done through a prenuptial or postnuptial agreement.

Children Born of the Marriage

The Uniform Parentage Act in New Mexico, NMSA 1978, §§ 40-11A-101 to 903, presumes that a child born of a marriage is a child of both parties to that marriage. However, not all jurisdictions abide by that presumption, or other presumptions in the Uniform Parentage Act, and some may refuse to recognize the co-parent as a legal parent unless there is a formal adoption decree naming the co-parent as a parent of the child. This applies to heterosexual couples as well. The circumstances vary from state to state.

Because not everyone agrees with the Obergefell decision, states that previously did not recognize same-sex marriage may fail to recognize the legal parent

presumption with same-sex couples. Hence, co-parent adoption is important to protect the child's relationship with the non-biological parent.

Post-Obergefell, several states have refused to recognize the presumption of parentage. For instance, a New York court stated that the presumption could be defeated by showing that another person is the child's biological father. Matter of Paczkowski v.

So, "marriage is marriage," right?

Paczkowski, 128 A.D.3d 968, 10 N.Y.S.3d 270 (2015). Here's a look at other states' approaches to parentage:

• In November 2015, the Illinois Supreme Court upheld a trial court's finding of non-existence of a parentchild relationship of a presumed father who had signed a voluntary acknowledgment of paternity. In re A. A., a Minor, No. 118605 (Ill. Nov. 19, 2015). Even though the presumed father had raised the child since birth, the court held that the trial court was correct in establishing a parent-child relationship with a biological parent and erasing the parent-child relationship of the presumed parent. The court cited to an earlier case in which a biological

father successfully challenged the parentage of a woman's husband - to rebut the marital presumption - based on biology alone. The effect of the ruling in In re A.A. was to allow the parents of the biological father to gain custody of the child and sever the relationship the child had since birth with the presumed father. It is clear that the Illinois courts will be open to disallowing a marital presumption in a same-sex marriage since they have done so in an opposite-sex marriage.

 In September 2015, the Alabama Supreme Court ruled that it will not recognize a same-sex adoption granted in Georgia and declared the Georgia adoption "void." Ex parte E.L., No. 1140595 (Ala. Sept. 18, 2015) (not yet reported in the Southeastern Reporter). This decision raises interesting questions regarding the Full Faith and Credit Clause and its application to orders of adoption. The adoptive mother has asked the U.S. Supreme Court to review the decision. The U.S. Supreme Court has issued a stay of the decision pending its decision on the petition for writ of certiorari. If the Alabama Supreme Court decision is allowed to stand, it is possible that couples there will not be able to legitimize their relationships with their children. Moreover, the decision will provide an avenue for states that do not wish to recognize same-sex relationships to harm families. Alabama was one of a handful of states that refused to abide by federal district court rulings that

invalidated prohibitions on same-sex marriage when its Supreme Court ordered Alabama officials to deny marriage licenses to same-sex couples.

The law in this area is developing and decisions are being issued by states every week. It is important to inform your same-sex clients that it is still necessary to adopt their children, even if there are presumptions of parentage that apply. You must also draft appropriate estate planning and guardianship documents to ensure your clients' children will not go to other family members should the biological or primary-adopting spouse die.

Also, advise your clients that a birth certificate does not prove parentage. That is true for heterosexual people as well. A birth certificate is only evidence. The key to parentage lies in the statutes, and a court order is the best "proof" of parentage. An order of parentage is second to an adoption order, especially if the order of parentage relies upon the presumptions in the Uniform Parentage Act.

FAMILY MAINTENANCE

If a couple was married in a recognition state and then moved to a non-recognition state, it is possible for purposes

of estates, taxes, Social Security and other benefits that post-Obergefell, their marriage will be recognized back to the original date of marriage. That is because Obergefell found bans on same-sex marriage to be unconstitutional and therefore void ab initio.

The U.S. Department of the Treasury and the Internal Revenue Service announced proposed regulations in October 2015 providing that a marriage of two individuals, whether of the same sex or the opposite sex, will be recognized for federal tax purposes if that marriage is recognized by any state, possession or territory of the U.S. (80 FR 64378). The proposed regulations would also interpret the terms "husband" and "wife" to include same-sex spouses and opposite-sex spouses.

In New Mexico, property will be divided according to the community property rules.

The Social Security Administration announced in August 2015 it would apply the Obergefell ruling retroactively and process pending spousal benefits claims for same-sex couples that lived in nonrecognition states. All post-Obergefell claims will be processed and recognized.

In December 2015 the IRS issued guidance on the application of Obergefell to qualified retirement plans under Section 401(a) of the Tax Code and health and welfare plans, including Section 124 cafeteria plans. Notice 2015-86. Even though most same-sex marriages had been recognized for federal tax law purposes



The proposed regulations will apply to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.

The proposed regulations would not treat registered domestic partnerships, civil unions, or similar relationships not denominated as marriage under state law as marriage for federal tax purposes. This rule protects individuals who have specifically chosen to enter into a state law registered domestic partnership, civil union, or similar relationship rather than a marriage, because they can retain their status as single for federal tax purposes.

after United States v. Windsor, 570 U.S. _, 133 S.Ct. 2675 (2013), the IRS issued this guidance to assist plan sponsors and to answer additional questions.

FAMILY DISSOLUTION

Post-Obergefell, divorce is divorce. In New Mexico, property will be divided according to the community property rules. That means that if your clients had a longstanding relationship before they got married and did not execute a prenuptial agreement, any previously acquired assets and debts will not be considered community property. This is because the law will only recognize as "community assets and debts" those that were accrued or incurred during the period of the actual marriage. Without a prenuptial agreement, the couple will have a bifurcated divorce proceeding, meaning:

- Assets/debts acquired during the marriage will be allocated pursuant to the domestic relations laws.
- · Assets/debts acquired before the marriage will be divided using basic contract law, under which assets and debts are divided based on whose name is on the title or the debt and what contribution each party made toward acquiring the asset. This process may serve a great injustice to the party who financially contributed less because that person may have contributed to the household in other than financial means (which has some value to the parties) or they could

have been "promised" equal shares of the assets at divorce or break-up by the other party. However, the court will have no choice but to apply the law and divide the assets according to financial contribution only.

If one of the parties dies and there is no pre-nuptial agreement, the treatment of the assets will also be bifurcated:

- · Assets acquired during marriage will be automatically transferred to the surviving spouse.
- Assets acquired before marriage will be treated differently and may be transferred to the deceased's family members rather than the surviving spouse.

CONCLUSION

While the Obergefell Court held that all marriages are to be recognized by all states, it did not erase all the issues for same-sex couples contemplating marriage. The Obergefell decision has resolved the big issues of same-sex marriage, but many questions are unresolved for families of same-sex couples. Be mindful of the everchanging legal environment in this area and advise your clients of the pitfalls that still exist. ■

Dorene A. Kuffer is a New Mexico boardcertified family law specialist practicing at the Law Office of Dorene A. Kuffer, PC, in Albuquerque.



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with Incapacitated or Disabled Parties

By Mary Ann R. Burmester

erhaps it's a function of my age (early 50s) and the number of years I've been practicing law (approaching 30), but I am encountering more divorces in which parties with physical and/or mental impairment play a significant role in negotiating a fair and practical settlement or in having to litigate property division, child custody and financial support. As both a lawyer and a gerontologist, many of my clients are getting divorced in the golden years (age 60 and up) or are grandparents raising grandchildren. Frequently one, and sometimes both, parties are dealing with their own physical

disabilities, chronic and sometimes terminal illnesses and/or mental health issues, ranging from severe depression to bipolar disorder to varying degrees of actual dementia.

I also see more cases in which PTSD is a factor—for a parent returning from active-duty military service or for one spouse struggling with long-term abusive behavior by the other spouse. Chronic substance abuse, particularly inappropriate use of prescription opioid drugs, is another growing problem. Sometimes one spouse/parent accuses the other (or each other) of drug or alcohol abuse or claims that the physical impairment of a party renders him or her unfit to parent (at least without supervision) or incapable of providing adequate financial support for him- or herself or the children. When one spouse already has a court-ordered guardian and conservator, sometimes the



adult children interject themselves in the divorce proceedings, to try to preserve their anticipated inheritance. Then the divorce turns into a pre-probate fight. This article poses questions the attorney should consider when representing or opposing a party who is disabled or incapacitated.

Varying Levels of Impairment

I see three categories of persons with an impairment:

- Permanent physical disability, with a clear mind and legal mental capacity is not an issue. The disability may be "static" such as permanent blindness, paralysis or amputation, or "progressive" such as Multiple Sclerosis, ALS (Lou Gehrig's disease), or congenital heart failure.
- Mental impairment rising to the level of legal incapacity necessitating the

- appointment of a legal guardian and conservator.
- The gray area in between where a person's physical or mental impairment is intermittent or progressive that has not reached the level where a guardian is required but the person's judgment or ability to function is questionable on a given day or for periods of time.

Such impairments impact how an attorney deals with parties when they are your own client or opposing party, and how a judge assesses the situation before making a ruling. Impairments are crucial in determining how one addresses issues such as co-parenting abilities and the safety of minor children, an impaired person's ability to provide financial support for the children and for him- or herself or the ex-spouse (alimony), and what constitutes a reasonable division of property and debts

given the medical treatment needs of an impaired party.

Legal Capacity

To form a valid, binding contract, such as a divorce settlement agreement or parenting plan, the law requires both parties to have the mental capacity to understand the terms of the agreement, to voluntarily enter into it, and to be able to abide by the terms. To participate in an evidentiary hearing or trial, a party must understand the nature of the proceedings and be able to work with his or her attorney to provide effective assistance of counsel. Lawyers are simply are not qualified to make a medical or mental health diagnosis of our clients or opposing parties. When there are signs a party may have a serious physical or mental health condition that calls into question legal capacity, the appropriate medical and mental health professionals should be brought in to assess the situation. If necessary, obtain a court order for the evaluation. Otherwise, the settlement agreement may be void or the party's participation in the trial may be overturned on appeal if he or she is later determined to have lacked capacity at the time the contract was signed or trial held.

Community Property Division

Because New Mexico is a community property state, property and debt allocation is supposed to be straightforward once you properly identify and characterize the community or separate nature of the assets and liabilities. In theory, both spouses should receive approximately equal net assets. However the court is charged with making an "equitable" division, which doesn't always mean "one-half". Consideration must be given to the following:

- · Can the party manage the assets?
- Is there a trust to manage the assets or does one need to be created?
- Is the disabled person receiving SSDI, Veteran's Disability, or other government benefits?
- Are the minor children receiving dependent benefits from the disabled
- Will the award of property make the party ineligible for government benefits?



- Does the incapacitated person need more than half of the assets to maintain a reasonable standard of living postdivorce?
- What is "equitable" under the circumstances?

