

BAR BULLETIN

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Sonoran Cougar, 12x24 inches, by Joe Weatherly

Daniel Maghen, Paris, France

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Animal Law Section

CLE Planner

June 16-17



Ninth Annual New Mexico Legal Service Providers Conference: Holistically Addressing Poverty and Advancing Equity for Women and Families in New Mexico

10.0 G

2.0 EP



Thursday and Friday, June 16–17, 2016
State Bar Center, Albuquerque

\$145: Standard Fee

\$125: Government, legal services attorneys, Paralegal Division members

JUNE 16

- 8:15 a.m. Registration and Continental Breakfast
- 8:30 a.m. **Equal Means Equal: The New Math for Women and Girls in New Mexico**
Pamela Herndon, Southwest Women's Law Center
- 9 a.m. **State Plan: What Is It? Why Do We Have It? How Do We Use It?**
Ed Marks, New Mexico Legal Aid Inc.
- 10: a.m. **Holistically Addressing the Plunge into Poverty**
Alexandria Taylor, Valencia Shelter Service; Jessica Martinez, Enlace Comunitario; Rep. Deborah Armstrong, (D) Bernalillo County; Dorene Kuffer, Law Office of Dorene A. Kuffer, PC
- 10:45 a.m. Break
- 11 a.m. **Holistically Addressing the Plunge Into Poverty, cont.**
- 11:45 a.m. Lunch (provided at the State Bar Center)
- 1 p.m. **Afternoon Education Tracks**
TRACK A: Litigation Tools—Exposing the Shadow Economy: Finding Hidden Assets and Income
Michael Corwin, Corwin Research & Investigations; Mary Ann Burmester, New Mexico Divorce and Custody Law, LLC
TRACK B: N.M. HSD Administrative Fair Hearings and Appeals to District Courts
Tim Gardner, Disability Rights New Mexico
- 2:30 p.m. Break
- 2:45 p.m. **Extended Families: Benefits and Burdens**
Larry Kronen and Jennifer Romero, Pegasus Legal Services for Children
- 4:15 p.m. Adjourn

JUNE 17

- 8:00 a.m. Continental Breakfast
- 8:30 a.m. **Morning Education Tracks**
TRACK A: Not Your Everyday Family Law Issues
Linda Wilson, Enlace Comunitario
TRACK B: The A-B-C (and Ds) of Medicare
Michael Parks and Juan Martinez, Senior Citizens Law Office
- 10 a.m. Break
- 10:15 a.m. **Bankruptcy and Collections—Legal Sword or Legal Shield?**
- 11:45 a.m. Lunch (provided at the State Bar Center)
- 1 p.m. **Afternoon Education Tracks**
TRACK A: Kids in Poverty
Yael Cannon, UNM School of Law; Cristen Conley, Corinne Wolfe Center for Child and Family Justice Center; Veronica Garcia, Voices for Children
TRACK B: Subsidized Housing 101
Tom Prettyman, New Mexico Legal Aid Inc.; Richard Weiner Legal Resources for the Elderly Program
- 2:30 p.m. Break
- 2:45 p.m. **Legal Services in New Mexico and our Professional Obligations (EP)**
Hon. Sarah Singleton, First Judicial District Court
- 4:45 p.m. Adjourn



Full course agendas available online.

Register online at www.nmbar.org or call 505-797-6020.



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Meetings

May

18

RPTE Section Real Property Division,
 Noon State Bar Center

18

RPTE Section Trust and Estate Division,
 Noon, State Bar Center

20

Family Law Section BOD,
 9 a.m., teleconference

20

Indian Law Section BOD,
 Noon, State Bar Center

20

Trial Practice Section BOD,
 Noon, State Bar Center

21

Young Lawyers Division BOD,
 10 a.m., Hotel Encanto de Las Cruces

23

Committee on Diversity in the Legal Profession, noon, State Bar Center

24

Intellectual Property Law Section BOD,
 Noon, Lewis Roca Rothgerber Christie,
 Albuquerque

State Bar Workshops

May

18

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

24

Legal Resources for the Elderly Program
 9:30–10:45 a.m., presentation;
 12:30–1:30 p.m., POA/AHCD Clinics
 Mary Esther Gonzales Senior Center,
 Santa Fe, 1-800-876-6657

25

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

June

1

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

1

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

Cover Artist: Joe Weatherly is a Southern California based artist specializing in the drawing and painting of animals. His style is bold and vigorous capturing the essence and drama of the subjects he draws and paints. The attitude and expression of the animal's character along with telling a visual story is what his work conveys. Conservation of the natural world is something Joe is very passionate about and hopes his work will motivate people to protect it and promote its survival. Weatherly has published several books and teaches drawing part time. Some of his clients include Nickelodeon Animation, Dreamworks Feature Animation, Universal Studios, Art Center, Laguna College of Art and Design and the Academy of Art in San Francisco. His drawings and paintings hang in private collections in Europe and North America. For more of his work, visit www.joeweatherly.com.

Notices

COURT NEWS

New Mexico Supreme Court Board of Legal Specialization Comments Solicited

The following attorney is applying for certification as a specialist in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 19-101 through 19-312 NMRA, which provide that the names of those seeking to qualify shall be released for publication. Further, attorneys and others are encouraged to comment upon any of the applicant's qualifications within 30 days after the publication of this notice. Address comments to New Mexico Board of Legal Specialization, PO Box 93070, Albuquerque, NM 87199.

Health Law

Angela M. Martinez

Commission on Access to Justice June Meeting Notice

The next meeting of the Commission on Access to Justice is at noon–4 p.m., June 3, at the State Bar Center in Albuquerque. Interested parties from the private bar and the public are welcome to attend. More information about the Commission is available at www.nmbar.org > for Public > Access to Justice.

Bernalillo County Metropolitan Court Specialty Courts Education Day

Members of the legal community are invited to attend Specialty Courts Education Day at 2:30–4:30 p.m., May 20, at the Bernalillo County Metropolitan Court in the Jury Assembly Room. Learn what is new in the existing specialty courts and about two new diversion programs: Veterans Court and the Pre-Adjudication Animal Welfare (P.A.W.) Court. After the presentation, program judges and staff will be available to answer questions regarding eligibility, requirements and how these programs are making a difference in the community. Refreshments will be available. For more information, contact Camille Baca at 505-841-9897.

Professionalism Tip

With respect to opposing parties and their counsel:

I will clearly identify, for other counsel or parties, all changes that I have made in all documents.

Administrative Office of the Courts Judicial Compensation Committee Notice of Public Meeting

The Judicial Compensation Committee will meet at 9 a.m.–noon, June 21, in room 208 of the New Mexico Supreme Court, 237 Don Gaspar, Santa Fe, to discuss fiscal year 2018 compensation for judges of the magistrate, metropolitan and district courts, the Court of Appeals and justices of the Supreme Court. The Commission will thereafter provide its judicial compensation report and recommendation for FY18 compensation to the Legislature during the 2017 session. The meeting is open to the public. For an agenda or more information call San Nithya, Administrative Office of the Courts, 505-476-1000.

STATE BAR NEWS

Attorney Support Groups

- June 6, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)
- June 13, 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#.
- June 20, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Annual Awards Call for Nominations

The State Bar of New Mexico Annual Awards are presented each year to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2015 or 2016. Nominations are now being accepted for the 2016 State

Bar of New Mexico Annual Awards:

- Distinguished Bar Service Award–Lawyer
- Distinguished Bar Service Award–Nonlawyer
- Justice Pamela B. Minzner Professionalism Award
- Outstanding Legal Organization or Program Award
- Outstanding Young Lawyer of the Year Award
- Robert H. LaFollette Pro Bono Award
- Seth D. Montgomery Distinguished Judicial Service Award

The Awards will be presented Aug. 19 during the 2016 Annual Meeting—Bench and Bar Conference at the Buffalo Thunder Resort in Santa Fe. The deadline for nominations is May 20. A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. For award details and nomination requirements, visit www.nmbar.org > for Members > Annual Meeting > Annual Awards.

Entrepreneurs in Community Lawyering Now Accepting Applications

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

org/ECL. For more information, contact Director of Legal Services Stormy Ralstin at 505-797-6053.

Young Lawyers Division Volunteers Needed for Wills for Heroes in Las Cruces

YLD needs volunteers for a Wills for Heroes clinic at 9 a.m.–noon, May 21, at New Mexico State University in Las Cruces. More than 30 first responders have already signed up to receive consultation and drafting of free simple wills, powers of attorney, and advanced health care directives. Consider volunteering for part or all of the clinic at NMSU. The documents are drafted via a proprietary hot docs program that will be installed on laptops for use at the clinic. For those not comfortable providing advice in this area, volunteers are needed for intake or serve as witnesses or notaries. To volunteer, contact Robert Lara at robunm@gmail.com.

UNM Law Library Hours Through Aug. 21

Building & Circulation

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

Reference

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

Holiday Closures

Memorial Day: May 30
Independence Day: July 4

Alumni Association UNM Law Scholarship Golf Classic

Join the UNM School of Law Alumni Association on June 3 at the UNM Championship Golf Course. Lunch will be at 11 a.m. with a shotgun start at 12:30 p.m. Proceeds benefit the law school's only full-tuition merit scholarships. Register online at goto.unm.edu/golf or by calling 505-277-1457.

Natural Resources Journal Call for Papers

The *Natural Resources Journal* seeks academic articles for its Winter 2017 issue, Volume 57.1, on water governance. Suggested topics include: institutional analysis and jurisprudence, collaborative approaches to water governance, drought

planning and climate adaptation, water and equity, markets, water and economic development, interplay of human and natural systems and politics and conflict in water governance. To submit an article, email (1) a manuscript of the article with citations and (2) a link to or copy of the author's CV to nrj@law.unm.edu. Submissions should be received by July 1, 2016. Authors who receive a commission will be notified by July 31. Additional information, including an archive of past issues, is available at <http://lawschool.unm.edu/nrj/>.

OTHER BARS Federalist Society, New Mexico Lawyers Chapter Ilya Shapiro Luncheon and Inaugural Event

The Federalist Society, New Mexico Lawyers Chapter, and the Rio Grande Foundation will host Ilya Shapiro as he discusses presents “The Scalia Legacy and the Future of the U.S. Supreme Court” at noon, May 12, at the Marriott Pyramid, 5151 San Francisco Rd. NE, Albuquerque. Seating is limited. Visit www.errorsofenchantment.com/2016/04/15/ilya-shapiro-luncheon-justice-scalias-legacy-and-the-supreme-courts-future-albuquerque/ to register.

First Judicial District Bar Association Spring Happy Hour

Join the First Judicial District Bar Association for a spring happy hour event at 5:30–7:30 p.m., May 19, at Georgia Restaurant, 225 Johnson St., Santa Fe. Attendance is free and includes one drink and appetizers. No R.S.V.P. necessary. For more information, contact Erin McSherry at erin.mcsherry@state.nm.us.

New Mexico Women's Bar Association Pathway to the Judiciary CLE and Social Event

The New Mexico Women's Bar Association invites members of the legal community to a CLE, “Pathway to the Judiciary” at 1–4 p.m., May 20, at the State Bar Center. Hon. Petra Jimenez Maes, Hon. M. Monica Zamora, Hon. M. Christina Armijo, Hon. Karen Molzen, Hon. Briana Zamora, Hon. Marie Ward and Hon. C. Shannon Bacon of the Second

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Judicial District Court will present a panel discussion addressing deciding when to compete for a judicial vacancy, the application and nomination process, running in a judicial election, understanding the day-to-day life of a judge and how being a judge impacts life outside of work. A reception will immediately follow the CLE program. All members of the bar and their guests are invited to attend. Attendance at the CLE is not a prerequisite to attend the social. For more information, contact Sharon Shaheen at sshaheen@montand.com.

OTHER NEWS

Southwest Women's Law Center

Legal Issues Facing Girls in Middle and High School

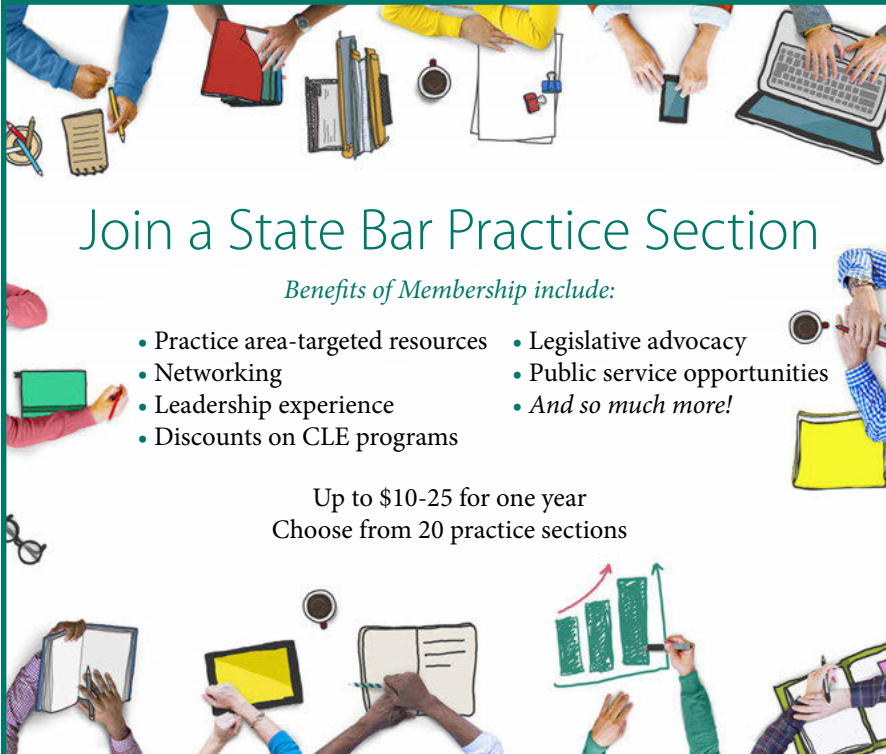
The Southwest Women's Law Center invites members of the legal community and educators to its Lunch and Learn Mini Series "Legal Issues and Challenges Facing Girls in Middle and High School" (1.0 G) at noon–1 p.m., May 25, at the SWLC, 1410 Coal Avenue SW, Albuquerque. Check-in and a light lunch will begin at 11:30 a.m. The CLE will examine how lawyers can best collaborate with educators in middle and high schools to ensure that pregnant and parenting teens have equal access to education and graduation pursuant to Title IX. Register at www.swwomenslaw.org or by contacting Sarah Coffey at 505-244-0502 or info@swwomenslaw.org. Registration is \$20 and registrations will be accepted at the door.

Legal Issues Facing Women Seeking Healthcare

The Southwest Women's Law Center invites the legal community to attend

its Lunch and Learn Mini Series "Legal Issues Facing Women Seeking Healthcare" (1.0 G) at 11:30 a.m.–1 p.m., June 9 at the SWLC, 1410 Coal Avenue SW, Albuquerque. Registration and a light lunch will begin at 11:30 a.m. The course provides an opportunity for lawyers and educators to understand the legal issues and challenges facing women and girls who are seeking healthcare. This presenta-

tion will provide an overview of statewide cuts to Medicaid services and highlight the independent challenges that women and girls who reside the rural New Mexico face when trying to access health services. Register at www.swwomenslaw.org or by contacting Sarah Coffey at 505-244-0502 or info@swwomenslaw.org. Registration is \$20 and registrations will be accepted at the door.




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Honored for Public Service— Betsy Glenn Named Public Lawyer of the Year

Story and photos by Evann Kleinschmidt

Elizabeth “Betsy” A. Glenn, chief deputy attorney general, was honored as the Public Lawyer of the Year at a ceremony on April 29 at the Capitol Rotunda in Santa Fe. She was chosen for the award based on her long history of public service in the state and stellar professional reputation.

An attorney for more than 30 years, the majority of Glenn’s career has been dedicated to the New Mexico Attorney General’s Office. She has played key roles, advised numerous attorneys general and authored many opinions for the Attorney General’s Office. She received her undergraduate degree from the University of California at Berkeley and her law degree from the Columbia University School of Law.

Public Law Section Chair Sean Cunniff welcomed the audience who filled all the seats provided. He gave a brief history of the award and outlined the criteria all of which he said Glenn embodies. The award is meant to honor an attorney who is not likely to be recognized by his or her outstanding work as a public servant. Martha Chicoski, immediate past president of the State Bar, thanked the



Award recipient Betsy Glenn and Former Attorney General Gary K. King

Public Law Section for their contributions and dedication.

Justice Edward L. Chávez congratulated Glenn and commended her career and reputation. He said that lawyers don’t devote themselves to public service for the money, but know that the best recognition comes from the hearts of family, friends and colleagues. Co-dean of the UNM School of Law Alfred D. Mathewson applauded Glenn and spoke on the importance of public lawyers, saying that they make the wheels of government turn for the people.

Former Attorney General Gary K. King, for whom Glenn worked for many years, reflected on his time as the attorney general. He said that being the attorney general is one of the best jobs you can have as a lawyer and that the best days of his life include debating meaty legal issues with the best minds around, Glenn included. Glenn is known for writing opinions for the AG Office and Attorney General King even joked that some of her best work is under his name! Current Attorney General Hector H. Balderas presented the award to Glenn. He thanked her for the immeasurable amount of help she has provided to his office. Calling her humble, dignified and



Public Law Section Chair Sean Cunniff welcomes the audience. At right are award recipient Glenn, Former Attorney General Gary K. King and Attorney General Hector H. Balderas.



