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Bar Bulletin

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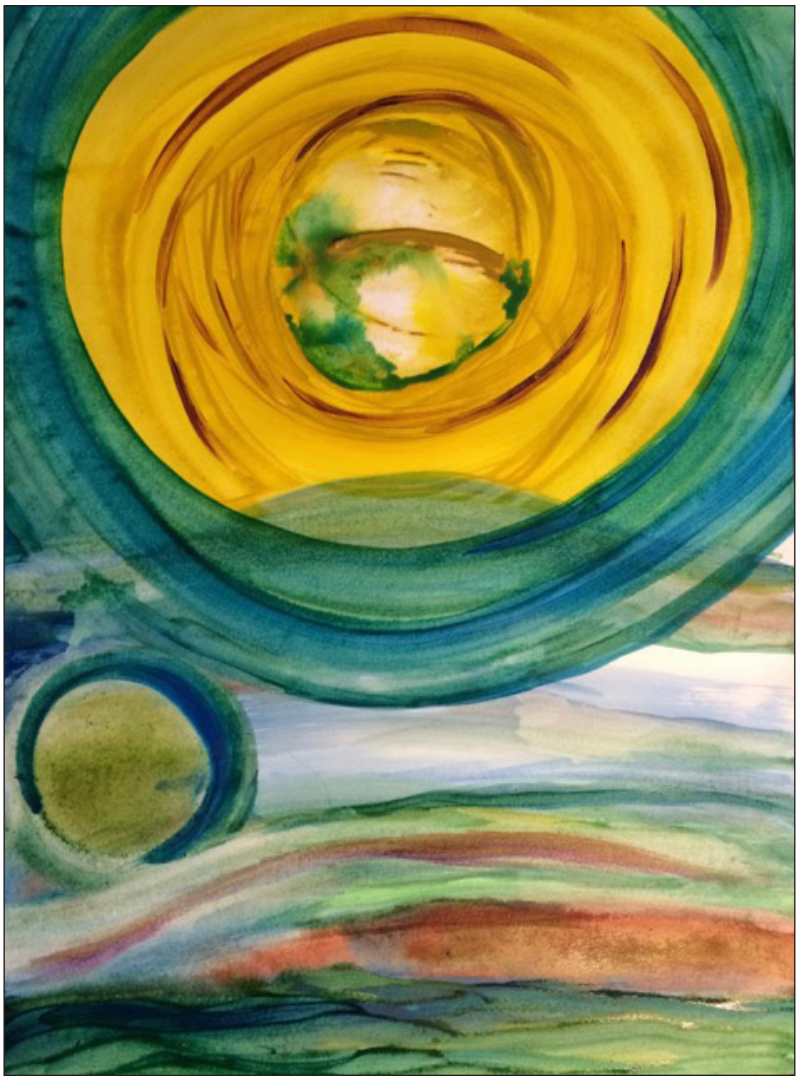

Inner Vision by Barbara L. Chapman www.chapman-art.com

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Join State Bar President Brent Moore for this incredible trip and enter the holiday season CLE stress free. One year's worth of CLE credits will be provided.

Seven Night Roundtrip from Fort Lauderdale

Ports of call on the Royal Caribbean Allure of the Seas:
Cozumel, Mexico • Falmouth, Jamaica • Labadee, Haiti

Prices per person based on double occupancy (including port expenses)

$679 Interior	$939 Superior ocean view, deck 10 or 11 with balcony
$901 Obstructed ocean view	$949 Superior ocean view, deck 12 or 14 with balcony

Plus taxes and fees

Contact Terri Nelson with Vacations To Go by April 29 to guarantee a room.
Flight reservations may be made on your own or through Terri.
1-800-998-6925, ext. 8704 • tnelson@vacationstogo.com

CLE course information is forthcoming.
Teach a one to two hour class and get free CLE registration ($325).
Send proposals to Christine Morganti, cmorganti@nmbar.org.

State Bar of New Mexico
Center for Legal Education

For more information go to www.nmbar.org, for Members, CLE at Sea

STATE BAR of NEW MEXICO

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Meetings

March

9
Animal Law Section BOD,
Noon, State Bar Center

9
Children's Law Section BOD,
Noon, Juvenile Justice Center

9
Taxation Section BOD,
11 a.m., teleconference

10
Business Law Section BOD,
4 p.m., teleconference

10
Elder Law Section BOD,
Noon, State Bar Center

10
Public Law Section BOD,
Noon, Montgomery & Andrews, Santa Fe

11
Prosecutors Section BOD,
Noon, State Bar Center

15
Solo and Small Firm Section BOD,
11 a.m., State Bar Center

15
Committee on Women and the Legal Profession,
Noon, Modrall Sperling, Albuquerque

State Bar Workshops

March

16
Family Law Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

23
Consumer Debt/Bankruptcy Workshop:
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

April

1
Civil Legal Clinic:
10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

1
Civil Legal Clinic:
10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

6
Divorce Options Workshop:
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

6
Civil Legal Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

12
Legal Clinic for Veterans:
8:30–11 a.m., New Mexico Veterans Memorial, Albuquerque, 505-265-1711, ext. 3434

Cover Artist: The inspiration for Barbara's work is derived from the movement initiated by life's changes and challenges. The use of acrylic paint, chalk and oil pastels allow for the flow of spirit to emerge and unfold. Volunteering with homeless youth reinforces her drive to express the beauty, grace and courage that can be found in each day.

Notices

Court News

New Mexico Court of Appeals

Stephen French Appointed to Fill Vacancy

On Feb. 18, Gov. Susana Martinez announced the appointment of Stephen French to the New Mexico Court of Appeals, filling the vacancy created by the retirement of Judge Cynthia Fry.

Fifth Judicial District Court

Retirement Celebration for Judge Steven L. Bell

The judges and employees of the Fifth Judicial District Court invite members of the legal community to attend a retirement ceremony for the Hon. Steven L. Bell. The celebration will be at 3 p.m., March 25, at the Chaves County Courthouse, Historic Courtroom 1. A reception will follow on the first floor of the courthouse in the historic rotunda.

Ninth Judicial District Court

Notice of Exhibit Destruction

The Ninth Judicial District Court, Roosevelt County, will destroy the following exhibits by order of the court if not claimed by the allotted time: 1) All unmarked exhibits, oversized poster boards/maps and diagrams; 2) Exhibits filed with the court, in criminal, civil, children's court, domestic, competency/mental health, adoption and probate cases for the years 1993–2012 may be retrieved through April 30; and 3) All cassette tapes in criminal, civil, children's court, domestic, competency/mental health, adoption and probate cases for years prior to 2007 have been exposed to hazardous toxins and extreme heat in the Roosevelt County Courthouse and are ruined and cannot be played, due to the exposures. These cassette tapes have either been destroyed for environmental health reasons or will be destroyed by April 30. For more information or to claim exhibits, contact the Court at 575-359-6920.

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.

Professionalism Tip

With respect to opposing parties and their counsel:
I will be courteous and civil, both in oral and in written communications.

Board of Bar Commissioners

Appointments

Appointment to Judicial Standards Commission

The Board of Bar Commissioners will make one appointment to the Judicial Standards Commission for a four-year term. The responsibilities of the Judicial Standards Commission are to receive, review and act upon complaints against State judges, including supporting documentation on each case as well as other issues that may surface. Experience with receiving, viewing and preparing for meetings and trials with substantial quantities of electronic documents is necessary. The commission meets once every eight weeks in Albuquerque and additional hearings may be held as many as four to six times a year. The time commitment to serve on this board is significant and the workload is voluminous. Applicants should consider all potential conflicts caused by service on this board. Members who want to serve should send a letter of interest and brief résumé by April 15 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 505-828-3765; or e-mail to jconte@nmbar.org.

Appointment to ABA House of Delegates

The BBC will make one appointment to the American Bar Association House of Delegates for a two-year term, which will expire at the conclusion of the 2018 ABA Annual Meeting. The delegate must be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members who want to serve should send a letter of interest and brief résumé by April 15 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 505-828-3765; or e-mail to jconte@nmbar.org.

Appointment to Civil Legal Services Commission

The BBC will make one appointment to the Civil Legal Services Commission for a three-year term. Members who want to serve should send a letter of interest and brief résumé by April 15 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 505-828-3765; or e-mail to jconte@nmbar.org.

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

Legislative Update with Sen. Mike Sanchez

As part of the Solo and Small Firm Section's luncheon and presentation series, State Sen. Mike Sanchez will present a legislative update. Sen. Sanchez will discuss what was accomplished in the Roundhouse this session and what may be coming in the future. The presentation will be noon, March 15, at the State Bar Center in Albuquerque. The presentation is open to all members of the State Bar who R.S.V.P. to Evann Kleinschmidt, ekleinschmidt@nmbar.org. Pizza and cookies will be provided.

Young Lawyers Division

Roswell Happy Hour

Join the Young Lawyers Division for a happy hour event from 5:30-7 p.m.,

March 23, at The Liberty. R.S.V.P.s are not necessary. Co-sponsors include the UNM School of Law, the New Mexico Hispanic Bar Association and the New Mexico Women's Bar Association. Hennighausen & Olsen will sponsor a limited hosted bar. For more information, contact Anna C. Rains, acrains@sbcw-law.com.

UNM

Law Library

Hours Through May 14

Building & Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10a.m.–6p.m.
Sunday	Noon–6 p.m.

Reference

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

Mexican American Law Student Association

21st Annual Fighting for Justice Banquet

The Mexican American Law Student Association invites members of the legal community to the 21st Annual Fighting for Justice Banquet at 6 p.m., April 16, at Hotel Albuquerque in Old Town. Tickets and sponsorship packages can be bought at http://malsaorg.wix.com/ffj2016 or by contacting MALSA President Jazmine Ruiz at ruizja@law.unm.edu. MALSA will award Hon. Justice Cruz Reynoso of the California Supreme Court (ret.) with the 2016 Fighting for Justice Award for his remarkable work in civil rights. Justice Reynoso will be introduced by his former colleague, emeritus professor and former dean of the UNM School of Law Leo Romero.

Other Bars

Albuquerque Bar Association

New Judges Reception

The Albuquerque Bar Association invites members to an event congratulating newly elected and appointed judges from 5:30–7:30 p.m., March 10, at the Pete V. Domenici U.S. Courthouse. Register for this exclusive event by calling the Albuquerque Bar at 505-842-1151 or online abqbar.org. This event is only open to Albuquerque Bar and Federal Bench and Bar members.

American Bar Association Criminal Justice Section

Spring Meeting in Albuquerque

The American Bar Association Criminal Justice Section's Spring Meeting, co-sponsored by the State Bar of New Mexico, will be "Neuroscience: Paving the Way for Criminal Justice Reform." The meeting will be held April 28-30 at Hotel Albuquerque at Old Town in Albuquerque. Topics include how neuroscience is paving the way to criminal justice reform, neuroscience and environmental factors, neuroscience and solitary confinement and the neuroscience of hate: the making of extremist groups. New Mexico Supreme Court Justice Charles W. Daniels will be the luncheon keynote speaker. Roberta Cooper Ramo, the first woman to become president of the American Bar Association, will provide opening remarks. State Bar of New Mexico members can register for the discounted rate of $75. For more information and to register, visit: http://ambar.org/cjs2016spring

First Judicial District Bar Association

March Buffet Luncheon and CLE

Join the First Judicial District Bar Association for a buffet luncheon and CLE at noon, March 21, at the Hilton HOtel, 100 Sandoval Street, Santa Fe. The course will be a one-hour, town hall style presentation by Senator Peter Wirth and Representative Brian Egolf. The discussion topics will include the legislation proposed in the 2016 session, actions taken by the House and Senate and the new laws passed. There will also be a question and answer session to address issues raised by the audience. Attendance is $15 and includes a buffet lunch. For more information or to R.S.V.P., contact Erin McSherry at erin.mcsherry@state.nm.us or 827-6390.

New Mexico Criminal Defense Lawyers Association

Trial Skills College

Need to brush up on trial tactics? In the New Mexico Criminal Defense Lawyers Association's "Trial Skills College" (15.5 G) on March 17–19 in Albuquerque, students will hear lectures and practice with each other in small focus groups on every aspect of a trial, from voir dire to closing statements. New and seasoned practitioners alike will benefit from this course. Only 30 seats are available. Register at www.nmcdla.org.

White Collar Crime CLE

Learn the latest updates and trends in charging health care cases, grand jury practice, and submitting budget requests for adequate funding at the New Mexico Criminal Defense Lawyers Association's upcoming CLE "White Collar Crime & Complex Cases" on March 11 at the Garrett's Desert Inn in Santa Fe. Hear from some of the leading practitioners in the state on these issues and more. Visit www.nmcdla.org for more information and to register.

New Mexico Defense Lawyers Association

Announces New Board Members

The New Mexico Defense Lawyers Association has selected five civil defense lawyers

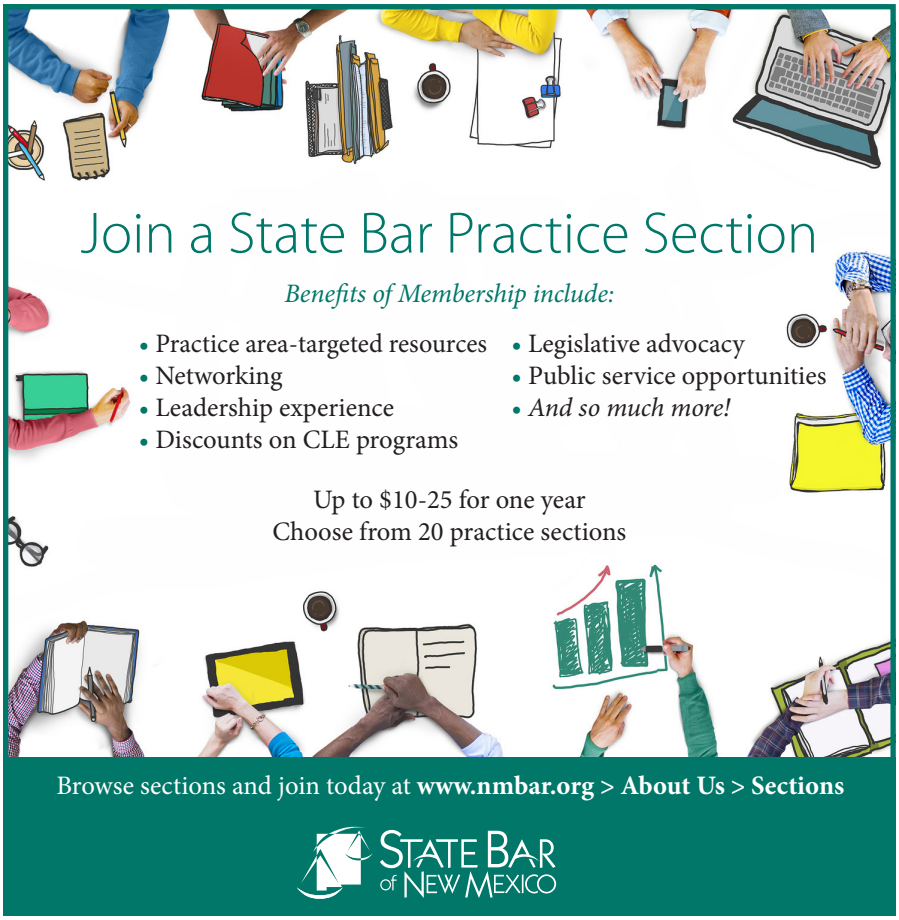
2016–2017 Bench & Bar Directory

Update Your Contact Information by March 25

Verify your current information:
www.nmbar.org/FindAnAttorney

Submit changes in writing:

online: www.nmbar.org > for Members > Change of Address; by **mail**: Address Changes, PO Box 92860, Albuquerque, NM 87199-2860; by **fax**: 505-828-3765; or by **email**: address@nmbar.org



to join its board of directors with terms ranging from three to five years. The new board members are Christina L. G. Brennan, Matthew T. Byers, Tyler M. Cuff, Juan M. Marquez Jr. and Tiffany Roach Martin. Re-elected to board are William R. Anderson, Bryan C. Garcia and S. Carolyn Ramos.

New Mexico Women's Bar Association

Meet and Greet Event

The New Mexico Women's Bar Association, a voluntary state-wide bar association open to all New Mexico attorneys regardless of sex or gender, is hosting a meet and greet event from 5:30–7 p.m., March 18, at the Albuquerque Country Club, 601 Laguna Blvd. SW, Albuquerque. NMWBA will providing light hors d'oeuvres and an exciting door prize with a cash bar. Members who bring a guest are elligible to attend a NMWBA sponsored CLE for free. R.S.V.P. suggested but not required to barbara@frjlaw.com.

Other News

Dine' Hoghaan Bii Development Inc.

Veterans Mini Stand Down

Dine' Hoghaan Bii Development Inc. calls for attorney volunteers for its first annual Veterans Mini Stand Down from 8:30 a.m.– 3:30 p.m. on March 25 at the Fire Rock Casino in Church Rock (just east of Gallup). There will be two-hour shifts with two attorneys for each shift. To schedule a shift or for more information, contact bernadinem25@gmail.com.

New Mexico Lawyers for the Arts

Volunteers Needed for Pro Bono Legal Clinic

New Mexico Lawyers for the Arts and WESST/Albuquerque seek attorneys to volunteer for the New Mexico Lawyers for the Arts Pro Bono Legal Clinic from 10 a.m. to 1 p.m., March 19, at the WESST Enterprise Center, 609 Broadway Blvd. NE, Albuquerque. Continental breakfast will be provided. Clients will be creative professionals, artists or creative businesses. Attorneys are needed to assist in many areas including contracts, business law, employment matters, tax law, estate planning and intellectual property law. For more information and to participate, contact Talia Kosh at tk@thebennettlawgroup.com.

Southwest Women's Law Center

Celebrating Women's Stories

Members of the legal community are invited to attend the Southwest Women's Law Center Celebrating Women's Stories event on March 12 at the University of New Mexico Student Union Building Ballroom A, B and C. There will be a reception at 6 p.m. and a dinner at 7 p.m. The event will honor Florenceruth Jones Brown as trailblazing attorney, UNM School of Law, class of 1953; Gayle Dine'Chacon, M.D., as first women surgeon general, Navajo Nation; and Col. Gail E. Crawford, staff judge advocate, Air Force Neclear Weapons Center. Table sponsorships are available. To purchase a ticket or sponsorship, call 505-244-0502 or visit www.swwomenslaw.org.

STATE BAR of NEW MEXICO FOUNDATION

2016 Annual Meeting Silent Auction

Item Contribution Form

Donor Information: Name _____

Company Name (if applicable) _____

Address _____

City, State, Zip _____

Phone _____

Item for Auction:
❑ Gift Certificate
❑ Tangible Gift

Description: (Please be very specific)

Restrictions: (i.e.: exclusions, expiration date)_____

Item Value (tax deductible): $ _____
Please check one:
❑ Value set by Donor
❑ Appraisal Attached
❑ Other

Delivery Method:
Please check one:
❑ I am enclosing the item with this form
❑ I will deliver the item to the State Bar of New Mexico, 5121 Masthead NE (Journal Center area off of Jefferson)
❑ I will need the item picked up from the above address

All auction proceeds will go to the New Mexico State Bar Foundation

For more information or questions please contact:
Stephanie Wagner, Development Director
Phone: 505-797-6007• Email: swagner@nmbar.org
***All auction items need to be received by July 29**

For office use only
Pick-up Date: _____ Delivery Date: _____ Received: _____
Category: _____ Gift solicited by: _____

STATE BAR of NEW MEXICO FOUNDATION

New Mexico State Bar Foundation 2016 Silent Auction

The New Mexico State Bar Foundation will hold a silent auction as part of the 2016 Annual Meeting—Bench & Bar Conference at the Buffalo Thunder Resort & Casino. Please help by donating an auction item(s) for the event. Auction items can be anything from gift cards/certificates, hotel stays, art, jewelry, etc. The auction will take place Friday, Aug. 19 with a preview on Thursday, Aug. 18. All proceeds will go directly to the New Mexico State Bar Foundation. **Won't you help be part of the festivities?!**

Silent auction contributors will be promoted throughout the three day Annual Meeting, in the Annual Meeting Program Guide, and in the *Bar Bulletin*, the State Bar's official publication distributed weekly to more than 8,000 members of the New Mexico legal community. We expect more than 600 lawyers and their guests to attend the event. Your donation is also tax-deductible.

If you have an item you are willing to donate, please contact:

Stephanie Wagner
Development Director, New Mexico State Bar Foundation
505-797-6007
swagner@nmbar.org

The New Mexico State Bar Foundation is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the foundation are to:

- *Enhance* access to legal services for underserved populations
- *Promote* innovation in the delivery of legal services
- *Provide* legal education to members and the public.

A Call to Action

from the NMHBA/UNM Summer Law Camp

By Denise M. Chanez,
New Mexico Hispanic Bar Association
Education & Mentorship Committee Chair

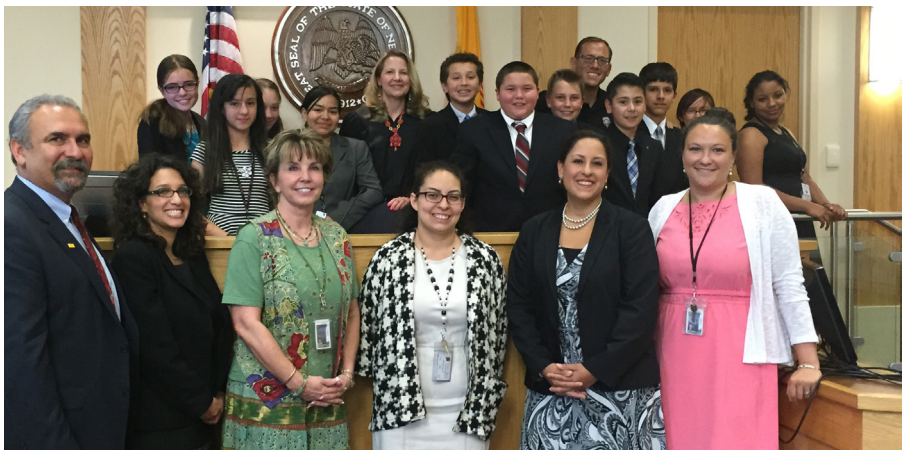
Inspiring diverse students to pursue higher education and careers in the legal profession is exactly what the NMHBA/UNM Summer Law Camp is designed to do. The program has already made a difference. Hundreds of students from different backgrounds and counties across New Mexico have already participated in the camp. Some are in college today and, hopefully, preparing to become the next generation of lawyers. During the week-long camp, students get exposure to life as a college student and as a lawyer by living on campus for the week, touring the courts, and participating in a mock trial. The Summer Law Camp is offered at no cost to the accepted students thanks to the generosity of its many sponsors.