Alimony and Child Support

The harder component is figuring out alimony in a sufficient amount and duration

Impairments are crucial in determining how one addresses issues...

to enable the impaired spouse to receive proper treatment. This is especially true when the paying spouse objects to financially supporting an ex-spouse she thinks caused his or her own impairment, as in the case of drug/alcohol abuse or volunteering to serve in the military. Until alimony is addressed, a lawyer cannot determine the gross income figures to use in calculating child support. The Child Support Guidelines look at both parents' gross incomes, adjusted for alimony, to determine base support for children. Also, New Mexico law allows for the imputation of income for voluntarily unemployed or under-employed parents. Frequently the paying parent complains that the impaired parent just needs to "get his or her act together" and get a well-paying job, not recognizing or accepting the reality that a mentally impaired parent cannot obtain or maintain regular employment unless and until the impairment is addressed, if possible. A proper medical and mental health diagnosis is key to the alimony issue. Key considerations include:

- Is the person's condition treatable?
- What does treatment entail logistically? At what cost?
- How much is the health insurance premium for the disabled parent post-divorce?
- How realistic is it for the spouse to find employment and keep the job long-term?
- How will working impact medical treatment?

Co-Parenting after Divorce

Coming up with an appropriate visitation plan when a parent is impaired or ill is quite challenging. Children need to be safe, but they also need to have meaningful time with both parents, particularly if one parent is dying. If both parents can put aside their own anger and fears, they should be able to come up with a plan that enables them to co-parent after the divorce. Working with a good family

therapist can help the adults see the needs of the children from the children's perspective. Otherwise, an expert child custody evaluator or a Guardian ad Litem may need to be appointed to investigate how the parent's disability or capacity issues impact the ability to parent and to coparent, and to make recommendations to the judge on what arrangement

serves the best interests of the childrenboth in the near future and in the longterm.

Overlap of Divorce and **Guardianship Proceedings**

A person who has been declared legally incapacitated can be divorced. Most frequently, it is the non-incapacitated spouse who seeks to end the marriage, but the court-appointed guardian and conservator can file the divorce petition on behalf of the incapacitated adult.

If the spouse is already under a guardianship, then a guardian and conservator needs to be appointed in the divorce proceedings. Usually, the same guardian and conservator appointed under the probate code in the PQ case seeks to be appointed to the same role in the divorce (DM case).

continued on page 14

KKRewinding the Clock:

In Extreme Cases, Parental Rights Can be Voluntarily Terminated

By Tamara Hoffstatter

boy we'll call Robby D was adopted as a one year old, but by the time he was 13, things were a mess. Everything had been tried to help him, but he was only getting worse. Robby D continued to be a source of imminent danger and harm to his parents and younger brother. He had been in and out of treatment facilities, worked with numerous therapists, tried multiple medications and experienced many treatment foster placements—at this point there were no other treatment options. Yet he continued to threaten his family, hiding

weapons of attack and intimidating them with graphic images of graffiti depicting the "bloody demise" of his mother. He physically assaulted a younger sibling routinely.

Robby D was placed in treatment foster care, at which point he was eligible for Medicaid. However, if he were to be discharged from treatment foster care and returned home to the family, he would lose his eligibility for Medicaid. That meant he would lose services he needed, because the cost of the high level of services he required was more than what the family could afford. With the discharge of Robby D looming, the parents became afraid of what would happen to them and their younger son once he came home.

Sometimes parents may need to relinquish their parental rights. These are extreme circumstances, and reasons vary from the parents simply being unable to control



their children to a question of the safety of the family. Many of these situations are not the result of abuse, abandonment, or fault of the adoptive parents. In these circumstances, a voluntary relinquishment of parental rights may be in order. Under very specific circumstances these relinquishments can be obtained in New Mexico.

For the safety of the younger sibling, the safety of the parents, and to enable Robby D to have the treatment he needed, the parents decided to seek a voluntary relinquishment of their parental rights under NMSA 1978, Section 32A-5-24 (2009), which, in relevant part, permits relinquishment to the Children, Youth and Families Department: 32A-5-24. Relinquishments to the department.

A. When a parent elects to relinquish parental rights to the department, a petition to accept the relinquishment shall be filed (...)

- B. In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem (...)
- C. If a proposed relinquishment of parental rights is not in contemplation of adoption, the court shall not allow the relinquishment of parental rights unless it finds that good cause exists, that the department has made reasonable efforts to preserve the family and that relinquishment of parental rights is in the child's best interest. Whenever a parent relinquishes the parent's rights pursuant to this subsection, the parent shall remain financially responsible for the child. The court may order the parent to pay the reasonable costs of support and maintenance of the child.

The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a

reasonable payment.

D. When a parent relinquishes the parent's rights under this section, the parent shall be notified that no contact will be enforced by the court (. . .)

Pursuant to Section 32A-5-24, the parents were able to obtain their desired relief. While the case of Robby D was one where the child was originally adopted by the parents, a relinguishment of parental rights pursuant to Section 32A-5-24 can be granted regarding

both naturally born and adopted

children alike. In cases where

neglect proceeding and where

there is no active abuse and

there is no contemplation of adoption, a relinquishment of parental rights to CYFD can be granted when good cause is shown to exist to accept the relinquishment of parental rights. Specifically, pursuant to Section 32A-5-24 (C), along with a good cause showing for the relinquishment, the court must be satisfied that CYFD had made reasonable efforts to preserve the family, and that relinquishment of parental rights was in the child's best interests. During the proceeding, the child is required to be represented by a guardian ad litem. See § 32A-5-24 (B). The parents may be required to remain financially responsible for the child post relinquishment, but aside from potential payment of financial support, a no-contact order completely prohibiting any contact between the child and the parents will be enforced, See § 32A-5-24 (C) & (D).

In the case of Robby D, no other viable options presented for protecting the parents and the younger child, nor for providing Robby D the care he



The voluntary relinquishment of parental rights is not the remedy for the parent who is "tired of being a parent."

needed to address his mental illness and his emotional issues. The decision to relinquish parental rights was a difficult one for the parents. However, because the family had dedicated itself to pursuing every avenue possible to prevent the relinquishment from becoming necessary, and due to strict understanding and adherence to the relevant statute providing this option for relief, they were successful. Obtaining the relinquishment became a cooperative and smooth process between the parents as former legal custodians and CYFD, which ultimately assumed the role of legal custodian.

Parenting is for life. No child is perfect. No parent is perfect. Raising children is never easy. It is one of the most challenging, most frustrating, and most rewarding experiences that an individual

will ever experience. All parents find themselves in situations from time to time where they are at the very limits of their patience, wondering how in the world their child was able to push their buttons to the brink of frustration, but then coming down from that frustration as part of the normal cycle of understanding and patience that goes hand in

hand with raising a child. The voluntary relinquishment of parental rights is not the remedy for the parent who is "tired of being a parent." Rather, it is extraordinary relief – the concept of the relinquishment of parental rights may seem difficult and perhaps impossible - and the statute provides relief to families in extreme situations. The process exists for the family that believes wholeheartedly that parenting is for life, yet understands that sometimes, parenting requires the wisdom and understanding of knowing when to let

Tamara Hoffstatter is an attorney with the Law Office of Dorene A. Kuffer, PC. Her practice is limited to family law, adoption and guardianship.

Quit Get a Fighting: Parenting Plan

By Maria Montoya Chavez and Martha Kaser

e often ask children whose parents are divorcing, "If you had three wishes, what would they be?"The two of us have interviewed hundreds of children over the years. Many children will say they want to go to Disney World, or ask for a superpower like the ability to fly through space. Some children will say they want piles of money or peace on earth. But about 90 percent of them will simply say, "I wish Mom and Dad would quit fighting. And I wish I could see them both."

You can help your clients sort out the best options for setting up a parenting plan after a divorce or relationship breakup included among those are voluntary agreements, family court services, parenting coordinators, a guardian ad litem, an 11-706 ruling or a trial on the merits.

Children are the civilian casualties of divorce. While they did not cause the divorce, the way the parents handle post-divorce parenting can have lifelong consequences. It's not divorce that causes the greatest harm to children, but the conflict between their divorcing parents. Emotions run high, routines are disrupted and conflict is high when parents split up. That's confusing and terrifying for children. If parents cannot resolve their differences peacefully, they risk serious emotional harm to their children.

It's important to know that children of different ages and temperaments react differently. Some withdraw, while some act out at school. Young children may



... the way the parents handle post-divorce parenting can have lifelong consequences.

regress by losing language or toilet training skills. Children of all ages may become aggressive or clingy or quickly learn to manipulate their parents when they know that the parents are not working together as a team to raise them. None of these scenarios is good for them.

Yet the good news is that none of these outcomes is inevitable. If the parents find constructive and peaceful ways to settle their differences regarding the children, they can provide for the mutual care of their children through a parenting plan without causing additional harm.

Voluntary Agreement

The best option, by far, is having the parents reach a voluntary agreement that takes into account the needs of their children. Many parents can do this. Sometimes they can meet privately. Sometimes, if both counsel agree to the

overall non-confrontational strategy, the parties and counsel can create a parenting plan with the assistance of a mediator or settlement facilitator. The agreement memorializes the current status quo for the children with respect to their school, activities, religion, medical care and residence, and provides a plan for daily and holiday time with both parents. Supreme Court forms found at www.nmcourts.gov/ lcgi/pros_lib/index.htm provide a basic format that parents can follow.



Family Court Services

Many district courts have a court program that offers mediation or further assistance in custody disputes. This is generally less expensive than other options and allows the parties to retain decision-making authority regarding their children and division of parental time. In mediation, the parties meet with a court clinician or court-appointed neutral third party who facilitates an open discussion of the custody issues involved. The neutral party can make suggestions consistent with the child's developmental needs; however, the neutral party cannot tell the parties how to resolve the issues. Mediation is not an evaluation process and, therefore, recommendations typically are not made to the court as a result of this process. However, in some districts, temporary recommendations may be made if the neutral party has serious concerns about the safety or well being of the children based on information presented in mediation.

For example, in Bernalillo County the Second Judicial District Court Clinic consists of trained staff who specialize in child development and understand ageappropriate parenting schedules based on the children's needs. Parties must have an order to be referred to the Court Clinic, which can be done by stipulation or by filing a motion and obtaining a Court Clinic Referral Order. If the mediation is not successful, the parties may request further assistance such as a Priority Consultation, which is conducted when

a critical issue has come to the court's attention or an advisory consultation, which is considered a form of custody evaluation.

The First Judicial District (Santa Fe, Rio Arriba, and Los Alamos counties) has a similar division called Family Court Services, while the Third Judicial District (Dona Ana County) has a mediation division for domestic matters. In both jurisdictions, parties are automatically ordered to attend a mediation session when a divorce petition involving children is filed.

Parenting Coordinator

A Parenting Coordinator is an increasingly popular option for divorcing parents. The PC is a neutral third party who can help parents as a sort of coach and "traffic cop" as they make difficult decisions about their children.

The PC is a legal or mental health professional with special expertise in family dynamics and family law. This person works with high-conflict parents on an ongoing basis to resolve parenting disputes as they arise. The PC may be given arbitration authority to make decisions when the parents cannot agree. Most PCs use a combination of mediation techniques, family therapy, and individual and joint meetings with parents (and sometimes children) to help them reach agreement on discrete issues. Some families use a PC for years after their divorce so they can stay out of the court system.