Attorney General Hector H. Balderas presented Betsy Glenn with the award

wise, Attorney General Balderas said that he has become dependent on Glenn's professionalism and expertise.

Thanking the Public Law Section, attorneys general Balderas and King, the audience and Jan Goodwin, Glenn said that she was honored to be among the other recipients of the prestigious award. She said that one must like what they do on a daily basis because it's the little things that get a person through. ■



Betsy Glenn joins previous recipients. From left are Cliff Rees, Al Lama, Glenn, Clark de Schweinitz and Paula Taackett



Betsy Glenn and Joe Lennihan



Justice Edward L. Chávez and State Bar Immediate Past President Martha Chicoski

Othmer Summer Fellowship

Each year, the Association of Public Interest Law at the UNM School of Law chooses a law student to receive the Othmer Summer Fellowship. In memory of her late husband Craig Othmer, Sheila Brown presented a fellowship of \$3,500 to law student Laura Johnson. The fellowship is funded by the Public Law Section and matched by the Othmer family to provide for a law student's internship in public service. Brown mentioned that Craig would be especially delighted by this year's fellowship recipient as Johnson will be working for the legal rights of the disabled—an issue that is close to the Othmer family's heart as they have several disabled family members. ■



UNM School of Law Dean Alfred Mathewson, presenter Sheila Brown and recipient Laura Johnson



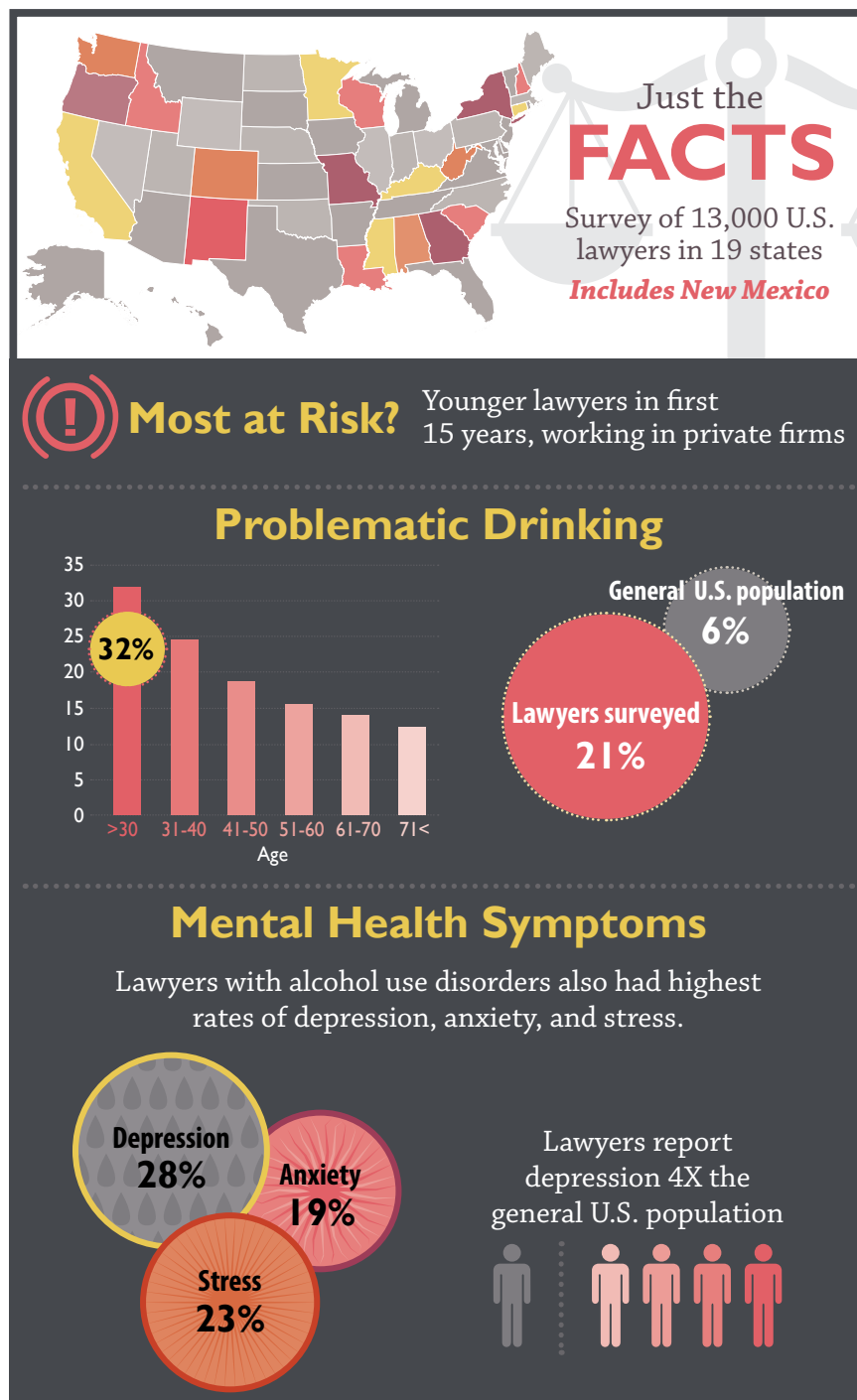
Laura and Chris Johnson



Betsy Glenn and Laura Johnson

Landmark National Study Confirms High Rates of Problem Drinking and Other Behavioral Health Issues in the Legal Profession

By Jill Anne Yeagley, New Mexico Lawyers and Judges Assistance Program



Sources:

Krill, P., Johnson, R., Albert, L. "The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys." Journal of Addiction Medicine. Jan Feb issue, 2016.
<http://journals.lww.com/journaladdictionmedicine/pages/default.aspx>.

Infographic modified with permission from the State Bar of Wisconsin, which originally appeared in the February 2016 *Wisconsin Lawyer*™ magazine.

The **New Mexico Lawyers and Judges Assistance Program** offers free assessments, information and referrals, and intervention services. Any legal professional can confidentially (even, anonymously) obtain assistance regarding their own or a colleague's mental health or substance use problem by calling **1-800-860-4914** or **505-228-1948**. The confidentiality of communications with NMJLAP is protected under NMRA 16-803 and the New Mexico Code of Judicial Conduct, Rule 21-300.

A new landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs confirms that lawyers suffer from problem drinking and mental health problems at significantly higher rates than other professionals and the general population.¹ The research also indicates that too many lawyers are not seeking the help they need, for common, yet unwarranted, reasons. The researchers and lawyer assistance programs hope this data will promote change and encourage those affected to seek assistance.

This national study of approximately 13,000 currently employed lawyers (representing 19 states in every region of the country including New Mexico) found that 36 percent drink at levels consistent with problem drinking and 21 percent meet the AUDIT-10 criteria for an alcohol use disorder.² These rates are roughly 3–5 times higher than the government estimates for alcohol use disorders in the general population. The study also revealed an alarming 28 percent of practicing attorneys currently experience mild-to-severe depression as compared to 7 percent of adults in the general U.S. population.

Younger and less experienced practitioners most at risk for alcohol problems

While it is clear that legal professionals as a group suffer elevated rates of alcohol abuse, an analysis of the data by practice

time and age shows younger lawyers are struggling the most with alcohol abuse. Respondents identified as 30 years or younger have a 32 percent rate of problem drinking, almost 1 in 3, which is substantially higher than any other age group. Attorneys, ages 31–40, report a 25 percent rate of problem drinking, and starting at age 51, the rates fall below 20 percent.

In addition to age, an inverse correlation between years of practice and problem drinking was evident. Approximately 28 percent of individuals working 10 years or less reported problem drinking behavior as compared to 19 percent of practitioners with 11–20 years of experience, 16 percent of practitioners with 21–30 years and 15 percent of professionals with 31–40 years of experience. This early onset of problems is further illustrated by the 44 percent of lawyers surveyed who indicated their use of alcohol was problematic during the 15 year period following their graduation from law school.

As a cohort, individuals employed in private firms had the highest rates of problem drinking (23 percent), after attorneys working in bar associations (24 percent). Elevated rates were also evident among lawyers working in other legal environments: 19 percent of lawyers who identified as an in-house, governmental, public or nonprofit lawyer met the AUDIT criteria for problem drinking, as did approximately 19 percent of those identified as solo practitioners. Among the judiciary, 6 percent met the criteria for an alcohol use disorder.

Reporting Drug Use

In contrast to the AUDIT alcohol-related section of questions which had almost full participation, only 27 percent answered the questions comprising the Drug Abuse Screening Test. While alcohol is the most common drug of choice among legal professionals (84.1 percent), the large number of respondents skipping these questions suggests substantial fears of repercussions and more drug use than the data shows. Among individuals reporting drug use other than alcohol in the past 12 months, sedatives were the most prevalent at 15.7 percent, followed by marijuana at 10.2 percent.

Of those who reported other drug use, 0.1 percent reported severe drug use, 3 percent reported substantial drug use, 20.9 percent reported intermediate use and 76 percent reported low use. Lead author of this study, attorney and clinician Patrick R. Krill said the significant number of participants reporting low and intermediate drug abuse is particularly disturbing when one considers the proliferation and addictive nature of today's prescription drugs. "If a lawyer is abusing prescription medications, it can quickly turn to 'substantial' or 'severe' use," Krill said, "And given the even higher stigma associated with drug use, lawyers may be even more hesitant to seek help."

Depression and Anxiety Continue to Plague Legal Professionals

Studies examining depression rates and suicidal risk in legal and other professional groups have consistently found elevated rates for lawyers and judges, and this study further supports those findings. Ninety percent of the study participants completed all questions comprising the Depression Anxiety Stress Scale (DASS-21), providing highly reliable data. Of these individuals, just over 28 percent and 19 percent reported current symptoms of depression and anxiety, respectively and 23 percent reported experiencing mild to high levels of stress.

Not surprisingly, the incidence of depression, anxiety and high stress at some point during the participants' careers was significantly higher. Forty-six percent reported experiencing concerns with depression and 61 percent with anxiety.

Particularly disturbing was the finding that 11.5 percent had suicidal thoughts during their career and 0.7 percent had made at least one suicide attempt during their career.

Like the findings concerning alcohol abuse, the rates of depression, anxiety and stress decreased as participants' ages or years worked in the field increased. The study also found significantly higher rates of depression, anxiety and stress among participants classified as problem drinkers.

"Any way you look at it," says Krill, "this data is very alarming and paints the picture of an unsustainable professional culture that's harming too many people. Attorney impairment poses risks to the struggling individuals themselves and to our communities, government, economy, and society. The stakes are too high for inaction."

Barriers to Seeking Help

Fewer than seven percent of respondents reported having received treatment for alcohol or other drug use problems. When asked to identify the major barriers to seeking assistance, 68 percent said they didn't want others to find out and 64 percent identified privacy and confidentiality as a major concern. About 31 percent cited concerns about maintaining their law license and 18 percent said they didn't know who to ask or didn't have the money for services. These same concerns were also identified as barriers to seeking help for mental health issues, with approximately 55 percent saying they didn't want others to find out and 47 percent expressing concerns about confidentiality and privacy. An additional 22 percent said they didn't know who to ask for help.

Although 84 percent of lawyers said they were aware of lawyer assistance programs, only 40 percent said they would utilize these services if they were in need; once again, privacy and confidentiality concerns were cited as the main reason not to pursue help.



Unfortunately, there is a common misperception that contact with lawyer assistance programs is not confidential and that one's livelihood is at risk if others in the community learn an individual has sought help for a substance use or mental health problem. In fact, confidentiality of communications is ensured by law just as the lawyer-client relationship is, and the responsibility to uphold the privacy of individuals who contact the New Mexico Lawyers and Judges Assistance Program is taken very seriously. Getting help has saved the careers of many New Mexico lawyers and greatly enriched their professional and personal lives, and the only people who are privy to that information are individuals with whom the lawyers have chosen to share their experiences.

David Stout, UNM Law Professor and Lawyers and Judges Assistance Committee co-chair adds, "The NMJLAP volunteers openly share our stories of addiction, mental health challenges and recovery with our colleagues in distress to offer them hope and a lifeline to professional help and recovery. We share our experiences in the hope that those who are suffering will understand they are not alone. The best way to prevent the loss of one's reputation, livelihood and license is to access help early."

Sadly, the nature of the brain biology of addiction is that 95 percent of individuals who meet the diagnostic criteria for a substance use disorder don't perceive they have a problem or need treatment, and most people who do recognize they have a problem, don't seek help.³ Thus, it is especially critical for colleagues to contact the NMJLAP when they observe

behaviors in another legal professional that raise concerns. Once alerted to these concerns, the NMJLAP works with the callers to develop an appropriate action plan.

Today, thanks to the compassion of colleagues who were willing to break the silence, numerous lawyers and judges have been given a fresh start and are now in recovery.

The New Mexico Lawyers and Judges Assistance Program offers free assessments, information and referrals and intervention services. Any legal professional can *confidentially* (even, anonymously) obtain assistance regarding their own or a colleague's mental health or substance use problem by calling 1-800-860-4914 or 505-228-1948. The confidentiality of communications with NMJLAP is protected under NMRA 16-803 and the New Mexico Code of Judicial Conduct, Rule 21-300. ■

Endnotes

¹ Krill, P. R., Johnson, R., & Albert, L. (2016). The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys. *American Society of Addiction Medicine*, 10(1), 46-52.

² Alcohol Use Disorders Identification Test. The AUDIT is a ten-question test developed by a World Health Organization-sponsored collaborative project to determine if a person is at risk for alcohol abuse problems.

³ Substance Abuse and Mental Health Services Administration. Results from the 2013 national survey on drug use and health: Summary of national findings. NSDUH Series H-48, HHS Publication No. (SMA) 14-4863. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

NEW MEXICO LAWYERS AND JUDGES ASSISTANCE PROGRAM (JLAP)

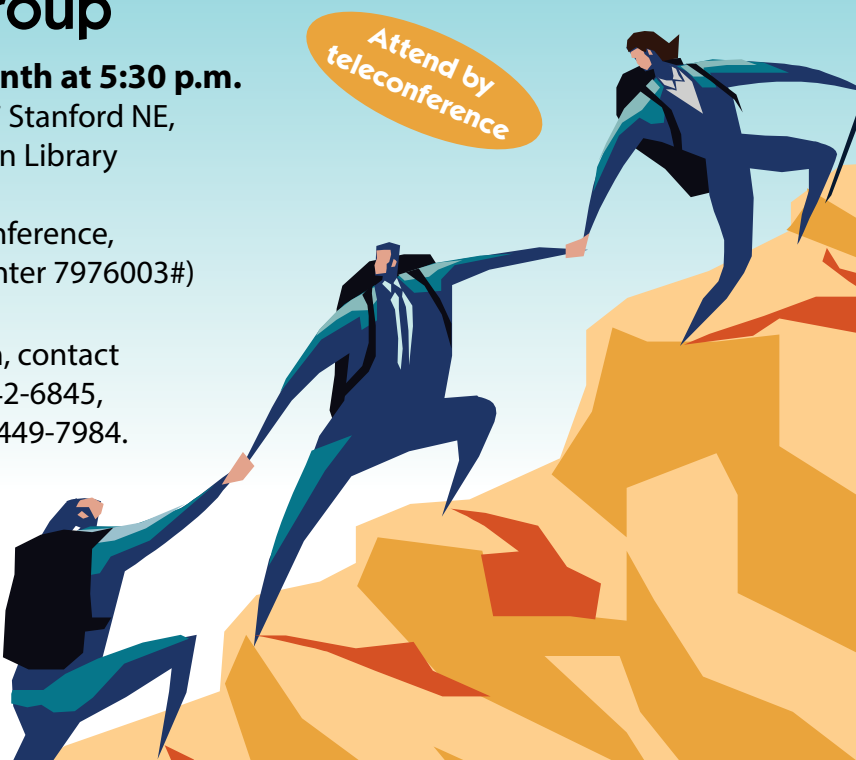
Support Group

Second Monday of the month at 5:30 p.m.