Broad diversity among the law campers has long been the program's goal, including geographic, gender, racial/ethnic and socioeconomic diversity. This year, there is a targeted focus on increasing the diversity of the program in two specific areas: (1) recruiting students from counties where no or few students have participated, and (2) reaching out to students with less financial resources and to those who may not think about applying for a program focused on law.

When it comes to geographic diversity, the Summer Law Camp has sought to draw in students from all corners of the state. After nearly 15 years, students from all but six counties have participated in Law Camp—a significant accomplishment in a state as large as New Mexico. The Summer Law Camp planning committee knows that the students from those six counties, some of which are largely rural, may need the program the most. Catron, Union, Harding, De Baca, Roosevelt and Lea counties have yet to have student representation at the Summer Law Camp, and the planning committee wants to change that statistic this year. For attorneys and judges who have ties to or who practice in those areas, we ask for your help encouraging sixth and seventh grade students from your county to apply for Summer Law Camp. The application

2015 Law Camp Participants at Mock Trial at Second Judicial District Court.

2015 Law Camp Participants with Metropolitan Court Judge Rosemary Cosgrove-Aguilar, Brian Colón, Chief Judge Nan Nash, and NMHBA President Damian Lara at Second Judicial District Court.



2015 Law Camp Participants with Second Judicial District Court Judge Marie Ward, Brian Colón, Chief Public Defender Jorge Alvarado, Nina Safier (law camp instructor, public defender), Second Judicial District Attorney Kari Brandenburg, Michelle Garcia (law camp instructor, Second Judicial District Attorney's office), Cydni Sanchez (law camp instructor, public defender) and Taryn Kaselonis (law camp instructor, Second Judicial District Attorney's office).

is available online at www.nmhba.net and can be submitted electronically. The application is not lengthy and the process is simple. Applications are due on April 1. We need your help encouraging students to apply!

One of the many special things about Summer Law Camp is that students come from a range of backgrounds, including different socioeconomic backgrounds. Without question, the program has attracted many diverse students who are already interested in law and some of whom already have connections to lawyers. However, one of the challenges in recruiting students for Summer Law Camp is reaching out to those who might not be thinking about higher education and a career in law, especially students with less financial resources who may have difficulty paying for their education.

We call upon our colleagues in the bar to help us reach out to sixth and seventh graders of all socioeconomic backgrounds to encourage them to apply for Summer Law Camp. If you are reading this and you know a student who is already interested in law, please encourage him or her to apply. Please also give some thought to students who do not fit this mold. Think about the promising student who does not have the resources that others do who could benefit immensely from positive exposure to the law. Think about the student who just needs a little nudge in the right direction. Make a conscious choice to talk to students who do not automatically come to mind when you think about this program and help them fill out an application. We need these students in the Summer Law Camp! Their voices, ideas, and perspectives, which might not otherwise be heard, allow all of the students in the program to reap the amazing benefits that diversity provides. Even just the exposure of students to other students of different backgrounds can change the way all of them think for the better.

As lawyers, it is in our best interest to make the legal profession more diverse. Having more diversity leads to more creative thinking, better decision making and problem solving—all skills which benefit lawyers in immeasurable ways. Infusing the pipeline to higher education with diverse students leads to increased diversity for the legal profession down the road. We all have a role to play in ensuring that this happens. So, we call on our colleagues and friends to please help us reach out to sixth and seventh graders and encourage them to apply for Summer Law Camp.

The NMHBA/UNM Summer Law Camp planning committee would like to thank the State Bar of New Mexico Young Lawyers Division, ENLACE New Mexico, UNM's El Centro de la Raza and the UNM College Enrichment and Outreach Program for their partnership and sponsorship of this program. We also want to thank the 2015 Summer Law Camp sponsors, including:

Aleli and Brian Colón

Bernalillo County and Commissioner Lonnie Talbert

Twelfth Judicial District Bar Association

State Bar of New Mexico Real Property, Trust and Estate Section

State Bar of New Mexico Employment & Labor Law Section

State Bar of New Mexico Immigration Law Section

State Bar of New Mexico Bankruptcy Law Section

New Mexico Women's Bar Association

Law Office of Monnica Garcia

Cruz Law Office, LLC

New Mexico Black Lawyers Association

And the many others who made individual donations to Law Camp.

If you, your law firm or your organization are interested in sponsoring the Summer Law Camp, please visit the NMHBA Foundation's website at www.foundation.nmhba.net. All donations are tax-deductible. ■

Legal Education

March

9 **Foreclosure Litigation Defense**
6.0 G
Live Seminar, Albuquerque
Gleason Law Firm LLC
gleasonlawfirm@gmail.com

10 **Estate and Gift Tax Audits**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 **Advanced Workers Compensation**
5.6 G, 1.0 EP
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com

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

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

11 **Law Practice Succession-A Little 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 Cross-commissioning: 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

11 **White Collar Crime & Complex Cases: The Clients, the Charges, the Costs**
6.7 G
Live Seminar, Santa Fe
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org

15 **Estate and Trust Planning for Short Life Expectancies**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 **Advocacy in Action Conference**
18.10 G
Live Seminar
New Mexico Coalition of Sexual Assault Programs
www.nmcsap.org

17 **Second Annual State Bar Symposium on Diversity and Inclusion**
5.0 G, 1.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org

17–19 **Trial Skills College**
15.5 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.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

18 **Ethically Managing Your Practice (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

21 **Honorary Trusts: Trusts for Pets**
1.5 G
Live Seminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Avoiding Family Feuds in Trusts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **Full Implementation Navigating the ACA Minefield**
6.6 G
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com

25 **Legal Technology Academy for New Mexico Lawyers**
4.0 G, 2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org

28 **Tech Tock, Tech Tock: Social Media and the Countdown to Your Ethical Demise**
3.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org

28 **What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics—2016 Edition**
3.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
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29 **Drafting Demand Letters**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

March

31 **Fair or Foul: Lawyers' Duties of Fairness and Honesty to Clients, Parties, Courts, Counsel and Others**
2.0 EP
Live Seminar and Webcast
Center for Legal Education of NMSBF
www.nmbar.org

31 **Working With Expert Witnesses**
3.0 G
Live Seminar and Webcast
Center for Legal Education of NMSBF
505-797-6020
www.nmbar.org

April

5 **Planning Due Diligence in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Treatment of Trusts in Divorce**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

8 **2015 Land Use Law in New Mexico**
5.0 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org

8 **More Reasons to be Skeptical of Expert Witnesses Part VI (2015)**
5.0 G, 1.5 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org

8 **Federal Practice Tips and Advice from U.S. Magistrate Judges**
2.0 G, 1.0 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org

8 **Invasion of the Drones: IP – Privacy, Policies, Profits (2015 Annual Meeting)**
1.5 G
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org

14 **Governance for Nonprofits**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Disciplinary Process Civility and Professionalism**
1.0 EP
Live Program
First Judicial District Court
505-946-2802

22 **Ethics for Estate Planners**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Employees, Secrets and Competition: Non-Competes and More**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Landlord Tenant Law Lease Agreements Defaults and Collections**
5.6 G, 1.0 EP
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com

28 **Annual Advanced Estate Planning Strategies**
11.2 G
Live Program
Texas State Bar
www.texasbarcle.com

May

4 **Ethics and Drafting Effective Conflict of Interest Waivers**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **Public Records and Open Meetings**
5.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Foundation for Open Government
www.nmfog.org

11 **Adding a New Member to an LLC**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **Workout of Defaulted Real Estate Project**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **2016 Retaliation Claims in Employment Law Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

20 **The New Lawyer – Rethinking Legal Services in the 21st Century**
4.5 G, 1.5 EP
Live Replay
Center for Legal Education of NMSBF
www.nmbar.org

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 February 26, 2016

Petitions for Writ of Certiorari Filed and Pending:

			Date Petition Filed
No. 35,779	State v. Harvey	COA 33,724	02/26/16
No. 35,777	N.M. State Engineer v. Santa Fe Water Resource	COA 33,704	02/25/16
No. 35,776	State v. Mendez	COA 34,856	02/25/16
No. 35,775	Northern N.M. Federation v. Northern N.M. College	COA 33,982	02/25/16
No. 35,774	State v. Damon C.	COA 33,962	02/24/16
No. 35,773	State v. Simpson	COA 33,723	02/24/16
No. 35,772	Castillo v. Arrieta	COA 34,108	02/24/16
No. 35,771	State v. Garcia	COA 33,425	02/24/16
No. 35,768	State v. Begay	COA 34,409	02/22/16
No. 35,767	State v. Gallegos	COA 34,698	02/22/16
No. 35,765	State v. Perez	COA 31,678	02/19/16
No. 35,764	State v. Kingston	COA 32,962	02/19/16
No. 35,758	State v. Abeyta	COA 33,461	02/15/16
No. 35,759	State v. Pedroza	COA 33,867	02/15/16
No. 35,760	State v. Gabaldon	COA 34,770	02/12/16
No. 35,763	State v. Marcelina R.	COA 34,683	02/12/16
No. 35,754	Valenzuela v. A.S. Horner Inc.	COA 33,521	02/12/16
No. 35,753	State v. Erwin	COA 33,561	02/12/16
No. 35,751	State v. Begay	COA 33,588	02/12/16
No. 35,750	State v. Norma M.	COA 34,768	02/11/16
No. 35,749	State v. Vargas	COA 33,247	02/11/16
No. 35,748	State v. Vargas	COA 33,247	02/11/16
No. 35,742	State v. Jackson	COA 34,852	02/05/16
No. 35,747	Sicre v. Perez	12-501	02/04/16
No. 35,743	Conger v. Jacobson	COA 34,848	02/04/16
No. 35,741	State v. Coleman	COA 34,603	02/04/16
No. 35,740	State v. Wisner	COA 34,974	02/04/16
No. 35,739	State v. Angulo	COA 34,714	02/04/16
No. 35,746	Bradford v. Hatch	12-501	02/01/16
No. 35,371	Citimortgage v. Tweed	COA 34,870	01/29/16
No. 35,730	State v. Humphrey	COA 34,601	01/29/16
No. 35,722	James v. Smith	12-501	01/25/16
No. 35,711	Foster v. Lea County	12-501	01/25/16
No. 35,713	Hernandez v. CYFD	COA 33,549	01/22/16
No. 35,718	Garcia v. Franwer	12-501	01/19/16
No. 35,717	Castillo v. Franco	12-501	01/19/16
No. 35,707	Marchand v. Marchand	COA 33,255	01/19/16
No. 35,702	Steiner v. State	12-501	01/12/16
No. 35,682	Peterson v. LeMaster	12-501	01/05/16
No. 35,677	Sanchez v. Mares	12-501	01/05/16
No. 35,669	Martin v. State	12-501	12/30/15
No. 35,665	Kading v. Lopez	12-501	12/29/15
No. 35,664	Martinez v. Franco	12-501	12/29/15
No. 35,657	Ira Janecka	12-501	12/28/15
No. 35,671	Riley v. Wrigley	12-501	12/21/15
No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15
No. 35,661	Benjamin v. State	12-501	12/16/15
No. 35,654	Dimas v. Wrigley	12-501	12/11/15
No. 35,635	Robles v. State	12-501	12/10/15
No. 35,674	Bledsoe v. Martinez	12-501	12/09/15
No. 35,653	Pallares v. Martinez	12-501	12/09/15
No. 35,637	Lopez v. Frawner	12-501	12/07/15
No. 35,268	Saiz v. State	12-501	12/01/15
No. 35,612	Torrez v. Mulheron	12-501	11/23/15
No. 35,599	Tafoya v. Stewart	12-501	11/19/15
No. 35,593	Quintana v. Hatch	12-501	11/06/15
No. 35,588	Torrez v. State	12-501	11/04/15
No. 35,581	Salgado v. Morris	12-501	11/02/15
No. 35,586	Saldana v. Mercantel	12-501	10/30/15
No. 35,576	Oakleaf v. Frawner	12-501	10/23/15
No. 35,575	Thompson v. Frawner	12-501	10/23/15
No. 35,555	Flores-Soto v. Wrigley	12-501	10/09/15
No. 35,554	Rivers v. Heredia	12-501	10/09/15
No. 35,523	McCoy v. Horton	12-501	09/23/15
No. 35,522	Denham v. State	12-501	09/21/15
No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,440	Gonzales v. Franco	12-501	07/22/15
No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,374	Loughborough v. Garcia	12-501	06/23/15
No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,353	Collins v. Garrett	COA 34,368	06/12/15
No. 35,335	Chavez v. Hatch	12-501	06/03/15
No. 35,371	Pierce v. Nance	12-501	05/22/15
No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15
No. 35,261	Trujillo v. Hickson	12-501	04/23/15
No. 35,159	Jacobs v. Nance	12-501	03/12/15
No. 35,097	Marrah v. Swisstack	12-501	01/26/15
No. 35,099	Keller v. Horton	12-501	12/11/14
No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14
No. 34,932	Gonzales v. Sanchez	12-501	10/16/14
No. 34,907	Cantone v. Franco	12-501	09/11/14
No. 34,680	Wing v. Janecka	12-501	07/14/14
No. 34,777	State v. Dorais	COA 32,235	07/02/14
No. 34,775	State v. Merhege	COA 32,461	06/19/14
No. 34,706	Camacho v. Sanchez	12-501	05/13/14

No. 34,563	Benavidez v. State	12-501	02/25/14
No. 34,303	Gutierrez v. State	12-501	07/30/13
No. 34,067	Gutierrez v. Williams	12-501	03/14/13
No. 33,868	Burdex v. Bravo	12-501	11/28/12
No. 33,819	Chavez v. State	12-501	10/29/12
No. 33,867	Roche v. Janecka	12-501	09/28/12
No. 33,539	Contreras v. State	12-501	07/12/12
No. 33,630	Utley v. State	12-501	06/07/12

Certiorari Granted but Not Yet Submitted to the Court:

(Parties preparing briefs)			Date Writ Issued
No. 33,725	State v. Pasillas	COA 31,513	09/14/12
No. 33,877	State v. Alvarez	COA 31,987	12/06/12
No. 33,930	State v. Rodriguez	COA 30,938	01/18/13
No. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13
No. 34,274	State v. Nolen	12-501	11/20/13
No. 34,443	Aragon v. State	12-501	02/14/14
No. 34,522	Hobson v. Hatch	12-501	03/28/14
No. 34,582	State v. Sanchez	COA 32,862	04/11/14
No. 34,694	State v. Salazar	COA 33,232	06/06/14
No. 34,669	Hart v. Otero County Prison	12-501	06/06/14
No. 34,650	Scott v. Morales	COA 32,475	06/06/14
No. 34,784	Silva v. Lovelace Health Systems, Inc.	COA 31,723	08/01/14
No. 34,812	Ruiz v. Stewart	12-501	10/10/14
No. 34,830	State v. Le Mier	COA 33,493	10/24/14
No. 34,929	Freeman v. Love	COA 32,542	12/19/14
No. 35,063	State v. Carroll	COA 32,909	01/26/15
No. 35,121	State v. Chakerian	COA 32,872	05/11/15
No. 35,116	State v. Martinez	COA 32,516	05/11/15
No. 34,949	State v. Chacon	COA 33,748	05/11/15
No. 35,296	State v. Tsosie	COA 34,351	06/19/15
No. 35,213	Hilgendorf v. Chen	COA 33056	06/19/15
No. 35,279	Gila Resource v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,289	NMAG v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,290	Olson v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,318	State v. Dunn	COA 34,273	08/07/15
No. 35,278	Smith v. Frawner	12-501	08/26/15
No. 35,427	State v. Mercer-Smith	COA 31,941/28,294	08/26/15
No. 35,446	State Engineer v. Diamond K Bar Ranch	COA 34,103	08/26/15
No. 35,451	State v. Garcia	COA 33,249	08/26/15
No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	08/31/15
No. 35,426	Rodriguez v. Brand West Dairy	COA 33,675/33,104	08/31/15
No. 35,499	Romero v. Ladlow Transit Services	COA 33,032	09/25/15
No. 35,456	Haynes v. Presbyterian Healthcare Services	COA 34,489	09/25/15
No. 35,437	State v. Tafoya	COA 34,218	09/25/15
No. 35,515	Saenz v. Ranack Constructors	COA 32,373	10/23/16
No. 35,614	State v. Chavez	COA 33,084	01/19/16
No. 35,609	Castro-Montanez v. Milk-N-Atural	COA 34,772	01/19/16
No. 35,512	Phoenix Funding v. Aurora Loan Services	COA 33,211	01/19/16
No. 34,790	Venie v. Velasquez	COA 33,427	01/19/16
No. 35,680	State v. Reed	COA 33,426	02/05/16

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)			Submission Date
No. 33,884	Acosta v. Shell Western Exploration and Production, Inc.	COA 29,502	10/28/13
No. 34,093	Cordova v. Cline	COA 30,546	01/15/14
No. 34,287	Hamaatsa v. Pueblo of San Felipe	COA 31,297	03/26/14
No. 34,613	Ramirez v. State	COA 31,820	12/17/14
No. 34,798	State v. Maestas	COA 31,666	03/25/15
No. 34,630	State v. Ochoa	COA 31,243	04/13/15
No. 34,789	Tran v. Bennett	COA 32,677	04/13/15
No. 34,997	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,993	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,726	Deutsche Bank v. Johnston	COA 31,503	08/24/15
No. 34,826	State v. Trammel	COA 31,097	08/26/15
No. 34,866	State v. Yazzie	COA 32,476	08/26/15
No. 35,035	State v. Stephenson	COA 31,273	10/15/15
No. 35,478	Morris v. Brandenburg	COA 33,630	10/26/15
No. 35,248	AFSCME Council 18 v. Bernalillo County Comm.	COA 33,706	01/11/16
No. 35,255	State v. Tufts	COA 33,419	01/13/16
No. 35,183	State v. Tapia	COA 32,934	01/25/16
No. 35,101	Dalton v. Santander	COA 33,136	02/17/16
No. 35,198	Noice v. BNSF	COA 31,935	02/17/16
No. 35,249	Kipnis v. Jusbasche	COA 33,821	02/29/16
No. 35,302	Cahn v. Berryman	COA 33,087	02/29/16
No. 35,349	Phillips v. N.M. Taxation and Revenue Dept.	COA 33,586	03/14/16
No. 35,148	El Castillo Retirement Residences v. Martinez	COA 31,701	03/16/16
No. 35,297	Montano v. Frezza	COA 32,403	03/28/16
No. 35,214	Montano v. Frezza	COA 32,403	03/28/16
No. 35,386	State v. Cordova	COA 32,820	03/28/16
No. 35,286	Flores v. Herrera	COA 32,693/33,413	03/30/16
No. 35,395	State v. Bailey	COA 32,521	03/30/16
No. 35,130	Progressive Ins. v. Vigil	COA 32,171	03/30/16

Writs of Certiorari

http://nmsupremecourt.nmcourts.gov

Opinion on Writ of Certiorari:

			Date Opinion Filed
No. 35,298	State v. Holt	COA 33,090	02/25/16
No. 35,145	State v. Benally	COA 31,972	02/25/16

Petition for Writ of Certiorari Denied:

			Date Order Filed
No. 35,733	State v. Meyers	COA 34,690	02/26/16
No. 35,732	State v. Castillo	COA 34,641	02/26/16
No. 35,705	State v. Farley	COA 34,010	02/24/16
No. 35,551	Ortiz v. Wrigley	12-501	02/24/16
No. 35,540	Fausnaught v. State	12-501	02/24/16

Opinions

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

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
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Effective February 26, 2016

Published Opinions

No. 33451	1st Jud Dist Santa Fe CV-13-2042, EARTHWORKS v NM OIL (affirm)	2/24/2016

Unublished Opinions

No. 34283	2nd Jud Dist Bernalillo CV-13-9303, M BRITTON v B BRUIN (affirm)	2/22/2016
No. 32860	2nd Jud Dist Bernalillo CR-08-3077, STATE v C GARCIA (affirm)	2/23/2016
No. 34740	2nd Jud Dist Bernalillo DM-13-175, K OVERTON v T MARTINEZ (affirm)	2/23/2016
No. 34864	2nd Jud Dist Bernalillo JR-15-32, STATE v NATHANIEL L (reverse)	2/24/2016
No. 35101	2nd Jud Dist Bernalillo JQ-13-127, CYFD v FAYE A (affirm)	2/24/2016
No. 33769	13th Jud Dist Valencia JQ-13-44, CYFD v. MOLLY S (reverse and remand)	2/25/2016

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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Dated Feb. 18, 2016

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Clerk's Certificate of Correction

The clerk's certificate of address and/or telephone changes dated Feb. 12, 2016, reported an incorrect email address for **Dennis Manzanares.** His correct address of record, telephone number, and e-mail address are as follows:
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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 March 9, 2016

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

Please see the special summary of proposed rule amendments published in the March 9 issue of the Bar Bulletin. *The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 6, 2016.*

Recently Approved Rule Changes Since Release of 2015 NMRA:

Second Judicial District Court Local Rules

LR2-400	Case management pilot program for criminal cases.	02/02/16

For 2015 year-end rule amendments that became effective December 31, 2015, and that will appear in the 2016 NMRA, please see the November 4, 2015, issue of the Bar Bulletin or visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us/nmrules/NMRules.aspx.