A court order of appointment should be entered so there is no question as to the PC's authority or scope of work. The court order may contain the scope of work, or it can reference the scope of work, which can be contained in a separate document. The scope of work agreement defines the parameters for confidentiality, whether the PC will testify in court, how the PC will be paid, whether the PC will attend court sessions, how decisions will be memorialized (letter, court order, email, etc.), what the contact with counsel will be, what level of access the PC will have with the children and how matters that are not within the PCs powers should be spelled out.

Typical problems that PCs address include specifying holiday, vacation or regular parenting time; developing uniform rules for homework, discipline and bedtimes at both homes; helping parents agree on how they will contact each other and try to resolve problems themselves; specifying how to object to a PC's decision; and interpreting or implementing provisions of the parenting plan.

The major benefits of this approach are:

- It is faster than litigation.
- It costs less than litigation.
- It fosters better co-parenting relationships through collaboration.

Detailed information about Parenting Coordination can be found at the Association of Family and Conciliation Courts' website, www.afccnet.org, under publications (see Guidelines for Parenting Coordination, 2005, Association of Family and Conciliation Courts).

Guardian Ad Litem

In any proceeding when custody of a minor child is contested, the court may appoint a guardian ad litem or the parties can stipulate a specific individual to serve as a GAL.

A GAL's role is to advocate zealously for his or her clients, which in this case are the children. A GAL appointed under Rule 1-053 NMSA is a "best interests attorney" who provides independent services to protect the child's best interests without being bound by the child's or either party's directive or objectives. The GAL makes findings and recommendations to the court.

The GAL serves as an investigative tool for the court and investigates the situation by interviewing the child face-to-face outside the presence of both parents and counsel; interviewing both parents; conducting home visits; and speaking with health care providers, teachers, coaches, counselors and others familiar with the child. Because the GAL is an arm of the court, the court generally adopts the GAL's recommendations. Typically, a GAL requires a retainer of \$3,500 or higher, which is usually equally divided between the parties. This process basically takes most of the parenting decisions away from the parents when the parents cannot

Custody Evaluation/Rule 11-706 Evaluators

A custody evaluation is the last resort for resolving parenting disputes. Parents are candidates for custody evaluations when all other available means have failed or been refused, when one or both parents has a mental disorder, where there are serious allegations of abuse against one parent or where the parents are in such high conflict that they will not agree to

any reasonable parenting plan. Custody evaluations can be helpful when a child has special needs and the parents do not agree how to fulfill these needs.

A custody evaluation can be expensive—as much as \$2,000 for each adult or child in the family, plus additional costs for contacting secondary sources such as stepparents or close relatives residing in the home and sometimes additional charges for court testimony. The approved protocol for custody evaluations requires clinical interviews of parents and children, psychological testing, home visits, parentchild observations and contact with collateral sources such as teachers, coaches, therapists, babysitters and childcare providers and family friends.

A custody evaluation can take months to complete, depending upon the cooperativeness of the parties, availability of collateral sources and the evaluator's availability. Custody evaluations are contentious, and the number of licensed psychologists willing to undertake this work is steadily shrinking, causing more delay in getting the final report and recommendations. In the meantime,

practitioners need to think about what is happening to the children of the parties and the parties as the process moves forward very slowly.

Seek a psychologist who is trained and licensed to do the sometimes-extensive testing that goes into an evaluation. The American Psychological Association has published custody evaluation guidelines, available at www.apa.org. In New Mexico, judicial districts refer parties for evaluation by a number of different mental health professionals, including master's-level therapists. However helpful these referrals may be, they do not constitute a true custody evaluation unless a licensed psychologist does them.

Most courts in New Mexico prefer to have the custody evaluation psychologist function under New Mexico Rule of Evidence 11-706, making the psychologist the "court's expert." Not only does this save considerable money, but it also bestows upon the psychologist the duty of neutrality. The order of appointment of the custody evaluator should clearly state that he is functioning as "an arm of the court" in performance of his or her duties.

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Quit Fighting: Get a Parenting Plan

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If the results of the custody evaluation are not to the client's liking, most courts permit objections to be filed within ten days of receiving the report, and a hearing will be held on the objections. As a practical matter, objections are seldom granted. The standard for overturning the evaluator's objections is high.

Occasionally, a parent will seek a second opinion from a different psychologist. APA Guidelines on second opinions state that the second-opinion psychologist (who is not appointed as a Rule 11-706 expert) does not retest the parties. Instead, the second opinion is a review of the process and scoring followed by the 11-706 expert to see if national standards were followed. Again, the likelihood of overturning an 11-706 evaluation is slim.

A custody evaluation is the "nuclear option" for divorcing parents. Whether the results are good or bad, the process of having had a custody evaluation often causes irreparable damage to the parents' ability to co-parent in the future. While they can be helpful, custody evaluations should be used with caution.

Trial on the Merits

If a case doesn't settle, it goes to trial. That is, if the court does not have a court program, if mediation fails, if a party does not like the recommendations of a GAL or custody evaluator and if objections are filed, the matter will proceed to a trial on the merits. This could entail taking depositions; serving discovery; preparing exhibits, testimony and arguments; and subpoening teachers, doctors and family members to testify at the trial. If a case proceeds to this point, it can be expected that the parties are in an expensive highconflict situation and that children are being negatively affected.

Conclusion

Parents have various options for resolving custody issues. If parties are unable to come to an agreement regarding the terms of a parenting plan, they need to be prepared for a long, contentious, invasive and emotionally stressful ride. The reality is that it's in the parents' and children's best interests if parties can make a good faith effort to work with one another

without the intervention of a GAL, custody evaluator, or the court. There is no better way to be good parents then to retain control of the co-parent decisionmaking and to spend money on the children instead of litigation costs.

Attorneys and parents have a whole toolbox of options for determining how the parents will co-parent after a divorce or separation. The voluntary, client-guided options concerning their children are usually most effective and long lasting among the choices available. Attorneys should be sure that they are aware of all options available to them. Parenting decisions and processes are not "one size fits all" matters.

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Divorce with Incapacitated or Disabled Parties

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If a spouse's mental capacity becomes highly questionable after the divorce proceedings commence, the divorce may need to be put on hold until that spouse is properly evaluated. Such evaluation may take place prior to, or in conjunction with, a separate guardianship case.

Before a court can strip an adult of the right to make decisions about his or her property or how to raise children, the judge must find the person "legally incapacitated". This involves the opinion of a Qualified Health Professional, a "Home Visitor", and Guardian ad Litem appointed to represent the alleged incapacitated adult – all indicating the person cannot make sound decisions for

him- or herself any longer. The person seeking to be appointed guardian and conservator usually has his or her own attorney. The guardian and conservator need not be the same person. Sometimes trust companies and special agencies are appointed if no immediate family members step up to be appointed to look out for the incapacitated adult's interests. The soon-to-be ex-spouse cannot serve as a guardian or conservator because of the inherit conflict of interest in the divorce.

For more information, refer to the Handbook for Guardians and Conservators: A Practical Guide to New Mexico Law, published by the Office of the Attorney General and revised by the New Mexico

Guardianship Association, Inc. The guide covers the protected persons' rights, as well as the powers and duties of a guardian or conservator. It also includes appendices of relevant resources and forms. The bottom line is the overlap of divorce and guardianship proceedings makes the process longer and costs more money, but it is necessary if the divorcing party truly cannot look out for himself.

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growth in the pension plan exceed the accumulated expenses associated with the pension obligations."). For example, SPS's expert stated that if the annual pension contribution over a five-year period is \$100 and the annual pension expense over the same period is only \$90, at the end of the five-year period, the prepaid pension asset would be \$50 (\$100 x 5 - \$90 x 5), plus any return on the \$50 prepaid pension asset. "Conversely, when [accrued expenses] exceed[] contributions to [a] fund, a prepaid pension liability accrues." See In re Sw. Pub. Serv. Co., 2008 WL 4226018 n.256, slip copy at 114 (NMPRC) (final order partially adopting recommended decision), order clarifying final order sub nom. 2008 WL 9888273 (slip copy) (NMPRC 2008). The SPS expert also stated that the prepaid pension asset is an artifact of timing; over a long period, pension contributions and pension expenses may even out, but over short and intermediate periods there will surely be differences, which are recorded as either prepaid pension assets or pension liabilities.

{4} SPS's expert testified that pension contributions and expenses differ because the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2011), and the Internal Revenue Code, 26 U.S.C. §§ 1-59 (2012), dictate how much the utility must contribute to its employee pension program, whereas the Financial Accounting Standards Board promulgates codified accounting standards¹ that govern how pension expenses are determined. The expert continued by testifying that as a result of these differing federal and industry standards, pension contribution and expense calculations utilize different assumptions, attribution methods, and periods of time over which the costs are required to be recognized. SPS's expert stated that these dissimilarities often result in differing annual contribution and expense amounts. When mandated contributions and income earned on the contributions exceed expenses, a prepaid pension asset accrues. See S. Co. Servs., Inc., 122 FERC ¶ 61,218, at *62235, 2008 WL 630079, slip copy at 5; see also In re Delmarva Power & Light Co., 2014 WL 3964914, slip copy at

{5} The expert witness also testified that utilities cannot legally withdraw any funds from pension trusts except to pay pension benefits and expenses. See S. Co. Servs., *Inc.*, 122 FERC ¶ 61,218, at *62235, 2008 WL 630079, slip copy at 5. However, SPS customers benefit from a prepaid pension asset because the earnings on this asset are deemed to be income for SPS, which reduces the amount of revenue it must collect from its customers. See Ind. Office of Util. Consumer Counselor v. Ind. Mich. Power Co., 7 N.E.3d 1025, 2014 WL 934350, at *12 (Ind. Ct. App. 2014) (memorandum decision) (non-precedential). The following hypothetical offered by SPS's testifying expert illustrates the indirect benefit SPS customers receive.

[S]uppose that in a given year the utility had a revenue requirement of \$300, and that it expected to earn a 6% return on the pension fund. The \$3.00 return on [a hypothetical] \$50 prepaid pension asset (0.06 x \$50) . . . would be credited against the revenue requirement, so that the utility could only collect \$297 from its customers through [the] rates. Thus, the revenue requirement is reduced by \$3.00 as a result of the prepaid pension asset.

SPS customers therefore would benefit from rate reductions generated by the prepaid pension asset, but SPS would not earn a return on the prepaid pension asset if the asset is not included in SPS's rate base. **[6]** In this case, the New Mexico jurisdictional share² of SPS's prepaid pension asset is approximately \$36.9 million. According to SPS, this asset resulted in \$1.7 million in earnings that effectively reduced SPS's pension expense by \$1.7 million, which reduced SPS's revenue requirement by the same amount. SPS sought "to include the net amount of its prepaid pension asset of approximately \$22 million" in the rate base to earn a return on its \$22 million (the \$36.9 million asset minus a \$14.9 million tax deferred asset).

{7} In a recommended decision, the PRC hearing examiner concluded that because the prepaid pension asset reduced the pension expense by \$1.7 million, that \$1.7 million should be included in the rate base for recovery. The PRC hearing examiner did not recommend that the \$22 million net prepaid pension asset amount be included in the rate base. SPS disagreed with this recommendation, contending that the examiner's proposal would enable "SPS [to] earn a return only on the amount of the reduction in the cost of service rather than on the amount of the asset that resulted in the reduction."