UNM School of Law, 1117 Stanford NE,
King Reading Room in Library

(To attend by teleconference,
dial 1-866-640-4044 and enter 7976003#)

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



Legal Education

May

- | | | | | | |
|----|--|----|--|----|---|
| 18 | Trusts 101
5.0 G, 1.0 EP
Live Seminar
NBI Inc.
www.nbi-sems.com | 20 | Legal Writing – From Fiction to Fact: Morning Session (2015)
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 20 | Ethics and Virtual Law Practices
1.0 EP
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 | Social Media and the Countdown to Your Ethical Demise (2016)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 25 | Update on New Mexico Rules of Evidence
2.0 G
Live Seminar
New Mexico Legal Aid
505-768-6112 |
| 19 | Annual WCA of NM Conference
8.0 G, 2.5 EP
Live Program, Albuquerque
Workers Compensation Association of New Mexico
505-377-3017 | 20 | What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics (2016 Edition)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 25 | Legal Rights and Issues Affecting Pregnant and Parenting Teens in New Mexico
1.0 G
Live Program, Albuquerque
Southwest Women's Law Center
swwomenslaw.org |
| 20 | The New Lawyer – Rethinking Legal Services in the 21st Century (2015)
4.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | | | | |

June

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|---|--|----|--|-------|--|
| 6 | 2016 Estate Planning Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org | 7 | The 31st Annual Bankruptcy Year in Review (2016 AM Session)
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 16–17 | Ninth Annual New Mexico Legal Service Providers Conference: Holistically Addressing Poverty and Advancing Equity for Women and Families in New Mexico
10.0 G, 2.0 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org |
| 7 | Conflicts of Interests (Ethicspalooza Redux—Winter 2015 Edition)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 9 | Legal Issues Facing Women Seeking Healthcare
1.0 G
Live Program, Albuquerque
Southwest Women's Law Center
swwomenslaw.org | 17 | Legal Ethics in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org |
| 7 | Beyond Sticks and Stones (2015 Annual Meeting)
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org | 16 | Negotiating and Drafting Issues with Small Commercial Leases
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org | | |

July

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|--|---|---|
| <p>14 Natural Resource Damages
10.0 G
Live Program, Santa Fe
Law Seminars International
www.lawseminars.com</p> | <p>21 Drafting Sales Agents' Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 2nd Annual Symposium on Diversity (2016): Implicit Bias and How To Address It
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 The Ethics of Creating Attorney-Client Relationships in the Electronic Age
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Reciprocity—Introduction to the Practice of Law in New Mexico
4.5 G, 2.5 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Talkin 'Bout My Generation: Professional Responsibility Dilemmas Among Generations (2015)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 Essentials of Employment Law
6.6 G
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com</p> | | |

August

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|--|---|---|
| <p>2 Due Diligence in Real Estate Acquisitions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>11 13th Annual Comprehensive Conference on Energy in the Southwest
13.2 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com</p> | <p>23 Drafting Employment Separation Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Charging Orders in Business Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19–20 2016 Annual Meeting—Bench & Bar Conference
12.5 CLE credits (including at least 5.0 EP)
Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 Lawyer Ethics and Disputes with Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>10 Role of Public Benefits in Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

September

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|---|--|---|
| <p>9 2015 Fiduciary Litigation Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Estate Planning for Firearms
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Estate Planning for Liquidity
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 Liquidated Damages in Contracts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Ethics and Keeping Secrets or Telling Tales in Joint Representations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

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 May 11, 2016

Petitions for Writ of Certiorari Filed and Pending:				No.				
Date Petition Filed				No.				
No. 35,865	UNM Board of Regents v. Garcia	COA 34,167	04/28/16	No. 35,677	Sanchez v. Mares	12-501	01/05/16	
				No. 35,669	Martin v. State	12-501	12/30/15	
No. 35,864	State v. Radosevich	COA 33,282	04/28/16	No. 35,665	Kading v. Lopez	12-501	12/29/15	
No. 35,866	State v. Hoffman	COA 34,414	04/27/16	No. 35,664	Martinez v. Franco	12-501	12/29/15	
No. 35,862	Rodarte v. Presbyterian Insurance	COA 33,127	04/27/16	No. 35,657	Ira Janecka	12-501	12/28/15	
				No. 35,671	Riley v. Wrigley	12-501	12/21/15	
No. 35,861	Morrisette v. State	12-501	04/27/16	No. 35,649	Miera v. Hatch	12-501	12/18/15	
No. 35,863	Maestas v. State	12-501	04/22/16	No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15	
No. 35,860	State v. Alvarado-Natera	COA 34,944	04/21/16	No. 35,661	Benjamin v. State	12-501	12/16/15	
No. 35,859	Faya A. v. CYFD	COA 35,101	04/19/16	No. 35,654	Dimas v. Wrigley	12-501	12/11/15	
No. 35,857	State v. Foster	COA 34,418/34,553	04/19/16	No. 35,635	Robles v. State	12-501	12/10/15	
No. 35,858	Baca v. First Judicial District Court	12-501	04/18/16	No. 35,674	Bledsoe v. Martinez	12-501	12/09/15	
				No. 35,653	Pallares v. Martinez	12-501	12/09/15	
No. 35,855	State v. Salazar	COA 32,906	04/15/16	No. 35,637	Lopez v. Frawner	12-501	12/07/15	
No. 35,854	State v. James	COA 34,132	04/15/16	No. 35,268	Saiz v. State	12-501	12/01/15	
No. 35,863	State v. Sena	COA 33,889	04/15/16	No. 35,612	Torrez v. Mulheron	12-501	11/23/15	
No. 35,852	State v. Cunningham	COA 33,401	04/14/16	No. 35,599	Tafoya v. Stewart	12-501	11/19/15	
No. 35,851	State v. Carmona	COA 35,851	04/14/16	No. 35,522	Denham v. State	12-501	09/21/15	
No. 35,848	State v. Vallejos	COA 34,363	04/11/16	No. 35,495	Stengel v. Roark	12-501	08/21/15	
No. 35,849	Blackwell v. Horton	12-501	04/08/16	No. 35,479	Johnson v. Hatch	12-501	08/17/15	
No. 35,839	State v. Linam	COA 34,940	04/06/16	No. 35,474	State v. Ross	COA 33,966	08/17/15	
No. 35,838	State v. Nicholas G.	COA 34,838	04/06/16	No. 35,466	Garcia v. Wrigley	12-501	08/06/15	
No. 35,845	Brotherton v. State	COA 35,039	04/05/16	No. 35,422	State v. Johnson	12-501	07/17/15	
No. 35,835	Pittman v. Smith	12-501	04/01/16	No. 35,372	Martinez v. State	12-501	06/22/15	
No. 35,832	State v. Baxendale	COA 33,934	03/31/16	No. 35,370	Chavez v. Hatch	12-501	06/15/15	
No. 35,831	State v. Martinez	COA 33,181	03/31/16	No. 35,353	Collins v. Garrett	COA 34,368	06/12/15	
No. 35,830	Mesa Steel v. Dennis	COA 34,546	03/31/16	No. 35,335	Chavez v. Hatch	12-501	06/03/15	
No. 35,828	Patscheck v. Wetzel	12-501	03/29/16	No. 35,371	Pierce v. Nance	12-501	05/22/15	
No. 35,825	Bodley v. Goodman	COA 34,343	03/28/16	No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15	
No. 35,822	Chavez v. Wrigley	12-501	03/24/16	No. 35,261	Trujillo v. Hickson	12-501	04/23/15	
No. 35,821	Pense v. Heredia	12-501	03/23/16	No. 35,097	Marrah v. Swisstack	12-501	01/26/15	
No. 35,818	State v. Martinez	COA 35,038	03/22/16	No. 35,099	Keller v. Horton	12-501	12/11/14	
No. 35,814	Campos v. Garcia	12-501	03/16/16	No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14	
No. 35,804	Jackson v. Wetzel	12-501	03/14/16	No. 34,932	Gonzales v. Sanchez	12-501	10/16/14	
No. 35,803	Dunn v. Hatch	12-501	03/14/16	No. 34,907	Cantone v. Franco	12-501	09/11/14	
No. 35,802	Santillanes v. Smith	12-501	03/14/16	No. 34,680	Wing v. Janecka	12-501	07/14/14	
No. 35,771	State v. Garcia	COA 33,425	02/24/16	No. 34,777	State v. Dorais	COA 32,235	07/02/14	
No. 35,749	State v. Vargas	COA 33,247	02/11/16	No. 34,775	State v. Merhege	COA 32,461	06/19/14	
No. 35,748	State v. Vargas	COA 33,247	02/11/16	No. 34,706	Camacho v. Sanchez	12-501	05/13/14	
No. 35,747	Sicre v. Perez	12-501	02/04/16	No. 34,563	Benavidez v. State	12-501	02/25/14	
No. 35,746	Bradford v. Hatch	12-501	02/01/16	No. 34,303	Gutierrez v. State	12-501	07/30/13	
No. 35,722	James v. Smith	12-501	01/25/16	No. 34,067	Gutierrez v. Williams	12-501	03/14/13	
No. 35,711	Foster v. Lea County	12-501	01/25/16	No. 33,868	Burdex v. Bravo	12-501	11/28/12	
No. 35,718	Garcia v. Franwer	12-501	01/19/16	No. 33,819	Chavez v. State	12-501	10/29/12	
No. 35,717	Castillo v. Franco	12-501	01/19/16	No. 33,867	Roche v. Janecka	12-501	09/28/12	
No. 35,702	Steiner v. State	12-501	01/12/16					
No. 35,682	Peterson v. LeMaster	12-501	01/05/16					

No. 33,539	Contreras v. State	12-501	07/12/12
No. 33,630	Utley v. State	12-501	06/07/12

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)

			Submission Date
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. 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. 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. 35,499	Romero v. Ladlow Transit Services	COA 33,032	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
No. 35,751	State v. Begay	COA 33,588	03/25/16

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)

			Submission Date
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. 34,798	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. 34,826	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. 35,386	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
No. 34,929	Freeman v. Love	COA 32,542	04/13/16
No. 34,830	State v. Le Mier	COA 33,493	04/25/16
No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	04/27/16
No. 35,426	Rodriguez v. Brand West Dairy	COA 33,675/33,104	04/27/16
No. 35,297	Montano v. Frezza	COA 32,403	08/15/16
No. 35,214	Montano v. Frezza	COA 32,403	08/15/16

Opinion on Writ of Certiorari:

		Date Opinion Filed
No. 34,613	Ramirez v. State	COA 31,820 04/14/16

Writ of Certiorari Quashed:

		Date Order Filed
No. 33,725	State v. Pasillas	COA 31,513 04/18/16
No. 33,877	State v. Alvarez	COA 31,987 04/18/16
No. 34,274	State v. Nolen	12-501 04/18/16
No. 34,443	Aragon v. State	12-501 04/18/16
No. 34,522	Hobson v. Hatch	12-501 04/18/16
No. 34,582	State v. Sanchez	COA 32,862 04/18/16
No. 34,694	State v. Salazar	COA 33,232 04/18/16
No. 34,669	Hart v. Otero County Prison	12-501 04/18/16
No. 34,650	Scott v. Morales	COA 32,475 04/18/16
No. 34,812	Ruiz v. Stewart	12-501 04/18/16
No. 34,949	State v. Chacon	COA 33,748 04/18/16
No. 35,296	State v. Tsosie	COA 34,351 04/14/16
No. 35,456	Haynes v. Presbyterian Healthcare Services	COA 34,489 04/14/16

Petition for Writ of Certiorari Dismissed:

		Date Order Filed
No. 35,213	Hilgendorf v. Chen	COA 33,056 11/09/15

Petition for Writ of Certiorari Denied:

			Date Order Filed			
No. 35,758	State v. Abeyta	COA 33,461	04/20/16	No. 35,588	Torrez v. State	12-501 04/12/16
No. 35,820	Martinez v. Overton	COA 34,740	04/19/16	No. 35,440	Gonzales v. Franco	12-501 04/12/16
No. 35,374	Loughborough v. Garcia	12-501	04/19/16	No. 35,815	State v. Sanchez	COA 34,170 04/11/16
No. 35,827	Serna v. Webster	COA 34,535/34,755	04/15/16	No. 35,813	State v. Salima J.	COA 34,904 04/07/16
No. 35,824	Earthworks Oil and Gas v. N.M. Oil & Gas Association	COA 33,451	04/15/16	No. 35,812	State v. Tenorio	COA 34,994 04/07/16
No. 35,823	State v. Garcia	COA 32,860	04/15/16	No. 35,811	State v. Barreras	COA 33,653 04/07/16
No. 35,817	State v. Nathaniel L.	COA 34,864	04/15/16	No. 35,810	State v. Barela	COA 34,716 04/07/16
No. 35,816	State v. McNew	COA 34,937	04/14/16	No. 35,809	State v. Taylor E.	COA 34,802 04/07/16
No. 35,777	N.M. State Engineer v. Santa Fe Water Resource	COA 33,704	04/14/16	No. 35,805	Trujillo v. Los Alamos Labs	COA 34,185 04/07/16
No. 35,618	Johnson v. Sanchez	12-501	04/12/16	No. 35,608	Johnson v. Horton	12-501 04/06/16
				No. 35,795	Jaramillo v. N.M. Dept. of Corrections	COA 34,528 04/05/16
				No. 35,793	State v. Cardenas	COA 33,564 04/05/16

Opinions

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

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

Effective May 6, 2016

Unpublished Opinions

No. 34570	1st Jud Dist Santa Fe CV-11-1534, S FOY v A JACKSON (affirm)	5/2/2016
No. 34134	9th Jud Dist Roosevelt CV-12-67, T MUSICK v SIERRA NEVADA (affirm in part, reverse in part and remand)	5/3/2016
No. 34902	11th Jud Dist San Juan LR-14-117, STATE v J HEAD (reverse)	5/3/2016
No. 35327	2nd Jud Dist Bernalillo CV-15-9253, K BRANDENBURG v HON R COSGROVE (affirm)	5/3/2016
No. 35011	2nd Jud Dist Bernalillo CV-15-726, V LOSACK v S OTERO (affirm)	5/4/2016
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No. 35059	13th Jud Dist Valencia CR-13-501, STATE v J WATERS (affirm)	5/4/2016
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No. 33782	2nd Jud Dist Bernalillo CR-12-5918, STATE v A COPPLER (affirm in part, reverse in part and remand)	5/5/2016

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An Introduction to This Issue

By Ellen Kelly

This is the third issue of the *New Mexico Lawyer* produced by the Animal Law Section. As was true for past issues, some of the authors have very definite views on the subjects of the articles, but every piece is well-documented and all of them continue to demonstrate how law, even animal law, is the servant of human economic, environmental and social interests.

To encourage interest in animal law issues, the Section is experimenting with a new format for the articles in this issue of the *New Mexico Lawyer*. Four of the articles appear printed in whole in this issue. The remaining articles are printed in full on the Animal Law Section's website. A summary of those articles are included in this issue. The Section is grateful to all the authors for their articles, all of which deserve to be read in their entirety because

they demonstrate the range of animal law issues lawyers encounter, from evidence and standing to international treaties and historical shifts in land use policies.

The Animal Law Section holds regular brown-bag events and sponsors continuing legal education programs that address the human interests that are at the heart of the legal issues involving animals. Those interests are commercial, environmental, philosophical or linked to concerns about human physical and psychological health. The brown-bag events, or "Animal Talks," are open to the public and draw attention to the connection between animal law and other legal topics. This year, the Section's main CLE program will be held in September and will focus on land use issues as they affect endangered species. Check out the Section's web page (www.nmbar.org/AnimalLawSection) or Facebook page (www.facebook.com/

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The Animal Law Section welcomes comments on the articles in this issue of the *New Mexico Lawyer* as well as suggestions for speakers or topics for Animal Talks. We also invite all members of the legal community, not just Section members, to submit article on legal issues involving animals for publication on our State Bar website and attend the Animal Talks. Membership in the Section is encouraged and is quite affordable. For additional information about the Section's activities, contact the current Section Chair Guy Dicharry at gdicharry@gmail.com.

Ellen Kelly is an attorney with Robert Curtis Law Firm, PA, and a member of the Animal Law Section board.

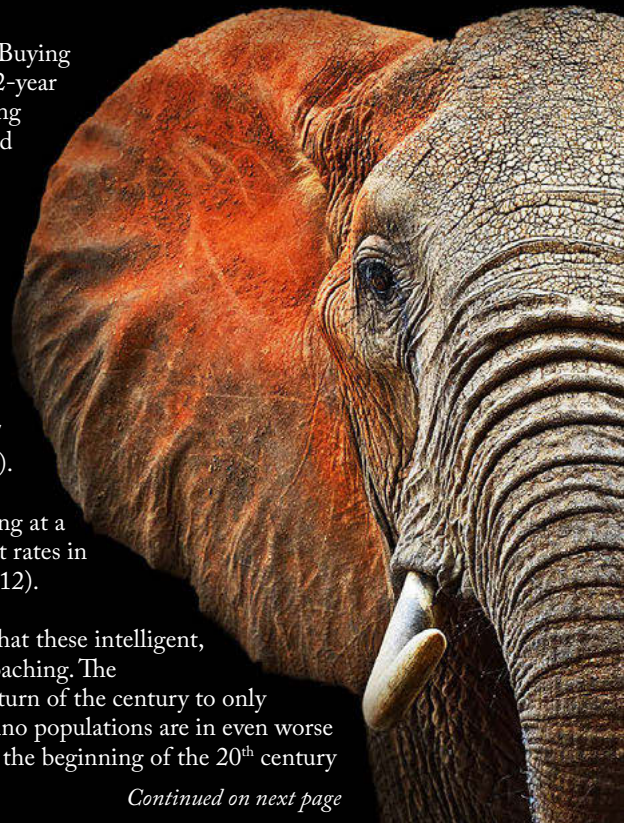
Blood Ivory: How States are Stepping in to Stop Elephant and Rhinoceros Poaching

By Susan George and Ruth Musgrave

"We can't let 96 elephants be killed every day just for their ivory. Buying and selling ivory should not happen!" These words are from 12-year old Taegen Yardley, a sixth grader in Shelburne, Vt. Yardley was testifying in April 2015 before the state's House Committee on Fish, Wildlife and Water Resources in support of a bill to ban ivory and rhino horn sales (H.297). But isn't there already a ban on such sales, you ask?

Federal law does indeed prohibit the import, export and interstate sale of most ivory (African Elephant Conservation Act of 1989, 16 U.S.C. § 4201 *et seq.*; Rhinoceros and Tiger Conservation Act of 1994, 16 U.S.C. § 5301 *et seq.*; Endangered Species Act, 16 U.S.C. § 1538), but it does not regulate intrastate sales. This means that a market for ivory still exists in the United States, and in fact, the U.S. is still the second-largest market in the world after China (*Ivory and Insecurity: The Global Implications of Poaching in Africa*, 112th Cong., 2nd sess., May 24, 2012). This loophole in federal law, and relaxed international restrictions, have given new life to the ivory trade, which means that poaching is increasing at a mind-numbing rate, with elephants being killed in Africa at the highest rates in a decade (Bryan Christy, *Blood Ivory*, National Geographic, October 2012).