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.

Proposed Amendments To Supreme Court Rules Of Practice And Procedure

The following Supreme Court Committees are considering whether to recommend for the Supreme Court's consideration proposed amendments to the rules of practice and procedure summarized below. If you would like to view and comment on the proposed amendments summarized below before they are submitted to the Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's web site at http://nmsupremecourt.nmcourts.gov, by email to nmsupremecourtclerk@nmcourts.gov, by fax to 505-827-4837, or by mail to

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before April 6, 2016, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

Ad Hoc Committee on Rules for Mental Health Proceedings

Proposal 2016-01 - Rules to Govern Competency Proceedings
[Rules 5-602, 5-602.1, 6-507, 6-507.1, 8-507 and 8-507.1 NMRA and Forms 9-514 and 9-404A NMRA]

The Ad Hoc Committee on Rules for Mental Health Proceedings proposes to amend Rules 5-602, 6-507, and 8-507 NMRA, and adopt new Rules 5-602.1, 6-507.1, and 8-507.1 NMRA and new Forms 9-514 and 9-404A NMRA as the first step toward implementing a revised, comprehensive framework for addressing competency in criminal proceedings. The proposed amendments and new material concern only the first part of the competency process—raising and answering whether a defendant is competent to stand trial—and are intended to provide a more efficient, predictable, and clear procedure than is currently in place.

PLEASE NOTE: The current proposal does not address the second part of the competency process—determining how to proceed if a defendant is found incompetent, including procedures for determining whether a defendant is dangerous under NMSA 1978, Section 31-9-1.2. To the extent that the amendments and new material in the current proposal reference proceedings after a defendant is found incompetent, those proceedings will be governed by rules and forms that will be published for comment at a later date.

Appellate Rules Committee
Proposal 2016-02 - Appellate Rules Recompilation Project
[Table of Contents and Rules 12-203A (recompiled as Rule 12-203.1), 12-206A (recompiled as Rule 12-206.1), 12-213 (recompiled as Rule 12-318), 12-214 (recompiled as Rule 12-319), 12-215 (recompiled as Rule 12-320), 12-216 (recompiled as Rule 12-321), 12-501, 12-502, 12-504, 12-505, 12-601, 12-602, 12-604, 12-606, 12-607, and 12-608 NMRA]

The Appellate Rules Committee proposes to recompile some of the Rules of Appellate Procedure and amend some of the rule titles to make the rules easier to navigate. First, to adopt a uniform numbering style, the committee proposes to ask the New Mexico Compilation Commission to recompile Rule 12-203A NMRA as Rule 12-203.1 NMRA, and Rule 12-206A NMRA as Rule 12-206.1 NMRA. Second, the committee proposes to move four rules, which contain provisions that apply both to direct appeals and to other appellate proceedings, from Article 2, "Appeals from the District Court," to Article 3, "General Provisions." This aspect of the proposal would recompile the brief rule, Rule 12-213 NMRA; the oral argument rule, Rule 12-214 NMRA; the amicus rule, Rule 12-215 NMRA; and the preservation rule, Rule 12-216 NMRA. And finally, the committee proposes to revise the titles of the following rules to more accurately reflect their scope: Rules 12-203A (recompiled as Rule 12-203.1), 12-501, 12-502, 12-504, 12-505, 12-601, 12-602, 12-604, 12-606, 12-607, and 12-608 NMRA. The proposed new rule titles and numbers are shown on the revised Table of Contents published as part of this proposal.

Proposal 2016-03 - Scope of the Rules of Appellate Procedure
[Rule 12-101 NMRA]

The Appellate Rules Committee proposes several amendments to Rule 12-101 NMRA. First, the committee proposes amendments to Paragraph A to provide a more general description of the scope of the Rules of Appellate Procedure. Second, the committee proposes to update the citation format in Paragraph B to conform to the citation format required by the appendix to the Supreme Court's citation rule, Rule 23-112 NMRA. And finally, the committee proposes new committee commentary referencing Rule 23-112.

Proposal 2016-04 - Related, Joint, and Consolidated Appeals
[Rules 12-202, 12-208, 12-317, and 12-502 NMRA]

The Appellate Rules Committee proposes to adopt a new Rule 12-317 NMRA to address joint and consolidated appeals. The committee modeled the rule after Federal Rule of Appellate Procedure 3(b) and existing Rule 12-202(G) NMRA. The committee also proposes the addition of new "related appeal" provisions to Rules 12-202(G), 12-208(E), and 12-502(C)(2)(f) NMRA, requiring the parties to identify any related appeals. The committee drafted the "related appeal" provisions in response to *State v. Gonzales*, 2014-NMSC-039, 339 P.3d 612, which addressed the parties' failure to alert the Court of Appeals to related appeals, resulting in different outcomes by two Court of Appeals panels.

Proposal 2016-05 - Reply Provisions
[Rules 12-203, 12-203A (recompiled as Rule 12-203.1), 12-206, 12-309, 12-502, 12-503, 12-504, and 12-505 NMRA]

The Appellate Rules Committee proposes to amend the existing reply provisions in Rule 12-309 NMRA (motions), and adding new reply provisions to Rules 12203, 12203A (recompiled as Rule 12203.1), 12206, 12502, 12503, 12504, and 12505 NMRA. The proposed new reply provisions would provide that (1) a reply is not permitted without leave of the appellate court; (2) a motion seeking leave to file a reply must be filed and served within seven days after service of the response; and (3) the proposed reply must be filed conditionally with the motion.

Proposal 2016-06 - Deadline to Appeal Class Certification Order
[Rule 12-203A (recompiled as Rule 12-203.1) NMRA]

The Appellate Rules Committee proposes to change the deadline to appeal an order granting or denying class action certification

from ten days to fifteen days, which would make the deadline consistent with the deadline for initiating an interlocutory appeal under Rule 12-203 NMRA (recompiled as Rule 12-203.1 NMRA). The Rules of Civil Procedure for the District Courts Committee is proposing corresponding revisions to Rule 1-023 NMRA. *See* Proposal 2016-52. Please note that the Appellate Rules Committee also recommends the recompilation of Rule 12-203A NMRA as part of Proposal 2016-02 and the addition of a new reply provision to Rule 12-203A as part of Proposal 2016-05.

Proposal 2016-07 - Appeal from Pretrial Release Order
[Rule 12-204 NMRA]

The Appellate Rules Committee proposes to amend Paragraph A and the committee commentary to Rule 12-204 NMRA to reflect the Supreme Court's holding in *State v. Brown*, 2014NMSC038, ¶ 17, 338 P.3d 1276, that the Supreme Court has "exclusive jurisdiction over interlocutory appeals from pretrial release orders in cases where the defendant faces a possible sentence of life imprisonment or death." Additionally, the committee proposes to amend the rule to provide express authority for further review by certiorari, as is permitted under Rule 12-205 NMRA, and recommends adding a new Paragraph D to Rule 12-204 as follows: "The defendant may seek review of a decision of the Court of Appeals by filing a petition for a writ of certiorari under Rule 12502 NMRA."

Proposal 2016-08 - Stay in Children's Court Matters
[Rule 12-206 NMRA]

The Appellate Rules Committee proposes to delete the word "ex parte" from the last two paragraphs in Rule 12-206 NMRA. The committee believes these provisions were never intended to permit the Court of Appeals to grant an "ex parte stay," but were instead intended to permit the Court of Appeals to grant a stay before receiving a response from the opposing party and before deciding whether to grant the stay for the entire time that the appeal is pending. The committee also recommends the addition of new committee commentary explaining that the rule "does not apply to a motion to stay a children's court custody order pending expedited appeal under Rule 12206.1 NMRA." Finally, please note that the committee proposes to adopt new Paragraph D addressing replies as part of Proposal 2016-05.

Proposal 2016-09 - Modification of the Appellate Record
[Rule 12-209 NMRA]

The Appellate Rules Committee proposes to add a provision to Paragraph C of Rule 12-209 NMRA, requiring an appellate court to notify the parties when the appellate court has supplemented the record on its own accord, so that the parties know that the appellate court is considering additional material.

Proposal 2016-10 - Briefs
[Rule 12-213 (recompiled as Rule 12-318) NMRA]

The Appellate Rules Committee proposes to amend the brief rule, Rule 12213 NMRA (recompiled as Rule 12318 NMRA). First, the committee proposes to add a reference in Subparagraph (A)(3) to the appendix to the Supreme Court's citation rule, Rule 23112 NMRA, which sets forth the appropriate format for citing the record. And second, the committee proposes to remove the requirement in Subparagraph (A)(6) and Paragraph C that a request for oral argument on the cover of a brief must be supported by a separate statement of the reasons why oral argument would be helpful to a resolution of the issues. This amendment corresponds to proposed amendments to the oral argument rule, Rule 12-214(A) NMRA (recompiled as Rule 12-319(A) NMRA), as set forth in Proposal 2016-11. Finally, please note that the committee also proposes to recompile this rule as part of Proposal 2016-02.

Proposal 2016-11 - Oral Argument
[Rule 12-214 (recompiled as Rule 12-319) NMRA]

The Appellate Rules Committee proposes to amend the oral argument rule, Rule 12214 NMRA (recompiled as Rule 12319 NMRA). In Paragraph A, the committee proposes to clarify that the appellate court may order oral argument at its discretion. In Paragraph B, the committee proposes permitting a party to request oral argument either by motion or on the first page of any brief, petition, motion, or application. A party who requests oral argument on the first page of a submission would be permitted—but not required—to include a separate statement of the reasons why oral argument would be helpful to a resolution of the issues. But a party who requests oral argument by separate motion would be required to include a statement of the reasons why oral argument would be helpful to a resolution of the issues. In Paragraph C, the committee proposes to add a deadline for motions to reset oral argument. In Paragraph D, the committee proposes to address the order of argument on crosspetitions and consolidated actions. In Paragraph I, the committee proposes to clarify that a judge or justice who was not present for the oral argument may participate in the case by reviewing a recording or transcript of the oral argument. The committee proposes to add a new Paragraph F, governing the use of physical exhibits. And finally, the committee proposes the adoption of new committee commentary. Please note that the committee also proposes to recompile this rule as part of Proposal 2016-02.

Proposal 2016-12 - Amicus Rule
[Rule 12-215 (recompiled as Rule 12-320) NMRA]

The Appellate Rules Committee proposes to amend the amicus rule, Rule 12-215 NMRA (recompiled as Rule 12-320 NMRA), to clarify that the appellate court may permit amicus participation in matters seeking discretionary review, such as petitions for writs of certiorari, applications for interlocutory appeal, and proceedings seeking extraordinary relief. The proposed amendments also address the topic of amicus participation more broadly, in contrast to the present version of the rule, which focuses on amicus briefs. Finally, please note that the committee proposes to recompile this rule as part of Proposal 2016-02.

Proposal 2016-13 - Scope of Review; Preservation
[Rule 12-216 (recompiled as Rule 12-321) NMRA]

The Appellate Rules Committee proposes to amend Rule 12-216 NMRA (recompiled as Rule 12-321 NMRA), which addresses the scope of appellate review and the preservation requirement. The amendments serve to clarify current preservation standards and to provide practitioners with a more accurate description of the exceptions to the preservation requirement. The committee also proposes amendments to the committee commentary. Finally, please note that the committee proposes to recompile this rule as part of Proposal 2016-02.

Proposal 2016-14 - Attorney Withdrawal and Substitution
[Rule 12-302 NMRA]

The Appellate Rules Committee proposes to amend Rule 12-302 NMRA to more accurately reflect the procedure for attorney withdrawal or substitution in cases before the appellate courts. The proposed revisions state that generally, an attorney may withdraw

from a case only upon motion and order from the appellate court. The amendments also provide an exception to this general rule. Specifically, an attorney of a law firm or governmental entity may withdraw by notice if at least one other attorney from the firm or entity remains in the case as counsel of record.

Proposal 2016-15 - Handwritten Submissions; Captions on Extraordinary Writ Petitions
[Rule 12-305 NMRA]

The Appellate Rules Committee proposes two amendments to Rule 12-305 NMRA, which addresses the form of papers prepared by parties. First, the committee proposes to add a new Paragraph C to address handwritten submissions. The paragraph provides that only self-represented, non-attorney litigants may file handwritten papers and sets forth formatting requirements for handwritten papers. And second, the committee recommends clarifying in Paragraph E (relettered as Paragraph F) the caption requirements that apply to extraordinary writ petitions under Rule 12-504 NMRA because the existing caption provisions are confusing as applied to extraordinary writ petitions.

Proposal 2016-16 - Duty of Clerk to Provide Copy of Opinion
[Rule 12-310 NMRA]

The Appellate Rules Committee proposes to amend Rule 12-310(D) NMRA to provide that the appellate court clerk will provide a party with a copy of a newly filed opinion only on request and that the copy may be either a hard copy or an electronic copy.

Proposal 2016-17 - Rehearing and Issuance of Mandate
[Rules 12-402 and 12-404 NMRA]

The Appellate Rules Committee proposes to amend Rules 12-402 and 12-404 NMRA to clarify how Rule 12402, issuance and stay of mandate, interacts with Rule 12404, rehearings, when the Court makes changes to the opinion—without changing the result—but denies rehearing. Currently, Rule 12404 suggests that a new rehearing period results, but Rule 12402 suggests that the mandate issues immediately. The committee recommends amending Rule 12402 to state that the mandate shall not issue until fifteen days after any modification of the Court's disposition, regardless of whether the Court modifies the disposition sua sponte or in response to a motion for rehearing. The committee believes these revisions will make Rule 12402 consistent with Rule 12404, which permits a party to file a motion for rehearing within fifteen days of the Court's modification of its disposition.

Proposal 2016-18 - Award of Costs and Attorney Fees
[Rule 12-403 NMRA]

The Appellate Rules Committee proposes to amend the rule governing the award of costs and attorney fees, Rule 12403 NMRA, to clarify that costs and fees are awarded only on motion. The committee proposes to revise Paragraph A to provide that a "party may request costs in a motion filed within fifteen (15) days after entry of disposition." Under Paragraph B, allowable costs may include court fees, the costs of preparing the record and transcript, attorney fees if permitted by law, damages under NMSA 1978, Section 39327 (1966), and other costs that the appellate court deems proper.

Proposal 2016-19 - Certiorari Procedures
[Rule 12-502 NMRA]

The Appellate Rules Committee proposes several revisions to Rule 12-502 NMRA, which addresses petitions seeking discretionary review of Court of Appeals decisions. The committee proposes to add a new Paragraph F for the filing of cross-petitions, similar to the provision for cross-appeals in Rule 12-201(B) NMRA. The committee also proposes to add guidance to Paragraphs I and J (relettered as Paragraphs K and L) regarding the procedural requirements for briefing and oral argument in the event that certiorari is granted. Finally, please note that the committee proposes to add a new "related appeal" provision to Subparagraph (C)(2) as part of Proposal 2016-04, and a new Paragraph I, addressing replies, as part of Proposal 2016-05.

Proposal 2016-20 - Form of Petition for Writ of Error
[Rule 12-503 NMRA]

The Appellate Rules Committee proposes revisions to Rule 12-503 NMRA that would make the wordcount limit and response deadline for a petition for a writ of error consistent with the wordcount limit and response deadline for a petition for a writ of certiorari, as set forth in Rule 12502 NMRA. The committee also proposes amendments to Paragraph B of Rule 12-503 to explain more accurately the Court of Appeals' authority to issue writs of error. Finally, please note that the committee proposes the adoption of a new Paragraph K, addressing replies, as part of Proposal 2016-05.

Proposal 2016-21 - Court of Appeals Contempt Judgment
[Rule 12-602 NMRA]

The Appellate Rules Committee proposes amendments to Rule 12602(B) NMRA to clarify that any appeal from a contempt judgment of the Court of Appeals would be heard by the Supreme Court and should be carried out by filing a statement of the issues in the Supreme Court, and not by filing a docketing statement in the Court of Appeals.

Proposal 2016-22 - Certification and Transfer from the Court of Appeals to the Supreme Court
[Rule 12-606 NMRA]

The Appellate Rules Committee proposes amendments to Rule 12606 NMRA, which currently addresses the procedure for certifying cases from the Court of Appeals to the Supreme Court. The amendments would conform the rule to current practice and would encompass the procedure for transferred cases, in addition to certified cases. Under current practice, the Court of Appeals issues an order seeking certification or transfer, and the Supreme Court decides whether to accept or reject the certification or transfer. Then, if the Supreme Court accepts the case, the Court of Appeals forwards the case file and record to the Supreme Court. Given that the appellate courts follow a uniform procedure for certified and transferred cases, the committee proposes to revise Rule 12606 to encompass both certification and transfer. The committee also proposes new committee commentary explaining the amendments.

Proposal 2016-23 - Briefing Schedule in Certified Cases
[Rule 12-607 NMRA]

The Appellate Rules Committee proposes amendments to the briefing deadlines in Paragraph E of Rule 12607 NMRA, which addresses certification to the Supreme Court "by a court of the United States, an appellate court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state." Rule 12-607(A)(1). The amendments would make the briefing deadlines in Rule 12-607(E) consistent with the briefing deadlines in Rule 12210(B)(2) NMRA for other appeals, i.e., forty-five days for

the brief in chief, forty-five days for the answer brief, and twenty days for the reply brief.

Appellate Rules Committee and Rules of Criminal Procedure for the District Courts Committee

Proposal 2016-24 - Motions That Toll the Time to Appeal in Criminal Cases
[Rules 12-201, 5-614, and 5-801 NMRA]

The Appellate Rules Committee proposes amendments to Rule 12-201(D)(1) NMRA, providing that in a criminal case, a timely filed motion that has the potential to affect the finality of the underlying judgment or sentence renders the judgment or sentence non-final and tolls the time to appeal until the motion has been disposed of, automatically denied, or withdrawn. The amendments would effectuate rulings in *State v. Suskiewich*, 2014-NMSC-040, 339 P.3d 614, and *State v. Romero*, 2014-NMCA-063, 327 P.3d 525. The Appellate Rules Committee also proposes revisions to the committee commentary to reflect the amendments. The Appellate Rules Committee collaborated with the Rules of Criminal Procedure for the District Courts Committee on this proposal, and the Rules of Criminal Procedure for the District Courts Committee proposes new committee commentary to Rules 5-614 and 5-801 NMRA, referencing the proposed amendments to Rule 12-201(D)(1). Finally, the Appellate Rules Committee proposes to change the deadline for cross-appeals from ten days to fourteen days, and to move the cross-appeal deadline from Paragraph A to Paragraph B of Rule 12-201.

Board Governing the Recording of Judicial Proceedings

Proposal 2016-25 - Applicability of Rules to Court Reporters
[Rule 22-101 NMRA]

The Board Governing the Recording of Judicial Proceedings proposes amendments to Rule 22-101 NMRA to clarify the extent to which the Rules Governing the Recording of Judicial Proceedings apply to court reporters acting under their New Mexico certification.

Proposal 2016-26 - Temporary Court Reporter Certification
[Proposed New Rule 22-204.1 NMRA]

The Board Governing the Recording of Judicial Proceedings proposes a new rule to implement a temporary certification program for court reporters who are in the process of completing the permanent certification process in New Mexico.

Children's Court Rules Committee

Proposal 2016-27 - Service of Process
[Rule 10-103 NMRA]

The Children's Court Rules Committee proposes to amend Rule 10-103 NMRA, the rule that governs service of process in a children's court proceeding. The amended rule would clarify the limited circumstances in which a child who is the subject of a delinquency or youthful offender proceeding may be served at school. The amended rule also would require service on a child to be made at least ten days before the child is required to appear in a delinquency or youthful offender proceeding when such service is made by mail.

Proposal 2016-28 - Consent to Special Masters
[Rule 10-163 NMRA and Form 10-727 NMRA]

The Children's Court Rules Committee proposes to amend Rule 10-163 NMRA and to adopt new Form 10-727 NMRA to clarify the procedure for consenting to a special master in a children's court proceeding. Amended Rule 10-163 would clarify that a special master shall not preside at certain types of proceedings without the concurrence of the parties. New Form 10-727 would be used to waive a child's right to have a children's court judge preside over certain proceedings under the Delinquency Act, as provided in Paragraph (C)(2) of amended Rule 10-163.

Proposal 2016-29 - Waiver of Affirmative Defenses in Abuse and Neglect Proceedings
[Rule 10-322 NMRA]

The Children's Court Rules Committee proposes to amend Rule 10-322 NMRA to clarify that the waiver of any defense not affirmatively pled by a respondent is left to the discretion of the children's court.

Proposal 2016-30 - Advisement of Child's Right To Attend Abuse and Neglect Hearing
[Rule 10-325 NMRA and Form 10-570 NMRA]

The Children's Court Rules Committee proposes to adopt new Rule 10-325 NMRA and new Form 10-570 NMRA to require attorneys for children in abuse and neglect proceedings to give notice to the court at least fifteen days before each hearing that the attorney has notified the child of the hearing and has advised the child of the right to attend the hearing.

Proposal 2016-31 - Child Testimony in Abuse and Neglect Proceedings
[Rule 10-340 NMRA and Form 10-571 NMRA]

The Children's Court Rules Committee proposes to adopt new Rule 10-340 NMRA and new Form 10-571 NMRA to govern the use of alternative methods of testimony by children in abuse and neglect proceedings. The proposed new rule sets forth procedures and standards for determining whether the use of such methods may be appropriate. The proposed new form, which is a motion to permit testimony by alternative method, prompts the movant to include sufficient allegations in the motion to assist the court in deciding whether an alternative method of testimony may be appropriate.