{8} The PRC also disagreed with the hearing examiner. In its final order, the PRC authorized the inclusion of the net amount of the prepaid asset in SPS's rate base because doing so "recognizes that ratepayers benefit from the prepaid pension asset and that the utility should earn a return on the prepaid pension asset in order for the utility to recover its full cost of service." The Attorney General appeals, arguing that substantial evidence does not support the inclusion of the entire prepaid pension asset within the rate base.

A. Standard of Review

{9} In determining whether a PRC final order is supported by substantial evidence, we review the whole record, "view[ing] the evidence in the light most favorable to the decision made by the [PRC]." PNM Gas Servs. v. N.M. Pub. Util. Comm'n (In re PNM Gas Servs.), 2000-NMSC-012, ¶ 4, 129 N.M. 1, 1 P.3d 383 (internal quotation marks and citation omitted). "'Substantial evidence' [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Rinker v. State Corp. Comm'n, 1973-NMSC-021, ¶ 5, 84 N.M. 626, 506 P.2d 783. "The supreme court shall have no power to modify the action or order appealed from [(in this case, a PRC final order)], but shall either affirm or annul and vacate the same." NMSA 1978, § 62-11-5 (1982). "The [PRC] is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable." *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, ¶ 4, 94 N.M. 731, 616 P.2d 1116. A party challenging a PRC final order has the burden of establishing that the order is "arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency's authority, or otherwise inconsistent with law." N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Commin, 2007-NMSC-053, ¶ 13, 142 N.M. 533, 168 P.3d 105 (internal quotation marks and citation omitted).

B. The Prepaid Pension Asset

{10} The Attorney General contends that only the earnings generated by the

¹Companies must follow Financial Accounting Standards Board codified accounting standards to comply with generally accepted accounting principles.

²SPS operates in other states besides New Mexico. For the relevant time period, SPS's total prepaid pension asset, on a total company basis, was approximately \$179.7 million. The amount of this asset attributable to New Mexico is approximately \$36.9 million.

prepaid pension asset should be included in the rate base because this is the amount by which the ratepayers have benefitted, or the amount by which the utility's revenue requirement is reduced. The Attorney General argues that only \$1.7 million should be included in the rate base, whereas the PRC's final order enables SPS to include \$22 million in the rate base, which is the net amount of its prepaid pension asset. In resolving this issue, we explain the rationale for electric utility regulation.

{11} Electric utilities are regulated because their industry has natural monopoly characteristics. Joseph P. Tomain, The Persistence of Natural Monopoly, 16 Nat. Resources & Env't. 242, 242 (2002). In natural monopoly settings, both the benefits and the possibility of competition are limited. Omega Satellite Prods. Co. v. City of Indianapolis, 694 F.2d 119, 126 (7th Cir. 1982). If the electric industry was a competitive free-for-all, different companies would attempt to build separate electric grids and sign up customers as quickly as possible to reduce their average costs of business more rapidly than their rivals. See id. This competitive process would last until a single company was left standing "because until a company serves the whole market it will have an incentive to keep expanding in order to lower its average costs." Id. Thus, until a single company wins, competition within the electric industry would produce wasteful duplicate grids that would needlessly raise average costs for consumers. See id.; Tomain, The Persistence of Natural Monopoly, supra, at 242 ("A specific service area needs only one set of electric . . . wires—the investment in any other set of wires is wasteful."). To avoid wasteful duplication, a government may choose to give one firm a monopoly within a service area "in exchange [for] a commitment to provide reasonable service at reasonable rates." Omega Satellite Prods. Co., 694 F.2d at 126.

{12} Electric utility regulation consequently reflects a compact between utilities and the public. See Jersey Cent. Power & Light Co. v. Federal Energy Regulatory Comm'n (FERC), 810 F.2d 1168, 1189 (D.C. Cir. 1987) (Starr, J., concurring). A utility is given a monopoly over a service area, and in exchange accepts government regulation of its business, including price regulation. Id. Under this arrangement, utility investors obtain a stability in earnings that would likely be unattainable in less regulated industries, while "ratepayers

are afforded universal, non-discriminatory service and protection from monopolistic profits." *Id.*

{13} Regulators attempt to set prices that mimic market conditions and ensure that utilities are "profitable enough to attract capital investment." Tomain, "Steel in the Ground," supra, at 945. The following rate making formula traditionally determines utility revenues to be received from rate-payers: R = O + (V - d)r, where

R represents the utility's revenue requirement—that is, the amount of money the utility needs to stay in business. O represents the utility's prudently incurred expenses. In short, ratepayers reimburse the utility for its expenditures dollar for dollar. The utility's rate base is represented by (V - d), which stands for the value of a utility's capital investment minus depreciation, which is returned to the utility as expenses. Finally, r represents the rate of return on the rate base.

Id. at 945-46.

{14} The utility's rate base—the total amount of investment made by a utility to provide its service—is determined by adding the utility's investment in physical properties to its working capital. Cent. La. Elec. Co. v. La. Pub. Serv. Comm'n, 373 So. 2d 123, 129 (La. 1979). Thus, a utility can include physical properties such as a power plant, see, e.g., Hobbs Gas Co., 1980-NMSC-005, ¶ 6, and working capital—operating funds essential to pay for current obligations—in its rate base. Gov't of Guam v. Fed. Mar. Commin, 329 F.2d 251, 256 (D.C. Cir. 1964); Ariz. Pub. Serv. Co., 5 FERC ¶ 63,038, at *65179, 1978 WL 16416, slip copy at 2 (FERC 1978) (defining working capital as "the money which a utility puts up to finance the services provided until it is compensated by customers").

{15} In the context of utility regulation, working capital

does not include the total liquid funds with which the business is conducted. It is not the property which the business has; that is, it is not the excess of current assets over current liabilities. Working capital, rather, is an allowance for the sum which the company needs to supply from its own funds for the purpose of enabling it to meet its current obligations as they arise and to operate economically and efficiently.

Gov't of Guam, 329 F.2d at 256 (internal quotation marks and citation omitted). As a result, only utility contributions, not ratepayer contributions, can be properly included in the rate base as working capital. For example, if a utility were to prepay for natural gas with investor funds, the utility should expect to receive a reasonable return on its investment. Zia Nat. Gas Co. v. N.M. Pub. Util. Comm'n (In re Zia Nat. Gas Co.), 2000-NMSC-011, ¶ 22, 128 N.M. 728, 998 P.2d 564. Conversely, if ratepayers have paid in advance for the natural gas, the utility would have no expectation of a return because its capital was not used to buy the natural gas. Id.

{16} A utility can include prepayments for pension expenses in its rate base "because the utility is out-of-pocket for such costs until they are recovered from ratepayers and is therefore entitled to recover its cost of financing such prepaid expenses." S. Co. Servs., Inc., 122 FERC 9 61,218, at *62235, 2008 WL 630079, slip copy at 5. For example, in the context of prepaid pension assets, income earned on the pension fund is reported under generally accepted accounting principles as a reduction to the utility's pension expense. *Id.* "If that reduction in pension expense is used in determining a utility's rates, there will be a corresponding reduction in the amounts collected from ratepayers." *Id.* Under these circumstances, the utility must finance the reduction because it cannot use the income from the pension trust to pay other current obligations; as a result, the utility is allowed to recover the costs of financing the reduction by including the pension income in the rate base. See id. The Attorney General's position is that the utility can only recover the costs of financing the reduction of the utility's revenue requirement, i.e., the utility can only earn a return from the pension income generated by the prepaid pension asset.

{17} However, a utility may not only be out-of-pocket for reductions in its revenue requirement resulting from pension fund earnings. A utility may also be out-of-pocket for investor-funded contributions that are in excess of pension expenses. Basically, when a utility supplies working capital to fund contributions in excess of pension expenses to create an income-producing prepaid pension asset, the utility finances the cost of the entire prepaid pension asset. *See, e.g., In re Rocky Mountain Power*, 2014 WL 7526282, at *14 \$ 5, 53, *36 (Wyo. P.S.C. 2014) (noting that a "prepaid pension asset represents

[a utility's] contributions to its pension ... plans in excess of what is expensed to that time" and the utility "finances the asset with a combination of debt and equity financing").

{18} Other jurisdictions have allowed utilities to recover the financing costs of the net prepaid pension asset by including the asset in the rate base as a component of working capital. See, e.g., Ind. Office of Util. Consumer Counselor, 7 N.E.3d 1025, 2014 WL 934350, at *12 (upholding a regulatory determination that a prepaid pension asset be included in the rate base because the "asset amounted to working capital that benefited the ratepayers by reducing the total pension costs needed in [the utility's] revenue requirement"); In re Rocky Mountain Power, 2014 WL 7526282, at *14, *36 (finding persuasive a utility's argument that it should recover the financing costs of its prepaid pension asset by including the asset in the rate base to enable the utility to earn a return on that asset). But see In re Pub. Util. Comm'n of Or., 2015 WL 4710466, at *7 (Or. P.U.C. 2015) (affirming a "long-standing policy of allowing a utility to recover its pension contributions [only as an] expense and reject[ing] the . . . Utilities' proposal to include their current prepaid pension assets in rate base").

{19} On appeal, the Attorney General does not argue as a matter of law that the prepaid pension asset cannot be included in the rate base. The Attorney General's only evidentiary challenge is that inclusion of the net prepaid pension asset will result in ratepayers paying more to SPS than the benefit ratepayers have enjoyed from the pension fund earnings. We interpret the Attorney General's argument to be that SPS did not prove how much of the net prepaid pension asset resulted in consumers paying \$1.7 million less to SPS. We disagree. We hold that some or all of a prepaid pension asset should be included in the rate base to the extent that the evidence evinces that the asset was investorfunded, as opposed to ratepayer-funded.³ See In re Potomac Elec. Power Co., 2008 WL 516553, slip copy at 29, 263 P.U.R. 4th 1 (D.C. P.S.C.) (finding that "investorsupplied cash contributions have resulted in an asset from which [utility] customers receive a tangible benefit in the form of reduced pension expenses" and including the prepaid pension asset in the rate base), adhered to on denial of reconsideration sub nom. 2008 WL 4831456 (slip copy) (D.C. P.S.C. 2008); In re N. Ill. Gas Co., 2005 WL 2445944, slip copy at 23 (Ill. C.C. 2005) (noting that a prepaid pension asset "was created by ratepayer-supplied funds, not by shareholder-supplied funds," and finding that the "prepaid pension asset should be eliminated from rate base"); In re Zia Nat. Gas Co., 2000-NMSC-011, ¶ 22 (noting that only investor-supplied working capital may be included in the rate base); In re Cent. Tel. Co. of Tex., 19 Tex. P.U.C. Bull. 929, 1993 WL 595464, slip copy at 13 (Tex. P.U.C. 1993) (concluding that conversely, when ratepayer-supplied money overfunds a pension plan, investors are not entitled to "earn a return on the prepaid pension asset because [this] . . . would have the effect of charging ratepayers again for amounts they have already paid"). Similarly, while a prepaid pension asset may be included in the rate base, prepaid pension liability must be subtracted from the rate base. See, e.g., In re Ky.-Am. Water Co., 1997 WL 34863470, slip copy at 10 (Ky. P.S.C. 1997) (noting that although pension liabilities can be utilized to reduce the rate base, if "a pension asset is created, then the asset should be included as a rate base addition"), opinion modified on denial of reh'g sub nom. In re Adjustment of the Rates of Ky.-Am. Water Co., 1997 WL 34863471 (slip copy) (Ky. P.S.C. 1997).