It's hard to imagine a world without elephants, but scientists estimate that these intelligent, massive creatures will be gone from the wild in 10 years due to ivory poaching. The population of African elephants has dwindled from the millions at the turn of the century to only 500,000 today, and an estimated 30,000 are poached each year (*Id.*). Rhino populations are in even worse shape, with only 29,000 living in the wild today, down from 500,000 at the beginning of the 20th century



Continued on next page

(South African Department of Environmental Affairs, 2015). Ninety percent of all black rhinos were killed in the 1970s, and there are only four northern white rhinos left on earth; the one male is too old to breed. The loss of these species will have dire consequences for both the ecosystems in which they live and the ecotourism trade which supports millions of people. For ecotourism alone, it is estimated that, over its lifetime, a live elephant is worth 76 times its value in ivory (John Platt, *Slaughtered for Ivory*, Scientific American, Feb. 12, 2014).



...a market for ivory still exists in the United States...

In response to this looming extinction, states around the country are acting to close the loophole in federal law by passing their own bans on intrastate sales. To date, at least 21 states have introduced legislation to this end. New York and New Jersey now have laws in place, both of which passed with bipartisan support; California had a prohibition already, and in the fall of 2015 passed an even stronger law with tighter exemptions (AB 96, numbered for the 96 elephants that are slaughtered every day). Citizens in Washington state passed I-1401 in November of 2015, an initiative that prohibits the sale or trade of many animal parts, including elephant and rhinoceros ivory. Yet many of these bills and initiatives have faced opposition from groups ranging from antique dealers to the National Rifle Association, and bills in 13 states have been defeated. Bill proponents often respond to opposition by providing exemptions in the bills to meet some of these concerns, such as exempting ivory that is more than 100 years old. But it is difficult, if not impossible, to distinguish antique ivory from recently poached ivory, or for that matter, legal from illegal ivory. In fact, more than half of the “antique” market in the U.S. is actually from recently killed animals (*Antiques Roadshow to Stop Featuring Ivory Tusks*, Wildlife Conservation Society, June 4, 2014).

To counter the outcry from the NRA about attempts to restrict commercial sales of animal parts and ivory-handled guns, bill proponents point to recent case law upholding similar restrictions. In *Asian American Rights Committee v. Brown*, 2012 WL 11891478 (Cal. Sup. Ct., July 23, 2012), a state prohibition on

the sale of shark fins in California was challenged as a “taking” in violation of the U.S. Constitution. The court found that no taking occurs if the product can still be possessed or non-commercially transferred, so that eliminating commercial trade alone does not constitute a taking, as it is still legal to possess, use, display, inherit and donate ivory. Additionally, in *Chinatown Neighborhood Assn. v. Harris*, 794 F.3d 1136 (9th Cir. 2015), the court upheld a district court decision ruling that the shark fin ban did not discriminate, interfere with commerce or preempt federal laws governing fisheries.

States are also ramping up their involvement because of the impact of poaching on organized crime and national security. Wildlife poaching is a major criminal activity, worth \$19 billion per year and ranking only behind narcotics, counterfeiting and human trafficking in international crimes. Terrorist organizations around the world are using sales from ivory trafficking to finance their attacks on Americans and others (*Larger than Elephants: Inputs for an EU Strategic Approach to Wildlife Conservation in Africa*, European Commission, European Union, 2015). Rhino horn, for example, sells for up to \$30,000 per pound, which is higher than gold and platinum; elephant ivory can sell for \$1,000 per pound (*Id.*). New Jersey’s Sen. Bateman, a Republican co-sponsor of that state’s bill, stated that “ivory trafficking is at the highest rate ever recorded, and we must work with other states to crack down on organized crime connected with ivory sales” (Press Release, Gov. Christie Signs Bipartisan Legislation to Crack Down on Black Market Ivory

Trafficking, Aug. 5, 2014). New Mexico has not yet joined the throng of states with legislation either introduced or passed to limit ivory sales intrastate.

The federal government is also stepping up its efforts to combat wildlife trafficking. President Obama issued Executive Order 13648 on July 1, 2013, committing the U.S. to increased efforts to stop the trade in “blood ivory.” Since then, the U.S. Fish and Wildlife Service created new rules for trade in elephant ivory in 2014 and 2015 (Director’s Order 210, effective July 31, 2015; 50 C.F.R. Part 23, effective June 26, 2014). A proposed final rule under Section 4 (d) of the Endangered Species Act

will further restrict interstate commerce in ivory and sport hunting trophies, but does not limit intrastate sales (50 C.F.R. Part 17.40(e)). Additionally, Senators Feinstein and Graham introduced the Wildlife Trafficking Enforcement Act (S. 27) in January of 2015 to stiffen penalties for wildlife trafficking violations. The bipartisan Global Anti-Poaching Act (HR 2494), with more than 90 sponsors, passed the House in November of 2015 and would enhance international anti-poaching efforts.

Despite these positive efforts, it will take a shift in consumer demand and a concomitant restriction on intrastate sales of ivory to have an impact on this illegal practice. Proponents stress that we are faced with a choice of whether being able to sell ivory-handled guns or trinkets is more important than the survival of arguably the most iconic animal on Earth. Urging state legislatures around the country to step up and close the federal loophole is vital, as the role that states can play to protect these beautiful, majestic animals is a critical component in the fight against ivory poaching and extinction.

Susan George is the director of the Wild Friends program at the UNM School of Law, a hands-on civics education program for youth focusing on wildlife conservation issues.

Ruth Musgrave is the Conservation and Climate Adaptation Coordinator for the National Caucus of Environmental Legislators and is a founder of the Wild Friends program.

Hidden Justice Department Policy Prevents Prosecution of Endangered Species Killers

By Judy Calman

In 1995, a man named Chad McKittrick shot and killed a gray wolf in Montana. Once a U.S. Fish and Wildlife Service Law Enforcement investigation had been done, McKittrick was charged in federal district court with committing an illegal take under the Endangered Species Act. His case would set the stage for a dramatic, unexplained, and unpublicized shift in federal policy that has severely undermined the ESA's criminal prohibition of killing endangered species.

Under the ESA, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct. 16 U.S.C. § 1532(19) (1973). A conviction for illegally taking an endangered species can result in a sentence of up to a year in jail and a fine of up to \$50,000 for each take that is committed. (16 U.S.C. § 1540(b)(1) (1973))¹.

McKittrick testified at trial that he thought he was shooting a dog; in other words, he argued that he should be acquitted because he thought he was killing a non-endangered species. Defendants in previous ESA cases had attempted to use the same argument as a defense, but it had never been recognized as a valid defense. Like the other defendants who had raised that defense, it did not help his case, and McKittrick was convicted. *U.S. v. McKittrick*, 142 F.3d 1170, 1172, 1176-77 (9th Cir. 1998).

The only defense provided by the statute itself to a charge of taking an endangered species is the protection of one's life or the life of another person. 16 U.S.C. § 1540(b)(3) (1973). Between 1973, when the ESA was passed, and 1998, courts accordingly upheld take convictions regardless of any defenses offered by the defendant as to mistaken identity of the species, noting that Congress intended to make taking an endangered species a general intent crime and that to hold otherwise would make the statute ineffective.

For example, in *U.S. v. Billie*, the defendant was charged with taking an endangered Florida panther and raised mistaken identity of the species as a defense. In determining that taking is a



“People have consistently avoided prosecution for takes of various endangered species...”

general intent crime, the court wrote that “the construction advanced by defendant would eviscerate the Act’s purpose because it would be nearly impossible to prove that the average hunter recognized the particular subspecies protected under the Act.” 667 F.Supp. 1485, 1493 (S.D. Fla. 1987).

In *U.S. v. Nguyen*, the defendant was charged with taking an endangered sea turtle. The court cited the ample legislative history showing that Congress intended to make takes under the ESA general intent crimes. The court explained that “[t]he plain intent of Congress in enacting [the Endangered Species Act] was to halt and reverse the trend toward species extinction, whatever the cost.... The legislative history of [Section 11] shows that Congress intended to make violations of its provisions a general intent crime. Thus, it is sufficient that Nguyen knew that he was in possession of a turtle. The government was not required to prove that Nguyen knew that this turtle is a threatened species.” *U.S. v. Nguyen*, 916 F.2d 1016, 1018 (5th. Cir. 1990).

Despite the precedent holding that mistaken identity of the species is not a defense, McKittrick appealed his conviction to the Ninth Circuit Court of Appeals, which affirmed the conviction based on *Nguyen*, *Billie*, and other cases. *U.S. v. McKittrick*, 142 F.3d 1170, 1176-77 (9th Cir. 1998). McKittrick submitted a petition for a writ of certiorari to the U.S. Supreme Court, but in a sudden and unexplained shift in policy, the U.S. Solicitor’s response brief in opposition to certiorari stated that prosecutors would no longer ask for a jury instruction stating it was not a defense to claim mistaken identity of an endangered species; the Solicitor’s office would recognize mistaken identity as a defense to prosecution. Brief for U.S. in Opposition, *McKittrick v. U.S.*, No. 98-5406, 525 U.S. 1072 (1999). This internal shift in policy was a surprise, especially since case law on the subject had firmly established that mistaken identity of the species was not a valid defense.

In the years since the *McKittrick* case, memos have been issued and articles have appeared in the *U.S. Attorney’s Bulletin* regarding the change in jury instruction

and cautioning prosecutors that the new policy is not supported by case law.² Notice of the change was only issued to federal prosecutors, however, and no notification ever appeared in the Federal Register or in any other public record. The U.S. Supreme Court denied certiorari, and McKittrick's conviction stood, but his case had an enormous impact on endangered species law. As a result of the incredible shift in policy, the government is now applying an entirely different standard than that which was outlined by Congress and 20 years of ESA case law.

The Mexican gray wolf (*Canis lupus baileyi*), native to Mexico and the American Southwest, is the smallest and most endangered subspecies of wolf. It was essentially exterminated by the first half of the 20th century as part of a program to remove predators from the West to expand settlements, agriculture, and cattle grazing. More recent biological research has shown that predators are the most important aspect of a functioning ecosystem. In 1970, the last seven wild Mexican gray wolves were captured and brought into captivity, and shortly after the ESA was passed in 1973, the Mexican gray wolf was listed as endangered.

Mexican gray wolves were first reintroduced into the wild areas of the Gila Wilderness in New Mexico and the Apache-Sitgreaves National Forest in Arizona in 1998. The program was always controversial. Half of the wolves that were initially released were shot within months, and the rest were brought back into captivity for their own protection.

Today, after a long struggle, there are approximately 110 Mexican gray wolves in the wild. This is still far short of the 750 wolves biologists say are needed for a sustainable population, but it is much better than previous years.

Wolves remain vilified in many communities. While wolf recovery is a federal program on federal land and paid for by federal tax dollars, people are



permitted under the 1934 Taylor Grazing Act (43 U.S.C. § 315 (1934)) to lease parcels of the same National Forest land for grazing cattle. This becomes a conflict when wolves scavenge on cows that have died in the forest, and when they occasionally take calves, which are easy prey. The vast majority of the wolves' diet consists of elk, deer, and small animals, but their occasional³ predation of cattle creates tension between ranchers, conservationists, biologists, and the federal government.

An unfortunate side effect of this tension is the deliberate illegal killing of wolves. A staggering number of wolves have been shot; there have been more than 60 documented illegal killings of Mexican wolves in New Mexico and Arizona since 1998, a shocking number considering the small number of these wolves that exist. Illegal killing is by far their most common cause of death.

New Mexico Wilderness Alliance began considering legal action after noticing that while wolf killings were often reported in the media, charges for ESA violations were not. After several Freedom of Information Act requests and many months of research, we discovered that almost every defendant claimed during the investigation to have thought he was shooting at a coyote or a dog. Despite many of these cases being turned over by U.S. Fish and Wildlife Service Law Enforcement to the U.S. Department of Justice for prosecution, only one person has actually been charged with a take, and that case resulted in a plea deal, leaving the issue of the change in jury instruction unreachable. Another person was charged with the lesser charge of illegal possession of an endangered species under 16 U.S.C. § 1538(a)(1)(D). A little more

digging led us to the little-known "McKittrick Policy," which has become shorthand for the Justice Department's shift in jury instruction use for take cases.

Amazingly, the McKittrick Policy is applied nationwide, to all endangered species, and while conservation organizations have remained relatively uninformed about it, other groups and websites have discovered it and used it to circumvent the ESA's take provisions. People have consistently

avoided prosecution for takes of various endangered species, including for killing grizzly bears by claiming a belief they were black bears, killing condors by claiming a belief they were turkey vultures, and killing whooping cranes by claiming a belief they were Sandhill cranes. We obtained an internal Fish and Wildlife Service memo in which a law enforcement officer sarcastically criticized the McKittrick Policy, stating, "[a]s soon as word about this policy gets around the west, the ability for the average person to distinguish a grizzly bear from a black bear or a wolf from a coyote will decline sharply. Under this policy a hen mallard is afforded more protection than any of the animals listed as endangered." In an interesting instance of executive agencies disagreeing with each other, the Fish and Wildlife Service itself requested that the Justice Department rescind the policy, stating that it has prevented the prosecution of many take cases and has made ESA enforcement much more difficult.

New Mexico Wilderness Alliance, partnering with WildEarth Guardians, sued the Department of Justice in 2013 arguing, among other things, that the Justice Department violated the Administrative Procedures Act by administering a policy that is so extreme that it abdicated the agency's statutory responsibilities and violated the Freedom of Information Act by not notifying the public of the rule change. The Justice Department filed a motion to dismiss later that year, and this July, U.S. District Court Judge Richard Bury denied that motion, concluding in his Order that

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Evidentiary Issues in Animal Abuse Cases

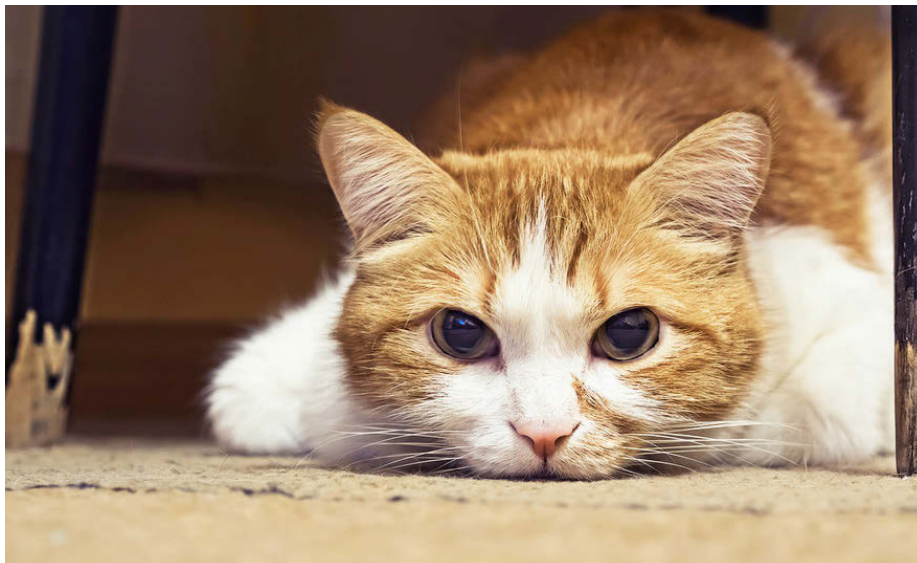
By Leigh Anne Chavez

Disturbing images of dead, beaten, emaciated, injured and neglected cats, dogs, horses and chickens peppered a highly informative conference on animal abuse held last fall in Albuquerque on “The Link Between Animal Abuse and Human Violence.” The link between cruelty to animals and violence towards humans is a matter of public safety and protecting the community’s animals from abuse goes hand-in-hand with protecting the community from violence overall, especially domestic violence. Not surprisingly, serial killers have been linked to animal cruelty¹. One way to address public safety is to address the treatment of animals.

The path from powerless pets to widespread prosecution for their abuse is a new one. Why should the law throw limited resources at animal protection? Dogs, cats and domestic birds are considered personal property in New Mexico (and most other jurisdictions). Throughout the ages, animals have provided rough sport for human entertainment—from Egyptians who harpooned hippos from boats, to Romans who watched as hapless criminals fought wild animals to the death. Fox hunts, horse racing, cockfighting and countless other human scheme has exploited animals and made them historically unworthy of legal protection.

That is changing. While the idea of animal abuse as a societal problem is not new, the modern focus began with the 1975 publication of ethicist Peter Singer’s “Animal Liberation,” in which he argued that animals’ ability to feel pain mandated their protection just like humans, although the legal interests between animals and humans were not necessarily identical. Shortly thereafter, the Animal Legal Defense Fund was established and it has taken a leading role in promoting prosecutions for animal abuse.