Proposal 2016-32 - Subpoenas
[Rule 10-560 NMRA and Form 10-721 NMRA]

The Children's Court Rules Committee proposes to amend Form 10-560 NMRA and to adopt new Form 10-721 NMRA, the subpoenas used in abuse and neglect proceedings and delinquency proceedings, respectively. The proposed amendments to Form 10-560 would clarify (1) that the subpoena may be used for any type of abuse and neglect hearing, and (2) that the payment of per diem and mileage for a subpoena issued by a children's court attorney or an attorney appointed by the court may be made pursuant to policies or procedures of the Children, Youth and Families Department. Proposed new Form 10-721 is substantially

identical to Form 10-560, except that the caption is tailored to delinquency proceedings.

Proposal 2016-33 - Recompiling, Amending, and Withdrawing the Delinquency Forms
[Amended Forms 10-702, -704, -705, -706, -711, -712, -715, -716, and -717 NMRA
and Withdrawn Forms 10-408A, -413, -414, and -417 NMRA]

The Children's Court Rules Committee proposes to recompile the delinquency forms into new Article 7 of the Children's Court Rules and Forms. The Committee also proposes to amend and withdraw certain delinquency forms as part of the recompilation. These recommendations represent the last steps in a years-long effort to review and reorganize the Children's Court Forms. The proposal includes a table of contents for new Article 7 and the forms identified above which are recommended for amendment or withdrawal.

Code of Professional Conduct Committee

Proposal 2016-34 - Lawyer-Client Sexual Relations
[Rule 16108 NMRA]

The Code of Professional Conduct Committee proposes to amend Rule 16108 NMRA to prohibit a lawyer from engaging in sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. This amendment is consistent with ABA Model Rule 1.8, which contains this prohibition. The express language in the ABA Model Rule, or some variation of it, has been adopted in 35 states.

Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee

Because the rules of procedure for the magistrate, metropolitan, and municipal courts often overlap, the proposals from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee are summarized together in this section. In some instances, the committees are submitting joint proposals for the Supreme Court's consideration that would amend similar rules in similar ways. In other instances, only one committee is proposing amendments to its own particular set of rules.

Proposal 2016-35 - Dismissal of Magistrate Court Civil Case for Failure to Prosecute
[Rule 2-305 NMRA; and Forms 4-306, 4-309, and 4-310 NMRA]

The Courts of Limited Jurisdiction Rules Committee proposes to amend Paragraph D of Rule 2-305 NMRA, which addresses the dismissal of civil actions without prejudice for failure to prosecute. The amendments would require magistrate courts to issue a thirty-day notice prior to dismissal, a procedure that many courts already follow. The committee also proposes the adoption of new Forms 4-309 and 4-310 NMRA to implement the procedure. Finally, the committee proposes to retain existing Form 4-306 NMRA for use in metropolitan courts with Rule 3-305 NMRA.

Proposal 2016-36 - Form of Record in Magistrate and Municipal Courts
[Rules 2-705, 6-102, 6-601, 8-102, and 8-601 NMRA]

The Courts of Limited Jurisdiction Rules Committee proposes to withdraw from Rules 2705, 6102, 6601, 8102, and 8601 NMRA the provisions addressing the record of proceedings because the magistrate and municipal courts are not courts of record. *See* NMSA 1978, § 39-3-1 (1955) ("All appeals from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law."); *see also* Rule 22-101(B)(10) NMRA (stating that the Rules Governing the Recording of Judicial Proceedings do not apply to magistrate or municipal court proceedings).

Proposal 2016-37 - Servicemembers Civil Relief Act
[Forms 4-702A, 4-702, and 4-703 NMRA]

The Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee propose the adoption of a new affirmation form, Form 4-702A NMRA, that civil plaintiffs can file to comply with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 3931. Under the SCRA, a court cannot enter a default judgment against a defendant unless and until the plaintiff has filed an affidavit stating whether or not the defendant is in military service, or stating that the plaintiff is unable to determine whether the defendant is in military service. *See id.* § 3931(b)(1). The committees also propose the addition of new check boxes and other minor revisions to the motion for default judgment form, Form 4-702 NMRA, and the default judgment form, Form 4-703 NMRA, to help ensure that the plaintiff and the court have complied with the SCRA.

Proposal 2016-38 - Restitution Judgment Form
[Form 4-909 NMRA]

The Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee propose revisions to Use Note 4 on the restitution judgment form, Form 4-909 NMRA. The proposed revisions are intended to resolve an inconsistency between the use note and NMSA 1978, Section 47-8-47 (1999), which explains the process for an appellant to obtain a stay pending appeal of a judgment entered under the Uniform Owner-Resident Relations Act. The statute provides that the resident can obtain a stay of any writ of restitution if the resident pays "to the *owner or into an escrow account with a professional escrow agent* an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period." (Emphasis added.) However, Use Note 4 instructs the appellant to pay into an escrow account at the *court*. The committees propose to amend Use Note 4 for consistency with the statutory provision.

Proposal 2016-39 - Signing of Complaints and Citations Prior to Filing
[Rules 6-201, 6-209, 7-201, 7-209, 8-201, and 8-208 NMRA]

Amendments are proposed for Rules 6-201, 6-209, 7-201, 7-209, 8-201, and 8-208 NMRA to clarify that all complaints and citations must be signed and that the court clerk should not accept an unsigned complaint or citation for filing.

Proposal 2016-40 - Timing of Motion Practice in Magistrate and Municipal Courts
[Rules 6-304 and 8-304 NMRA]

The Courts of Limited Jurisdiction Rules Committee proposes new time deadlines for motion practice in criminal cases in magistrate and municipal courts. For magistrate courts, the committee proposes to amend Rule 6-304(C) NMRA to require parties to file and serve written motions within ninety days after the date of arraignment or the filing of a waiver of arraignment. The committee believes that the ninety-day deadline will work well with the newly approved discovery deadlines in Rule 6-504 NMRA, effective December 31, 2015, which require the prosecution to produce discovery within forty-five days after arraignment and the defendant

to produce discovery within sixty days after arraignment. For municipal courts, the committee proposes to amend rule 8-304(C) NMRA to require parties to file and serve written motions at least twenty days before trial or the time specified for a motion hearing. Finally, the committee proposes to change the response deadline in Rules 6-304(F) and 8-304(F) from fifteen days to eleven days.

Proposal 2016-41 - Timing of Motions to Suppress Evidence in Metropolitan Courts
[Rule 7-304 NMRA]

The Metropolitan Courts Rules Committee proposes several amendments to the provisions addressing motions to suppress evidence in Rule 7304 NMRA. First, the committee proposes to move the suppression paragraph from Paragraph B to Paragraph F of the rule. Second, the committee proposes amendments to Subparagraph (F)(1)(b) to clarify that the suppression provisions apply to any motion to exclude evidence obtained through allegedly unconstitutional means. Third, the committee proposes a deadline for suppression motions of twenty days before trial or the time specified for a motion hearing, whichever is earlier. Fourth, the committee proposes to require the prosecution to file a written response within fifteen days after service of a motion to suppress, and to permit the court to rule on a motion to suppress without a hearing if the prosecution fails to file a timely written response. And finally, the committee proposes the adoption of new committee commentary.

Disciplinary Board

Proposal 2016-42 - Trust Account Requirements
[Rule 17-204 NMRA]

The Disciplinary Board proposes amendments to Rule 17-204 NMRA to clarify an attorney's obligation to produce trust account records upon request of the the Board and New Mexico Client Protection Fund Commission and to provide enhanced enforcement mechanisms for doing so; to prohibit non-attorneys from signing on trust accounts; to require monthly reconciliations of trust accounts; to require the development of a trust account plan; to require regular continuing education regarding proper trust account management; and to clarify who is exempt from the trust account rule. Stylistic and formatting revisions are also proposed to improve the clarity and readability of the rule.

Proposal 2016-43 - Reinstatements from Disability Inactive Status
[Rules 17-208 and 17-214 NMRA]

The Disciplinary Board proposes amendments to Rules 17-208 and 17-214 NMRA to clarify the reinstatement procedure for an attorney seeking to be reinstated from disability inactive status.

Proposal 2016-44 - Proceedings to Prohibit the Unauthorized Practice of Law
[Rules 17B-005 and 17B-006 NMRA]

The Disciplinary Board proposes amendments to Rules 17B-005 and 17B-006 NMRA to clarify and revise the process for filing, serving, and responding to petitions seeking to prohibit the unauthorized practice of law. The proposed amendments also revise some of the notice and timing provisions that govern the procedure for hearing and disposing of petitions to prohibit the unauthorized practice of law.

Domestic Relations Rules Committee

Proposal 2016-45 - Recompilation and Amendment of Kinship Guardianship Forms
[Rule 1-120 NMRA and Forms 4A-501 to 4A-513 NMRA]

The Domestic Relations Rules Committee proposes to amend Rule 1-120 NMRA to add the Kinship Guardianship Forms to the forms that must be used by self-represented litigants in a domestic relations proceeding. The committee also recommends recompiling the current Kinship Guardianship Forms into new Article 5 of the Domestic Relations Forms and substantially revising the forms to conform to current practice.

Proposal 2016-46 - Uniform Collaborative Law Rules
[Rules 1-128 NMRA to 1-128.13 NMRA]

The Domestic Relations Rules Committee proposes to adopt new Rules 1-128 to -128.13 NMRA to govern the practice of collaborative law in matters arising under NMSA 1978, Chapter 40. The new rules largely follow the Uniform Collaborative Law Rules promulgated by the Uniform Law Commission in 2009 and amended in 2010, with certain exceptions to conform to New Mexico law.

Joint Committee on Rules of Procedure for New Mexico State Courts

Proposal 2016-47 - Closed Courtroom Proceedings
[Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, 12-322, and 23-107 NMRA]

The Joint Committee on Rules of Procedure for New Mexico State Courts proposes the adoption of new rules for the district, magistrate, metropolitan, municipal, and appellate courts, addressing the procedure for closing a courtroom proceeding. The proposed rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the proposed rules would prohibit the court from closing a courtroom proceeding unless the closure is warranted under the four-factor "overriding interest" standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules would require notice and a hearing and would permit public participation prior to the issuance of an order closing a courtroom proceeding. The committee also proposes minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA, to clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the proposed new courtroom closure rules.

Proposal 2016-48 - Criminal Contempt in Courts of Limited Jurisdiction
[Rules 2-110, 3-110, 6-111, 7-111, and 8-110; and Forms 9-223, 9-224, 9-611, 9-612, 9-613 NMRA]

The Joint Committee on Rules of Procedure for New Mexico State Courts proposes amendments to the rules and forms addressing criminal contempt of court proceedings in the magistrate, metropolitan, and municipal courts. The proposed rule amendments are modeled after the new criminal contempt rules for the district courts, Rules 1-093 and 5-112 NMRA, which took effect on December 31, 2015. Regarding the forms, the committee proposes to withdraw the existing order to show cause form, Form 9-611

NMRA, and to adopt a new motion for an order to show cause form, Form 9-223 NMRA, and a new order to show cause form, Form 9-224 NMRA. The committee also proposes amendments to Form 9-612 NMRA, order on direct criminal contempt, for consistency with the proposed rule amendments. And finally, the committee proposes to withdraw Form 9-613 NMRA, judgment and sentence on indirect criminal contempt, because the committee believes that courts should use the general judgment and sentence forms when issuing a judgment for indirect criminal contempt, e.g., Forms 9-601, 9-602, 9-603, and 9-603A NMRA.

Proposal 2016-49 - Juror Summons Form
[Forms 4-602 and 9-513 NMRA]
The Joint Committee on Rules of Procedure for New Mexico State Courts proposes amendments to the summons portion of the juror summons, qualification, and questionnaire forms, Forms 4-602 and 9-513 NMRA, used for civil and criminal jury trials in the district, magistrate, and metropolitan courts. The proposed amendments respond to a request from the Committee for the Improvement of Jury Service in New Mexico. Currently, courts are permitted to use one of three options on the top portion of the summons. A few courts have expressed concern, however, that their processes do not fit into any of the three allowed options. The proposed amendments would require all courts to include the same general language on the top portion of the summons but would permit individual courts to include more specific instructions for their court on the bottom portion of the summons, which currently includes space for the courts to add a customized message.

Lawyers Succession and Transition Committee

Proposal 2016-50 - Emeritus Attorneys
[Rule 17-202 and Proposed New Rule 24-111 NMRA]

The Lawyers Succession and Transition Committee, in collaboration with the Disciplinary Board, proposes amendments to Rule 17-202 NMRA along with a proposed new rule that would create a new emeritus attorney pro bono program. Under this proposal, an inactive status attorney or an attorney who has withdrawn from the New Mexico Bar may apply to become an "emeritus attorney" who is authorized to provide pro bono legal services under the supervision of a supervising attorney and in association with an approved legal aid organization. Approved emeritus attorneys would be exempt from certain fees, reporting and disclosure requirements, and continuing legal education requirements while participating in an emeritus pro bono program.

Rules of Civil Procedure for the District Courts

Proposal 2016-51 - Consumer Debt Litigation in District Courts
[Rules 1-009, 1-017, 1-055, and 1-060; and Form 4-226 NMRA]

In 2013, the New Mexico Attorney General's Office asked the Supreme Court to consider proposed rule amendments to address default judgments in consumer debt litigation. The proposal contemplated amendments to the civil procedure rules for the district, magistrate, and metropolitan courts, and would have created additional pleading requirements as a condition precedent to the award of a default judgment. In 2014, the Supreme Court published the proposal for public comment to aid the committee review process. The Supreme Court received thirty-nine (39) comments, which were forwarded to the Rules of Civil Procedure for the District Courts Committee, the Metropolitan Courts Rules Committee, and the Rules for Courts of Limited Jurisdiction Committee. The committees reviewed the comments received and drafted two different proposals in response to the initial proposal submitted by the Attorney General's Office. In 2015, the Supreme Court published the two proposals for comment and the Supreme Court received thirty-four (34) comments. The Rules of Civil Procedure for the District Courts Committee considered all of the comments received and made revisions to its proposed amendments based upon those comments. The Supreme Court is now publishing for comment revised amendments to Rule 1-009 NMRA (pleading special matters), Rule 1-017 NMRA (parties plaintiff and defendant; capacity), Rule 1-055 NMRA (default), and Rule 1-060 NMRA (relief from judgment or order); and Form 4-226 NMRA (new civil complaint provisions to be used in debt collection cases) as recommended by the Committee.

Proposal 2016-52 - Class Action Certification Appeals
[Rule 1-023 NMRA]

The Rules of Civil Procedure for the District Courts Committee proposes to change the ten-day appeal deadline in Rule 1-023(F) NMRA (appeals from orders granting or denying class action certification) to fifteen days to match Rule 12-203 NMRA (interlocutory appeals). The Appellate Rules Committee proposes the same change to Rule 12-203A NMRA (recompiled as Rule 12-203.1 NMRA). *See* Proposal 2016-06.

Proposal 2016-53 - Judgment Dismissing Less Than All Parties
[Rule 1-054 NMRA]

The Rules of Civil Procedure for the District Courts Committee proposes to revise Rule 1-054(B) NMRA to mirror the federal rule, by providing that a judgment dismissing less than all parties is not a final judgment unless the district court "expressly determines that there is no just reason for delay." The Appellate Rules Committee agrees with this revision.

Proposal 2016-54 - Time Limit for Filing Motion to Compel Arbitration
[Rule 1-007.2 NMRA]

The Supreme Court is publishing for comment a proposed new rule that sets forth a time limit for filing a motion to compel arbitration.

Rules of Evidence Committee

Proposal 2016-55 - Notice and Demand Procedure for Hearsay Exception
[Rule 11-803 NMRA]

The Rules of Evidence Committee proposes to amend Rule 11-803 NMRA, the rule that sets forth exceptions to the rule against hearsay. The proposed amendments, which substantially track recent amendments to Federal Rule of Evidence 803(10), would require a notice-and-demand procedure to be used when the prosecutor in a criminal case intends to offer a certification—rather than live testimony—to prove that a public record or statement does not exist. The additional procedures would avoid a potential violation of the Sixth Amendment right of confrontation as recognized in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

UJI-Civil Committee

Proposal 2016-56 - Wrongful death
[UJI 13-1830 NMRA]
The UJI-Civil Committee proposes to amend UJI 13-1830 NMRA to make it consistent with recent amendments to other civil jury instructions on damages. In 2013, the Court amended UJI 13-1807 NMRA (pain and suffering) to remove the language regarding the "enlightened conscience of impartial jurors" and "fairness to all parties." The new version of UJI 13-1807 instead directs jurors to "use your judgment to decide a reasonable amount to compensate the plaintiff . . . ." Likewise, new UJI 13-1807A NMRA (loss of enjoyment of life) does not include the "enlightened conscience" language in describing the standard for determining the amount of damages. The committee concluded that the language of UJI 13-1830 should conform to UJIs 13-1807 and -1807A.

UJICriminal Committee

Proposal 2016-57 - Attempted Battery Assault Instructions
[UJIs 14-301, -303, -304, -306, -308, -310, -311, -313, -351, -353, -354, -356, -358, -360, -361, -363, -371, -373, -374, -376, -378, -380, -381, -383, -2201, -2203, -2204, -2206, -2207, and -2209 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-301 NMRA, "Assault; attempted battery," as well as subsequent instructions that incorporate the elements of an attempted battery assault, UJI 14-303, -304, -306, -308, -310, -311, -313, -351, -353, -354, -356, -358, -360, -361, -363, -371, -373, -374, -376, -378, -380, -381, -383, -2201, -2203, -2204, -2206, -2207, and -2209 NMRA. The proposed amendments aim to more accurately reflect the legal definition of the word "attempt" as defined in the attempt statute, NMSA 1978, Section 30-28-1, and corresponding UJI 14-208 NMRA.

Proposal 2016-58 - Sex Offender Registration and Notification Act Offenses
[New UJIs 14-990 to -994 NMRA]

The UJI-Criminal Committee proposes to adopt new instructions for offenses under the Sex Offender Registration and Notification Act (SORNA), NMSA 1978, Sections 2911A1 to -10. The proposed new instructions include a chart to guide practitioners in identifying which statutory scheme applies to a particular case, as well as elements instructions tailored to the offenses as they appear in the various statutory versions of SORNA. The offenses addressed include failure to register (proposed UJIs 14-991 and -992 NMRA), providing false information when registering (proposed UJI 14-993 NMRA), and failure to notify the sheriff of the intent to move away from New Mexico (proposed UJI 14-994 NMRA).

Proposal 2016-59 - Multiple Conspiracies
[UJI 14-2810, and new UJIs 14-2810A, -2810B, and -6019B NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-2810 NMRA and to adopt new UJIs 14-2810A, -2810B, and -6019B NMRA in response to *State v. Gallegos*, 2011-NMSC-027, ¶ 55, 149 N.M. 704, 254 P.3d 655 (holding that "the Legislature established . . . a rebuttable presumption that multiple crimes are the object of only one, overarching, conspiratorial agreement subject to one, severe punishment set at the highest crime conspired to be committed"). The proposed instructions address single conspiracies with single or multiple objectives, as well as cases involving multiple distinct conspiracies. In particular, UJI 14-2810B provides guidance to the jury in deciding whether separately charged conspiracies constitute separate agreements, or only one overarching conspiracy was established by the evidence. Special attention should be paid to the bracketed element which identifies five relevant factors for a jury to consider in determining the number of conspiracies.

Proposal 2016-60 - Possession of a Dangerous Drug
[New UJI 14-3106 NMRA]

The UJI-Criminal Committee proposes to adopt a new instruction for the offense of possession of a dangerous drug under the New Mexico Drug, Device and Cosmetic Act, NMSA 1978, Sections 26-1-1 to -26. The proposed elements instruction was drafted based upon the statutory definition of "dangerous drug" in Section 26-1-2(F) and the express prohibition contained in Section 26-1-16(A). The fourth element of the instruction has been bracketed to differentiate between knowing violations of the Act which constitute a fourth degree felony, *see* Section 26-1-26(A), and other violations of the Act which constitute a misdemeanor for a first offense or a fourth degree felony for second and subsequent offenses, *see* Section 26-1-26(B).

Proposal 2016-61 - DWI with a Blood or Breath Alcohol Concentration of .08 or More
[UJI 14-4503 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-4503 NMRA to remove the brackets from the phrase "and the alcohol concentration resulted from alcohol consumed before or while driving the vehicle." Under NMSA 1978, Section 66-8-102(C)(1), this phrase is neither an alternative nor an optional element of the offense to be instructed only if in issue. The committee concluded that the bracketed phrase constitutes an essential element of the offense which may not be omitted.

Proposal 2016-62 - Ignorance or Mistake of Fact
[UJI 14-5120]

The UJI-Criminal Committee proposes to amend UJI 14-5120 NMRA to remove the phrase "evidence has been presented" as an improper comment by the court on the evidence. Furthermore, the committee proposes to amend the commentary to provide a more complete discussion of *State v. Bunce*, 1993-NMSC-057, 116 N.M. 284, 861 P.2d 965. In the process of expanding the commentary on *Bunce*, the committee updated the remaining commentary to provide a broader explanation and authority to practitioners faced with mistake of fact issues.

The proposed rule amendments summarized above can be viewed in their entirety at the New Mexico supreme court website www.nmsupremecourt.nmcourts.gov.

