

BAR BULLETIN

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June 1, 2016 • Volume 55, No. 22



Vast, by Andrea Cermanski

The William and Joseph Gallery, Santa Fe

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JUDGE CAROL CONNOR

1941-2016



It is with great sadness that members of the New Mexico Women's Bar Association bid goodbye to **Judge Carol Connor**, a much-loved founding member, who passed away on May 10, 2016. To read the full obituary, refer to page 13 of this issue or the New Mexico Women's Bar Association website.

*We will miss her humor, generosity, and fighting spirit.
Her memory will continue to inspire us.*



www.nmbar.org/WomensBar



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Meetings

June

- 1**
Employment and Labor Law
Section BOD, noon, State Bar Center
- 7**
Bankruptcy Law Section BOD,
Noon, U.S. Bankruptcy Court
- 7**
Health Law Section BOD,
9 a.m., teleconference
- 8**
Animal Law Section BOD,
Noon, State Bar Center
- 8**
Children's Law Section BOD,
Noon, Juvenile Justice Center
- 8**
Taxation Section BOD,
11 a.m., teleconference
- 9**
Business Law Section BOD,
4 p.m., teleconference
- 9**
Public Law Section BOD,
Noon, Montgomery & Andrews, Santa Fe
- 10**
Criminal Law Section BOD,
Noon, Kelley & Boone, Albuquerque

Workshops and Legal Clinics

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
- 1**
Sandoval County Free Legal Clinic:
10 a.m.–2 p.m., 13th Judicial District Court,
Bernalillo, 505-867-2376
- 3**
Civil Legal Clinic:
10 a.m.–1 p.m., First Judicial District Court,
Santa Fe, 1-877-266-9861
- 9**
Valencia County Free Legal Clinic:
10 a.m.–2 p.m., 13th Judicial District Court,
Los Lunas, 505-865-4639
- 15**
Family Law Clinic:
10 a.m.–1 p.m., Second Judicial District
Court, Albuquerque, 1-877-266-9861

Cover Artist: Andrea Joy Cermanski is an artist who lives and works in Santa Fe. She has been working in acrylic and encaustic for more than 19 years and has a bachelor's degree in art history and a master's degree in art education. Cermanski has exhibited her work in five solo and nine group shows, including *Feminists Under Forty*, which was curated by Judy Chicago. She is featured in E. Ashley Rooney's *Contemporary Art of the Southwest* (2014), and has numerous collectors around the country, including two corporate collections. She is currently represented by galleries in Santa Fe and San Jose del Cabo, Mexico. View more of her work online at www.santafemodernpainter.com/.

Notices

COURT NEWS

New Mexico Supreme Court Notice of Vacancies on Supreme Court Committees

The Supreme Court of New Mexico is seeking applications to fill vacancies on the following Supreme Court committees: Board of Bar Examiners (1 vacancy), Joint Committee on Rules of Procedure (1 vacancy) and Metropolitan Courts Rules Committee (1 vacancy). Unless otherwise noted, all licensed New Mexico attorneys are eligible to apply. Anyone interested in volunteering to serve on one or more of these committees may apply by sending a letter of interest and resume by mail to Joey D. Moya, Chief Clerk, P.O. Box 848, Santa Fe, New Mexico 87504-0848, by fax to 505-827-4837, or by email to nmsupremecourtclerk@nmcourts.gov. The letter of interest should describe the applicant's qualifications and should list committees in order of preference if applying to more than one committee. The deadline for applications is June 10.

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.

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.

Professionalism Tip

With respect to the courts and other tribunals:

I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation.

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.

Appellate Practice Section Brown Bag Lunch with Chief Judge Michael E. Vigil

State Bar members are invited to join the Appellate Practice Section and the Young Lawyers Division for the next brown bag lunch at noon on June 10, at the State Bar Center in Albuquerque. The guest will be Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. The brown bag lunch series is informal and is intended to create opportunities for appellate judges and the practitioners who appear before them to exchange ideas and to get to know each other better. Attendees should bring their own brown bag lunch. Space is limited, so email Tim Atler at tja@atlerfirm.com to attend.

Chief Judge Vigil is a 1976 graduate of Georgetown University Law Center in Washington, D.C. where he was an editor of the *Georgetown Law Journal*. He was one of the original staff attorneys for the Court's prehearing division from 1976 until 1979. He then entered the private practice of law, focusing on criminal defense and civil litigation, with an emphasis on personal injury and medical malpractice in the civil field. He is a past member of the New Mexico Criminal Defense Lawyers Association, National Association

of Criminal Defense Lawyers, Association of Trial Lawyers of America and American Inns of Court.

Children's Law Section Donate to the Annual Art Contest Fund

The Children's Law Section seeks donations for its annual art contest fund. The contest aims to help improve the lives of New Mexico's youth who are involved with the juvenile justice system. The generous donations received each year and the community help defray the cost of supplies, prizes and an award reception. Through the years, the contest has demonstrated that communicating ideas and emotions through art and writing fosters thought and discussion among youth on how to change their lives for the better. To make a tax deductible donation, make a check out to The New Mexico State Bar Foundation and write "Children's Law Section Art Contest Fund" in the memo line. Mail checks to: State Bar of New Mexico, Attn: Breanna Henley, PO Box 92860, Albuquerque, NM 87199. For more information contact Ali Pauk, alison.pauk@lopdm.us

Committee on Women and the Legal Profession Rosemary Traub Receives Justice Minzner Award

The Committee on Women and the Legal Profession will present the Justice Pamela B. Minzner Outstanding Advocacy for Women Award to Rosemary Traub of New Mexico Legal Aid. The ceremony will be from 5:30-7:30 p.m., June 9, at the Albuquerque Country Club. Appetizers will be provided by the Committee and a cash bar will be available. R.S.V.P.s are appreciated and can be sent to Zoë Lees, zel@modrall.com.