Lora Dunn, a staff attorney for ALDF’s Criminal Justice Program, identifies three ways in which prosecution of animal abuse cases is significant for public safety: 1) crime prevention, 2) breaking the



“The animal in an animal abuse case is both evidence and someone’s legal property.”

cycle of family violence, and 3) danger assessment². Dunn states that animal abuse “should be handled just like any other crime, but there are unique hurdles to animal cruelty cases: animals are voiceless victims and can’t recount what happened and they are also live evidence that need immediate, consistent and costly care while the case is pending. What’s more, law enforcement and prosecutors’ offices, already facing budget constraints, sometimes don’t have the resources to investigate and prosecute a case to its fullest extent.”³

Nevertheless, ALDF and other animal protection organizations such as the American Society for the Prevention of Cruelty to Animals have identified and shared key issues in evidence that must be addressed in the fight to properly hold abusers accountable.

No vet—no case

Dr. Patricia Norris, a veterinarian and director of animal welfare for the North Carolina Department of Agriculture and a specialist in the emerging field of veterinary forensics, is often asked to assist law enforcement agencies throughout New Mexico. According to the International

Veterinary Forensic Sciences Association, forensic veterinary is a relatively new discipline which applies forensic science techniques to legal investigations in criminal offenses against animals, helping crime scene analysts to process, assess and treat injuries and to determine causes of death. The focus is on preserving evidence, and availability to testify as expert witnesses.

Dr. Norris emphasizes the importance of the veterinarian in evidentiary issues that arise in animal abuse prosecutions and in making sure that veterinarian will be able to testify. “No vet—no case,” she holds. Evidentiary problems can be minimized by tapping into the forensic skills of a trained veterinarian from the very beginning, and developing strong relationships with crime scene investigators. The forensic veterinarian is able to recognize signs of injury resulting from intentional acts against the animal and to assess the animal’s level of distress, which may become significant issues at trial where the crime charge is a felony requiring intent. There the knowledge, skill and treating notes of the forensic veterinarian, who is presented as the principal expert witness at trial, is indispensable.

Crime scene management

While the veterinarian may be indispensable, the investigator is still in charge of the scene. New Mexico prosecutors generally agree that animal welfare investigators and law enforcement officers do a good job assisting in animal abuse prosecutions by preserving evidence and handling the scene, calling in the forensic veterinarian, and being available to testify. However, a 2010 ASPCA survey of law enforcement nationwide showed that less than 19 percent of officers had received formal training in animal cruelty laws in their jurisdictions.⁴ For example, an otherwise qualified crime scene investigator who can easily identify dogfight paraphernalia may not be aware of the developing legal rule that exigent circumstances not requiring a warrant to search extends to freeing dogs and animals in hot cars.⁵ It is the forensic veterinarian who can best testify as to whether the crime scene evidence showed whether starving, freezing, confining, or striking was tantamount to torture and thus supports a felony charge. She can also assist the lead investigator in assessing whether such evidence as visible sores on the animal signifies felonious intent.

Seizure and the “luxury” of long-term impoundment

The animal in an animal abuse case is both evidence and someone’s legal property. Evidence in all cases must be preserved, but an injured animal seized as evidence must be housed, fed and provided veterinary care pending trial, rather than simply being stored in an evidence locker like a stolen television. Although animal welfare authorities may be able to arrange a foster home placement, the chain of custody must be maintained. All of this requires scarce resources that governments and animal welfare organization already strain to allocate.

Pre-trial motions

Is the defendant a repeat abuser? Are those graphic images inflammatory? It may be necessary to file a Rule 404(b) motion to bring in evidence of the defendant’s prior abuse history in order



to counter a claim of absence of criminal intent. Photos and videos from the crime scene are, unfortunately, probably fairly explicit, but nonetheless essential to a possible conviction. However, this same vivid imagery will likely cause even a novice defense attorney to file a motion to exclude the evidence because it may prejudice the jury in its ability to traumatize more sensitive jurors. If such a defense motion is even partially successful, thought must be given to mitigation the disturbing aspect of such visual evidence by taping over faces for example.

An article on the ALDF website entitled “Why Prosecutors Don’t Prosecute,” the ALDF asserts that in addition to resource issues, a prosecutor may simply lack the necessary evidence to prove beyond a reasonable doubt that the perpetrator is guilty. For jurisdictions that cannot afford scrupulous investigations, a forensic veterinarian, or to house animals while the investigation is pending, the ALDF provides grant money for necropsies (animal autopsies), forensic testing, expert witness fees and costs of care as well as other legal research assistance on legal motions and brief writing.

New Mexico statutes divide animal abuse into two categories, cruelty and extreme cruelty, but do not protect insects, reptiles, most livestock animals or rodeo practices. Extreme cruelty requires intentional malicious killing, torturing, mutilating, injuring or poisoning an animal.⁶

Assistant district attorneys around New Mexico have different experiences prosecuting animal cruelty cases and find themselves concentrating on the

extreme cruelty felony cases. Spirit Gaines, assistant district attorney for the Second Judicial District, who prosecutes felony animal abuse cases in Bernalillo County, has had less than ten cases in two years. In New Mexico, there is no division of labor in the veterinary tasks needed to be completed in preparing for an animal abuse trial: animal welfare investigators serve both as evidence

preservers and expert witnesses. Among cases Gaines has prosecuted included one involving a puppy whose nose was broken while being disciplined, and a domestic violence case in which an animal was stabbed with scissors.

Prosecutions in rural areas of New Mexico are even fewer. Joseph Martinez, assistant district attorney for the 13th Judicial District, had a felony case—one of only three he has prosecuted—in which a mother dog who had given birth, died and was being eaten by her puppies for sustenance. District Attorney Andrea Reeb of the Ninth Judicial District thinks that the most difficult part of handling animal abuse cases is the general sense that animals and their protection are not important.

On the other hand, Don Gallegos, the Eighth Judicial District’s head prosecutor, sees a conviction rate of around 90 percent for animal abuse cases, but struggles with resource issues. Gallegos believes that investing in training for investigators, veterinarians and their assistants who treat injured animals following discovered or reported abuse, those who board live animals pending trial, and law enforcement personnel involved in the evidentiary chain that leads to animal abuse convictions bring long-term benefits to the community.

The relative infrequency of animal abuse prosecutions is thus to a large extent a function of resources available to provide tools for success bringing cases. Gaines is confident there are many more cases

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Read the **full versions** of these articles at
www.nmbar.org/AnimalLawSection.

Lobos and Litigation: Mexican Gray Wolf Reintroduction¹

By Peter M. Ossorio, retired federal prosecutor



The Mexican gray wolf (*Canis lupus baileyi*) or *lobo*, is not the gray wolf (*Canis lupus*) reintroduced into the Northern Rockies. It is a genetically distinct, smaller (50-90 pounds) and much rarer subspecies. Unlike its northern cousins, the *lobo* has no genetically diverse “source” population of thousands of wolves in Canada. Reduced by government killing to only seven “founders,” the *lobo*’s reprieve from extinction came with a genetic bottleneck and a time bomb of inbreeding depression. This urgency permeates every aspect of

the politics and policies affecting them.

During the 20th century, the U.S. Fish and Wildlife Service (and its predecessor, the Bureau of Biological Survey) extirpated the *lobo* from the United States by about 1970 – and also “assisted” Mexico in trying to wipe out wolves there. After the 1973 passage of the Endangered Species Act, the Service was charged with reversing course and saving, rather than exterminating, species.

In 1976, the Service listed the *lobo* as an endangered species. Between 1978 and 1980 a few were found in Mexico. By 1982 private conservation organizations succeeded in breeding them in captivity. However the reintroduction of *lobos* into the wild (1998) came in direct response to a 1990 lawsuit. As documented in the on-line article, at every subsequent major step the Service appeared to court lawsuits from conservationists to provide political “cover” and counter political pressure from *lobo* opponents.

Endnotes

¹ In addition to the USFWS <http://www.fws.gov/southwest/es/mexicanwolf/> and Arizona websites, <https://azgfdportal.az.gov/Wildlife/SpeciesOfGreatestConservNeed/MexicanWolves/> additional information about *lobos* from conservation groups is at www.mexicanwolf.org.

This article is dedicated to men and women of the Interagency Field Team (IFT) – federal, state, and volunteers – who do not quit on the week-ends as they strive to recover the *lobo*. Comments are welcome: peterossorio@centurylink.net.

Protecting Wildlife from Government Agencies

Samantha Ruscavage-Barz, staff attorney, WildEarth Guardians;
and Ashley Wilmes, former staff attorney, WildEarth Guardians



Between 2004 and 2010, Wildlife Services, a federal agency within the U.S. Department of Agriculture, spent nearly \$1 billion to kill nearly 23 million animals using aerial gunning, poisons, traps, snares, and hounds, purportedly to protect agriculture and other private interests from wildlife interference. As part of its program on federal lands, Wildlife Services distributes sodium cyanide booby traps and shoots

tens of thousands of native carnivores such as coyotes and wolves from helicopters and airplanes on public lands, including in wilderness areas. The agency also kills many “non-target” species such as domestic dogs and cats. Because it is a federal program, Wildlife Services’ actions must comply with the National Environmental Policy Act, a statute requiring federal agencies to analyze the environmental impacts of their actions before proceeding with the action. 42 U.S.C. § 4332(2)(C).

In 2012, WildEarth Guardians (“Guardians”) sued the U. S. Department of Agriculture and Wildlife Services to enjoin the federal agency’s management program because of its two-decade refusal to analyze the environmental consequences of its actions pursuant to NEPA and other statutes. *WildEarth Guardians v. USDA et al.*, Case No. 2:12-cv-716 (D.Nev. April 30, 2012). Guardians alleged Wildlife Services relied on an outdated environmental analysis for its wildlife-killing activities that failed to take into account new reports evaluating the efficacy of the program, current public concern with wildlife, and new scientific and economic information concerning wildlife management. Guardians presented significant new information to the agency on the costs, ineffectiveness, and environmental harms of wildlife-killing programs, but the agency did not consider the new data in its ongoing program implementation.

This article traces the historical development of Wildlife Services, discusses the program’s killing methods and budget, and describes the *WildEarth Guardians v. USDA* case.



Wacky Wildlife Laws

By Kelsey Rader, third year law student, UMM School of Law

Strange, outdated laws are often found on websites and in urban legends. Some of these laws have an actual basis in fact and tell an interesting story about the time period and events that led to their creation. This article focuses on the seemingly wacky wildlife laws still on the books in many states. Boxing bears, escaped camels and ill-fated Easter pets are investigated for their journeys into legislation and what they have to say about serious problems affecting animal welfare.

Hidden Justice Department Policy

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“the Plaintiffs allege a cause of action causally linked and fairly traceable to the McKittrick policy because it negates the coercive and deterrent effect of the general intent crime formulated by Congress and the vigorous enforcement plan designed by FWS in the Final Rule to prevent illegal shootings of Mexican gray wolves.” *WildEarth Guardians and New Mexico Wilderness Alliance v. U.S. Department of Justice*, Case 4:13-cv-00392-DCB, Doc. 30, p. 9 (July 27, 2015).

We continue to work for the reversal of the McKittrick Policy through this lawsuit, and we hope that regardless of the case’s outcome, the administration chooses

to rescind the policy in deference to the Fish and Wildlife Service and Congress’s intent when it passed the ESA.

Judy Calman is the staff attorney for New Mexico Wilderness Alliance

Endnotes

¹ See also 16 U.S.C. § 1538 (prohibiting the taking of endangered species, subject to several exceptions, such as taking with a permit).

² See Marshall Silverberg and Ethan Carson Eddy, *Prosecuting Criminal Violations of the Endangered Species Act*, 59 U.S. Attorney’s Bulletin No. 4, at 49 (July 2011).

³ For example, in 2010 in New Mexico, 22,000 head of cattle died. Of these, 3,300 were killed by predators. Of those 3,300 killed by predators, 2.4 percent (79 cows) were killed by wolves, totaling .3 percent of total cattle losses for that year. In contrast, 38 percent of total losses (8,360 cows) were due to digestive and respiratory problems. Other medical problems led to the vast majority of the rest of the losses. These numbers are statistically consistent over many years. See USDA, *Cattle Death Loss* (May 12, 2011), available at <http://usda.mannlib.cornell.edu/usda/current/CattDeath/CattDeath-05-12-2011.pdf> (last accessed 3/30/16).

Evidentiary Issues in Animal Abuse Cases

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than what is reported, and that New Mexico’s Legislature must look at our legal structure to address such issues as the lack of a statutory veterinarian duty to report abuse. Prosecutors Gaines, Gallegos, Martinez and Reeb all agree that, while the number of case handled per year or in total for each of the districts hovers at around a dozen, the problem is much more widespread than the number of prosecutions indicate based on their involvement in domestic violence cases and contact with animal welfare personnel.

District attorneys nationwide recently organized an effort to promote collegial support for animal abuse prosecutors. In 2011, the National District Attorneys Association founded its National Center for the Prosecution of Animal Abuse. The mission of NCPAA is in part to provide the resources, tools and support to prosecutors and allied professionals in order to prosecute those who harm animals.

Based on years of solid work by the ASPCA and ALDF in educating law enforcement, building coalitions, and holding outstanding conferences that

both educate and bring those who support humane animal approaches together, the NCPAA strongly promotes the ideas that voiceless victims deserve knowledgeable prosecutors to pursue justice in their name. Perhaps the strongest tools in the kit for such prosecutors is both the appreciation for the role of the expert veterinarian in prosecuting cases, as well as a strong assembly of resources from legislative funding. Thus, for the quality of life for all New Mexicans and their families, evidentiary issues in animal abuse lie at the heart of how we line up resources for future protection of all of those interests.

Leigh Anne Chavez works with the New Mexico Regulation and Licensing Department and is a member of the Animal Law Section.

Endnotes

¹ See, e.g., “Serial Killers & Animal Abuse”, noting that the FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Infamous connections in more recent times include Columbine High School students Eric

Harris and Dylan Klebold, who shot and killed 12 classmates before turning their guns on themselves, having bragged about mutilating animals to their friends. <https://spcala.com/programs-services/humane-education/serial-killers-animal-abuse/>

² Danger assessment is a tool, often in the form of a questionnaire, used by domestic violence professionals to determine the level of risk of death or serious harm posed to a domestic violence victim based on certain behaviors of the abuser. Violence towards pets is a risk factor. See, e.g., <http://learn.nursing.jhu.edu/instruments-interventions/Danger%20Assessment/index.html>.

³ Email interview between author and Lora Dunn, 11/5/2015.

⁴ Allie Phillips, J.D., and Randall Lockwood, Ph.D., *A Guidebook on Safer Communities, Safer Families & Being an Effective Voice for Animal Victims*, National District Attorneys Association, 2013.

⁵ See *Commonwealth v. Duncan*, 467 Mass. 746, 7 N.E.3d 469 (2014)

⁶ NMSA 1978, § 30-18-1 through 30-18-15

Editor’s note: The following update came after the New Mexico Lawyer was printed.

Metro Court to Launch ‘Animal Court’ Pilot

Albuquerque Metro Court recently formed a new specialty court to handle animal abuse cases and their offenders. One goal is to “intervene in that cycle of violence”, according to attorney Laura Castille, who worked for two years to establish the animal court. Alleged offenders would then be encouraged to give up their pet and sign up for counseling. Read more at <http://krqe.com/2015/12/17/metro-court-to-launch-animal-court-pilot/>.

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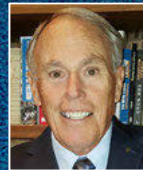
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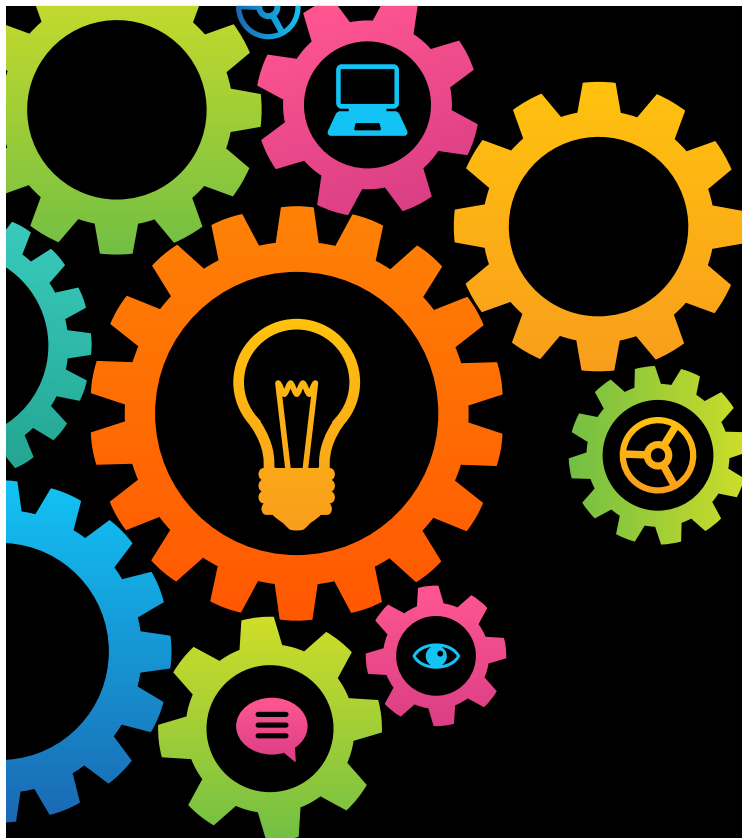


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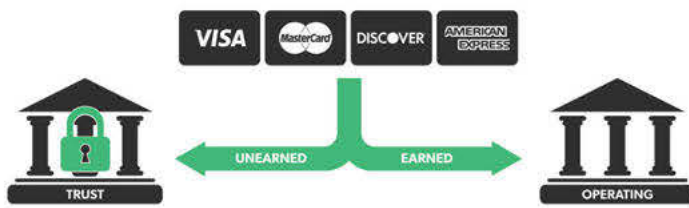


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Recent Rule-Making Activity

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Effective April 6, 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:

RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS

Rule 6-506 Time of commencement of trial 05/24/16

RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS

Rule 7-506 Time of commencement of trial 05/24/16

RULES OF PROCEDURE FOR THE MUNICIPAL COURTS

Rule 8-506 Time of commencement of trial 05/24/16

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>.