Certiorari Granted, October 23, 2015, No. 35,515

From the New Mexico Court of Appeals

Opinion Number: 2015-NMCA-113

No. 32,373, (filed August 18, 2015)

ESTATE OF CHARLES ANTHONY SAENZ,
by and through his personal representative, VIRGINIA SAENZ,
individually and as Next Friend of ROBIN BRANDY SAENZ,
minor child, MARCUS ANTHONY SAENZ, and JASON RAY SAENZ,
Plaintiffs-Appellants,
v.
RANACK CONSTRUCTORS, INC.,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
MANUEL I. ARRIETA, District Judge

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for Appellee

Opinion

Michael D. Bustamante, Judge

{1} Defendant Ranack Constructors, Inc., a general contractor, was hired to build a multi-screen movie theater. Ranack hired Alamo General Contractors, Inc. as a subcontractor to build the steel framework of the theater. Decedent Charles Saenz was an ironworker employed by Alamo and its related entity T&T Staff Management (T&T), a staffing agency. Saenz was working on the theater project at a height in excess of twenty-five feet, without fall protection, when he fell and died. This appeal follows a jury trial.

{2} The case raises two issues. First, whether the concept of joint and several liability in *Saiz v. Belen School District*, 1992-NMSC-018, ¶¶ 18-21, 113 N.M. 387, 827 P.2d 102 should be applied in favor of employees of subcontractors. And, second, whether a new trial on wrongful death damages for Saenz's estate is appropriate. We conclude that *Saiz* is not applicable to claims made by employees of subcontractors. We also conclude that a new trial addressing the estate's damages only should be held. We thus affirm in part and reverse in part.

BACKGROUND

{3} Saenz fell as the Alamo crew was attempting to set a roof joist on the building. Saenz's job was to receive one end of the joist as it was suspended by a crane and put it in place. The joist was supposed to be placed on an intersecting beam. Saenz could have accomplished this task by using a ladder to get on top of the beam that he needed to reach and employing his fall-protection equipment. Instead, Saenz approached the placement point by walking on the top edge of a concrete and Styrofoam wall that was part of the unfinished structure and that was more than twenty-five feet above the concrete floor. By one witness account, Saenz slipped as he reached for the joist tag lines, and by another witness account, the roof joist struck the wall and caused him to lose his balance. Whatever the cause of his loss of balance, Saenz fell to the concrete below and died from the impact.

{4} In terms of personal fall-protection equipment, evidence at trial showed that Saenz was wearing a harness equipped with a lanyard. In addition, a beamer—a device that clamps to a beam and provides an anchor point for the lanyard—was on the beam where the joist was to be placed. When a worker has hooked his fall-protection equipment to a secure point he is "tied off." Saenz was required to be tied off when he was performing the task that led to his fall. Saenz was not tied off when he fell.

{5} Testimony at trial also demonstrated that Ranack failed in a number of respects to ensure the safety of the job site. Summarized, those failures included, among other things: a failure to provide and enforce an adequate fall-protection safety plan; a failure to ensure that subcontractors were adequately and safely performing their work; a failure to ensure that workers were, in fact, protected from fall hazards; a failure to staff the job with full-time safety personnel; and an emphasis on hurrying to get the job done that caused subcontractors and workers to take shortcuts, including shortcutting safety.

{6} Plaintiff Virginia Saenz, individually and as personal representative of her husband's estate and as next friend of Saenz's children, Robin, Marcus, and Jason, filed a wrongful death lawsuit against Ranack. Because Alamo and T&T were Saenz's employers, workers' compensation provided the exclusive remedy against them. As such, they were not named in the complaint, but were identified together as a single potential tortfeasor in the jury instructions. The original complaint specifically asserted premises liability and simple negligence causes of action against Ranack. The complaint contains no mention of *Saiz*-type liability based on its concepts of peculiar risk or inherent danger. *Id.* ¶¶ 18-21.

{7} After a ten-day trial, the case was submitted to the jury on ordinary care, negligence, and premises liability theories. The "theory of the case" instruction detailed the ways each party thought the other was negligent. The list in the instruction echoed and expanded upon the summary provided above in Paragraph 5. The special interrogatory instruction submitted did not ask the jury to specify which asserted theories it credited. Given its verdict, it is

obvious that the jury found a degree of fault in all of the actors' acts or failures to act.

{8} Pursuant to a comparative fault instruction, the jury found Ranack forty-five percent at fault, Alamo and T&T thirty percent at fault, and Saenz twenty-five percent at fault for his death. The district court entered a judgment ordering Ranack to pay forty-five percent of the wrongful death judgment in addition to jury-awarded punitive damages.

{9} Ranack has not appealed, nor does it otherwise contest, the district court's legal determination that it owed Saenz a duty of ordinary care. Interestingly, Ranack requested that UJI 13-401 NMRA—defining independent contractors and limiting the liability of employers for the wrongful acts of the independent contractors' employees—be given to the jury, but then withdrew the request. Ranack also does not refute the propriety of the jury's attribution to it for forty-five percent of the fault for Saenz's death.

{10} The jury found the total amount of damages suffered by Plaintiff Virginia Saenz, individually, to be $482,000. Additionally, the jury found Robin's damages to be $50,000, and Marcus and Jason to each have suffered $25,000 in damages. Saenz's wife and children were also awarded $10,000 each in punitive damages. As to Saenz's estate, however, the jury awarded zero damages.

{11} In a post-trial motion, Plaintiff requested a mistrial on the basis of the zero damages award to the estate. At the hearing on the motion, Plaintiff argued that the jury's decision to award zero damages to Saenz's estate was the result of jury confusion and, alternatively, that it was not supported by substantial evidence. The district court denied Plaintiff's motion. The court concluded that based on the facts at trial, in particular, Saenz's criminal history and his prior incarceration, the jury could reasonably have found that the zero value was appropriate.

{12} With regard to whether the jury was confused by the instructions as to the damages it should award to Saenz's estate, the district court apparently decided that Plaintiff waived any objection on that ground because Plaintiff's counsel agreed to the district court's proposed response to a jury question regarding estate damages. During its deliberations, the jury sent the following question to the district court: "Does 'total amount of damages to the Estate of Charles Saenz' include all amounts awarded to Virginia, Rob[in], and sons[,] or is it meant to be a separate amount?" After conferring with counsel, the district court suggested that it respond by saying that "[t]he 'total amount of damages to the Estate of Charles Saenz' is separate." All counsel agreed with that suggestion.

{13} As an alternative to a mistrial, Plaintiff requested in her post-trial motion that the district court enter a judgment notwithstanding the verdict on the ground that Saenz was engaged in inherently dangerous work and that, as a result, "Ranack should be held strictly liable for the damages herein[.]" At the hearing, Plaintiff's counsel argued that there should be no reduction for comparative negligence. Standing by an earlier ruling on this issue, the district court declined to hold that Saenz was engaged in inherently dangerous work at the time of his death.

{14} On appeal, Plaintiff continues to argue that Saenz was engaged in an inherently dangerous activity and that, accordingly, Ranack should be held jointly and severally liable for his death. Plaintiff also contends that reversal and remand for a new trial is required because jury confusion arising from conflicting instructions as to loss of consortium may have led the jury to mistakenly award to Plaintiff and to Saenz's children damages that should have been awarded to the estate. Alternatively, Plaintiff argues that the zero damages award to the estate was not supported by substantial evidence.

DISCUSSION

The Joint and Several Liability Issue

{15} Plaintiff argues that Ranack should be held jointly and severally liable for all damages found by the jury. Plaintiff recognizes that joint and several liability is not generally available in New Mexico. This Court abolished joint and several liability in toto in *Bartlett v. New Mexico Welding Supply, Inc.*, 1982-NMCA-048, ¶¶ 33-37, 98 N.M. 152, 646 P.2d 579, *superseded by statute as stated in Payne v. Hall*, 2006-NMSC-029, 139 N.M. 659, 137 P.3d 599. The holding in *Bartlett* was seen as a logical imperative flowing from our Supreme Court's adoption of pure comparative negligence in *Scott v. Rizzo*, 1981-NMSC-021, ¶ 30, 96 N.M. 682, 634 P.2d 1234 (adopting in full the Court of Appeals opinion in the same consolidated cases), *superseded in part by statute as stated in Rodriguez v. Williams*, ___-NMCA-___, ___ P.3d ___, 2015 WL 1412633 (Nos. 33,138 and 33,668) (Mar. 26, 2015). Six years later, the Legislature addressed the subject. *See* NMSA 1978, § 41-3A-1 (1987). Echoing *Bartlett*, the Legislature also abolished joint and several liability in cases involving comparative fault. Unlike *Bartlett*, however, the Legislature provided four exceptions to the general rule of abolition. Section 41-3A-1(C). Only one of the four exceptions is directly relevant here. Section 41-3A-1(C)(4) provides that joint and several liability shall apply "to situations . . . having a sound basis in public policy."

{16} Our Supreme Court relied on Section 41-3A-1(C)(4) to impose joint and several liability in cases involving work or endeavors which are "inherently dangerous" or carry "peculiar risks." *Saiz*, 1992-NMSC-018, ¶¶ 15-19 (relying on Sections 413, 416, and 427 of the Restatement (Second) of Torts (1965)). The Supreme Court held that engaging in such work created a nondelegable duty of care that could only be effectively enforced through imposition of joint and several liability. *Saiz*, 1992-NMSC-018, ¶¶ 35-36.

{17} Plaintiff also recognizes that *Saiz* by itself does not provide a basis for imposing joint and several liability in this case. In an earlier opinion involving a factual scenario much closer to this case, the Supreme Court held specifically that Sections 413, 416, and 427 of the Restatement (Second) of Torts should not be applied in favor of employees of independent contractors. *N.M. Elec. Serv. Co. v. Montanez*, 1976-NMSC-028, ¶¶ 14-15, 89 N.M. 278, 551 P.2d 634. There are material factual dissimilarities between *Saiz* and this case. We will detail the factual distinctions in a later section of this Opinion. Nevertheless Plaintiff argues that developments in New Mexico case law—including *Saiz* and this Court's opinion in *Enriquez v. Cochran*, 1998-NMCA-157, 126 N.M. 196, 967 P.2d 1136—support a conclusion that *Montanez* should not control the outcome here. To the contrary, as we will explain, we conclude that *Montanez* is still good law and is in keeping with the vast majority of cases across the nation addressing the issue.

{18} Our discussion will start with a detailed review of the district court's consideration of Plaintiff's request to impose *Saiz*-based liability on Ranack. We will then analyze *Saiz* and *Enriquez*. Finally, we will review the case law across the country and the Restatement Second and Third of Torts. Because we conclude that *Saiz*-based joint and several liability is not applicable to the employees of subcontractors on construction sites, we need not, and will

not, consider whether Saenz was engaged in inherently dangerous work.

A. The District Court Decision

{19} As we noted above, Plaintiff did not include a claim for nondelegable duty and joint and several liability in her complaint. *Saiz* and its progeny were first mentioned during argument on the parties' pretrial motions in limine about a week before trial commenced. The first matter argued was Ranack's motion to exclude testimony concerning delays on the project assertedly caused by improper steel design and foundation work. Ranack couched its argument as a question of duty, asserting that it had no duty of care to its subcontractor's employees and thus evidence as to delays in construction was irrelevant. In partial response to Ranack's argument, Plaintiff argued that Ranack could be found to have a duty under *Saiz* and *Enriquez*. *Enriquez*, 1998-NMCA-157, ¶ 98 (holding that felling of large trees was inherently dangerous). The district court eventually denied Ranack's motion, noting specifically that it had not "looked at the issue of inherently dangerous" and holding the issue for a later time.

{20} A week later at the beginning of the trial, the parties discussed whether the idea of "peculiar risk of danger" should be included in the pre-voir dire description of the case to the jury. Ranack objected to its inclusion and the district court agreed, noting that it was still thinking about the issue.

{21} The parties and the district court took the matter up in earnest as they started work on the jury instructions. Referring to an apparently off-the-record discussion from the previous day, the district court asked to reopen the issue in order "to reconsider its ruling yesterday on inherently dangerous condition or peculiar risk." The district court articulated a number of reasons why it had decided not to impose *Saiz*-based strict liability even though "both experts and a number of individuals [had testified] that this is inherently dangerous work." The district court's rationale was that to impose strict liability would (1) "ignore the contractual relationship between [the] parties[;]" (2) "nullify all those OSHA standards and directives about controlling contractors," and (3) make every general contractor and every landowner "strictly liable for any fall of any person from any building during construction." In addition, the district court noted that prior cases finding inherent danger involved injured third parties rather than individuals who were directly involved in the dangerous activity and who may have contributed to their own injury. The district court decided to "submit this case to the jury on the basis of negligence and premises liability."

{22} Later that same day the matter was argued again, allowing Ranack to be heard more fully. Ranack started its argument by citing *Montanez* and its holding that general contractors do not owe a duty of care to the employees of its independent contractors under Sections 413, 416, and 427 of the Restatement (Second) of Torts. Ranack did not argue that the work Saenz was engaged in was not inherently dangerous. Its arguments revolved around the type of duty Ranack owed as a general contractor to employees of its subcontractors.

{23} In the end, the district court adhered to its prior ruling that it would not deem the "steel erection being done in this case" to be an inherently dangerous activity. When prompted by Plaintiff's counsel, the district court confirmed that its decision was based on the policy implications it had articulated earlier.

{24} The next day the district court held a more formal proceeding in which the parties made their record with regard to specific jury instructions. Plaintiff had requested that UJI 13-1634 NMRA—describing strict liability for nondelegable duties—be given to the jury. The district court formally refused the instruction, restating its prior rationale. The district court expanded its prior rulings by noting that it did "not feel that a contractor/landowner should be strictly liable for any steel erection on the premises when the majority of the control for the safety precautions is within the independent contractor's authority and within the control of the injured individual."

{25} The district court's rationale was internally consistent, reflecting appropriate policy concerns for the potentially far-reaching and largely unknown impact of imposing *Saiz*-based strict liability on landowners and general contractors engaged in construction projects. But the district court never conducted the analysis set out by our Supreme Court in *Gabaldon v. Erisa Mortgage Co.*, 1999-NMSC-039, 128 N.M. 84, 990 P2d 197, to determine whether steel erection on relatively large projects is inherently dangerous. Neither did it squarely decide whether—as argued by Plaintiff—the Supreme Court's clear holding in *Montanez* had been overtaken by its opinion in *Saiz* and our opinion in *Enriquez*. We certainly do not fault the district court for not undertaking these analyses. Counsel's arguments were not well-focused, coming as they did at the end of a long trial. It is left to us with the luxury of time to more directly deal with the legal issues raised by this factual scenario.

B. Nondelegable Duty Does Not Apply to Employees of Subcontractors

1. The *Montanez* Opinion

{26} As the parties recognize, *Montanez* stands as a substantial impediment to the application of *Saiz*-based joint and several liability to general contractors such as Ranack. The plaintiff worker in *Montanez* was injured when he came into contact with a live wire in the process of dismantling a secondary power line feeding an oil well. 1976-NMSC-028, ¶ 3. The plaintiff worked for the independent contractor hired to take down the secondary lines. The named defendants were Wolfson Oil Company, Cass-Fitts Electric Company, and the New Mexico Electric Service Company. Wolfson owned the oil well and hired Gary Electric, the plaintiff's employer, to dismantle the secondary system. Cass-Fitts built the secondary system originally for Wolfson. The utility supplied power through its primary system which occupied the same poles as the secondary system. *Id.* ¶¶ 6-7.

{27} The district court entered summary judgment in favor of all the defendants, though it is not clear on what ground. Each of the defendants argued that they had no duty toward the plaintiff, and that he was in any event contributorily negligent as a matter of law. *See Montanez v. Cass (Cass)*, 1975-NMCA-142, ¶¶ 3, 5, 89 N.M. 32, 546 P.2d 1189, *aff'd in part and rev'd in part by Montanez*, 1976-NMSC-028. The plaintiff appealed.

{28} We will examine the Court of Appeals opinion in some detail because it provides an elucidative backdrop to the Supreme Court's holding. The Court of Appeals reversed as to all the defendants finding that each of them owed a duty of ordinary care toward the plaintiff. *Cass*, 1975-NMCA-142, ¶ 28. Of particular relevance to us is its discussion of Wolfson's duty. Wolfson hired the plaintiff's employer to take down the secondary system. Wolfson argued that it had no duty to the plaintiff because he was an employee of independent contractors—Cass-Fitts and Gary Electric, the plaintiff's employer. *Id.* ¶¶ 29-30. The Court of

Appeals recognized, "[t]he traditional rule is that the employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants." *Id.* ¶ 31. The Court of Appeals also recognized that "[a]n exception to this traditional rule arises when the independent contractor is engaged in the performance of inherently dangerous work." *Id.* In that circumstance, the employer is liable to third persons for physical harm caused by its independent contractor. *Id.* (citing Prosser, *Law of Torts*, at 472 (4th ed. 1971)).

{29} The Court of Appeals then embarked on what can be reasonably described as an impassioned statement as to why [p]ublic policy demands that third persons . . . be [so] protected and why the concept of third persons should include the employees of subcontractors. *Cass*, 1975-NMCA-142, ¶¶ 33-36 (internal quotation marks omitted). The Court of Appeals noted that New Mexico had already included employees of subcontractors as protected third persons—or "others" in the parlance of the Restatement (Second) of Torts—when it adopted Restatement (First) of Torts § 414 (1934) in *DeArman v. Popps*, 1965-NMSC-026, ¶ 21, 75 N.M. 39, 400 P.2d 215. *Cass*, 1975-NMCA-142, ¶¶ 39-41. The Court of Appeals then explicitly held that the same rationale and rule applied to the duty described in Sections 416 and 427 of the Restatement (Second) of Torts. That is, the term "others" in these two sections included employees of independent contractors within its ambit. *Cass*, 1975-NMCA-142, ¶¶ 42-46.

{30} The Court of Appeals recognized that there was authority to the contrary and that the Restatement (Second) itself included indications that employees of independent contractors should not receive the benefit of Sections 416 and 427 protection. *Cass*, 1975-NMCA-142, ¶¶ 48-49. The Court of Appeals opinion brushed those concerns aside and held that based on the Restatement, public policy, and the "long sustenance of the rule," employees of independent contractors were owed a duty of due care when the work being performed was inherently dangerous. *Id.* ¶ 54.

{31} The Court of Appeals opinion in *Cass* mirrors substantively the opinion Plaintiff would have us issue in this case. The difficulty for Plaintiff is that our Supreme Court specifically disagreed with and disapproved of the Court of Appeals' holding and rationale. *Montanez*, 1976-NMSC-028, ¶¶ 15-16. The Supreme Court specifically held that the employees of independent contractors were not within the class of persons protected by Sections 413, 416, and 427 of the Restatement (Second) of Torts. The Court explicitly approved the underlying rationale of other cases so holding, in particular cases that the Court of Appeals had cited with disapproval.[1] *Montanez*, 1976-NMSC-028, ¶ 15; *see Welker v. Kennecott Copper Co.*, 403 P.2d 330 (Ariz. Ct. App. 1965), *rejected on other grounds by Lewis v. N.J. Riebe Enters., Inc.*, 825 P.2d 5 (Ariz. 1992); *King v. Shelby Rural Elec. Coop. Corp.*, 502 S.W.2d 659 (Ky. Ct. App. 1973). *Contra Cass*, 1975-NMCA-142, ¶ 49.

2. *Saiz* and *Enriquez* Do Not Undermine *Montanez*

{32} Plaintiff's response is that developments in New Mexico law have superseded the Supreme Court's reasoning in *Montanez*. We disagree.

{33} Plaintiff relies on *Saiz* and *Enriquez* for her position. *Saiz*, of course, was the case in which New Mexico adopted Sections 413, 416, and 427 of the Restatement (Second) of Torts and their concepts of peculiar risk and inherent danger. The facts in *Saiz* are so different from *Montanez*, however, that *Saiz* says little if anything about whether the Supreme Court would decide *Montanez* differently now. *Saiz* involved a classic "innocent bystander." A high school student attending a football game simultaneously touched a metal electric conduit running up a wooden light pole and a nearby metal fence. He was electrocuted because the contractor who installed the electrical service used the wrong kind of bushing where the buried electrical service line met the metal conduit. *Saiz*, 1992-NMSC-018, ¶¶ 3-4, 29. Given these facts, the Supreme Court had no reason to consider the effect, if any, its decision would have on the holding of *Montanez*. In our position as an intermediate appellate court we are loath to speculate whether the Court would now modify or reverse *Montanez*. *State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 21, 135 N.M. 375, 89 P.3d 47 (stating that Supreme Court "decisions remain binding precedent until [the Supreme Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality" (internal quotation marks and citation omitted)); *Behrens v. Gateway Court, LLC*, 2013-NMCA-097, ¶ 16, 311 P.3d 822 (stating that the Court of Appeals is bound by Supreme Court precedent); *Dunning v. Buending*, 2011-NMCA-010, ¶ 11, 149 N.M. 260, 247 P.3d 1145 (stating that the Court of Appeals is bound by Supreme Court precedent even when aspects of that precedent have been rejected by other authorities).

{34} Similarly, *Enriquez* provides little or no guidance as to how the Supreme Court would decide the *Montanez* issues today. First, *Enriquez* is an opinion of this Court and cannot be deemed to have reversed or modified Supreme Court case law which is otherwise in good standing. More to the point, however, the facts in *Enriquez* again are materially different from the facts in *Montanez*.

{35} In *Enriquez*, an employee of a local Boy Scouts council was badly injured when a large tree he was helping to cut down broke and fell in an unexpected direction. 1998-NMCA-157, ¶¶ 12-17. He sued the Boy Scouts of America asserting that it should have provided more training and supervision of the tree cutting process in its position as the chartering organization for the local council. *Id.* ¶ 51. The relationship between the plaintiff in *Enriquez* and the Boy Scouts of America was not that of a general contractor or owner and an independent contractor and its employees. *Enriquez* recognized this factual difference with *Montanez* explicitly. *Enriquez*, 1998-NMCA-157, ¶ 113. Thus, *Enriquez* cannot be read to alter or call into question the holding in *Montanez*.