{20} The evidence indicates that SPS has a net prepaid pension asset of approximately \$22 million. The evidence also indicates that including \$22 million of the net prepaid pension asset in the rate base would generate approximately \$2.5 million in revenue for SPS, which exceeds the \$1.7 million by which SPS asserts the pension expense was reduced. SPS maintains that its actual annual pension expense is \$5.36 million, but the \$1.7 million return on the prepaid pension asset reduced the pension expense to \$3.66 million.

{21} Although the Attorney General is correct to make an evidentiary contention, the premise of its argument is incorrect. Utilities are able to recover the costs of financing their business operations through the inclusion of investor-supplied working capital in the rate base. See In re Zia Nat. Gas Co., 2000-NMSC-011, ¶ 22. In his written testimony, Gene H. Wickes stated that "[t]he portion of the prepaid pension asset due to these contributions has therefore come exclusively from shareholder capital and should be included in rate base." It is uncontested that SPS investors made contributions to the pension fund that are required by law. These contributions exceeded expenses and generated earnings that effectively reduced SPS's-and consequently the ratepayers'-pension expense. Had the ratepayers advanced the contributions to the pension fund, their contributions would not have been included in the rate base. See In re N. Ill. Gas Co., 2005 WL 2445944, slip copy at 14. However, because the ratepayers did not make the contributions, the investors, not the ratepayers, absorbed the cost of funding the pension program, and therefore the net prepaid pension asset was properly included in the rate base. See, e.g., In re Pub. Serv. Co. of Colo., 1993 WL 494141, slip copy at 17, 148 P.U.R. 4th 1 (Colo. P.U.C. 1993) ("In order to compensate investors for the additional funds they supply to meet the higher contribution levels, the resulting prepaid assets are an appropriate addition to rate base."); In re Potomac Elec. Power Co., 2008 WL 4831456, slip copy at 3 (concluding that inclusion of an investor-supplied prepaid pension asset in the rate base is supported by substantial evidence because "the earnings on the prepaid pension asset will reduce the annual [utility] expense, thus benefiting customers by reducing the revenue requirement"); Ind. Office of Util. Consumer Counselor, 7 N.E.3d 1025, 2014 WL 934350, at *12 (upholding a regulatory determination that a prepaid pension asset

³Because utilities may only include in the rate base investor-funded, prepaid pension assets, we emphasize that "shareholder contributions do not solely drive prepaid pension asset balances." In re Pub. Util. Commin of Or., 2015 WL 4710466, at *8 (Or. P.U.C. 2015). For example, during "periods of high economic growth, a prepaid pension asset balance will increase even with no shareholder contributions," id., presumably because, among other reasons, existing funds within a pension trust can earn unexpectedly high returns. See, e.g., In re Cent. Tel. Co. of Tex., 19 Tex. P.U.C. Bull. 929, 1993 WL 595464, slip copy at 13 (Tex. P.U.C. 1993) (noting that because a utility failed to "accurately predict that its pension fund would experience favorable investment results and that there would be reductions in benefit levels, the [utility's] pension fund was subsequently overfunded" through rates collected earlier from ratepayers). In short, simply placing a prepaid pension asset in the rate base allows utilities to earn returns on amounts that are not shareholder contributions. See In re Pub. Util. Comm'n of Or., 2015 WL 4710466, at *8.

amounted to working capital that should be included in the rate base).

{22} We note, however, that contributions to pension funds should be scrutinized to ensure that utility investments are "used and useful" so as to inure to the benefit of consumers. See N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n, 1986-NMSC-059, ¶ 29, 104 N.M. 565, 725 P.2d 244 (internal quotation marks omitted) (noting that the "'used and useful' concept is but one factor among many to be considered by the [PRC] in its rate base analysis"). Utilities should not voluntarily overfund their pension funds simply to earn a favored rate of return. In re Appalachian Power Co., 2011 WL 2150661, slip op. at 27, 288 P.U.R. 4th 185 (W. Va. P.S.C. 2011) ("Prepayments should be subject to the same review as any other investment or expense of a utility. Inclusion of prepayments in rate base should not be used for a utility to find a convenient place to deposit funds and then expect to earn a return on those funds."). On the other hand, mandatory contributions to pension funds are useful. Such contributions may benefit customers by generating an income-earning prepaid pension asset to reduce pension expenses, see, e.g., In re Potomac Elec. Power Co., 2008 WL 516553, slip copy at 29, and also fund the pension programs that make it possible for the utility to attract and retain highly-skilled workers. See, e.g., In re Advice Letter No. 830 - Gas of Pub. Serv. Co. of Colo., 2013 WL 5799983, at *46-47 (Colo. P.U.C.).

{23} We conclude that the Attorney General has failed to meet its burden of showing that the PRC's inclusion of the entire prepaid pension asset was unreasonable or unlawful for lack of substantial evidence. See In re PNM Gas Servs., 2000-NMSC-012, ¶ 4.

II. THE LAWFULNESS OF THE RE-**NEWABLE PORTFOLIO** STANDARDS RIDER

A. SPS's Recovery of Renewable **Energy Procurement Costs from** Non-Capped Customers

{24} The Attorney General also contends that the PRC acted contrary to law when it approved SPS's renewable energy cost rider because the rider sought to recover renewable energy costs from non-capped customers, customers who are not subject to a legislatively imposed limit on their renewable energy costs. We review issues

of law de novo. N.M. Attorney Gen. v. N.M. Pub. Regulation Comm'n, 2013-NMSC-042, ¶ 10, 309 P.3d 89. However, "[w]hen an agency that is governed by a particular statute construes or applies that statute, [we] will [accord] some deference to the agency's interpretation." Id. ¶ 12 (internal quotation marks and citations omitted). We will reverse the agency's interpretation of a statute if it is unreasonable or unlaw-

{25} The resolution of this issue necessitates a discussion of the Renewable Energy Act, §§ 62-16-1 to -10. As a preface to our discussion of this issue, some background on renewable energy promotion is warranted.

{26} Under the traditional rate formula, utilities receive a reasonable rate of return for capital project investments such as power plants. See Tomain, "Steel in the Ground," supra, at 946. Utilities consequently have an incentive to invest in capital projects, see id., and "prefer low-risk, conventional technologies that can be built quickly instead of long-term, innovative technologies that would be riskier." Virginia R. Hildreth, Comment, Renewable Energy Subsidies and the GATT, 14 Chi. J. Int'l L. 702, 707 (2014). As a result, "government assistance is often key to encourage investment in industries like renewable energy." Id. Such encouragement is desirable because there are numerous benefits to renewable energy such as "lessened dependence on foreign fossil fuel supplies, heightened national security, overall cleaner air, and local and rural job creation." Shelley Welton, From the States Up: Building a National Renewable Energy Policy, 17 N.Y.U. Envtl. L.J. 987, 995 (2008); see also Brent M. Haddad & Paul Jefferiss, Forging Consensus on National Renewables Policy: The Renewables Portfolio Standard and the National Public Benefits Trust Fund, 12 The Elec. J. 68, 69 (Mar. 1999) (listing benefits of renewable energy).

{27} Renewable portfolio standards are among the most popular methods of encouraging renewable energy development. See Lincoln L. Davies, State Renewable Portfolio Standards: Is There A "Race" and Is It "To the Top"?, 3 San Diego J. Climate & Energy L. 3, 10 (2011-2012). These standards mandate that utilities incorporate renewable energy sources into their electric generation portfolios, id. at 13, and frequently enable utilities to purchase renewable energy credits4 to satisfy the mandates of renewable portfolio standards. Id. at 11. A renewable portfolio standard therefore combines "both a potentially inflexible regulatory directive and the malleable tool of economic trading," id. at 10, to "inject an element of economic efficiency into [renewable portfolio standard] schemes." Id. at 11.

{28} Under the Renewable Energy Act, New Mexico has a renewable portfolio standard that both mandates the incorporation of renewable energy sources into electric generation portfolios and allows for the purchase of renewable energy certificates (credits) to satisfy the mandates. Sections 62-16-4 to -5. Pursuant to this renewable portfolio standard, before the proceedings in this case, the evidence indicates that SPS received PRC approval to (1) purchase the outputs of two New Mexico wind farms, (2) pay incentives encouraging customers to install solar and biomass generation systems, (3) obtain renewable energy credits from various sources, and (4) purchase solar photovoltaic systems.

{29} The controversy over the permissibility of SPS's proposed rider arises from a disagreement as to how renewable energy costs are allocated between different rate classes. In utility regulation, customers are often divided into different classes that are charged different rates. II Leonard Saul Goodman, The Process of Ratemaking 964-65 (1998). The creation of rate classes involves the consideration of various factors such as alternate fuel capability and types of customer, which can be classified as residential, commercial, or industrial. Id. at 965. Differential rates can be utilized to implement various policies. Tomain, "Steel in the Ground," supra, at 946-47.

{30} In this case, cost allocation has been utilized to address a problem that is incidental to the promotion of renewable energy generation. The use of renewable energy tends to raise energy costs relative to the consumption of fossil fuels. See Hildreth, supra, at 716 ("The technology needed for renewable energy tends to be more expensive than traditional fuel sources."); Trevor D. Stiles, Renewable Resources and the Dormant Commerce Clause, 4 Envtl. & Energy L. & Pol'y J. 34, 43-44, 45 (2009) (numerically illustrating how there is a "vast price discrepancy between renewable energy sources and fossil fuel sources for energy generation"). The prospect of

⁴Renewable energy credits "typically represent the production of one megawatt hour ('MWh') of renewables-fueled electricity." Davies, supra, at 11.

"overly high renewable implementation costs" has prompted concern that commercial and large industrial customers may leave the utility system or exit states that implement prohibitively expensive renewable energy promotion plans. California Commissioner Seeks Consideration of Shale Gas, 4054 PUR Util. Reg. News 1, 1 (Jan. 20, 2012). These large customers may have the capacity to self-generate their energy needs or simply close their plants in areas where energy costs are high. See Charles G. Stalon & Reinier H.J.H. Lock, State-Federal Relations in the Economic Regulation of Energy, 7 Yale J. on Reg. 427, 449 (1990). When these large customers are driven from the utility system, utility rates have to be raised even further for remaining customers, which exacerbates the potential for other customer exits. See id. In light of the potential for large customers to exit the grid, the Legislature enacted Section 62-16-4(A)(2), which limits the annual amount large customers can be charged for renewable energy procurement. The PRC calls this limit the "large customer cap." Accordingly, costs that exceed the large customer cap may be called "large customer cap costs."