Advance Opinions

<http://www.nmcompcomm.us/>

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Official Citation: 2016-NMSC-006

No. S-1-SC-35426 (filed February 15, 2016)

NOE RODRIGUEZ,
Worker-Respondent,
v.

BRAND WEST DAIRY, Uninsured Employer,
Employer-Respondent,
and

NEW MEXICO UNINSURED EMPLOYERS FUND,
Insurer-Petitioner,
Consolidated With:

MARIA ANGELICA AGUIRRE,
Worker-Respondent,
v.

M.A. & SONS CHILI PRODUCTS,
Employer-Respondent,
and

FOOD INDUSTRY SELF INSURANCE FUND OF NEW MEXICO,
Insurer-Respondent.

AND

Docket No. S-1-SC-35438

NOE RODRIGUEZ,
Worker-Respondent,
v.

BRAND WEST DAIRY, Uninsured Employer,
Employer-Petitioner,
and

NEW MEXICO UNINSURED EMPLOYERS FUND,
Insurer,
Consolidated With:

MARIA ANGELICA AGUIRRE,
Worker-Respondent,
v.

M.A. & SONS CHILI PRODUCTS,
Employer-Petitioner,
and

FOOD INDUSTRY SELF INSURANCE FUND OF NEW MEXICO,
Insurer-Petitioner.

ORDER

WHEREAS, this matter came on for consideration by the Court upon motion to clarify stay and response thereto, and the Court having considered said pleadings and being sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra Jimenez Maes, Justice Edward L. Chavez, Justice Charles W. Daniels, and Justice Judith K. Nakamura concurring;

NOW, THEREFORE, IT IS ORDERED that the motion to clarify the stay is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to Rule 12-405(C) NMRA, the precedential value of the Court of Appeals' opinion in *Rodriguez v. Brand West Dairy*, 2015-NMCA-097, 356 P.3d 546, is hereby suspended until further order of this Court; and

IT IS FURTHER ORDERED that this case shall be scheduled for oral argument on the next available calendar.

IT IS SO ORDERED.

WITNESS, Honorable Barbara J. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 15th day of February, 2016.

Joey D. Moya,

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

Certiorari Granted, August 7, 2015, No. S-1-SC-35386

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-019

No. 32,820 (filed June 11, 2015)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JUAN CORDOVA,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF RIO ARriba COUNTY
MARY MARLOWE-SOMMER, District Judge

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for Appellee

JORGE A. ALVARADO
Chief Public Defender
B. DOUGLAS WOOD, III
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion**Cynthia A. Fry, Judge**

{1} Defendant appeals his convictions for causing great bodily injury by vehicle, aggravated driving while under the influence (DWI), knowingly leaving the scene of an accident, and homicide by vehicle. Defendant raises a number of arguments. However, the pertinent issue for this appeal is whether the district court erred in determining that the emergency assistance doctrine justified the warrantless entry by two Rio Arriba County sheriff's deputies into Defendant's residence. Because we conclude that the deputies did not have reasonable grounds to believe that a genuine emergency existed requiring their immediate aid, we hold that the district court erred in denying Defendant's motion to suppress.

BACKGROUND

{2} The facts underlying Defendant's convictions are as follows. A group of motorcyclists returning from a motorcycle rally in Red River, New Mexico, were traveling on State Road 76 near Chimayo, New Mexico. Defendant, driving a truck in the opposite direction, crossed the center lane and struck the motorcyclists. Several of the motorcyclists were injured in the collision, and one, the lead motorcyclist, was killed. Following the collision, Defendant

drove a short distance before he and two passengers abandoned the vehicle.

{3} Deputy Paula Archuleta was one of the first deputies to respond to the scene. A witness informed Deputy Archuleta that the abandoned truck was farther up the road and that three individuals were seen running from the scene in the vicinity of the Rio Chiquito. While a fellow deputy stayed with the victims, Deputy Archuleta began investigating the abandoned truck. She noted damage on the front passenger side and a cracked windshield on the driver side. After running the license plate, Deputy Archuleta was informed that the truck belonged to Defendant. Deputy Archuleta called Deputy Isaac Martinez, who was off-duty but lived nearby, and asked for his assistance in searching for the suspects. The deputies first began searching the area surrounding the Rio Chiquito. After being told by a volunteer firefighter where Defendant lived, the deputies proceeded to Defendant's residence.

{4} The deputies' testimony at the preliminary hearing varied slightly on the events that followed once they reached Defendant's residence. Deputy Archuleta testified that the door to the house was ajar and that she heard some type of "background noise" in the home. She testified that she knocked and announced the deputies' presence and, upon getting no response, entered the home. Deputy

Martinez, however, testified that they did not knock or hear "background noises." He testified that the deputies announced their presence and walked into the home. Both deputies testified that they entered the home with guns drawn.

{5} The deputies located Defendant in his bedroom lying on the bed. The deputies asked if he was Juan Cordova. When Defendant responded that he was, the deputies ordered him to put his hands up. They then told Defendant he was the suspected driver, escorted Defendant out of the house, and told him that he was being detained for questioning. The deputies testified that Defendant had a cut on his forehead, although a physician who treated Defendant later testified that he did not recall such an injury. When deputies asked if he was okay, Defendant responded that his truck had been stolen and that he was not involved in the accident. Once the deputies removed Defendant from the home, he was placed in handcuffs and searched. A set of car keys was found in his front pocket. Defendant was taken to the sheriff's department and charged in relation to the death and injuries of the motorcyclists. A chemical test would later show Defendant's blood alcohol content to be 0.14.

{6} Before trial, Defendant filed a motion to suppress, arguing that the deputies' entry into his home was in violation of the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The district court denied the motion to suppress and concluded that, under the emergency assistance doctrine, the deputies' warrantless entry into the home was justified by the deputies' concern for Defendant's safety. See *State v. Ryon*, 2005-NMSC-005, ¶¶ 27, 39, 137 N.M. 174, 108 P.3d 1032 (holding that "police officers may enter a home without a warrant or consent under the emergency assistance doctrine" when police have "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property"). The case proceeded to trial, and Defendant was convicted on two counts of causing great bodily injury by vehicle, two counts of aggravated DWI, one count of leaving the scene of an accident, and one count of homicide by vehicle. Defendant now appeals.

DISCUSSION**Standard of Review**

{7} We review a district court's decision regarding a motion to suppress evidence

as a mixed question of fact and law. *State v. Vandenburg*, 2003-NMSC-030, ¶ 17, 134 N.M. 566, 81 P.3d 19. “We view the facts in the light most favorable to the prevailing party and defer to the district court’s findings of historical facts and witness credibility when supported by substantial evidence.” *Ryon*, 2005-NMSC-005, ¶ 11. “The legality of a search, however, ultimately turns on the question of reasonableness.” *Id.* Reasonableness is determined de novo. *Id.*

Emergency Assistance Doctrine

{8} Defendant challenges the district court’s ruling that the deputies’ entry into Defendant’s home was justified under the emergency assistance doctrine. While “[w]arrantless searches and seizures inside a home are presumptively unreasonable,” the emergency assistance doctrine is one of the “few specific, narrowly defined exceptions.” *Id.* ¶ 23. In *Ryon*, our Supreme Court adopted the three-part test utilized in *People v. Mitchell*, 347 N.E.2d 607, 609 (N.Y. 1976). *Ryon*, 2005-NMSC-005, ¶ 29. It is the state’s burden to establish all three elements. *Id.* First, “the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.” *Id.* (alteration, internal quotation marks, and citation omitted). Second, “the search must not be primarily motivated by intent to arrest and seize evidence.” *Id.* (alteration, internal quotation marks, and citation omitted). Finally, “there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.” *Id.* (alteration, internal quotation marks, and citation omitted).

{9} Defendant’s argument largely focuses on the first element. Defendant argues that the deputies did not have sufficient information to reasonably believe that he was in need of immediate aid. Defendant also argues, under the second element of the *Mitchell* test, that without such reasonable belief, the deputies’ actions were primarily motivated by their intention to apprehend him and gather evidence. In practice, however, this distinction is irrelevant because without such reasonable grounds, the deputies’ actions were unlawful.

{10} As recognized in *Ryon*, because of the strong privacy interest in the home,

the first element requires a genuine emergency. 2005-NMSC-005, ¶ 26. This means “a strong perception that action is required to protect against imminent danger to life or limb” and circumstances so “sufficiently compelling [as] to make a warrantless entry into the home objectively reasonable[.]” *Id.* ¶ 31. Reasonableness is “tested objectively under the totality of the circumstances.” *Id.* ¶ 30. Useful factors for this determination are the “purpose and nature of the dispatch, the exigency of the situation based on the known facts, and the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.” *Id.* ¶ 32 (internal quotation marks and citation omitted). Furthermore, generalized testimony regarding a possible or potential emergency is insufficient to carry the state’s burden on this element. Instead, “officers must have credible and specific information that a victim is very likely to be located at a particular place and in need of immediate aid to avoid great bodily harm or death.” *Id.* ¶ 42.

{11} We agree with Defendant that the State failed to establish that there were reasonable grounds for the deputies to believe that an emergency necessitated their immediate entry into Defendant’s home. The only specific information available to the deputies at the time was that Defendant’s truck had been involved in an accident, albeit a serious one, and that three individuals were seen abandoning the truck. At this point, the deputies had no concrete information that Defendant was the driver involved in the accident, or even at home. *Id.* ¶ 43 (noting that the officers were unaware if the defendant was even in the home).

{12} Even assuming the deputies knew that Defendant was the driver, they had no specific information that he was seriously injured and in need of immediate aid. *See id.* (stating that the officers’ information was insufficient where they “did not know the nature or extent of the injury” or even “whether he was injured”). There were no obvious indications in the cab of the truck, such as blood or impacts to the windshield coming from inside, that any of the vehicle’s occupants were injured. *See City of Fargo v. Ternes*, 522 N.W.2d 176, 177-78 (N.D. 1994) (holding that one circum-

stance justifying the officers’ reasonable belief that a driver in an accident suffered sufficiently serious injuries was the presence of “blood on the seat and blood mingled with glass on the dashboard and steering wheel”). More importantly, none of the witnesses who saw the individuals fleeing the truck told deputies that they appeared injured. *See State v. Geisler*, 576 A.2d 1283, 1289 (Conn. App. Ct. 1990), *vacated on other grounds*, 498 U.S. 1019 (1991) (stating that the lack of indication by witnesses that the driver was injured or in need of assistance cast doubt on the notion that the “driver was injured to the point of needing immediate aid”). Indeed, the fact that the suspects had fled the truck, and, in Defendant’s case, conceivably had run home, is inconsistent with the degree of injury necessitating immediate police assistance by way of a warrantless entry. *See State v. Seavey*, 789 A.2d 621, 624 (N.H. 2001) (stating that a witness’s observation of the defendant walking away from the accident and down the street “indicated that she was not physically impaired”); *Commonwealth v. DiGeronimo*, 652 N.E.2d 148, 155 (Mass. App. Ct. 1995) (“[The defendant’s] driving off from the accident scene suggested lack of incapacitating injury.”).

{13} Finally, no circumstances at Defendant’s home indicated a genuine emergency. No signs of injury, such as blood, were noted on the property. *See People v. Copenhagen*, 21 P.3d 413, 416 (Colo. App. 2000) (affirming the officer’s warrantless entry where the officer noted blood inside the vehicle involved in the crash and a trail of blood leading from the outside of the defendant’s apartment through the residence). No sounds from inside the house alerted the deputies that Defendant was in need of immediate aid. *DiGeronimo*, 652 N.E.2d at 155 (noting that sounds of moaning or distress may be indicative of an emergency inside the residence). And, while in some cases an occupant’s failure to respond to repeated knocking can indicate an emergency, especially in instances where the officers already have specific information that the victim is in the home and seriously injured, the deputies did not have that chance here because they entered the home immediately after announcing their presence. *See Ternes*,

¹Subsequent to our Supreme Court’s decision in *Ryon*, the United States Supreme Court eliminated the second element of the *Mitchell* test because an officer’s “subjective motivation is irrelevant.” *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404 (2006). Although we state the *Mitchell* test as our Supreme Court adopted it in *Ryon*, the subjective element of the test is ultimately immaterial to our analysis in this case.

522 N.W.2d at 177-78 (holding that the warrantless entry was permissible where the officers knew the defendant was inside, had been involved in a serious accident, was bleeding, and where they received no response after knocking on the front door for several minutes, entered the residence). Given these circumstances, we conclude that the deputies did not have reasonable grounds to believe that Defendant might have been injured to an extent requiring their immediate entry and assistance.

{14} Although the State failed to establish that the objective circumstances necessitated a warrantless entry, we are similarly unconvinced that the deputies' testimony was sufficient to establish that a genuine emergency necessitated their entry. Both deputies testified that the reason they entered the home was because they were "concerned" for Defendant's safety. Deputy Martinez acknowledged that they did not know what Defendant's injuries were, if any. Consistent with the deputies' lack of specific information, Deputy Martinez characterized the entry as a "welfare check." However, this testimony does not establish the requisite circumstances needed to demonstrate a legitimate emergency requiring immediate police assistance. *State v. Baca*, 2007-NMCA-016, ¶ 31, 141 N.M. 65, 150 P.3d 1015 ("Ryon makes it clear that the burden to demonstrate an emergency is high."); *State v. Martin*, 193 P.3d 993, 998-99 (Or. Ct. App. 2008) (stating that while the officers' testimony regarding concern about the defendant's well-being and if she was "okay" after she was involved in hit and run "might reveal well-founded speculation that perhaps all was not well with defendant, it falls far short of revealing a belief that immediate intervention was necessary to protect her life."). Instead, this testimony is the type of speculation and conjecture that we have previously rejected as supporting an officer's warrantless entry under the emergency assistance doctrine. See *Baca*, 2007-NMCA-016, ¶ 27 ("Speculation and conjecture are insufficient to establish an emergency at hand and an immediate need for police assistance." (alteration, internal quotation marks, and citation omitted)); *Ryon*, 2005-NMSC-005, ¶ 43 (stating that the officers had insufficient information to justify entry into the residence where they "had only generalized, nonspecific

information that [the d]efendant might be inside [the home] and that he might have sustained a head or face injury."). We therefore conclude that the district court erroneously denied Defendant's motion to suppress the evidence seized as a result of the deputies' unreasonable entry into Defendant's home.

Sufficiency of the Evidence

{15} Defendant challenges the sufficiency of the evidence supporting his conviction for causing great bodily injury by vehicle to Vivian Woodall contrary to NMSA 1978, Section 66-8-101 (2004). Because we are reversing the district court's judgment, we consider whether sufficient evidence supported this conviction in order to determine whether double jeopardy principles would prohibit retrial of Defendant on this charge. *State v. Valino*, 2012-NMCA-105, ¶ 18, 287 P.3d 372. Because Defendant does not challenge the sufficiency of the evidence regarding his other convictions, we do not undertake a similar double jeopardy analysis in connection with those charges.

{16} "When reviewing a challenge to the sufficiency of the evidence, we must determine whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." See *State v. Templeton*, 2007-NMCA-108, ¶ 28, 142 N.M. 369, 165 P.3d 1145 (internal quotation marks and citation omitted). "A reviewing court must view the evidence in the light most favorable to the state, resolving all conflicts therein and indulging all permissible inferences therefrom in favor of the verdict." *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314.

{17} In order to convict Defendant of causing great bodily injury by vehicle, the State was required to prove beyond a reasonable doubt that (1) "[t]he defendant operated a motor vehicle while under the influence of intoxicating liquor, or while under the influence of valium, . . . or in a reckless manner"; (2) "[t]he defendant thereby caused the great bodily injury to Vivian Woodall", and (3) "[t]his happened in Rio Arriba County, New Mexico on or about the 28th day of May 2011." Defendant specifically argues that there was insufficient evidence that Woodall's

injuries constituted great bodily injury. Consistent with UJI 14-131, great bodily injury was defined in the jury instructions as "an injury to a person which creates a high probability of death or results in serious disfigurement or results in permanent or prolonged impairment of the use of any member or organ of the body."

{18} Woodall testified at trial that she experienced severe bruising, road rash, and bruised ribs as a result of the collision. The bruising and road rash covered her right side. She testified that she was unable to work for approximately a month. In addition, for approximately the first two weeks, she was largely unable to move because of the extreme pain from her bruised ribs. She testified that at certain times she still experiences pain resulting from her bruised ribs.

{19} Viewing the evidence in the light most favorable to the verdict, the jury could determine that Woodall suffered great bodily injury. "Prolonged impairment" is not a technical term. *Cf. State v. Jim*, 1988-NMCA-092, ¶ 20, 107 N.M. 779, 765 P.2d 195 (construing similar term, "protracted impairment"). "Prolonged impairment," like "protracted impairment," means a "lengthy or unusually long time under the circumstances." *Id.* ¶ 21 (internal quotation marks and citation omitted). Thus, it was for the jury to determine whether the impairment was for a sufficiently extended period of time so as to meet this definition. *Id.* In this case, the jury determined that Woodall's extreme and immobilizing pain over the course of the month, in addition to recurrent bouts of pain, were sufficient to constitute great bodily injury, and we will not interfere with its determination. Accordingly, sufficient evidence supported Defendant's conviction on this charge, and retrial on this charge is not barred.