{36} In interpreting *Saiz*, we did observe that the "relationship between the owner/employer and the independent contractor is not, and should not be, the focus of the inquiry." *Enriquez*, 1998-NMCA-157, ¶ 103. But, again, that comment was made in the course of analyzing a factual scenario much different from the one present here. Further, we made clear that imposition of strict liability was a policy- driven inquiry and that undertaking inherently dangerous work does not necessarily require a finding of joint and several liability. *See*

[1]On the other hand, the Court reaffirmed liability under Section 414 of the Restatement (First) of Torts (1934), when an owner or general contractor retains some control over the work being done. *Montanez*, 1976-NMSC-028, ¶ 17. This type of duty continues to be recognized in New Mexico. *Hinger v. Parker & Parsley Petroleum Co.*, 1995-NMCA-069, ¶ 36, 120 N.M. 430, 902 P.2d 1033.

Abeita v. N. Rio Arriba Elec. Coop., 1997-NMCA-097, ¶ 15, 124 N.M. 97, 946 P.2d 1108 (holding that an electrical utility that was held sixty percent liable for an electrocution on a construction job was not jointly and severally liable given that it had no power to actually halt work at the site).

{37} In sum, neither *Saiz* nor *Enriquez* undermine the rationale and holding of *Montanez*. And, as we will discuss in the next section of this Opinion, the vast majority of cases addressing the issue agree with *Montanez*.

3. The Great Weight of Authority From Other Jurisdictions Follows the *Montanez* Approach

{38} As evidenced by the discussions and outcomes in *Montanez* and *Cass*, the status of employees of independent contractors as beneficiaries of the protection offered by the "peculiar risk" provision of the Restatement has been uncertain from the beginning. Dean Prosser, as the reporter for the 1965 edition of the Restatement (Second) of Torts, suggested a Special Note that would disallow claims by employees of independent contractors against owner/employers. *See* Restatement (Third) of Torts § 55 cmt. h (2012) (providing an overview of the history of the issue within the Restatement process and an overview of the case law). The Special Note was not included apparently because the case law was still in flux, though Dean Prosser did note that the "prevailing point of view is that there is no liability on the part of the employer of the independent contractor." *Id.*

{39} In the fifty years since the 1965 version of the Restatement (Second) of Torts debuted, the prevailing view has only strengthened. The commentary to Section 57 of the Restatement (Third) of Torts—which replaces former Sections 416 and 427, among others—now flatly states that "[t]he hirer of an independent contractor is not subject to liability to an employee of the independent contractor under any of the vicarious-liability avenues in this [c]hapter." *Id.* cmt. d. And Subsection (d) of the Reporters' Notes to Section 57 states that the "vast majority of cases disallow claims by employees of independent contractors against hirers on vicarious-liability theories."

{40} Our own research confirms this observation. We found only two cases allowing such claims against a general contractor under Sections 416 and 427 of the Restatement (Second) of Torts. *See Makaneole v. Gampon*, 777 P.2d 1183, 1187 (Haw. 1989); *Elliott v. Pub. Serv. Co. of N.H.*, 517 A.2d 1185, 1187-89 (N.H. 1986). It would serve little purpose to list all of the contrary authority. The cases are, as they say, "legion." Representative of the cases holding that Sections 416 and 427 do not apply to personal injury claims by employees of subcontractors against general contractors or owners are: *Welker*, 403 P.2d at 335-38; *Privette v. Superior Court*, 854 P.2d 721, 727-29 (Cal. 1993) (in bank); *DeShambo v. Nielsen*, 684 N.W.2d 332, 339-41 (Mich. 2004); *Conover v. N. States Power Co.*, 313 N.W.2d 397, 403-05 (Minn. 1981); *Gaytan v. Wal-Mart*, 853 N.W.2d 181, 200-02 (Neb. 2014) (overruling prior case law allowing such claims); *Zueck v. Oppenheimer Gateway Props., Inc.*, 809 S.W.2d 384, 390 (Mo. 1991) (en banc).[2]

{41} In contrast, the liability of hirers of subcontractors for their own negligence in the exercise of retained control is alive and well. Section 56 of the Restatement (Third) of Torts replaces Section 414 of the Restatement (Second) of Torts. New Mexico has recognized the applicability of Section 414 liability since at least our Supreme Court's opinion in *DeArman*. *See* 1965-NMSC-026, ¶ 21; *see also Valdez v. Cillessen & Son, Inc.*, 1987-NMSC-015, ¶¶ 16, 20-27, 105 N.M. 575, 734 P.2d 1258 (reversing summary judgment in favor of general contractor because there were genuine issues of fact as to the extent and nature of the control it has over injury-causing activity); *Moulder v. Brown*, 1982-NMCA-078, ¶ 16, 98 N.M. 71, 644 P.2d 1060.[3] Of course, such negligence claims based on retained control do not provide a basis for imposing joint and several liability.[4]

{42} In sum, we conclude that *Montanez* still controls claims made by employees of subcontractors against property owners and general contractors. And neither *Saiz* nor *Enriquez* provide any basis for questioning its continuing vitality. As an intermediate appellate court, we cannot change or overrule *Montanez*. As such, there is no basis for imposing joint and several liability on Ranack.

JURY INSTRUCTION AND JURY VERDICT ISSUES

{43} Plaintiff puts forth separate arguments concerning the jury instruction and the verdict entered by the jury. First, she argues that the district court erred in giving—over objection—an incorrect formulation of the wrongful death damages instruction and thus confusing the jury as to the proper allocation of damages between Saenz's estate and his survivors. Second, she argues that the jury's decision to award zero in damages to the estate is not supported by substantial evidence. We disagree with her first argument, but agree with the second.

1. The UJI 13-1830 NMRA Instruction Given Was Wrong but no Prejudice Is Apparent

{44} UJI 13-1830 is the uniform instruction on the measure of damages in a wrongful death case. It includes, as a bracketed option, a paragraph on loss of consortium damages. *Id.* ¶ 6. It also includes bracketed language in its last paragraph that instructs the jury that it must not permit the amount of damages to be influenced by "the loss of the deceased's society to the family." This language is in direct conflict with the language describing loss of consortium damages. As

[2]The special concurrence proposes an employee centric approach to evaluating whether an activity should be considered inherently dangerous. The approach it suggests is contrary to the Restatement emphasis on "activities" rather than personal attributes of potential plaintiffs. In addition, it would be difficult to administer. Assessing the level of training and the capabilities of individual plaintiffs in the activity at issue would make inherent danger a question for the jury rather than the question of law it currently is. Here, for example, if Saenz had been a newcomer to the job, would the activity have been inherently dangerous as to him, but not to someone on the same job with more experience and training? Such issues are more appropriately handled by applying our normal and familiar rules of comparative negligence.

[3]We note that our Supreme Court cited *Montanez* with approval in *Valdez*. *See Valdez*, 1987-NMSC-015, ¶¶ 29-31. Justice Ransom, the author in *Saiz*, concurred.

[4]*Valdez* has likely been partially reversed. In *Tafoya v. Rael*, 2008-NMSC-057, ¶ 17, 145 N.M. 4, 193 P.3d 551, the Supreme Court recognized a limited cause of action for negligent hiring of a subcontractor in favor of an employee of the subcontractor. The Court was careful to point out, however, that the liability would be subject to normal comparative fault principles. *Id.* ¶ 22.

a result, the Use Notes for UJI 13-1830 provide that "[i]f the personal representative is also the surviving spouse . . . the damages described in [I]tem 6 should be included and the bracketed material in the last sentence of the instruction should be excluded."

{45} Plaintiff's requested UJI 13-1830 instruction mistakenly included both provisions. Noting the mistake, Plaintiff pointed it out to the district court and asked that the latter material be deleted. Plaintiff cited concerns for jury confusion but did not cite the Use Note to the district court. The district court refused the request.

{46} Given the Use Notes, the instruction given to the jury was wrong. But, as Plaintiff notes, not every defective jury instruction, even one that deviates from the UJI, gives rise to reversible error. Plaintiff must demonstrate that the error created prejudice or harmed substantial rights. *Kennedy v. Dexter Consol. Sch.*, 2000-NMSC-025, ¶ 26, 129 N.M. 436, 10 P.3d 115. Our review is de novo. *Salopek v. Friedman*, 2013-NMCA-087, ¶ 16, 308 P.3d 139. And while we will resolve doubts in favor of the party claiming prejudice where an instruction is inconsistent with the UJI, *Kennedy*, 2000-NMSC-025, ¶¶ 26-27, we will not set aside a judgment based on mere speculation that the erroneous instruction influenced the outcome of the case. *Fahrbach v. Diamond Shamrock, Inc.*, 1996-NMSC-063, ¶ 31, 122 N.M. 543, 928 P.2d 269.

{47} Plaintiff argues that the jury's confusion was evident from the way it distributed the damages it did award—comparable amounts to each of the children, and a substantially greater amount to Plaintiff for loss of consortium, but zero to the estate. Plaintiff also relies on the fact that toward the end of its deliberations the jury posed the following question: "Does 'total amount of damages to the Estate of Charles Saenz' include all amounts awarded to Virginia, Rob[in], and sons[,] or is it meant to be a separate amount?"

{48} We perceive no prejudice to Plaintiff from the jury instruction. The most natural kind of prejudice to be expected from the error would be a reduction in loss of consortium damages. But Plaintiff makes no argument that those damages were inadequate or even reduced as a result of the error. Rather, Plaintiff suggests that the jury may have awarded damages actually belonging to the estate to the individuals to somehow make up for a presumed belief that they could not award loss of society damages. On the face of it, this suggestion is mere speculation and provides no basis for setting aside the verdict.

{49} In any event, Plaintiff's suggestion is all but an impossible scenario. Unusually, we have in this case an indication of the jury's thinking. The jury question quoted above shows that the jury was thinking about the issue of division of damages. With all counsels' approval, the district court responded that the "[t]otal amount of damages to the Estate of Charles Saenz" is separate. Given the question and the answer, combined with the absence of any indication about confusion about loss of consortium damages, there is no basis to suspect that the jury apportioned any damages belonging to the estate to the individuals. Thus there is no basis to suspect, much less conclude that prejudice flowed from the UJI 13-1830 error.

2. There Is No Substantial Evidence to Support an Award of Zero Damages to the Estate.

{50} Finally, Plaintiff argues that the district court erred in denying her motion for a new trial because the award of zero damages to the estate was contrary to the evidence. To the extent that Ranack argues that this contention was not preserved because Plaintiff failed to raise it before the jury was excused, we disagree. The rule stated in *Thompson Drilling, Inc. v. Romig*, 1987-NMSC-039, 105 N.M. 701, 736 P.2d 979, and its progeny applies only to challenges of a jury verdict based on inconsistency, ambiguity, or indefiniteness. In *Thompson*, the defendant argued that "the jury verdict [was] invalid because it [was] ambiguous and indefinite as to the amount of damages." *Id.* ¶ 5. Similarly, in *Ramos v. Rodriguez*, the appellant argued that "the special verdict form submitted by the judge omitted necessary language which thereby resulted in a jury verdict that was contradictory and inconsistent on its face." 1994-NMCA-110, ¶ 9, 118 N.M. 534, 882 P.2d 1047. In both cases, these arguments were not addressed on appeal because the appellant failed to raise them before the jury was discharged. *Thompson*, 1987-NMSC-039, ¶ 5; *Ramos*, 1994-NMCA-110, ¶ 13; *see also G & G Servs., Inc. v. Agora Syndicate, Inc.*, 2000-NMCA-003, ¶ 41, 128 N.M. 434, 993 P.2d 751 ("A litigant who fails to object to an alleged inconsistency in a jury's verdict before the jury is dismissed may be held to have waived any further challenge to the alleged inconsistency.").

{51} But this rule does not apply to motions for a new trial based on a lack of substantial evidence under Rule 1-059 NMRA. Addressing a fact pattern similar to that here, the Alaska Supreme Court held that the

> rule [that a challenge to a verdict based on inconsistency is waived if not raised before the jury is discharged] has limited application here. The [plaintiff's] failure to raise the issue of inconsistency before the court discharged the jury precluded it from later asserting that the inconsistency entitled it to a new trial as a matter of law. But that failure did not strip the estate of its right to move for a new trial on the discretionary ground that the verdict was against the weight of the evidence.

Kava v. Am. Honda Motor Co., 48 P.3d 1170, 1176-77 (Alaska 2002).

{52} Reaching a similar conclusion, the Kentucky Supreme Court explained that the difference lies in whether the verdict contains a "patent irregularity" or is a "complete verdict." *Cooper v. Fultz*, 812 S.W.2d 497, 499 (Ky. 1991), *abrogated on other other grounds by Cooper v. Leatherman*, 532 U.S. 424 (2001). In *Cooper*, the jury awarded damages for medical expenses but entered "0" on the line for mental and physical suffering on the verdict form. *Id.* at 498. On appeal, the Court considered "whether, by thus specifying a deliberate intention to make no award for one (or more) elements of damages, the jury has returned a verdict with a patent irregularity which is waived by failing to timely object, or whether this represents a completed verdict which is subject to challenge as inadequate on motion for a new trial." *Id.* at 499. It noted that the explicit entry of zero on the jury form differs fundamentally from leaving the form blank, stating, "it is futile to require a jury that has consciously inserted '0' or its equivalent to reconsider its decision. This is not the same situation as that created when a jury has left a verdict slot blank. Such a verdict is patently irregular or incomplete." *Id.* at 500 (internal quotation marks and citation omitted). Citing Kentucky's version of Rule 59, it went on,

> Where there is a patent deficiency or irregularity, the [rule requiring objection before the jury is discharged] should be followed. However, it is untenable to utilize

> that procedure where the jury has deliberately awarded nothing, despite the evidence and instructions to the contrary. Such a verdict is no more incomplete or irregular than had the jury inserted one dollar. It may be defective as contrary to the evidence and the law that relates to the adequacy of an award, but such a defect is one appropriate to be addressed by the trial court upon a motion for a new trial.

Id. (internal quotation marks and citation omitted).

{53} Other states have echoed this reasoning. The West Virginia Supreme Court explained that "[c]ritically, the objective that underlies the general rule of requiring that an objection to the verdict form must be made prior to the jury's discharge is to provide the trial court with an opportunity to 'cure' any alleged defect or irregularity in the form prepared by the jury." *State ex rel. Valley Radiology, Inc. v. Gaughan*, 640 S.E.2d 136, 141 (W. Va. 2006). It went on to state that

> [n]o similar opportunity to cure is required for an inadequate award of damages . . . because a request for a new trial based on the inadequacy of damages is not a procedural objection to the verdict form, but a substantive objection to the amount of damages awarded in view of the evidence presented and the findings of the jury as to fault. Consequently, there is no basis for invoking the waiver rule . . . when the post-trial objection is solely to the adequacy of the damages.

Id.; *accord Ga. Farm Bureau Mut. Ins. Co. v. Hyers*, 661 S.E.2d 682, 683 (Ga. Ct. App. 2008) ("Failure to move for a directed verdict also bars the party from contending on appeal that he is entitled to judgment as a matter of law because of insufficient evidence. This failure does not, however, bar the party from contending that he is entitled to a new trial on that ground." (citation omitted)); *Clay v. Choctaw Nation Care Ctr., LLC*, 2009 OK CIV APP 35, ¶¶ 20-21, 210 P.3d 855, 860 (affirming the grant of a new trial where the movant failed to object before the jury was discharged, stating, "there was nothing irregular, incorrect, or confusing about the form of the verdict[,]" noting that "[t]he alleged error . . . [did] not involve the verdict's form, but its substance[,]" and finding no waiver).

{54} Plaintiff did not specify in her motion the rule under which she moved for a new trial. Consequently, we examine the arguments in the motion to determine which rule applies. *Century Bank v. Hymans*, 1995-NMCA-095, ¶ 10, 120 N.M. 684, 905 P.2d 722 ("The movant need not cite the provision authorizing the motion; the substance of the motion, not its title, controls."). In Plaintiff's motion, she argued that the jury's award of zero damages to the estate "was . . . against the overwhelming evidence propounded upon the [j]ury in this matter." A claim that the verdict is contrary to the clear weight of the evidence falls within the proper ground for a new trial under Rule 1-059. *See* Rule 1-059(A) ("A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted."); *see also Pool v. Leone*, 374 F.2d 961, 963 (10th Cir. 1967) (stating that the plaintiff's claim that the verdict was contrary to the evidence is a ground "recognized at common law and in the courts of the United States prior to the adoption of Rule 59(a) as proper grounds for the granting of a new trial"). Hence, we understand Plaintiff's motion for a new trial to invoke Rule 1-059 and conclude that her argument that the verdict was not supported by the evidence was not waived by her failure to object to it on these grounds before the jury was discharged.

{55} "The grant or denial of a new trial is a matter resting within the sound discretion of the trial court, and the reviewing court will not reverse absent a manifest abuse of that discretion." *Martinez v. Ponderosa Prods., Inc.*, 1988-NMCA-115, ¶ 4, 108 N.M. 385, 772 P.2d 1308.

{56} "We are of the opinion that proof of a wrongful death of necessity implies recoverable damages." *Baca v. Baca*, 1970-NMCA-090, ¶ 25, 81 N.M. 734, 472 P.2d 997. *Contra Marchese v. Warner Commc'ns, Inc.*, 1983-NMCA-076, ¶¶ 32, 35, 100 N.M. 313, 670 P.2d 113 (rejecting the plaintiff's argument that "one cannot find a life valueless in New Mexico" and stating that "the amount of damages is a correct one for the jury to decide"). Such damages may be based on, but are not limited to, pecuniary injury. *Baca*, 1970-NMCA-090, ¶ 25; *Stang v. Hertz Corp.*, 1969-NMCA-118, ¶ 8, 81 N.M. 69, 463 P.2d 45 ("Damages for the wrongful death may be recovered by proof of the present worth of life of decedent to the decedent's estate."), *aff'd* 1970-NMSC-048, 81 N.M. 348, 467 P.2d 14. Damages based on pecuniary injury to the estate are rarely zero. *Reffitt v. Hajjar*, 892 S.W.2d 599, 603 (Ky. Ct. App. 1994) (stating that it is not "proper in a wrongful death action to award nothing for destruction of earning power unless there is evidence from which the jury could reasonably believe that the decedent possessed *no power to earn money*" (internal quotation marks and citation omitted)); *see* Eric A. Posner & Cass R. Sunstein, *Dollars and Death*, 72 U. Chi. L. Rev. 537, 544 (2005) (stating that zero damages are appropriate for a "victim who has no future income, no dependents, and no spouse, and who dies without feeling pain" as a matter of "formal law," but that this rule is not always followed in practice). Even in the absence of pecuniary injury, however, the jury may also consider "[t]he present worth of the life, . . . [based on] the age, occupation, earning capacity, health, habits, and the probable duration of the life of decedent." *Baca*, 1970-NMCA-090, ¶ 25; *see* Posner & Sustein, *supra* (stating that New Mexico recognizes hedonic damages in wrongful death cases).

{57} In *Jones v. Pollock*, 1963-NMSC-116, ¶ 5, 72 N.M. 315, 383 P.2d 271, the Court considered whether a new trial should have been granted where the jury found the appellees liable for the appellants' injuries but awarded little or no damages for their medical costs incurred as a result of those injuries. The Court concluded that "[i]t does not stand to reason for the jury to have arrived at the determination that [the] appellees are liable for the injuries suffered by [the] appellants without it also finding that [the] appellants merited an award for the injuries." *Id.* ¶ 10. As to the amount of the award, the appellees argued that while they had stipulated to the total amount of the appellants' medical bills, they did not stipulate to the recoverable amount. *Id.* ¶ 9. The Court rejected this argument, stating that the "appellees cite no evidence in the record which would tend to lessen the amount which [the] appellants claim they incurred as a result of the accident. There was no controversy as to the amount of the medical expenses. The only evidence offered on this point was that submitted by [the] appellants." *Id.* There being no evidence tending to reduce the recovery for medical costs, the Court concluded that "where it is shown, . . . that the verdict of the jury on the question of damages is clearly not supported by substantial evidence adduced at the trial

of the case, a motion for a new trial should be granted, and not to do so is an abuse of discretion by the court." *Id.* ¶ 12; *see Hammond v. Blackwell*, 1966-NMSC-258, ¶ 13, 77 N.M. 209, 421 P.2d 124 (holding that a new trial was required where the district court found the plaintiff suffered a loss of earning ability as a result of an accident but failed to award any damages for such loss).

{58} Here, Plaintiff presented evidence that Saenz was working at the time of his death and that he was a competent and dependable employee making between $10 and $33 per hour. There was also evidence presented on Saenz's role in his family and his relationship with his wife and children. While there was evidence that Saenz's wage-earning capacity was mitigated by the fact that he had been convicted and incarcerated for a felony charge and that he had a fitful relationship with his wife, these factors could work to reduce the amounts Saenz might have earned or contributed to his family—they cannot cancel them out entirely. Having found that Ranack was forty-five percent at fault for Saenz's death, the jury could not find under the evidence presented to it that the damage to his estate was zero. The jury was free to settle on essentially any figure—ranging from a nominal sum to an amount akin to the amounts awarded to his survivors—but it could not under the evidence find zero damages. We conclude that an award of zero damages to Saenz's estate is not supported by the evidence and remand for a new trial as to damages to the estate only.

{59} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

I CONCUR:
TIMOTHY L. GARCIA, Judge
JONATHAN B. SUTIN, Judge
(specially concurring in part and dissenting in part).

SUTIN, Judge (specially concurring in part and dissenting in part).