{31} In earlier proceedings, the evidence indicates that the PRC had already approved SPS's "requested procurements without any reduction to SPS's overall [renewable portfolio standards] to account for large customer cap costs." When the PRC learned that SPS's costs exceeded the large customer cap, the PRC specifically approved treatment of that amount as a deferred cost. "A 'deferred cost' is one that has been paid by the [utility] but is postponed for inclusion in rates until a future period." I Leonard Saul Goodman, The *Process of Ratemaking* 321 (1998). This may occur, for example, when a utility "has a major future liability, and before collecting anything through rates, its management decides that the books should reflect the liability." Id. Under these circumstances, a utility "may apply for [regulator] approval to fund an account, and to reflect on its books a deferred debit or 'regulatory asset,' ... which later can be charged to ratepayers and amortized over a future period." Id. Regulatory assets are often created to spread out the recovery of nonrecurring costs over a period of years so as to avoid substantial rate increases, which may occur if full recovery was allowed as soon as the utility made an expenditure. City of Corpus Christi v. Pub. Util. Comm'n of Tex., 51 S.W.3d 231, 244-45 (Tex. 2001).

{32} SPS filed an application seeking to obtain a rider to recover approximately \$22 million of renewable energy procurement costs. Riders are surcharges applied to directly recover specific costs. See Chesapeake Utils. Corp. v. Del. Pub. Serv. Comm'n, 705 A.2d 1059, 1063 (Del. Super. Ct. 1997) (referring to a rider as a surcharge); Citizens Util. Bd. v. Ill. Commerce Comm'n, 651 N.E.2d 1089, 1102 (Ill. 1995) ("[A] rider mechanism . . . facilitates direct recovery of a particular cost."). These surcharges give regulators more flexibility in spreading out costs charged to ratepayers over a period of time. See Chesapeake Utils. Corp., 705 A.2d at 1063 n.3.

{33} Section 62-16-4(A)(1)(a)-(d) mandates that a certain percentage of a "public utility's total retail sales to New Mexico customers" be comprised of renewable energy. The required percentage escalates over time. See id. However, under the large customer cap provision of Section 62-16-4(A)(2), the renewable portfolio standards mandated in Section 62-16-4(A)(1)

shall be reduced, as necessary, to provide for the following specific procurement requirements for nongovernmental customers at a single location or facility, regardless of the number of meters at that location or facility, with consumption exceeding ten million kilowatt-hours per year [(capped customers)]. On and after January 1, 2006, the kilowatt-hours of renewable energy procured for these customers shall be limited so that the additional cost of the renewable portfolio standard to each customer does not exceed the lower of one percent of that customer's annual electric charges or forty-nine thousand dollars (\$49,000) [(large customer cap)].

Section 62-16-4(A)(2). The large customer cap in Section 62-16-4(A)(2) also escalates over time such that capped customers can continue to be charged increasing amounts for renewable energy.

{34} The evidence indicates that SPS sought to recover the renewable energy procurement costs that exceeded the large customer cap from non-capped customers. The Attorney General opposed SPS's application, arguing that SPS could only recover its costs from large customers. The Attorney General argues that recovery of large customer cap costs from non-capped customers is contrary to both Section 62-16-4(A)(2) and 17.9.572.15 NMAC, a regulation concerning renewable energy cost recovery. The Attorney General contends that Section 62-16-4(A) (2) mandates the reduction of renewable energy procurements if such procurements would generate costs in excess of the large customer cap. Under the Attorney General's reasoning, because large customer cap costs should not have arisen as a matter of law, they cannot be allocated to non-capped customers.

{35} In a supplemental recommended decision, the hearing examiner recommended that SPS be allowed to recover large customer cap costs from non-capped customers because given the cost limits on large customers, SPS's ability to collect excess costs from large customers in the future would be speculative and uncertain. In a final order partially adopting the recommended decision (the final order), the PRC agreed with the hearing examiner. We affirm the PRC on this issue because its actions are consistent with Section 62-16-4(A)(2) and the Renewable Energy Act as a whole.

B. Discretion to Reduce Renewable **Energy Procurements**

 $\{36\}$ Section 62-16-4(A)(2) states that the New Mexico renewable portfolio standards mandate "shall be reduced, as necessary" to accommodate the large customer cap. According to the Attorney General, the word "shall" indicates that renewable energy procurement reductions are mandated whenever renewable energy procurement costs would otherwise exceed the large customer cap. One opposing interpretation of Section 62-16-4(A)(2) is that the phrase "as necessary" modifies the phrase "shall be reduced" to indicate that the PRC has discretion to reduce renewable energy procurements, even if large customer cap costs would result from such procurements. The Attorney General argues that when large customer cap costs arise, the PRC has discretion regarding the amount by which renewable energy procurement should be reduced, but not whether the renewable portfolio standards should be reduced. We hold that (1) Section 62-16-4(A)(2) does not mandate a reduction in renewable energy procurement whenever large customer cap costs arise, and (2) the PRC has discretion to reduce renewable energy procurement when large customer cap costs arise.

{37} Our analysis begins with the plain text of the statute. Garcia v. Gutierrez, 2009-NMSC-044, ¶ 53, 147 N.M. 105, 217 P.3d 591. In analyzing the phrase "shall be reduced, as necessary," we knowledge that "shall" is a word of mandate. See Black's Law Dictionary 1375 (6th ed. 1990). However, the phrase "as necessary" indicates discretion. Norris v. Emanuel Cty., 561 S.E.2d 240, 244 (Ga. Ct. App. 2002). Because "as necessary" modifies the word "shall" in Section 62-16-4(A) (2) (internal quotation marks omitted), the statute's plain text indicates that when large customer cap costs arise, the PRC has discretion to determine whether renewable energy procurement reductions are necessary.

{38} The next sentence in Section 62-16-4(A)(2) provides that "the kilowatt-hours of renewable energy procured for these customers shall be limited so that the additional cost of the renewable portfolio standard to each customer does not exceed" the large customer cap. The word "shall" in this sentence is not modified by any words of discretion. The Attorney General apparently relies upon this lack of discretionary language to argue that Section 62-16-4(A)(2) mandates renewable energy procurement reductions whenever large customer cap costs arise. We disagree. This sentence merely precludes capped customers from being charged costs in excess of the statutory cap. Logically, should large customer cap costs arise, the PRC can ensure compliance with the statutory cap in two ways: the PRC can either reduce renewable energy procurement or adjust what is actually charged to capped customers. In adjusting what is actually charged to capped customers, the PRC "may authorize deferred recovery of the costs of complying with the renewable portfolio standard." Section 62-16-4(A)(2). In other words, the PRC can choose not to reduce procurements, even when large customer cap costs arise, by deferring the excess costs for later recovery, so as not to charge capped customers with statutorily prohibited costs. See id.

{39} A plain reading of Section 62-16-4(A) (2) indicates that the PRC has the authority not to reduce renewable energy procurements, even when large customer cap costs increase. This interpretation is strongly supported by a reading of the Renewable Energy Act in its entirety, and it should therefore be adopted. *See Arnold v. State*, 1980-NMSC-030, ¶ 10, 94 N.M. 381, 610 P.2d 1210 ("Legislative intent is to be determined primarily from the language used in the Act or statute as a whole."). Moreover, this reading acknowledges the difficulty of avoiding large customer cap costs.

{40} First, the renewable portfolio standard promulgated by the Renewable Energy Act provides a minimum standard. See § 62-16-4(A)(1) ("[R]enewable energy shall comprise *no less than* [a given] percent of each public utility's total retail sales to New Mexico customers." (emphasis added)). The Attorney General's reading of Section 62-16-4(A)(2) would have us treat the large customer cap as providing a maximum standard. This is problematic because mandating renewable energy procurement reductions whenever large customer cap costs arise would be inconsistent with Section 62-16-2(A)(5), which plainly states that "a public utility should have incentives to go beyond the minimum requirements of the renewable portfolio standard."

{41} Second, Section 62-16-4(A) clearly evinces a legislative intent to systematically increase renewable energy use in New Mexico. Section 62-16-4(A)(1) escalates renewable energy procurement requirements over time, while Section 62-16-4(A)(2) increases the large customer cap over time. Mandating renewable energy procurement reductions whenever large customer cap costs arise would undermine New Mexico's ability to systematically increase renewable energy usage.

{42} Third, the Attorney General's argument is erroneously premised on the idea that Section 62-16-4(A)(2) was meant to protect non-capped customers from high renewable energy costs by banning costs in excess of the large customer cap to prevent large customer cap costs from being allocated to non-capped customers. We need not adopt the Attorney General's interpretation of Section 62-16-4(A)(2) to protect non-capped customers from high renewable energy costs because another statutory provision already performs this function: Section 62-16-4(B) mandates setting an overall reasonable cost threshold for renewable energy procurement.

{43} Fourth, the Attorney General's argument appears to assume that large customer cap costs can be forecast on an accurate and consistent basis so that in approving renewable energy procurements, the PRC can systematically avoid large customer cap costs. The record proper indicates otherwise. PRC approvals of renewable energy procurement are "based on the best information available at the time the resources were being reviewed." SPS notes that how much large customer cap costs will increase depends on future occurrences such as the fluctuation of

natural gas prices. Accordingly, the evidence indicates that we cannot reasonably expect that large customer cap costs can be predictably eliminated.

[44] Reading the language of the Renewable Energy Act as a whole, we conclude that the PRC has discretion to decline to reduce renewable energy procurement, even when large customer cap costs arise. This authority is congruent with the statutory policy of increasing renewable energy use in New Mexico. Moreover, we cannot reasonably expect that either the PRC or utilities will be able to avoid large customer cap costs. Thus, adopting the Attorney General's position that large customer cap costs have to be avoided as a matter of law also would be contrary to practical experience.

C. Section 62-16-4(A)(2) Does Not Preclude the Recovery of Large Customer Cap Costs from Non-Capped Customers

{45} The PRC exercised its discretion not to reduce renewable energy procurement when large customer cap costs arose, which is consistent with our interpretation of Section 62-16-4(A)(2). It then authorized the deferral of large customer cap costs for future recovery. The PRC's final order provides for the collection of large customer cap costs from non-capped customers. We therefore determine the permissibility of collecting large customer cap costs from non-capped customers.

{46} The Attorney General does not oppose SPS's ability to recover deferred large customer cap costs. It merely contends that such costs should not be recovered from non-capped customers, asserting that (1) enabling recovery of large customer cap costs from non-capped customers "violate[s] the basic ratemaking principle of cost[] causation," and (2) Section 62-16-4(A)(2) protects non-capped customers from paying for large customer cap costs. We reject the Attorney General's position as contrary to law and hold that large customer cap costs can be allocated to non-capped customers.

{47} The Attorney General's contention that allocating large customer cap costs to non-capped customers violates the principle of cost causation is without merit. The plain language of Section 62-16-4(A) (2) does not mandate that renewable energy procurement costs be recovered only against those customers who caused large customer cap costs. Moreover, renewable energy procurement costs arise as a result of statutory mandate, see § 62-16-4(A)(1),

such that neither capped nor non-capped customers can be said to cause any specific procurement costs.