CONCLUSION

{20} For the foregoing reasons, we reverse the district court's denial of Defendant's motion to suppress and remand for proceedings consistent with this opinion.

{21} **IT IS SO ORDERED.**

CYNTHIA A. FRY, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge
RODERICK KENNEDY, Judge

Certiorari Denied, January 29, 2016, No. S-1-SC-35675

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-020

No. 34,006 (filed December 7, 2015)

NATIONAL ROOFING, INC., MIDTOWN METALS, LLC,
and BUILDING ENVELOPE SERVICES, LLC,
Plaintiffs-Appellants,

v.

ALSTATE STEEL, INC., HUGHES & ASSOCIATES, INC., REID & ASSOCIATES, LLC,
MASON CORPORATION, MERILLAT LP, MASCO CABINETRY, LLC,
JOHN DOE, and STUDIO SOUTHWEST ARCHITECTS, INC.,
formerly known as DESIGN COLLABORATIVE SOUTHWEST,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

NAN G. NASH, District Judge

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Opinion**Linda M. Vanzi, Judge.**

{1} Subject to various exceptions, “[a]n action for damages resulting from a tort can only be sustained by the person directly injured thereby, and not by one claiming to have suffered collateral or resulting injuries.” *Loucks v. Albuquerque Nat’l Bank*, 1966-NMSC-176, ¶¶ 46-47, 76 N.M.

735, 418 P.2d 191. Nevertheless, National Roofing (Plaintiff) has sued several defendants in strict liability and negligence for damages allegedly resulting from physical injuries to its employees. The district court dismissed Plaintiff’s claims against all Defendants on the ground that no duty exists. Plaintiff argues on appeal that the district court impermissibly relied on principles of foreseeability in dismissing its claims, contrary to *Rodriguez v. Del Sol Shopping*

Center Associates, 2014-NMSC-014, 326 P.3d 465. We hold that the principle stated in *Loucks* remains good law, entirely consistent with the duty analysis set forth in *Rodriguez*, and we affirm.

BACKGROUND

{2} Plaintiff has alleged the following facts, which we accept as true. *See Envtl. Improvement Div. v. Aguayo*, 1983-NMSC-027, ¶ 10, 99 N.M. 497, 660 P.2d 587 (“[I]f a district court grants a motion to dismiss pursuant to Rule [1-0]12(b)(6) [NMRA], then the allegations pleaded in the complaint must be taken as true for purposes of an appeal.”). In March 2010 employees of Plaintiff were injured while repairing the deck of a canopy at a cabinet manufacturing facility owned by Masco Cabinetry, LLC and Merillat LP. The canopy was designed and manufactured by Mason Corporation and/or Studio Southwest Architects, Inc., and installed by Alstate Steel, Inc., Hughes & Associates, Inc., and/or Reid & Associates, LLC. Plaintiff and its affiliates sued all seven entities (collectively Defendants) in strict liability and negligence for damages Plaintiff sustained as a result of the injuries to its employees—specifically, increased workers’ compensation premiums, sums paid to reduce its insurance rating or modifier, and “los[t] income and future income” resulting from its now deficient safety record.¹ Because Plaintiff itself suffered no physical injury or property damage, the district court granted Defendants’ motion to dismiss all counts, precipitating this appeal. Plaintiff now asserts as a matter of law that *Rodriguez* precludes dismissal. Our review is de novo. *Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97, 257 P.3d 917.

II. DISCUSSION

{3} In *Rodriguez*, our Supreme Court held that “foreseeability is not a factor for courts to consider when determining the existence of a duty, or when deciding to limit or eliminate an existing duty in a particular class of cases.” 2014-NMSC-014, ¶ 1. In so holding, the Court expressed concern that a determination of “no duty” based on an improbable or remote nature of risk invites a court to weigh the particular facts of a case, usurping the jury’s role in determining legal cause and breach. *See id.* ¶¶ 18-19, 22. In short, foreseeability is simply not subject to categorical analysis by a court because “[w]hat may not be foreseeable

¹It has been conceded on appeal that National Roofing’s affiliates are not proper parties to this action, and they are hereby dismissed.

under one set of facts may be foreseeable under a slightly different set of facts[.]” *id.* ¶ 1, and facts are appropriately weighed by the jury, see *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 9, 148 N.M. 713, 242 P.3d 280. Nonetheless, “[c]ourts are not powerless to dismiss cases as a matter of law[.]” *Rodriguez*, 2014-NMSC-014, ¶ 24. A court may still (1) articulate policy reasons (unrelated to foreseeability) that justify a categorically limited duty, or no duty rule, *id.* ¶ 5; or (2) decide, as a matter of law, that no reasonable jury could find legal cause or breach, *id.* ¶ 24.

{4} This framework was adopted from the Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 7 cmt. j (2010). *Rodriguez*, 2014-NMSC-014, ¶ 1. Cases that do not involve physical or emotional harm to the plaintiff are treated separately in the Restatement. See Restatement (Third) of Torts: Liability for Economic Harm § 1(a) (Tentative Draft No. 1, 2012) (“An actor has no general duty to avoid the unintentional infliction of economic loss on another.”).² Comments to Section 1 recognize that “[a]n actor ordinarily has a duty of care when engaged in any activity that creates a risk of physical harm to others[.]” but that “[d]uties to avoid the negligent infliction of economic loss are notably narrower.” *Id.* cmt. a. Thus—specifically relevant to this case—a plaintiff normally cannot recover for economic loss caused by “unintentional injury to another person[.] or unintentional injury to property in which the [plaintiff] has no proprietary interest.” Restatement (Third) of Torts: Liability for Economic Harm § 7 (Tentative Draft No. 2, 2014). These limits

are related applications of the same principle, and they apply to facts that usually have certain features in common. The plaintiff and defendant typically are strangers. The defendant commits a negligent act that injures a third party’s person or property, and indirectly though perhaps foreseeably—causes various sorts of economic loss to the plaintiff: lost income or profits, missed business opportunities, expensive delays, or other disruption. The plaintiff may suffer losses, for example, because the defendant injured someone with whom the plaintiff had a contract and from whom the plaintiff had been expecting performance, such as an employee or supplier. Or the plaintiff may be unable to make new contracts with others, such as customers who cannot conveniently reach the plaintiff’s business because the defendant’s negligence has damaged property that now blocks the way. The common law of tort does not recognize a plaintiff’s claim in such circumstances.

Id. cmt. a. (citations omitted)³

{5} The ALI’s position, while often framed in different ways, is not novel. The rule against recovery for harm to another is typically associated with *Robins Dry Dock & Repair Co. v. Flint*, where the plaintiffs—time charterers of a ship owned and possessed by a third party—sued the defendant for negligently damaging the ship’s propeller, and thereby causing them to lose profits while the propeller was being repaired. 275 U.S. 303, 307 (1927), *superseded by statute on other grounds as stated in Slaven v. BP America, Inc.*, 786 F. Supp. 853 (C.D. Cal. 1992). The United States Supreme Court held that the plaintiffs lacked standing to sue in negligence because they

had no proprietary interest in the damaged ship. *Id.* at 308-09. Thus, Justice Holmes famously wrote, even assuming that the plaintiffs’ loss “flowed directly” from the injury to the propeller, “a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other unknown to the doer of the wrong. The law does not spread its protection so far.” *Id.* at 309 (citation omitted).

{6} The dominant justification for the continued reliance on this general rule is pragmatic: liability for indirect (but foreseeable) consequences to third parties resulting from negligent harm could be limitless given society’s proliferation of commercial relationships and the corresponding potential for unbounded actual and prospective economic harm flowing from a single negligent act. See, e.g., *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 54 (1st Cir. 1985) (“The number of persons suffering foreseeable financial harm in a typical accident is likely to be far greater than those who suffer traditional (recoverable) physical harm.”); Restatement (Third) of Torts: Liability for Economic Harm § 7 cmt. b (“Recognizing claims for those sorts of losses would greatly increase the number, complexity, and expense of potential lawsuits arising from many accidents. In some cases, recognition of such claims would also result in liabilities that are indeterminate and out of proportion to the culpability of the defendant.”); see generally Fleming James, Jr., *Limitations on Liability for Economic Loss Caused by Negligence: A Pragmatic Appraisal*, 25 Vand. L. Rev. 43, 45, 48-55 (1972).

²This section was approved by the membership of the American Law Institute (ALI) at the 2012 Annual Meeting. The related section specific to economic loss from injury to a third person or property not belonging to the plaintiff, which will be discussed in this Opinion, was approved by the ALI’s membership at the 2014 Annual Meeting. According to the Institute, both sections represent the most current statements of the ALI’s position on the subject and may be cited in opinions or briefs until the official text is published. Torts: Liability for Economic Harm, American Law Institute, <https://www.ali.org/projects/show/torts-liability-economic-harm-3rd/> (last visited October 22, 2015).

³The parties and the district court have conflated this doctrine with the “economic loss rule.” In New Mexico, that term has been relegated to a different (but related) context that calls for doctrinally policing the line between tort and contract. *Utah Int’l, Inc. v. Caterpillar Tractor Co.*, 1989-NMCA-010, ¶ 17, 108 N.M. 539, 775 P.2d 741 (“[I]n commercial transactions, when there is no great disparity in bargaining power of the parties, economic losses from injury of a product to itself are not recoverable in tort actions; damages for such economic losses in commercial settings in New Mexico may only be recovered in contract actions.” (citation omitted)). Compare Restatement (Third) of Torts: Liability for Economic Harm § 3: Preclusion of Tort Liability Arising from Contract (Economic Loss Rule) (Tentative Draft No. 1, 2012), which is paradigmatically rooted in products liability and has its own section in the Restatement, with Restatement (Third) of Torts: Liability for Economic Harm § 7, titled “Economic Loss from Injury to a Third Person or to Property Not Belonging to the Claimant.” See also Dan B. Dobbs, *An Introduction to Non-Statutory Economic Loss Claims*, 48 Ariz. L. Rev. 713, 714 (2006) (identifying two distinct rules limiting recovery of stand-alone economic loss). Professor Dobbs would call the principle discussed in this Opinion the “stranger economic loss rule.” Dobbs, *supra*, at 714. It is an often unstated principle of tort law, tethered to rationales that have little to do with doctrinal policing, and it applies with equal force when the plaintiff and defendant are strangers without any contractual relationship. Dobbs, *supra*, at 715

{7} For its part, the Restatement (Second) of Torts treated the type of claim for lost profits advanced in *Robins* as a nonactionable assertion of negligent interference with contracts and prospective contractual relations. See Restatement (Second) of Torts § 766C (1979). In essence, one cannot typically sue another in negligence for conduct that causes a third person to breach a contract with the plaintiff; or that causes the plaintiff's performance of a contract to be more expensive or burdensome; or that interferes with the plaintiff's ability to acquire potential contractual relationships with third persons—e.g., lost profits. *Id.* Applying Section 766C, for example, the Supreme Court of Iowa has concluded that an employer's claim in negligence for increased workers' compensation premiums resulting from injuries to its employees caused by a third party tortfeasor was nonactionable. *Anderson Plasterers v. Meinecke*, 543 N.W.2d 612, 613-14 (Iowa 1996). Indeed, such actions, whether the harm alleged is foreseeable or not, have been “almost universally denied.” *Id.* at 614; accord *Ore-Ida Foods, Inc. v. Indian Head Cattle Co.*, 627 P.2d 469, 473 (Or. 1981) (en banc) (rejecting employer's claim to recover workers' compensation benefits based on the prevailing rule “that a plaintiff may not recover for economic loss resulting from negligent infliction of bodily harm to a third person”).

{8} Consistent with *Robins* and the Restatements, our Supreme Court recognizes both the distinction between negligent and intentional interference with contractual relations, see *Anderson v. Dairyland Ins. Co.*, 1981-NMSC-130, ¶ 11, 97 N.M. 155, 637 P.2d 837 (“[E]ither an improper motive (solely to harm plaintiff), or an improper means is required for liability” (internal quotation marks and citation omitted)), and the general rule that “[a]n action for damages resulting from a tort can only be sustained by the person directly injured thereby, and not by one claiming to have suffered collateral or resulting injuries[.]” *Loucks*, 1966-NMSC-176, ¶ 46. As recently as 2003, the Court acknowledged “the prevailing rule

in America[.]” that “a plaintiff may not recover in negligence for economic loss resulting from bodily harm to another.” *Berlangieri v. Running Elk Corp.*, 2003-NMSC-024, ¶ 22, 134 N.M. 341, 76 P.3d 1098 (internal quotation marks and citation omitted).

{9} There are numerous “exceptions” to this principle of negligence law—which are probably better described as situations in which the pragmatic justification for limiting liability is simply absent. For instance, claims alleging intentional (as opposed to negligent) interference with contractual relations are actionable, but liability in those instances is inherently limited by the doctrine's intent requirement. See *Anderson*, 1981-NMSC-130, ¶ 11. Similarly, a loss-of-consortium claimant can sue for physical harm to another by demonstrating, in part, that “the claimant and the injured party shared a sufficiently close relationship,” a requirement that itself categorically limits liability to a particular class of relationships of mutual dependence. See *Wachocki v. Bernalillo Cty. Sheriff's Dep't*, 2011-NMSC-039, ¶¶ 5, 10, 150 N.M. 650, 265 P.3d 701. Recovery for wrongful death is provided for and carefully circumscribed by statute. See NMSA 1978, § 41-2-3 (2001). And while an insurer may claim as subrogee, the claim is brought in the “shoes of the insured,” and the defendant is not subject to potentially infinite strings of liability. *Amica Mut. Ins. Co. v. Maloney*, 1995-NMSC-059, ¶ 9, 120 N.M. 523, 903 P.2d 834. “[I]n insurance subrogation cases . . . there is but one cause of action for the entire recovery, including the subrogated amount, and that cause of action lies in the name of the insured.” *Id.* ¶ 11.

{10} At common law, the English cause of action *per quod servitium amisit* provided a remedy in the employment context for a master to recover for the loss of services of a servant injured by a third party. See *B.V. Merrow Co. v. Stephenson*, 300 N.W.2d 734, 735 (Mich. Ct. App. 1980) (per curiam) (citing *Mary's Case*, 9 Coke 111b (5 Coke's Reports 201, 204); 77 Eng. Rep. 895 (1612)). But the action was

based on the outdated social concept that domestic servants were the property of their masters, *id.*, and the assertion of such claims has long since been abandoned. See Restatement (Second) of Agency § 316 cmt. b (1958) (“For several hundred years . . . there have been few cases in which a master has brought an action for negligent harm to a servant not a member of his family.”); see also *Cont'l Cas. Co. v. P.D.C., Inc.*, 931 F.2d 1429, 1431 (10th Cir.1991) (concluding that New Mexico would reject a claim that an employer faced with a diminished work force due to employee injury has a cause of action against the tortfeasor).

{11} While Plaintiff's injured employees might state a claim against Defendants for their physical injuries, Plaintiff itself, which has suffered neither a physical injury nor property damage, is alleging collateral or resulting harm—increased premiums, an increased ratings modifier, and lost profits resulting from unsuccessful bids on new jobs—based on its status as employer of those injured, and on its commercial relationships with existing and potential customers and with its workers' compensation insurance carrier. Plaintiff has made no allegation that Defendants intentionally and improperly interfered with these contractual relations, see *Anderson*, 1981-NMSC-130, ¶ 11; Plaintiff certainly has made no claim on damages for loss of consortium; and this is not a claim on any subrogated interest—nor could it be. *Liberty Mut. Ins. Co. v. Salgado*, 2005-NMCA-144, ¶ 9, 138 N.M. 685, 125 P.3d 664 (“[O]ur courts have historically held that an employer/insurer does not have a statutory assignment or subrogation interest in a worker's third-party claim.”).

{12} Despite the requirements of these settled doctrines, Plaintiff argues that our Supreme Court's adoption of the Restatement's duty analysis in *Rodriguez* now authorizes it to sue in negligence and strict liability for economic loss based entirely on physical harm to another. For the reasons stated herein, we do not believe *Rodriguez* contemplated such a result. See *Dominguez v. State*, 2015-NMSC-014,

⁴The ALI is apparently in accord with our conclusion that the doctrine prohibiting recovery for economic loss resulting from physical injury to another, applied by our Supreme Court in *Loucks*, is entirely consistent with the duty analysis set forth in *Rodriguez*. As discussed above, the Institute has included both doctrines in the Restatement (Third) of Torts, without yet noting any conflict between them. See Restatement (Third) of Torts: Liability for Economic Harm § 1 cmt. a (“Duties to avoid the negligent infliction of economic loss are notably narrower.”); *Id.* § 7 cmt. b (“A collision that sinks a ship will cause a well-defined loss to the ship's owner; but it also may foreseeably cause economic losses to wholesalers . . . and then to suppliers, employees, and customers of the retailers, and so on. Recognizing claims for those sorts of losses would greatly increase the number, complexity, and expense of potential lawsuits arising from many accidents.”).