{60} I do not disagree with the Majority's analysis and conclusion that *Montanez* precludes a holding that Ranack is jointly and severally liable for all of the damages found by the jury. Majority Op. ¶¶ 15, 26-42. I write separately to address what I believe to be an important issue raised in this case, namely, whether the work that Saenz was doing at the time of his death may be considered "inherently dangerous" as a matter of law. This issue was addressed by the district court, it is central to Plaintiff's argument on appeal, and in my view, it highlights an aspect of New Mexico case law that needs to be clarified. *See id.* ¶¶ 14, 21, 23. Additionally, I disagree with the Majority's decision to remand for a new trial as to damages to the estate, and as to that issue, I respectfully dissent. *Id.* ¶¶ 50-59.

As a Matter of Law, Saenz Was Not Engaged in an Inherently Dangerous Activity

{61} Acting pursuant to Section 41-3A-1(C), in *Saiz*, our Supreme Court established a public policy exception to several liability. 1992-NMSC-018, ¶ 34. The *Saiz* Court began its analysis by recognizing the longstanding tort principle that, although an employer of an independent contractor is not generally responsible for the independent contractor's negligence, the general rule has no application where, by virtue of work that is "inherently dangerous," the employer has a nondelegable duty to ensure that precautions are taken. *Id.* ¶¶ 10-12, 15. In order to serve the policy underlying the imposition of a nondelegable duty to ensure that safety precautions are taken in regard to inherent dangers, the *Saiz* Court determined that employers should be held strictly liable for injuries caused by the failure to ensure such precautions. *Id.* ¶ 33. This, in turn, would promote the "special public policy" of protecting "third persons in an area of inherent danger" and encouraging "conscientious adherence to standards of safety where injury likely will result in the absence of precautions." *Id.* ¶ 35. To effectuate these public policy considerations, the *Saiz* Court held that, pursuant to Section 41-3A-1(C)(4), "when precautions are not taken against inherent danger, the employer is jointly and severally liable for harm apportioned to any independent contractor for failure to take precautions reasonably necessary to prevent injury to third parties arising from the peculiar risk." *Saiz*, 1992-NMSC-018, ¶¶ 34, 36. I refer to this public policy exception in *Saiz* as "the *Saiz* exception."

{62} The *Saiz* exception was derived from Sections 416 and 427 of the Restatement (Second) of Torts. *Saiz*, 1992-NMSC-018, ¶¶ 11-14. Section 416 of the Restatement (Second) of Torts, "Work Dangerous in Absence of Special Precautions," provides that when one employs an independent contractor to do work that the employer "should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken," the employer is subject to liability for physical harm to "others" caused by the independent contractor's failure to exercise reasonable care to take the special precautions. This is so regardless of whether "the employer has provided for such precautions in the contract or otherwise." *Id.* The Restatement's illustrations of the application of Section 416 demonstrate that it was intended to apply to injured third parties who had no connection to the employer or to the independent contractor and who were injured through no fault of their own by virtue of the independent contractor's failure to take precautions for the safety of the general public. *See id.* cmt. c, e (illustrating the intended application of Section 416).

{63} Section 427 of the Restatement (Second) of Torts, "Negligence as to Danger Inherent in the Work," subjects an employer of an independent contractor to liability for injuries to "others" caused by the independent contractor's failure to take reasonable precautions against "a special danger" where the work for which the independent contractor was hired involves a "special danger to others which the employer knows or has reason to know to be inherent in or normal to the work[.]" Like those accompanying Section 416, the Restatement's illustrations of the application of Section 427 demonstrate that it was intended to apply to circumstances in which a third party, a member of the public, with no relationship to the employer or to the independent contractor was injured as a result of the independent contractor's failure to take precautions necessary to alert the public to a dangerous condition. *See id.* cmt. d (providing illustrations).

{64} Recognizing that Sections 416 and 427 were different formulations of the same principle, the *Saiz* Court synthesized the respective sections in its holding that "one who employs an independent contractor to do work that the employer as a matter of law should recognize as likely to create a *peculiar risk* of physical harm to others unless reasonable precautions are taken is liable for physical harm to others caused by an absence of those precautions." *Saiz*, 1992-NMSC-018, ¶ 15 (emphasis added); *see id.* ¶ 12 n.6 (stating that work that presents a "peculiar risk" or "special danger"[5] is "inherently dangerous").

{65} Plaintiff argues that Saenz's work activity was inherently dangerous under the *Saiz* exception. Plaintiff's theory of inherent danger is based on an argument that the work activity that Saenz was performing when he died satisfies the

three-part test established in *Gabaldon*, 1999-NMSC-039, ¶ 13, for evaluating whether an activity is inherently dangerous as a matter of law.

{66} To be considered inherently dangerous as a matter of law, the at-issue activity must present a "peculiar risk." *Saiz*, 1992-NMSC-018, ¶ 12 n.6 (stating that work is inherently dangerous because it presents a peculiar risk). In general, a "peculiar risk" is one that is outside the realm of personal experience, such that the person subjected to the risk is unfamiliar with the associated danger. *See Valdez v. Yates Petroleum Corp.*, 2007-NMCA-038, ¶ 11, 141 N.M. 381, 155 P.3d 786 (stating that personal experience with an activity that results in familiarity with its dangers defies a conclusion that the risks of the activity are peculiar). In the context of construction work, a peculiar risk is one that is "not routinely encountered in the contractor's line of work." *Sievers v. McClure*, 746 P.2d 885, 889-90 (Alaska 1987).

{67} Under the particular circumstances of this case, the work that Saenz was engaged in at the time of his death does not come within the legal definition of "inherently dangerous" work. Saenz was a skilled, experienced, and knowledgeable ironworker, equipped with fall-protection devices, aware of the hazards and required safety precautions of his trade, aware of normal routine matters of ironwork activity, and aware of the risk and hazard of falling from the height of an unfinished building. Furthermore, Saenz had worked on large construction projects, including having participated in the structural steel construction work of several buildings from the ground up.

{68} Saenz had trained both of his sons, Jason and Marcus, to be ironworkers. Jason testified that Saenz was "extremely safety conscious" and that Saenz had trained him in ironwork safety precautions, including how to use a harness, a beamer, and a lanyard, and eventually, how to work at heights. Marcus, who was working with Saenz on the day of Saenz's accident, testified that Saenz warned him "several times" not to work at heights or to walk across beams without being tied off. Saenz also advised his co-workers on safety matters, including "how to be careful[,]" "how to tie off[,]" and "how to make sure that [they] were working safely at the job."

{69} Both Ranack's and Alamo's employees were required to use fall protection, including a requirement to tie off when working from elevated areas, which, according to Ranack's policy, included any height over six feet. Thus, Saenz was required to be tied off when working at the height from which he fell. Evidence at trial established that the task that Saenz was attempting to perform when he fell could have been accomplished safely by, in keeping with the tie-off requirement, tying himself off to a joist or to the steel structure that was in place, or by using a ladder to reach his destination rather than walking across the concrete wall. Evidence at trial also showed that had Saenz tied off, he would have fallen no more than six feet before his lanyard would have arrested his fall. The foregoing factual presentation was credited both by the jury and by the district court.

{70} Owing to his knowledge and experience in regard to the dangers of the ironwork trade and the fact that he was skilled in guarding against the dangers, the risk of death or injury from falling was not "peculiar" to Saenz. *See Valdez*, 2007-NMCA-038, ¶ 11 (stating that personal experience with an activity that results in familiarity with its dangers defies a conclusion that the risks of the activity are peculiar); *see also Warnick v. Home Depot U.S.A., Inc.*, 516 F. Supp. 2d 459, 469 (E.D. Pa. 2007) ("All construction work involves a risk of some harm; only where the work is done under unusually dangerous circumstances does it involve a . . . peculiar risk." (internal quotation marks and citation omitted)); *Sievers*, 746 P.2d at 889-90 (holding that, in the context of construction work, a peculiar risk is one that is "not routinely encountered in the contractor's line of work" such that the employer of a contractor may only be held liable for "those hazards which the independent contractor is unlikely to be aware of and therefore unable to protect against"). To the contrary, Saenz was well aware of the risk of falling and the ever-present need to guard against that risk when working from heights. Because the presence of a peculiar risk is an inextricable element of "inherent danger," the circumstances here do not support a conclusion that Saenz was engaged in an inherently dangerous activity. *Saiz*, 1992-NMSC-018, ¶¶ 11, 12 n.6 (explaining that work is inherently dangerous because it presents a peculiar risk).

{71} Having concluded that the work that Saenz was performing does not come within the meaning of "inherent danger" as that term was used in *Saiz*, I further conclude that the three-part test established by the *Gabaldon* Court for evaluating whether an activity is inherently dangerous does not apply under the circumstances of this case. *See Gabaldon*, 1999-NMSC-039, ¶ 13 (establishing a three-part test to determine whether an activity should be considered "inherently dangerous" as that term was used in *Saiz*). Under the *Gabaldon* test, in order to conclude that an activity is inherently dangerous: (1) "the activity must involve an unusual or peculiar risk of harm that is not a normal routine matter of customary human activity"; (2) "the activity is likely to cause a high probability of harm in the absence of reasonable precautions"; and (3) "the danger or probability of harm must flow from the activity itself when carried out in its ordinary, expected way[.]" *Id.* Because they were derived from the *Saiz* definition of "inherent danger," the factors of the *Gabaldon* test contemplated an unwitting plaintiff, a member of the general public, who is unable, by virtue of his lack of experience with the dangerous condition awaiting him, to guard against the risk presented by a dangerous condition. *See id.* ¶ 14 ("The first prong addresses the relative rarity of the activity and the concomitant lack of contact or experience with the activity and its dangers by the general public." (internal quotation marks and citation omitted)). In light of Saenz's knowledge and experience as an ironworking tradesman and that Saenz was a subcontractor's employee, instead of a third party, the *Gabaldon* three-factor analysis is too limited an analysis through which to evaluate Saenz's ironwork task. Even if the *Gabaldon* test were construed to apply to a circumstance in which the injured party was the employee of a subcontractor (contrary to *Montanez*), additional factors would have to be considered—particularly, the knowledge, skill, and experience of the injured party. Considering these additional factors would, for the reasons that I set forth earlier, lead to a conclusion that, under the circumstances of this case, Saenz was not engaged in an inherently dangerous activity.

[5]The *Saiz* Court concluded that although the terms "peculiar risk" and "special danger" both appear in the Restatement, it would treat them as equivalent; following the Court's lead in *Saiz*, I do not distinguish these terms and, for simplicity, use the term "peculiar risk" exclusively. *See id.* ¶ 12 n.6.

The District Court's Denial of Plaintiff's Motion for a New Trial Should Be Affirmed

{72} On the special verdict form, the jury returned verdicts finding "the total amount of damages suffered by Plaintiff Virginia Saenz, Individually to be $482,000" and finding "the total amount of damages suffered by the Estate of Charles Anthony Saenz, Deceased, to be $0." The jury's verdict was read in open court. Plaintiff's counsel did not raise any issue in regard to estate damages prior to the discharge of the jury. Rather, the issue was raised for the first time more than two weeks after the trial ended, when Plaintiff filed a motion for a mistrial. In that motion, Plaintiff sought a mistrial in the post-jury-discharge proceeding based on an argument that, in arriving at the zero verdict for the Estate, the jury ignored "overwhelming evidence," somehow measured by a substantial evidence standard, constituting jury abuse of discretion, including jury bias, prejudice, or passion. Ranack asserted in response that the elements of possible injury to Saenz and his estate was vigorously contested and set out examples of Saenz's difficulties retaining employment, his criminal history, the impact of that history on his future employment opportunities, his having lived apart from his family while in prison and while not in prison, and his failure to support his offspring. The district court denied Plaintiff's mistrial motion, seemingly convinced that substantial evidence supported the verdict given the "number of items brought into evidence[,]" including "[t]he criminal history of this individual, the fact that he had just gotten out of jail some months earlier, so on and so forth."

{73} "The jury's verdict is presumed to be correct[,]" and "[w]hen the jury makes a determination and the trial court approves, the amount awarded in dollars stands in the strongest position known in the law." *Ennis v. Kmart Corp.*, 2001-NMCA-068, ¶ 27, 131 N.M. 32, 33 P.3d 32 (internal quotation marks and citation omitted). In this appeal, there exists no issue of bias, passion, prejudice, excessive verdict, or improper admission of evidence. There exists no contention of district court error in regard to the special verdict submitted to the jury. Plaintiff undisputedly did not preserve in the district court any concern with the special verdict. The jury was discharged with Plaintiff's full knowledge of the verdict.

{74} Instead of attacking the basis on which the district court concluded that substantial evidence existed, Plaintiff and the Majority rely on notions of an "inadequate" verdict, "contrary to the evidence," and "overwhelming evidence" of the jury's erroneous failure to award damages to the estate. Majority Op. ¶¶ 50-52, 54. The Majority buttresses its position with foreign (and in my view, inapplicable) authorities to support the assertion for the case at hand that the waiver rule does not apply. Ranack relies on *Thompson*, 1987-NMSC-039, ¶ 11, for the proposition that by failing to object to the jury's verdict or otherwise alert the district court to the alleged error prior to the jury's dismissal, Plaintiff waived the opportunity to raise any claim of error in regard to the amount of estate damages. I agree with Ranack. *See id.* ("[T]he right to object to an improper verdict is waived when not made at the time of the verdict and cannot be reclaimed and revived by resorting to a motion for a new trial or on appeal."). For the reasons that follow in this dissent, the denial of Plaintiff's post-jury-discharge motion can and should be upheld, if not based on substantial evidence as determined by the district court, then, contrary to the Majority's analysis, because Plaintiff failed to preserve an attack on the jury's verdict and the fault lay not in verdict inadequacy but in Plaintiff's litigation approach or failures.

{75} Embedded in New Mexico law is the requirement that a party object to an improper verdict before the jury is discharged, and that the party that fails to object waives the right to a new trial after the jury's discharge. *Id.*; *Guest v. Allstate Ins. Co.*, 2009-NMCA-037, ¶ 36, 145 N.M. 797, 205 P.3d 844, *reversed in part on other grounds by* 2010-NMSC-047, 149 N.M. 74, 244 P.3d 342; *G & G Servs., Inc.*, 2000-NMCA-003, ¶¶ 40-42; *Diversey Corp. v. Chem-Source Corp.*, 1998-NMCA-112, ¶ 39, 125 N.M. 748, 965 P.2d 332; *Ramos*, 1994-NMCA-110, ¶ 13; *see also Philippine Nat'l Oil Co. v. Garrett Corp.*, 724 F.2d 803, 806 (9th Cir. 1984) (recognizing that failure to object to a no-damages verdict at the time that it is read constitutes a waiver of any future objections to the form of the verdict and further stating that in the federal system "failure to award damages does not by itself render a verdict invalid"); *Balderas v. Starks*, 2006 UT App 218, ¶¶ 17-19, 138 P.3d 75 (stating that a failure to object to the sufficiency or legality of a verdict before the jury is discharged constitutes a waiver of the objection and recognizing that the waiver rule avoids "the expense and additional time for a new trial by having the jury which heard the facts clarify the [matter] while it is able to do so" (internal quotation marks and citation omitted)).

{76} In *Diversey*, this Court explored whether a fundamental error could override the failure to timely object to an ambiguous verdict. 1998-NMCA-112, ¶¶ 36-40. The question of ambiguity involved whether the use of "and/or" in an instruction rendered the jury's verdict ambiguous with the consequence that the jury improperly awarded a double recovery for the same injury. *Id.* ¶ 36. The Court determined that fundamental error generally did not apply in civil cases and limited any exception to waiver to specific "exceptional circumstances" found in four specific cases. *Id.* ¶ 40 (stating that fundamental error may be found in civil cases in which "substantial justice was not done, the court was deprived of jurisdiction to hear the case, the issue was one of general public interest that would impact a large number of litigants, or[] there was a total absence of anything in the record of the case showing a right to relief" (internal quotation marks and citation omitted)). None of the exceptional circumstances exist in the present case. Furthermore, Plaintiff created all of which she now complains.

{77} The jury was instructed based on UJI 13-1830 that "[t]he lawsuit has been brought by Virginia Saenz, Individually and on behalf of the estate of . . . Saenz, who is now deceased." This instruction was adopted verbatim by the court from Plaintiff's requested UJI 13-1830 which she modified, substituting "on behalf of the surviving beneficiaries" with "on behalf of the estate[.]" The term "estate" was not defined for the jury in any jury instruction. The special verdict form given to the jury was likewise, in pertinent part relating to damages, adopted from Plaintiff's requested special verdict form. Plaintiff's requested special verdict form given to the jury did not carry out UJI 13-1830's use note suggestion that the "various elements of damages . . . be broken out separately on the special verdict form . . . in order to identify damages recoverable by the estate" as distinguished from those recoverable by the decedent's spouse and beneficiaries for loss of consortium. Thus, neither the UJI 13-1830-based instruction nor the special verdict form as given to the jury at Plaintiff's request explained the distinguishing factors inherent in "Vir-

ginia Saenz, Individually and on behalf of the estate," as those words appeared in the instruction, or "Virginia Saenz" as the "surviving spouse," as those would have appeared in an unmodified UJI 13-1830. And, importantly, Plaintiff did not point out or explain to the jury any differences or distinguishing factors about damages recovery in closing argument.

{78} Plaintiff's UJI 13-1830-based instruction could easily have given an impression to and reasonably have been interpreted by the jury to say that Virginia Saenz was entitled to one recovery encompassing both her individual and representative capacities. Plaintiff's special verdict form did not clarify potential recoveries. The special verdict form provided a blank space for damages "suffered by Plaintiff Virginia Saenz, Individually[,]" which, given the way the instruction read, namely, "Individually and on behalf of the estate," could reasonably be read as calling for recovery of one amount consisting of damages in both capacities. Nowhere in the special verdict form was there a separate place for the jury to consider damages recoverable by "Virginia Saenz on behalf of the estate." Further, Virginia Saenz as "surviving spouse" appears nowhere in the special verdict form. In awarding zero as "damages suffered by the Estate of Charles Anthony Saenz" (with "the Estate" nowhere described, nowhere differentiated from "Virginia Saenz, Individually," and nowhere indicating whether the award should be given to Virginia Saenz in her "on behalf of the estate" capacity) the jury could reasonably have concluded from the instructions, the special verdict form, and the lack of any explanation to the jury by Plaintiff, that its award of $482,000 properly included all of the compensation for "Virginia Saenz, Individually *and* on behalf the estate" according to Plaintiff's UJI 13-1830-based and modified instruction. (Emphasis added.)

{79} During its deliberations, the jury sent a note to the court asking the following question: "Does 'total amount of damages to the Estate of . . . Saenz' include all amounts awarded to [Plaintiff and the children] or is it meant to be a separate amount?" This question lacked clarity. Given the manner in which Plaintiff had the jury instructed, including how her special verdict form read, the question could reasonably be interpreted as asking not whether there should be separately awarded damages pursuant to a division or distinction between "Individually" on the one hand and either "on behalf of the estate" or "the Estate" on the other hand, but whether, upon or after an award "of all amounts" to Plaintiff, individually and on behalf of the estate (and to the children), the Estate was still to receive a separate amount. The court consulted counsel for both parties regarding how to respond to the question. Initially, Plaintiff's counsel suggested sending the jury an answer saying: "Yes." To which the court astutely responded that the problem with that answer would be that the jury would then ask, "What is the estate entitled to?" The court insightfully explained, from "looking at the damages instruction for wrongful death, . . . I am not quite sure if it itemizes the damages for the estate." The court instructed counsel to recess and look at the issue to figure out a way to respond to the note. Counsel returned with an agreed upon answer for the jury, still lacking in clarity, that read, "It is separate[,]" which the court suggested be slightly modified to state, "The 'total amount of damages to the Estate of . . . Saenz is separate." Both parties agreed to the court's modification and that answer was submitted to the jury.

{80} The evidence at trial was that the value of Saenz's lost wages over the remainder of his working lifetime was estimated to be $450,000. No other dollar amounts were in evidence with respect to damages. On the face of the special verdict form, the jury awarded $482,000 in damages "suffered by Plaintiff Virginia Saenz, Individually[.]" And the jury awarded damages "suffered by" the children: to Saenz's daughter, $50,000 and to each of Saenz's sons, $25,000. The special verdict form made no mention of "consortium."

{81} It is reasonable to conclude that the $482,000 award to Plaintiff, individually, indicates that the jury likely included in the award "all amounts awarded to [Plaintiff]"—that is, all amounts that would flow to her "Individually and on behalf of the estate," as instructed. This conclusion is supported, among other things, by the fact that the jury asked: "Does 'total amount of damages to the Estate of . . . Saenz' include all amounts awarded to [Plaintiff and the children,] or is it meant to be a separate amount?" The question of how much of any intended award to Virginia Saenz on behalf of the estate should flow to her as a wrongful death beneficiary under the Wrongful Death Act and how much should be allocated to Virginia Saenz, individually, for loss of consortium, is not suggested or argued by Plaintiff on appeal. *See generally* NMSA 1978, § 41-2-3 (2001) (governing the distribution of the proceeds of a wrongful death judgment).

{82} Under the circumstances, one can reasonably assume that the jury's award of $482,000 to "Virginia Saenz, Individually" represented more than the value of Plaintiff's loss of consortium, given Plaintiff's evidence of economic damages of $450,000. It is reasonable to conclude that, within its $482,000 award, the jury included damages to Plaintiff in both capacities, individually and on behalf of the estate, based on the instruction and special verdict form given to the jury, Plaintiff's counsel's misunderstanding or misinterpretation of the jury's question and failure to ask the court to inquire further, and counsel's failure or decision not to explain to the jury the distinctions and differences in Plaintiff's capacities, the damages elements, the commensurate recovery rights, and how the jury should read and complete the special verdict form. It is likely that the jury did not intend to award $482,000 to Plaintiff solely for consortium.

{83} The outcome in this case is not a fault of the district court, and it does not fall within any of *Diversey*'s alternatives to fundamental error. *See* 1998-NMCA-112, ¶¶ 36-40. The outcome was the product of Plaintiff not having assured that the jury was properly and carefully instructed on the damages elements and the different capacities and recoveries, together with a conforming special verdict form.