{48} Similarly, the Attorney General's assertion that Section 62-16-4(A)(2) protects non-capped customers from large customer cap costs is unsupported by law. Its argument assumes that Section 62-16-4(A)(2) mandates reductions in renewable energy procurement whenever large customer cap costs arise to protect both capped and non-capped customers from high renewable energy costs. Under the Attorney General's reasoning, rates for non-capped customers cannot be increased by large customer cap costs because such increases would deprive non-capped customers of the protections provided by Section 62-16-4(A)(2). We reject this reasoning because Section 62-16-4(A)(2) does not evince a legislative intent to protect non-capped customers. We have already held that Section 62-16-4(A)(2) does not mandate renewable energy procurement reductions when large customer cap costs arise. The Attorney General's contention that Section 62-16-4(A)(2) precludes large customer cap costs to protect non-capped customers is also incorrect because nothing in Section 62-16-4(A)(2) addresses the interests of non-capped customers. See State v. Diamond, 1921-NMSC-099, ¶ 5, 27 N.M. 477, 202 P. 988 (We will not insert words that are absent in a statute.). We conclude that Section 62-16-4(A)(2) does not preclude the allocation of large customer cap costs to non-capped customers.

{49} The PRC had previously approved of SPS's procurement plans. Under Section 62-16-6(A), "[c]osts that are consistent with commission approval of procurement plans . . . shall be deemed to be reasonable." Thus, the renewable procurement costs in this case are reasonable as a matter of law. Because these procurement costs are reasonable, SPS is entitled under Section 62-16-6(A) to recover large customer cap costs. Id. ("A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard."). The evidence indicates that if large customer cap costs only can be collected from capped customers, 20 years or more could elapse "before SPS even has the opportunity to collect" these procurement costs. Thus, as the PRC determined, the Attorney General's proposed cost recovery mechanism "is speculative and uncertain, and would not provide a reasonable opportunity for SPS to recover [large customer cap] costs." Forcing SPS to collect large customer cap costs only from capped customers would effectively disallow recovery of these procurement costs, contrary to the Renewable Energy Act's guarantee that utilities can recover the reasonable costs of renewable energy procurement. Sections 62-16-4(A) $(2) \& -6(A).^{5}$

D. 17.9.572.15 NMAC Does Not Preclude the Recovery of Large **Customer Cap Costs from Non-Capped Customers**

{50} The Attorney General contends that the "plain language" of 17.9.572.15 NMAC "make[s] clear that costs associated with large [capped] customers should be borne by large customers alone." 17.9.572.15 NMAC is a regulatory provision concerning renewable energy cost recovery that references Section 62-16-4(A)(2). Our interpretation of Section 62-16-4(A)(2)therefore informs our construction of 17.9.572.15 NMAC. We have previously held in this opinion that Section 62-16-4(A)(2) provides the PRC with discretion, not a mandate, to reduce renewable energy procurement when large customer cap costs arise, and does not bar the allocation of large customer cap costs to non-capped customers. Consistent with our interpretation of Section 62-16-4(A)(2), we hold that 17.9.572.15 NMAC also does not bar the allocation of large customer cap costs to non-capped customers.

- **{51}** 17.9.572.15 NMAC provides that:
 - A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs and other costs attributable to acquisition and delivery of renewable energy to retail New Mexico customers.
 - Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

- C. A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Sections 62-16-4A(2) and 62-16-4A(3) NMSA 1978 the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.
- For customers that are subject to the rate impact limitations of Section 62-16-4A(2) NMSA 1978, a public utility may, through the ratemaking process, recover from those customers the cumulative sum of those Section 62-16-4A(2) NMSA 1978 limited deferred amounts, plus carrying charges on those amounts.
- Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation
- **{52}** The Attorney General's argument relies on 17.9.572.15(D) NMAC to support its contention that large customer cap costs can only be recovered from large customers. The Attorney General seems to share our understanding that large customer cap costs, which arise pursuant to Section 62-16-4A(2), may be deferred. Based on this understanding, the Attorney General assumes that the term "Section 62-16-4A(2) NMSA 1978 limited deferred amounts" in Subsection D is a synonym for deferred large customer cap costs. Armed with this assumption, the Attorney General contends that because Subsection D concerns recovery of costs from capped customers and only Subsection D expressly refers to recovery of "Section 62-16-4A(2) NMSA 1978 limited deferred amounts," large customer cap costs can only be recovered from capped customers.
- **{53}** We reject the Attorney General's contention. 17.9.572.15(C) NMAC states that whenever "[a] public utility . . . is permitted to defer the recovery of renewable energy

⁵We also note that although the Attorney General relies on Section 62-16-4(A)(2) to argue for a cost recovery mechanism which SPS argues would effectively disallow its ability to recover large customer cap costs, such a mechanism would be contrary to the plain language of Section 62-16-4(A)(2), which provides that "[n]othing contained in this paragraph [concerning the large customer cap] shall be construed as affecting a public utility's right to recover all reasonable costs of complying with the renewable portfolio standard."

costs pursuant to commission order," the utility may recover the deferred amounts from non-capped customers. Subsection C therefore authorizes public utilities to recover deferred costs, in general, from non-capped customers. By contrast, 17.9.572.15(D) NMAC explicitly authorizes only the recovery of "Section 62-16-4A(2) NMSA 1978 limited deferred amounts" from capped customers. Thus, although 17.9.572.15(D) NMAC arguably provides that only "Section 62-16-4A(2) NMSA 1978 limited deferred amounts" may be recovered from capped customers, 17.9.572.15(C) NMAC provides that any deferred amounts may be recovered from non-capped customers.

{54} We conclude that a plain reading of 17.9.572.15 NMAC indicates that deferred costs arising from Section 62-16-4A(2) can be recovered from both capped and non-capped customers. There is simply no language explicitly banning the collection of deferred large customer cap costs from non-capped customers. The Attorney General errs in conflating the issue of whether capped customers may be charged only for Section 62-16-4A(2) deferred amounts with whether only capped customers may be charged the aforesaid deferred amounts. **III. CONCLUSION**

{55} We affirm the PRC's final order. We will not disturb the PRC's finding that SPS's entire prepaid pension asset was properly

included in the rate base. We also hold that the PRC properly allocated large customer cap costs to non-capped customers to enable SPS to recover its reasonable renewable energy procurement costs.

EDWARD L. CHÁVEZ, Justice

WE CONCUR: BARBARA J. VIGIL, Chief Justice PETRA JIMENEZ MAES, Justice CHARLES W. DANIELS, Justice TIMOTHY L. GARCIA, Judge Sitting by designation





We are pleased to announce,

Amy Sirignano

has joined the firm as Of Counsel.

Amy has over 20 years of experience in investigating, prosecuting, and defending Federal/State criminal cases and civil litigation, with an emphasis in White-Collar and financial crimes. She is a Certified Fraud Examiner(CFE), a corporate Anti-Bribery & Corruption Compliance professional, and an expert in forensic sciences matters.

She earned her J.D. at the Rutgers School of Law-Newark, and has a Masters of Forensic Sciences from George Washington University.

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Congratulations to Phillip W. Cheves and Scott F. Stromberg who were named shareholders of Butt Thornton & Baehr PC in 2016!







Scott F. Stromberg

Mr. Cheves is an alumnus of Abilene Christian University and graduated from Pepperdine University School of Law in 1991. He is admitted to practice law in New Mexico, Texas, and federal courts. Mr. Cheves has represented clients in a variety of areas including complex civil litigation, premises liability, domestic relations, criminal matters, and general liability.

Mr. Stromberg is an alumnus of the University of New Mexico and graduated from the University of New Mexico School of Law in 2010. He is admitted to practice law in New Mexico state and federal courts. Mr. Stromberg has represented clients in a variety

of civil matters including complex civil litigation, trucking and transportation, and products liability. His practice now primarily focuses on medical and health care liability defense.



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Melissa A. Brown

has joined the Firm as an associate

Ms. Brown earned her bachelor's degree in Criminology and Political Science from the University of New Mexico in 2003 and her Doctor of Jurisprudence in 2006 from Baylor Law School.

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Positions

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The Law Office of J. Douglas Compton is seeking an Attorney with a minimum of 1-3 years' experience in personal injury litigation or 5 years' litigation experience, to work in a busy insurance defense practice. Job requirements include: A license to practice law in good standing in New Mexico and current on all CLE requirements; Experience, with auto, truck accidents, and uninsured, underinsured motorists' cases; Demonstrated trial ability in the State of New Mexico is needed with experience in Bernalillo County Courts preferred; Must be able to travel to attend trials, arbitration, mediations and hearings; Attorney will defend lawsuits against GEICO insureds and represent GEICO in UM/UIM suits in all courts of NM; Must be computer proficient and be able to use a keyboard. Position is commensurate with experience. Please submit your application to Careers. geico.com.

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The civil litigation firm of Atkinson, Thal & Baker, P.C. seeks an attorney with strong academic credentials and 2-10 years experience for a successful, established complex commercial and tort litigation practice. Excellent benefits. Tremendous opportunity for professional development. Salary D.O.E. All inquiries kept confidential. Send resume and writing sample to Atkinson, Thal & Baker, P.C., Attorney Recruiting, 201 Third Street NW, Suite 1850, Albuquerque, NM 87102.

Associate Attorney

Montgomery & Andrews, PA, with offices in Albuquerque and Santa Fe, is seeking applications from attorneys who have at least two years of experience for full-time associate positions in the firm. The firm serves a wide variety of national, state, and local clients in growing and dynamic practice areas, including construction law, commercial transactions, environmental law, insurance defense, water law, government relations, employment law, medical malpractice, and health law. Applicants should mail cover letters and resumes to: Hiring Attorney, Montgomery & Andrews, P.A., Post Office Box 2307, Santa Fe, New Mexico 87504-2307 or email them to tgarduno@montand.com. Inquiries will be kept confidential upon request.

13th Judicial District Attorney Assistant Trial Attorney, Associate Trial Attorney Sandoval and Valencia Counties

Assistant Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for entry to mid-level attorney to fill the positions of Assistant Trial Attorney for Sandoval (Bernalillo) or Valencia (Belen) County Offices. These positions require misdemeanor and felony caseload experience. Associate Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for entry level positions for Sandoval (Bernalillo) or Valencia (Belen) County Offices. These positions require misdemeanor, juvenile and possible felony cases. Upon request, be prepared to provide a summary of cases tried. Salary for each position is commensurate with experience. Send resumes to Reyna Aragon, District Office Manager, PO Box 1750, Bernalillo, NM 87004, or via E-Mail to: RAragon@da.state. nm.us. Deadline for submission of resumes: Open until positions are filled.

Associate

Established Albuquerque plaintiff personal injury and wrongful death litigation firm seeks associate for its growing statewide practice. Ideal candidate should have minimum 2 years of personal injury litigation experience. Taking/defending depositions and arbitration/trial experience required. Bilingual Spanish is a plus. Salary dependent on experience. Submit resumes to 4302 Carlisle NE, Albuquerque, NM 87107. Please include sample of legal writing.

Attorney

The Third Judicial District Attorney's Office, located in Dona Ana County, is now accepting resumes for an attorney. This position is open to experienced attorneys. Salary will be based upon the New Mexico's District Attorney Personnel and Compensation Plan with a starting salary range of \$42,935.00 to \$74,753.00. Excellent benefits available. Please send a cover letter, resume, and references to Whitney Safranek, Human Resources, 845 N. Motel Blvd. Second Floor, Suite D., Las Cruces, NM 88007 or via e-mail Wsafranek@da.state.nm.us.