¶ 16, 348 P.3d 183 (“The general rule is that cases are not authority for propositions not considered.” (alteration, internal quotation marks, and citation omitted)).⁴ We agree with the district court that public policy has historically—and appropriately—justified a categorical no duty rule under the present circumstances, and we conclude that application of the rule stated in *Loucks* and subsequently recognized in *Berlangieri* defeats Plaintiff’s claims as a matter of law.

{13} Indeed *Rodriguez* itself provides that there are “exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases,” and in those cases “a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.” 2014-NMSC-014, ¶ 13 (internal quotation marks and citation omitted). Cases alleging liability in negligence or strict liability arising only from physical harm to another, constitute one such class of cases. *Loucks*, 1966-NMSC-176, ¶¶ 46-47. No fact-specific analysis is necessary to dismiss them. See *La. ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1023 (5th Cir. 1985) (en banc) (describing the rule as a pragmatic limitation on liability even when losses to third parties without a proprietary interest are “certainly foreseeable”); *Aikens v. Debow*, 541 S.E.2d 576, 592 (W. Va. 2000) (“It is a question of public policy.”).

{14} For a number of reasons, and without exception, other jurisdictions have uniformly rejected the precise claims Plaintiff advances. Some have held that an employer’s lost profits and/or increased workers’ compensation premiums resulting from a third party tortfeasor’s injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability. See *Crab Orchard Improvement Co. v. Chesapeake & O. Ry. Co.*, 115 F.2d 277, 282-83 (4th Cir. 1940) (applying West Virginia law); *Fischl v. Paller & Goldstein*, 282 Cal. Rptr. 802, 804 (Ct. App. 1991); *RK Constructors, Inc. v. Fusco*

Corp., 650 A.2d 153, 157 (Conn. 1994); *Southland Constr., Inc. v. Greater Orlando Aviation*, 860 So. 2d 1031, 1033-34, 1036 (Fla. Dist. Ct. App. 2003) (too remote and foreclosed by Pennsylvania’s workers’ compensation scheme); *Unique Paint Co. v. Wm. F. Newman Co.*, 411 S.E.2d 352, 353 (Ga. Ct. App. 1991); *N. States Contracting Co. v. Oakes*, 253 N.W. 371, 372 (Minn. 1934); *Whirley Indus., Inc. v. Segel*, 462 A.2d 800, 804 (Pa. Super. Ct. 1983) (“[A]n increase in an employer’s [W]orkmen’s [C]ompensation premiums following an automobile accident is not reasonably foreseeable by a driver.”); *Higbie Roth Constr. Co. v. Houston Shell & Concrete*, 1 S.W.3d 808, 812-13 (Tex. App. 1999).

{15} Other courts have held that the exclusivity provisions of the various workers’ compensation acts impliedly forbid such recovery. *Erie Castings Co. v. Grinding Supply, Inc.*, 736 F.2d 99, 103-104 (3d Cir. 1984) (applying Pennsylvania law); *Southland Constr., Inc.*, 860 So. 2d at 1035-36; *Pro-Staffers, Inc. v. Premier Mfg. Support Servs., Inc.*, 651 N.W.2d 811, 815-16 (Mich. Ct. App. 2002); *Multiplex Concrete Co. v. Besser Co.*, 380 A.2d 708, 710 (N.J. Super. Ct. App. Div. 1977) (per curiam) (action prohibited in both strict liability and negligence); *M.B. Haynes Corp. v. Strand Electro Controls, Inc.*, 487 S.E.2d 819, 820-21 (N.C. Ct. App. 1997); *Schipke v. Grad*, 1997 SD 38, ¶ 13, 562 N.W.2d 109, 112 (“[W]e find ourselves in agreement with those courts that have denied recovery on the ground that the employer, having no more rights under the workers’ compensation statutes against a negligent third party than the employee injured by the third party’s negligence, has no right to sue for increased premiums.”).

{16} While we join these jurisdictions, we do so in agreement with courts that have ruled on the more basic ground that public policy categorically prohibits recovery under these circumstances. *Am. River Transp. Co. v. KAVO KALIAKRA SS*, 206 F.3d 462, 465 (5th Cir. 2000) (stating that an employer cannot recover in admiralty for increased workers’ compensa-

tion premiums resulting from injuries to employees because “economic damages are not recoverable in negligence untethered to an injury to a property interest”); *Anderson Plasterers*, 543 N.W.2d at 613-14 (discussed above); *R.L. Whipple Co. v. Pondview Excavation Corp.*, 887 N.E.2d 1095, 1097 (Mass. App. Ct. 2008) (stating that an employer cannot maintain a negligence claim to recover increased workers’ compensation premiums from the third party who injured its employee because “purely economic losses are unrecoverable in tort . . . actions in the absence of personal injury or property damage” (alteration in original) (internal quotation marks and citation omitted)); *Cincinnati Bell Tel. Co. v. Straley*, 533 N.E.2d 764, 771 (Ohio 1988) (“We do not find that a duty to an injured employee’s employer exists by virtue of the pronouncements of common law, by legislative enactment, or by operation of law. It would appear that such a duty could only exist based on contract or warranty.”); *Ore-Ida Foods, Inc.*, 627 P.2d at 473 (citing the prevailing rule “that a plaintiff may not recover for economic loss resulting from negligent infliction of bodily harm to a third person”); *Vogel v. Liberty Mut. Ins. Co.*, 571 N.W.2d 704, 708 (Wis. Ct. App. 1997) (holding, as a matter of public policy, that allowing damages to an employer for economic consequences arising from injuries to an employee would “enter a field with no sensible stopping point”).

{17} This conclusion is consistent with both *Loucks*, 1966-NMSC-176, ¶¶ 46-47, and *Rodriguez*, 2014-NMSC-014, ¶¶ 24-25, and therefore, the district court appropriately dismissed Plaintiff’s claims.

III. CONCLUSION

{18} Affirmed.

{19} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

MICHAEL D. BUSTAMANTE, Judge



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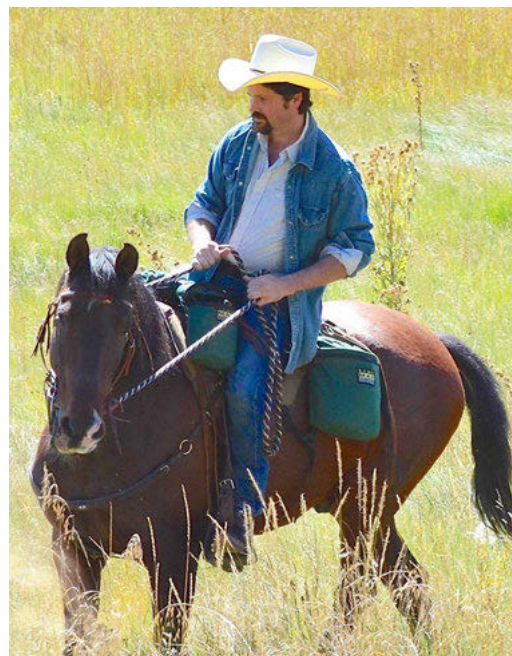
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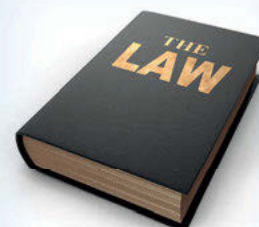


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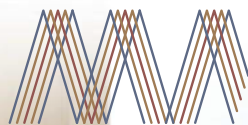
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The Children, Youth and Families Department is seeking to fill a vacant Children's Court Attorney Senior Position. Salary range is \$39-\$69K annually, depending on experience and qualifications. The attorney will represent the Department in abuse/neglect and termination proceedings and related matters. The ideal candidate will have experience in the practice of law totaling at least three years and New Mexico licensure is required. Children's Court Attorney Senior position is located in Albuquerque, New Mexico. Benefits include medical, dental, vision, paid vacation, and a retirement package. Please contact the following for additional information. Deborah Gray (505) 841-7819 or Deborah.Gray@state.nm.us. The state of New Mexico is an EOE. To apply for this position go to www.state.nm.us/spo/ and click on JOBS, then click on Apply for a Job Online.

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NM's leading Worker's Compensation insurance carrier is seeking an associate corporate counsel with 1-5 years experience to assist the VP/General Counsel in protecting the company's legal interests. The position will provide legal analysis, advice and services on a range of legal, compliance and general business issues, as well as oversee the management of subrogation and other litigation. It will interact with internal departments of the company on projects and cases that influence multiple aspects of business operations. Candidates must possess strong writing, research and communication skills, be self-motivated and have demonstrated time management skills in handling multiple cases, projects and meeting deadlines. Legal experience with a law firm preferable or in-house counsel. Subrogation, insurance and/or workers' compensation litigation a plus. Please submit resumes to humanresources@newmexicomutual.com. For more detailed information visit careers at www.newmexicomutual.com.

Third Judicial District Attorney State of New Mexico

Position Vacancy Announcement

Position/Division: Trial Attorney (Position Classification Dependent upon experience) (Hiring Salary depends on experience and budget availability); Location: Dona Ana County Building, 845 N. Motel Blvd., Suite D, Las Cruces, NM 88007; Salary Range: \$54,122-\$67,652/ Annually; (Hiring salary depends on experience and budget availability); Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. Preferred Qualifications: Two (2) or more years as a prosecuting attorney. Job Duties: Incumbent handles felony cases under supervision, for example adult and juvenile burglaries, property crimes, armed robberies, drug trafficking, mental commitments, probation violations; takes rotation as on-call attorney; performs legal research for other attorneys; assists in trial teams; performs non-prosecution duties as assigned; advises/assists entry level attorneys; performs other related job duties. Working Conditions: Work is performed in office, courtroom, and community environments. Physical effort and travel may be required. Incumbent may be required to work under stressful situations and/or conditions. Application Deadline: Friday, May 27, 2016 by 5:00 p.m. Submit Application to: 3rd Judicial District Attorney's Office, C/O Whitney Safranek, Human Resources Administrator, 845 N. Motel Blvd., Suite D, Las Cruces, NM 88007; wsafranek@da.state.nm.us. *This position may be offered at the lowest level.*

Department of Finance and Administration Governor-Exempt Position of General Counsel

The Department of Finance and Administration is seeking qualified applications for the Governor-exempt position of General Counsel. Applicants must be licensed to practice law in the State of New Mexico; plus have at least two (2) years of experience in finance law with at least one (1) year experience in employment law. Civil litigation experience preferred. Please submit a letter of interest, a resume, and at least three professional references to Julia Ruetten at Julia.Ruetten@state.nm.us. For more information call (505) 827-4982. Salary DOQ. Open until filled.

Legal Director

The American Civil Liberties Union (ACLU) of New Mexico seeks a full-time Legal Director, based in Albuquerque. This senior staff position supervises a team of attorneys and oversees the ACLU's program of impact-oriented litigation and support for non-litigation advocacy. For the full position announcement and how to apply: <http://www.aclu-nm.org/legaldirector>. Position open until filled.

Third Judicial District Attorney State of New Mexico

Position Vacancy Announcement

Position/Division: Assistant Trial Attorney (Position Classification Dependent upon experience) (Hiring Salary depends on experience and budget availability); Location: Dona Ana County Building, 845 N. Motel Blvd., Suite D, Las Cruces, NM 88007; Salary Range: \$48,980-\$61,225/ Annually (Hiring salary depends on experience and budget availability); Requirements: J.D. degree and current license to practice law in New Mexico. Preferred Qualifications: Legal experience totaling up to at least one (1) year; Job Duties: Incumbent handles a variety of misdemeanors and lower level felony cases, such as DWI's and bad check cases; does legal research for felony cases for higher level Attorney's; assists in trial teams; performs non-prosecution duties as assigned and performs other related job duties. Felony work is performed under supervision. Working Conditions: Work is performed in office and courtroom environments. Physical effort and travel may be required. Incumbent may be required to work under stressful situations and/or conditions; Application Deadline: Friday, May 27, 2016 by 5:00 p.m.; Submit Application to: 3rd Judicial District Attorney's Office; C/O Whitney Safranek, Human Resources Administrator, 845 N. Motel Blvd., Suite D, Las Cruces, NM 88007; wsafranek@da.state.nm.us. *This position may be offered at the lowest level.*

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

Associate Attorney Position

Hoffman Kelley Lopez, insurance defense firm with emphasis on Workers' Compensation, is seeking an associate attorney to join our team. Applicant must be a graduate of an accredited law school and licensed in NM. Ideal candidate will be a highly motivated self-starter that possesses excellent oral and written communication skills, strong analytical ability and can work independently. Deposition and/or courtroom experience is a plus. In state travel is required. Benefits available including health, dental and 401(k). Email resume, writing sample and references to michelle@hklfirm.com or fax to Hiring Partner at 800-787-9748.

Associate Attorney

Blackburn Law Offices, an established Albuquerque criminal defense and racetrack/racino litigation firm, is seeking a full time associate to assist in all areas of our practice. Candidates should have good research and writing skills. Please submit resumes to Admin@BBlackburnLaw.com or Blackburn Law Offices, 1011 Lomas NW, Albuquerque, NM 87102.

General Counsel, Spaceport America

The General Legal Counsel for Spaceport America serves as legal counsel regarding a broad, complex set of legal tasks including but not limited to: contracting; agreements; trademarking; ITAR compliance; Inspection of Public Records Act (IPRA); and compliance with State and Federal law as it relates to spaceport activities. Examples of work include the drafting and review of: contracts, Request for Proposals and other tasks associated with procurement, agreements, opinions, correspondence and other documents; negotiating contracts; and developing, drafting and evaluating proposed legislation. Knowledge of aerospace law is highly desirable. This is a full time policy making non-tenured Exempt Position. The incumbent reports to the CEO of Spaceport America. The position is located in Las Cruces, New Mexico with relocation to Spaceport America, New Mexico within a year. A Juris Doctorate Degree from an accredited school of law is required. Candidates must have an active bar membership and be in good standing in at least one jurisdiction and if selected must either wave into the New Mexico Bar or obtain a public employee limited license pending successful passage of the New Mexico Bar exam, (See 15-107 NMRA and 15-301.1 NMRA.). Previous experience with general representation of state government agencies including familiarity with the Open Meetings Act, the Inspection of Public Records Act and other state governance issues is highly desirable. To apply, submit a resume to the New Mexico Spaceport Authority, 901 E. University Ave., Suite 965L, Las Cruces, NM 88001 or to christine.anderson@spaceportamerica.com.

Taxation and Revenue Department Governor-Exempt Position of General Counsel

The Taxation and Revenue Department is seeking qualified applications for the Governor-exempt position of General Counsel. Applicants must be licensed to practice law in the State of New Mexico; plus have at least two (2) years of experience in tax law with at least one (1) year experience in employment law. Civil litigation experience preferred. Please submit a letter of interest, a resume, and at least three professional references to Julia Ruetten at Julia.Ruetten@state.nm.us. For more information call (505) 827-4982. Salary DOQ. Open until filled.

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.jemezpuablo.org. Or call the Human Resources Department at (575) 834-7359. Submit a completed tribal application with your resume to: HR@jemezpuablo.org

Administrative Assistant for Legal and HR Departments

Full time Position available to provide administrative support to the Legal and Human Resource Departments in a variety of functions. Qualifications include 2 - 5 years of related office and administrative experience. Proficiency with MS Office software-Word, Excel, PowerPoint and Outlook Required. A general knowledge of legal and/or HR procedures and processes preferred but not required. Must have demonstrated ability to maintain confidentiality. Critical thinking skills and attention to detail and accuracy are essential. To see detailed Job Description, please log onto our Website at www.jaynescorp.com/careers.

Administrative Assistant

Administrative Assistant for law office for calendaring, data base management, answering telephones, opening and closing files, mail management and back up legal assistants in office. Must have pleasant disposition and phone voice, with great computer skills, including Word and Excel. Experience with Time Matters a plus. Please send letter of interest with salary requirements and resume to Tonnie@cclawnm.com. EOE

Paralegal

Need a team member for small law firm. Must have at least 3 years legal experience and have knowledge and experience with court filing, including e-filing; legal research; scheduling; client/court contact; working knowledge of Microsoft Office Suite programs; document formatting; working with computers; and AP/AR. Excellent working atmosphere. Email resume to mickey@mickeylawyer.com.

Positions Wanted

Legal Assistant/Paralegal Seeks FT Employment

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Services

Briefs, Research, Appeals—

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

Contract Paralegal

Contract paralegal with 25+ years of experience available for help with all aspects of civil litigation, working from my own office. Excellent references. civilparanm@gmail.com.

Get it done

Contract paralegal with proven record in civil litigation. I produce favorable results. Research, briefs, all aspects of case management. tracydenardo.sf@gmail.com. 505-699-4147

Office Space

503 Slate NW

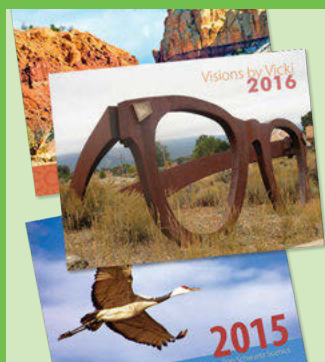
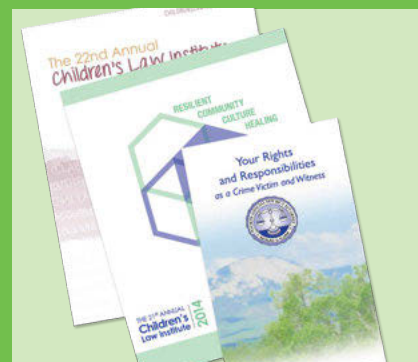
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