{84} The Majority holds that a failure to timely object, before the jury was discharged, to an inadequate damages award and particularly a zero damages award, as opposed to an inconsistent or ambiguous verdict, does not constitute a waiver. Majority Op. ¶¶ 50-53. New Mexico has not addressed that issue. As noted by the Majority, on the waiver issue, cases outside New Mexico have made a distinction between verdicts with alleged inadequate damage awards and verdicts that are inconsistent with respect to such awards. *Id.* ¶¶ 51-53.

{85} The Majority's reliance on foreign case law is misplaced. *See id.* ¶¶ 51-54. Each foreign authority is distinguishable for several reasons. In none of the authorities on which the Majority relies was there complicity by the plaintiff in submitting a defective or ambiguous jury instruction and special verdict form and, as here, in perpetuating a misunderstanding of the jury's question. In none of the relied upon authorities does it appear that the plaintiff

failed in closing argument to explain how to decide what to award. In none of the authorities was there a special verdict awarding substantial compensatory damages considerably close in amount to the evidence of economic damages presented in the case and reasonably interpretable to include loss of consortium. In none of the authorities was a sum awarded to a plaintiff in a wrongful death case "individually" when the award rationally could have been intended by the jury, based on its reading of the instructions and verdict form, to cover not just damages "individually" (for consortium) but also "on behalf of the estate."

{86} *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003), is significantly factually different from our case, and when carefully analyzed, supports this dissent. *Zhang* shows that the special verdict in our case consisted of two legal conclusions of damages and that, despite the claimed inconsistency, the verdict should stand. *Zhang* also makes clear that with general verdicts or legal conclusions in a special verdict form, such as in the present case, a party can waive a sufficiency of evidence argument when the issue does not involve factual findings of the jury in a special verdict circumstance, as here, but instead involves legal conclusions as to damages. 339 F.3d at 1031-34. Further, and significantly, the *Zhang* court stated:

> Another persuasive line of cases involves discrepancies between findings of liability and damage awards, typically arising when a jury finds liability but nonetheless awards zero damages. . . . [T]he damage award is not really a separate general verdict, but it is nonetheless a legal conclusion, and so these types of cases involve purported conflicts between two legal conclusions. . . . Justice Brandeis wrote that the trial court's refusal to grant a new trial cannot be held erroneous as a matter of law. Appellate courts should be slow to impute to juries a disregard of their duties, and to trial courts a want of diligence or perspicacity in appraising the jury's conduct. This rule retains vitality, and we have noted that the federal rule is that failure to award damages does not by itself render a verdict invalid.

Id. at 1036 (internal quotation marks and citations omitted).

{87} The outcome here stemmed from the lack of clarity of the UJI 13-1803-based instruction and the special verdict form, from the inadequate understanding of and response to the jury question, and from the failure to explain to the jury in closing argument how the awards should be made and divided, including what the "Estate" as shown in the special verdict form meant, as opposed to what "Virginia Saenz, Individually and on behalf of the estate" (as stated in the modified instruction) meant. This footprint of complicity is the culprit here, not verdict inadequacy.

{88} Further, it simply cannot be disputed that the several problems created by Plaintiff could have been resolved if, upon hearing the zero damages verdict for the estate along with the substantial award to Plaintiff, individually, Plaintiff had raised the issues at the time. This would have given the district court the opportunity to consider ways in which the jury could be further instructed or the parties could make further argument to clarify and resolve questions about the verdict.

{89} This case is not about exceptional circumstances, and there is no clear inadequacy in the verdict that should give rise to a new trial. This case was fully and fairly tried before a jury by experienced counsel. The district court did not abuse its discretion or otherwise err in denying Plaintiff's motion for a new trial. *See id.* (stating that where a jury finds liability but nonetheless awards zero damages, the "refusal to grant a new trial cannot be held erroneous as a matter of law [because a] ppellate courts should be slow to impute to juries a disregard of their duties, and to trial courts a want of diligence or perspicacity in appraising the jury's conduct" (internal quotation marks and citation omitted)).

{90} In conclusion, I fully understand and am sympathetic with the difficulties even experienced litigators have in the vicissitudes, challenges, and surprises in the litigation arena. Attorneys must be immediately aware of the problematic occurrences. They must make on-the-spot decisions. Litigators ought not to enter into the fray without careful thought about every aspect of trial, from anticipating evidentiary issues, to readiness in making clear objections, to anticipating and perceiving error, to assuring clear, correct, and complete jury instructions and special verdict forms, to anticipating jury misunderstanding of instructions and forms, and to jury error. It should be the rare instance in which this Court overturns, in a fully and fairly tried case, what appears to be an ambiguous or unclear jury verdict, or even one that may appear to be inadequate, but, as here, stems from the complaining party's own steps or mis-steps. This Court should not be in the business of saving parties from their trial strategies or mis-steps and forcing complete new trials on trial courts and prevailing parties under these circumstances.

JONATHAN B. SUTIN, Judge

MCLE 2015 Annual Compliance

The 2015 Annual Compliance notifications have been sent to all active licensed New Mexico attorneys. The notifications include all information for courses taken by 12/31/15.

Compliant attorneys will receive an email indicating 2015 compliance and a link to review their MCLE records online at www.nmmcle.org. **The email compliance notification is new for the 2015 compliance year, no Annual Reports will be mailed to compliant attorneys.**

All non-compliant attorneys will receive a mailed Annual Report. Non-compliant attorneys have been assessed a late compliance fee, and the invoice for payment of the fee is included with the Annual Report. Non-compliant attorneys must complete their requirements immediately. On April 1, 2016 a second late compliance fee will be assessed for those attorneys who continue to be in non-compliance.

On May 2, 2016 the MCLE office will submit to the Supreme Court a list of all attorneys who have not completed their 2015 requirements and/or failed to pay assessed late compliance fees. The Supreme Court will then begin to initiate the suspension process for those attorneys on the list. For more information, call MCLE at (505) 821-1980; e-mail mcle@nmmcle.org, or write to MCLE, PO Box 93070, Albuquerque, NM 87199.

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Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

All advertising must be submitted via e-mail by 4 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Wednesday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by the publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.**

For more advertising information, contact:
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Positions

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.

FY17 Legal Notice RFP Ad

The Administrative Office of the Courts is soliciting proposals from licensed New Mexico attorneys to provide professional legal services for parties to abuse/neglect cases arising under the N.M. Children's Code. Proposals will be accepted for all attorney types in all judicial districts. The Request for Proposal will be issued on March 20, 2016 at 6:00am, and will be posted at nmcourts.gov. Proposals must be received via email no later than April 22, 2016 at 5:00pm. Questions may be e-mailed to caaffbid@nmcourts.gov or call the CAAF Program office at (505) 827-4354. RFP packets will not be mailed or faxed. The Procurement Code, NMSA 1978, '13-1-28 to -199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Court Administrator

Manage and administer the activities, programs and staff of the Pueblo of Jemez' Tribal Court. Education and experience required: Bachelor's Degree in criminal justice, or a closely related field; AND five (5) years of managerial experience in court operations. To learn more about this position and the Pueblo of Jemez, visit our website at www.jemezpueblo.org. Or call the Human Resources Department at (575) 834-7359. Submit a completed tribal application with your resume to: HR@jemezpueblo.org

Family Law Attorney

The Law Office of Jill V. Johnson Vigil LLC., a Las Cruces based family law practice, is seeking to expand and add an attorney to our team. Applicants should have 2-3 years experience in family law, be highly motivated, able to multi-task and manage a large case load. The Law Office of Jill V. Johnson Vigil LLC. offers a comfortable and friendly work environment with benefits and competitive salary commensurate with your qualifications and experience. Applicants must be in good standing with NM Bar and willing to relocate to Las Cruces. Spanish speaking is preferred, but not required. If you are ready for the next step in your career, please send your cover letter, resume and three references via email to careers@jvjvlaw.com before March 31, 2016. Check us out online at www.jvjvlaw.com and "like" us on Facebook Law Office of Jill V. Johnson Vigil.

Request for Proposals:

Mountain States Insurance Group, located in Albuquerque, seeks proposals from law firms or licensed NM attorneys to provide legal services in the defense of our insureds related to civil claims and workers' compensation in New Mexico and Texas. Firms or attorneys interested in submitting a proposal may request a packet from Stacey Scherer, sscherer@msig-nm.com. Proposals will be due by May 1, 2016.

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The City of Alamogordo is recruiting for an Assistant City Attorney. Responsibilities include prosecuting violations of City Ordinances in municipal court and providing legal advice and research for the Mayor, City Officials and Administration, and other City departments as directed by the City Attorney. Please see the City website at ci.alamogordo.nm.us for the full job description, position requirements and to submit an application. Recruitment closes on 3/18/16. Salary DOQ. Call 575-439-4399 for more information.

Proposal Request for Public Defender Services

The Mescalero Apache Tribe is seeking proposals to provide Public Defender Services to the Mescalero Tribal Court for criminal cases. SUMMARY: The Mescalero Apache Tribal Court is a court of general jurisdiction addressing crimes under the Mescalero Apache Law and Order Code. All crimes do not exceed one year sentencing. Attorneys licensed and in good standing with the State of New Mexico Bar is required; Proposed fees may be based on an hourly rate or a flat rate; Proposed fees may NOT exceed $60,000.00 per budget year; Final terms of submitted proposals are negotiable. SUBMIT PROPOSALS TO THE MESCALERO TRIBAL ADMINISTRATOR: DUANE DUFFY, MESCALERO APACHE TRIBE, MESCALERO, NM 88340 575-464-4494 EXT. 211

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 careers@keleher-law.com. All replies kept confidential.

Associate Attorney

Rosales Law Group, P.C. seeks an experienced attorney to join our litigation team, and provide legal analysis, representation and advice to local and national clients. Ideal Attorney has 3+ years of experience in general litigation. Please submit resume and salary requirements to: DavidRosales@NewMexicoCounsel.com

Associate

Caruso Law offices, an established Albuquerque plaintiff personal injury and wrongful death litigation firm, seeks associate for its growing statewide practice. Ideal candidate should have minimum 1 year of personal injury litigation experience. Salary dependent on experience. Submit resumes to Caruso Law Offices, PC, 4302 Carlisle NE, Albuquerque, NM 87107.

Associate Attorney – Santa Fe

The Santa Fe office of The Rothstein Law Firm seeks an associate attorney with 3 plus years of litigation experience. Candidates should have a strong academic background and excellent research and writing skills. Please email a resume and writing sample to info@rothsteinlaw.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 Position

Riley, Shane & Keller, P.A., an Albuquerque AV-rated defense firm, seeks an Associate to help handle our increasing case load. We are seeking a person with one to five years experience. Candidate should have a strong academic background as well as skill and interest in research, writing and discovery support. Competitive salary and benefits. Please fax or e-mail resumes and references to our office at 3880 Osuna Rd., NE, Albuquerque, NM 87109 c/o Office Manager (fax) 505-883-4362 or mvelasquez@rsk-law.com

Part-Time Attorney

Davis Miles McGuire Gardner, PLLC is the New Mexico provider firm for LegalShield. We seek a part-time attorney in our downtown Albuquerque office. We offer telecommuting after a training period. Our attorneys do not have a case load. However, they enjoy the opportunity to assist people on a variety of legal issues each day. New Mexico residents preferred. New Mexico Bar membership required. Our requirements include the following: a minimum of three years practice experience (may be a combination of NM and other state); excellent communication and writing skills; experience in a variety of practice areas – generalized practice a plus; ability to review contracts, draft letters, render advice on non-litigation matters and render limited advice on litigation matters; ability to work in a fast-paced call center environment; telecommuting attorneys need home office with high-speed internet access (following comprehensive in-office training lasting approximately 10-16 weeks depending on the individual); and Bi-lingual (English/Spanish) preferred. Please fax resume and cover letter to 505 243 6448, Attn: Office Administrator

Litigation Associate Attorney

McCarthy Holthus, LLP, a well-established multi-state law firm based in San Diego, CA, successfully representing financial institutions in a variety of banking law matters and specializing in mortgages in default, is currently seeking a Litigation Associate Attorney to join our team in its Albuquerque, NM office. The responsibilities of the qualified candidate will include, but are not limited to, providing legal advice and support to clients concerning matters in litigation, preparing motions, discovery practice, participation in court ordered mediations, along with some trial preparation and appellate practice. Exceptional customer service, written and oral advocacy skills, and openness to creatively engage in setting new standards in our industry are required. An attention to hourly billing is required, typically 100/month. The office has a casual atmosphere, with staff and attorneys enjoying mutual respect. The qualified candidate must possess 5+ years of civil litigation experience. Experience in the representation of financial institutions, in real estate law or bankruptcy law, is a plus. Must be licensed to practice law in New Mexico. McCarthy Holthus offers a comprehensive benefits package, including competitive paid time-Off (PTO), health insurance, dental insurance, disability insurance, and a 401K. McCarthy Holthus is an Equal Opportunity Employer and E-Verify participant. Please apply by clicking the link below: https://workforcenow.adp.com/jobs/apply/posting.html?client=mypremier&jobId=129791&source=CB

General Counsel

The New Mexico Educational Retirement Board is seeking an experienced attorney to serve as General Counsel. The Santa Fe-based state agency provides retirement and disability benefits to all of the public educational employees in New Mexico. Responsibilities include supervising other legal team members: two attorneys and two paralegals. Candidates must be licensed and in good standing in NM. Strong writing and analytical skills, interpersonal skills and the ability to work in a team environment are necessary. Experience working with a state agency in a supervisor capacity is a plus, while not required. Please submit resume, transcripts, and writing sample to Jan Goodwin at jan.goodwin@state.nm.us. Please state "General Counsel" in email subject

New Mexico Administrative Hearings Office, Tax Hearing Officer-Advanced, Santa Fe

The New Mexico Administrative Hearings Office (AHO) seeks applications for a Lawyer A-Tax Hearing Officer Advanced position in its Santa Fe Hearing Office. This hearing officer will primarily conduct tax protest hearings under the Administrative Hearings Office Act, the Tax Administration Act, and the Property Tax Code. This hearing officer position will manage a large docket of tax cases, handle complex tax cases, address motions, write orders, control the conduct of the litigants at hearing and comply with various statutory and regulatory time deadlines for conducting a hearing and writing a final decision. The preferred candidate will possess strong organizational, analytical, and writing skills, as well as experience in state tax matters and administrative law. This classified position requires a law degree from an accredited law school and a license as an attorney by the Supreme Court of New Mexico or the qualifications to apply for a limited practice license, which requires licensure in good standing in another state and sitting for the next eligible New Mexico State Bar exam. As an AHO attorney, the applicant must be current with all tax reporting and payment requirements and have a valid driver's license. The position is pay band 80 with an hourly salary range of $21.53/hr. to $37.46/hr. ($44,782/yr. to $77,917/yr.) For more information and to submit your application please review the posting on the State Personnel website, https://www.governmentjobs.com/careers/newmexico , position number 00001993.

Biotech, EE, CS, Physics – Mid-Level Associate

The Albuquerque office of Lewis Roca Rothgerber Christie LLP seeks a mid-level associate candidate with an undergraduate degree in Biotech, Electrical Engineering, Physics, or Computer Science, as well as a juris doctor (J.D.) from an ABA-accredited law school. Candidate should have at least three years of law firm patent prosecution experience; prior industry experience is a plus but not necessarily required. Responsibilities include: review invention disclosures, prepare and prosecute patent applications, analyze patent portfolios, perform due diligence, undertake patent validity and infringement analyses, and coordinate international patent prosecution activities. Candidate may be called upon to provide patent litigation support as needed as well as be involved in contested proceedings (inter partes review and covered-business method proceedings before the Patent Trial and Appeal Board). Must be admitted before the US Patent & Trademark Office; New Mexico Bar admission is required. The ideal candidate should also have excellent communication (verbal and written), client service, and time management skills. Lewis Roca Rothgerber Christie has 280 lawyers with a broad range of legal expertise throughout California, the Rocky Mountains, and the Southwestern United States and is committed to helping local and national clients face myriad legal challenges. Lewis Roca Rothgerber Christie works closely with its clients from the earliest stages of their technical development, offering valuable advice as to integrating intellectual property protection and business strategy. Lewis Roca Rothgerber Christie encourages a supportive, congenial work environment that enables its professional management team and administrative staff to become integral parts of your practice. We offer qualified candidates a competitive salary commensurate with experience and a full benefits package. If you are interested in making Lewis Roca Rothgerber Christie a part of your future, please visit the Career Opportunities page at LRRC.com to submit your application materials (resume, transcript and writing sample/patent application) to Mary W. Kiley, Director of Lateral Attorney Recruiting. Lewis Roca Rothgerber Christie LLP is an Equal Opportunity Employer. We do not discriminate on the basis of race, sex, sexual orientation, gender identity, religion, national origin, color, age, physical or mental disability, spousal affiliation, marital status, a serious medical condition, genetic information, veteran status or any other basis prohibited by federal, state or local law.

Request for Applications
City of Albuquerque
Assistant City Attorney Position

ASSISTANT CITY ATTORNEY: Assistant City Attorney position available with Municipal Affairs Program working directly in the City's Municipal Development Department with oversight by the Office of the City Attorney. The City of Albuquerque is seeking a well-qualified, results-oriented contract lawyer with preferred government business experience. Litigation experience is also preferred. This position will be responsible for a wide variety of contracts, assisting other attorneys and many City departments on various design and municipal construction procurement and administration issues. Prefer: expertise in State and local procurement law and regulation, particularly New Mexico; ability to draft complex, routine and non-routine contractual instruments; knowledge of contract concepts and applicable State and local contract acquisition law and regulations, excellent analytical and communication skills; use of independent judgment and creativity applied to resolution of contract issues and excellent internal and external negotiation skills. Prior knowledge of City of Albuquerque policies and procedures is preferred. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package included Salary range of $41,900.00 to $90,000.00 depending on experience. Please submit résumé to attention of "DMD Attorney Application"; c/o: Penny Louder, Senior Personnel/Labor Relations Officer; Department of Municipal Development, P.O. Box 1293, Albuquerque, NM 87103. Application deadline is March 23, 2016.

Associate Attorney

Riley, Shane & Keller, P.A., an AV-rated defense firm in Albuquerque, seeks an associate attorney for an appellate/research and writing position. We seek a person with appellate experience, an interest in legal writing and strong writing skills. The position will be full-time with flexibility as to schedule and an off-site work option. We offer an excellent benefits package. Salary is negotiable. Please submit a resumes, references and several writing samples to 3880 Osuna Rd., NE, Albuquerque, NM 87109 c/o Office Manager, (fax) 505-883-4362 or mvelasquez@rsk-law.com

Experienced Paralegal/
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Chappell Law Firm, PA is seeking an experienced paralegal/legal assistant for a temporary position which may lead to permanent employment. The firm specializes in commercial real estate, business matters and commercial litigation. Experience with WordPerfect, Word and Outlook required. Please submit resumes and salary requirements to gwennb@chappellfirm.com.

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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.

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TERRY & DEGRAAUW, P.C. is a two-attorney, family law firm in Albuquerque. We are seeking a full-time, experienced paralegal to join our team. Candidates should have excellent attention to detail and the ability to handle a high caseload. We offer benefits and competitive compensation. Please submit your resume to Kelly Squires at kss@tdgfamilylaw.com.

Legal Assistant

Civil litigation firm in search of a self-motivated individual interested in employment as a legal assistant. The right individual must be skilled in using Microsoft applications including Word, Excel, Outlook and Exchange. Experience is a must. Please email resumes to: NMHiringManager@aol.com All resumes are kept confidential

Transactional Legal Assistant

The Rodey Law Firm is accepting resumes for a Transactional Legal Assistant position for its Albuquerque Office. Must have a minimum of three years' experience working in a mid- or large-sized law firm. Applicants must have experience providing legal and litigation support for commercial real estate transactions, financing transactions and various types of business transactions. Must have solid working knowledge of general office procedures, experience handling client billing, conflict checking and file opening. Working knowledge of a document management system a plus. Applicants must possess the ability to work in a fast-paced and deadline-driven environment. Requires flexibility and ability to manage multiple deadlines. Needs to be a self starter, willing to take initiative and work as a member of team. Firm offers congenial work environment, competitive compensation and excellent benefit package. Please send resume to hr@rodey.com or mail to Human Resources Manager, PO Box 1888, Albuquerque, NM 87103.

Secretary/Legal Assistant

F/T secretary/legal assistant for litigation and business matters. Applicants should have a minimum of 3 years of experience. Must be detail oriented, organized, self-motivated & able to undertake a variety of tasks in a fast-pace environment. Salary DOE. Please email your resume to lori@srklawnm.com.

Paralegal

Experienced paralegal needed for busy family law firm in Albuquerque. Family law experience preferred. We are looking for a highly organized professional who can work independently. Exceptional people skills are needed due to substantial client interaction. Must be able to multi-task in a fast paced environment. Excellent work environment, benefits and salary. Please provide resume to ninap@waltherfamilylaw.com.

Positions Wanted

Are You Looking for a FT Legal Assistant/Secretary?
7-8 years experience. Want to work in Personal Injury or Insurance Defense area ONLY. Gen./Civil Litigation. Professional. Passionate about career. Transcription, Proofreading/Formatting, Organized, Attn. to Detail, E-filing in Odyssey-CM/ECF, Cust. Svc. Exp., Basic Pleadings, Discovery Prep./Answer, Calendaring, Quick Learner, Punctual. File Maintenance, Word, Outlook, Excel, Monitoring/Replying/Saving Emails. Please contact LegalAssistant0425@yahoo.com for Resume, Salary Expectations and References.

Services

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Leave the writing to me. Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

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Paralegal with 25+ years of experience available for work in all aspects of civil litigation on a freelance basis. Excellent references. civilparanm@gmail.com.

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