9th Judicial District Attorney-Senior Trial Attorney, Assistant Trial Attorney, Associate Trial Attorney

The Ninth Judicial District Attorney is accepting resumes and applications for an attorney to fill one of the following positions depending on experience. All positions require admission to the New Mexico State Bar. Senior Trial Attorney- This position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence, as well as the ability to handle a full-time complex felony caseload. A minimum of five years as a practicing attorney are also required. Assistant Trial Attorney - This is an entry to mid-level attorney. This position requires misdemeanor and felony caseload experience. Associate Trial Attorney - an entry level position which requires misdemeanor, juvenile and possible felony cases. Salary for each position is commensurate with experience. Send resumes to Dan Blair, District Office Manager, 417 Gidding, Suite 200, Clovis, NM 88101 or email to: Dblair@da.state.nm.us.

Deputy City Attorney

The City of Las Cruces has an open position for a Deputy City Attorney. Closing date for applications is February 22, 2016. Salary: \$78,142.05 -- \$117,213.07 annually. This is a fulltime regular, exempt position that plans, coordinates, and manages operations, functions, activities, staff and legal issues in the City Attorney's Office to ensure compliance with all applicable laws, policies, and procedures. Minimum requirements are: Juris Doctor Degree AND seven (7) years of experience in a civil and criminal legal practice; at least one (1) year of experience in municipal finance, land use, and public labor law is preferred. A combination of education, experience, and training may be applied in accordance with City of Las Cruces policy. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Please check our website http://agency.governmentjobs.com/ lascruces/default.cfm for further information regarding the job posting, requirements and online application process. Resumes will not be accepted in lieu of a completed application.

Associate Attorney

Established Albuquerque law firm seeking an Associate Attorney with 0-5 years' experience possessing strong writing and critical thinking skills for work in Med Mal and Catastrophic Injury Plaintiffs' practice. Email resume and references to vlawofficenm@ gmail.com.

Chief of Staff

The New Mexico Public Regulation Commission (NMPRC) seeks a Chief of Staff -an "at will" position serving its Commissioners and staff - to provide administration of operations. Position reports to Commissioners. Position performs management functions and provides administrative oversight of agency mission and goals. Position provides counsel to Commissioners on operations. Other duties include: ensuring successful operation of agency divisions, directing administrative activities for agency divisions, providing oversight of agency budgets. Position analyzes and makes recommendations to Commissioners on legislative initiatives and represents Commissioners in legislative matters related to operation and regulatory authority of the agency. Position is responsible for final decisions in personnel matters, including discipline and hiring. Position attends open meetings and provides reports and recommendations to Commissioners on administrative matters. Position conducts meetings for daily operations of agency, ensures deadlines are met to comply with federal and state laws and rules and regulations related to daily operation of the agency. Position supervises Division Directors and a Management Analyst, and participates in committees, statewide outreach for Commissioners, and agency task forces. Bachelor's degree in Business Management, Public Administration or related area required, and five (5) years of management experience in the public or private sectors. Experience may be substituted for education. The chosen candidate should foster a "teamwork" approach and be able to interpret and enforce policies and procedures consistently. Salary: \$75,418.52-\$130,000 per year plus benefits. Salary based on education and experience. The State of NM is an EOE Employer. Applicants may email or mail their resume to Rene Kepler at Renes.Kepler@state.nm.us, or mail to NMPRC Attn: Human Resources, P.O. Box 1269, Santa Fe, NM 87504. Applicants should submit resumes prior to February 10, 2016,. Questions may be directed to Rene Kepler: 505-827-4324.

New Mexico Public Regulation Commission **General Counsel**

The New Mexico Public Regulation Commission is accepting applications for the position of General Counsel. The position advises the Commission on regulatory matters, including rulemakings and adjudicatory proceedings involving the regulation of electric and gas utilities, telecommunications providers, and motor carriers; represents the Commission in federal and state trial and appellate courts. Manages and oversees day to day operations of General Counsel Division including case management and assignments. Involves day to day interaction with Elected Officials, Hearing Examiners and other Division Directors. The position requires extensive knowledge of administrative law practice and procedures and of substantive law in the areas regulated by the Commission; ability to draft clear, concise legal documents; ability to prioritize within a heavy workload environment. Minimum qualifications: JD from an accredited law school; ten years of experience in the practice of law, including at least four years of administrative or regulatory law practice and three years of staff supervision; admission to the New Mexico Bar or commitment to taking and passing Bar Exam within six months of hire. Background in public utilities, telecommunications, transportation, engineering, economics, accounting, litigation, or appellate practice preferred. Salary: \$56,000- \$90,000 per year (plus benefits). Salary based on qualifications and experience. This is a GOVEX "at will" position. The State of NM is an EOE Employer. Apply: Submit letter of interest, résumé, writing sample and three references to: Human Resources, Attention: Rene Kepler, Renes. Kepler@state.nm.us or NMPRC P.O. Box 1269, Santa Fe, NM 87504-1269. Applications must be postmarked by February 10, 2016.

Immediate Opening for Law Clerks

Guebert Bruckner P.C. looking for law clerks to review documents in Santa Fe. This is a temporary position approximately 3-6 months. Must have own transportation. Hourly + mileage reimbursement. Apply to Kathleen A. Guebert @ kathleen@guebertlaw.com NO PHONE CALLS PLEASE

Associate Attorney

Large established Albuquerque law firm has an immediate need for an associate attorney with 3 to 5 years experience in all aspects of business and commercial law, real estate law, and litigation. Please submit a resume and writing sample to POB 92860, Albuquerque, NM 87199 attention Box D. All replies kept confidential.

Office of the State Engineer/ **Interstate Stream Commission** (OSE/ISC) State of New Mexico

The Litigation & Adjudication Program seeks to hire a New Mexico licensed attorney: a Lawyer Advanced to work in the Pecos Adjudication Bureau in federal & state court water rights adjudications and litigation and administrative hearings on water rights and natural resource issues. The position is located in Santa Fe. Qualifications: Juris Doctorate from an accredited law school; 5 years experience in the practice of law; member of the New Mexico State Bar. Job ID #: Pecos Attorney Advanced (OSE#6004) #2016-00419 Must apply on line at http://www.spo.state. nm.us/ from 2/10/16 to 2/17/16. The OSE/ISC is an Equal Opportunity Employer.

Las Cruces Attorney

Holt Mynatt Martínez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking an associate attorney with 3-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to bb@hmm-law.com.

Paralegal

Personal Injury/MedMal/Bad Faith Litigation Law Firm in Albuquerque is looking for an experienced, energetic paralegal to join our team! We offer great benefits, positive and friendly environment. If you have 5 or more years' experience, please submit your cover letter, resume and salary history, in confidence, to kdc@carterlawfirm.com.

Legal Assistant/Paralegal

Albuquerque law firm focused on civil catastrophic injury litigation seeking a full-time paralegal/legal assistant to join our trial team. Bachelor's degree and legal experience preferred. Candidate should have strong organizational skills and a positive attitude. Send resume to vlawofficenm@gmail.com.

Legal Assistant

The Federal Public Defender office for the District of New Mexico is accepting applications for a Legal Assistant position to be stationed in Albuquerque. Federal salary and benefits apply. Minimum qualifications are high school graduate or equivalent and at least three years legal secretary experience, federal criminal experience preferred. Starting salary ranges from a JSP-6 to JSP-8, currently yielding \$36,031 to \$57,641 annually depending on experience. This position provides secretarial and clerical support to the attorneys and staff utilizing advanced knowledge of legal terminology, word and information processing software. Legal Assistants must understand district and circuit court rules and protocols; edit and proofread legal documents, correspondence, and memoranda; transcribe dictation; perform cite checking and assemble copies with attachments for filing and mailing. Duties also include screening and referring telephone calls and visitors; screening incoming mail; reviewing outgoing mail for accuracy; handling routine matters as authorized; assembling and attaching supplemental material to letters or pleadings as required; maintaining calendars; setting appointments as instructed; organizing and photocopying legal documents and case materials; and case file management. The ideal candidate will have a general understanding of office confidentiality issues, such as attorney/client privilege; the ability to analyze and apply relevant policies and procedures to office operations; exercise good judgment; have a general knowledge of office protocols and secretarial processes; analyze and recommend practical solutions; be proficient in WordPerfect, Microsoft Word and Adobe Acrobat; have the ability to communicate effectively with assigned attorneys, other staff, clients, court agency personnel, and the public; and have an interest in indigent criminal defense. Must possess excellent communication and interpersonal skills, and be self-motivated while also excelling in a fast paced team environment. Spanish fluency a plus. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. Position subject to the availability of funds. Please e-mail your resumé with cover letter and 3 references to: Melissa Dearing, Administrative Officer, FDNM-HR@fd.org. Must be received no later than 3/1/2015. Only those selected for an interview will be contacted. No phone calls.

Part-Time Legal Assistant

Part-time legal assistant for small law firm working primarily in immigration matters. Bilingual (Spanish/English) and good computer and interpersonal skills required. Submit resume to Immigration Law, 201 12th St. NW, Albuquerque, NM 87102 or e-mail to jeanneattorney @aol.com.

Paralegal/Policy Filing Analyst

Experienced paralegal needed for fast paced insurance company regulatory compliance department. Excellent computer skills, the ability to multitask, e-filing experience, and being a good team player are all required. Insurance company and SERFF filing experience preferred. Critical thinking skills and ability to work independently is a must. Please refer to our website for job description: http://www.centuryservicecorp.com/polfileanalyst.html. Benefit package available; Pay DOE. Inquiries confidential. Email cover letter, resume, references, writing sample, and salary requirements to lcraig@centuryservicecorp.com.

Legal Assistant

GUEBERT BRUCKNER P.C. busy litigation firm looking for experienced Legal Assistant to support 11 attorneys. Candidate will coordinate with various members of the staff to accomplish the needs of attorneys. Duties include but are not limited to: Filing, finalizing documents for submission to clients, State and Federal courts. Excellent communication skills required in order to meet deadlines and to comply with various client guidelines. Strong writing and proof reading skills, as well as knowledge of court rules required. Hours 8:30 to 5:30. Firm uses Microsoft Word, Excel, and Outlook. Please submit resume and salary requirement to Kathleen A. Guebert, POB 93880, Albuquerque, NM 87109.

Immediate Opening for Experienced Paralegal

Barudin Law Firm is seeking a primary paralegal with excellent written and verbal communication skills who can immediately join our small team. Duties will include investigation, research, drafting of pleadings, discovery, pre-trial litigation and trial preparation. Candidate must have familiarity with personal injury, proficiency with electronic filing systems, and knowledge of New Mexico law and culture. Paralegal certification is preferred; however, an Associate's degree plus seven years of experience or an equivalent combination of education and experience is necessary. Successful candidate will enjoy a competitive salary, generous benefits package, and an 8:00 am to 4:00 pm M-F workday. Email resume and wage history to abarudin@ barudinlaw.com without delay.

Paralegal

Paralegal for Plaintiff's Injury Firm. Minimum 3 years' experience in Plaintiff's injury law. Litigation experience necessary. Fast-paced environment with a high case load. We work as a team, and are the best team in Albuquerque. Outstanding pay, perks, and benefits. Come join us. To see the position description and apply, please type into your browser: ParnallLawJobs.com

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