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

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

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

Albuquerque Bar Association June Luncheon

Join the Albuquerque Bar Association for a membership luncheon on June 7 at the Embassy Suites Hotel. Alicia Bannon will present "Essentials of a Strong Public Financing System" during lunch from noon–1 p.m. (arrive for networking at 11:30 a.m.). After the luncheon, Ted Occhialino, UNM School of Law, will present "Civil Procedure Update" (2.0 G) from 1:15–3:15 p.m. To register or for more information, visit www.abqbar.org.

New Mexico Criminal Defense Lawyers Association Evidence and Jury Trials CLE

Law and technology change the playing field in today's trial practice. Learn evidentiary issues involving the internet, character evidence and biased jurors at the New Mexico Criminal Defense Lawyers Association's "Evidence & Jury Trials in the 21st Century" CLE (6.0 G) on June 17 in Albuquerque. This seminar includes NMCDLA's annual membership meeting and Driscoll Award ceremony. Afterwards, NMCDLA members and their families and friends are invited to the annual membership party and silent auction. Visit www.nmcdla.org to join NMCDLA and register for the seminar today.

OTHER NEWS

Southwest Women's Law Center

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

—Featured— Member Benefit



MeetingBridge offers easy-to-use teleconferencing especially designed for law firms. Set up calls and notify attendees in one simple step. Client codes can be entered for easy tracking. Operator assistance is available on every call.

Contact Dave Martin
1-888-723-1200, ext. 627
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www.meetingbridge.com/371



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ADDRESS CHANGES

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court

Email: attorneyinfochange@nmcourts.gov
Fax: 505-827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar

Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org

lunch will begin at 11:30 am. 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.

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners met at on May 6 the State Bar Center in Albuquerque. Action taken at the meeting was as follows:

- Approved the Feb. 26 meeting minutes as submitted;
- Accepted the March 2016 financials, cash flow statements and executive summaries;
- Received an update on dues which reported that there are currently 24 active members who have not paid their dues;
- Received an update on the audit which will be finalized for the August meeting;
- Approved a recommendation to invest funds in savings or money market accounts rather than CDs;
- Reported on the State Bar's and Bar Foundation's credit card points and options for their use; staff will determine the best option;
- Approved a recommendation to transfer \$100,000 from the Bar Foundation to the State Bar for expenses paid on its behalf;
- Discussed the sale of the Bar Foundation's interest in the Bar Center to the State Bar; the Board will consider all options and discuss further;
- Tabled a request for the Justice Patricio M. Serna Endowed Scholarship pending the creation of a policy for donation requests which the Bylaws and Policies Committee is in the process of drafting;
- Received a report from the Access to Justice Fund Committee and an update on the IOLTA funds which New Mexico will be receiving for distribution to legal service organizations to assist with mortgage foreclosures and community redevelopment;
- Received a report on the Executive Committee meeting at which the agenda was reviewed; a report

from General Counsel Richard Spinello was received regarding rule changes to the Pension Protection Act, which all retirement plans are required to update in order to comply with the Act; the only substantive change is that the amendment allows participants to begin participating 90 days after beginning employment instead of one year; the committee approved a resolution for the changes and the Board ratified the action;

- Held an executive session and approved an extension of the executive director's contract due to the timing of the expiration of the contract and the next Board meeting;
- Received a report from the Bylaws and Policies Committee which met to discuss the creation of a policy for contribution/donation requests; a policy with criteria will be presented to the Board for consideration at the August meeting; the committee also discussed non-attorney members of sections and recommends limiting the number of non-lawyer members and to not permit them to serve as officers of the section board; amendments to Article IX, Section 9.1, of the State Bar Bylaws will be presented to the Board for consideration at the August meeting; and the committee tabled the Natural Resources, Energy and Environmental Law Section's request to amend their bylaws regarding membership and board composition pending the Board's approval of the bylaw amendments to Article IX, Section 9.1;
- Reappointed Dennis E. Jontz to the ABA House of Delegates for a two-year term;
- Appointed Mary H. Smith to the Civil Legal Services Commission for a three-year term;
- Reappointed Norman L. Gagne to the Judicial Standards Commission for a four-year term;
- Discussed the creation of a lifetime achievement award and referred it to

the Annual Awards Committee for a recommendation;

- Reported that the deadline for annual awards nominations is May 20 and due to the timing of the next Board meeting, the committee's recommendations as to the award recipients will need to be approved by the Executive Committee;
- Received a report from General Counsel Richard Spinello on the recent U.S. Supreme Court case *Friedrichs v. CA Teachers Association* which looks at overturning the *Aboud* case, one of the foundational cases that is relied on by the *Keller* decision. The Court recently issued a 4-4 tie in the current case which left the *Aboud* case intact; however, the case may be reheard once the new justice is appointed to the Court;
- Ian Bezpalko provided an update on increases in filing and file and serve fees by \$2 due to the increased costs of Odyssey; the Board asked Bezpalko to convey their concerns regarding the increases to the Court;
- Received a report from the Bar Center Committee; the committee met in follow up from the feasibility study to determine the current and future needs; a cost benefit analysis will be prepared; they are also looking at repairs and upgrades, including resurfacing the parking lot and renovations to the service kitchen and restrooms; and
- Received an update on Entrepreneurs in Community Lawyering; ECL is taking applications and working on the curriculum; ECL reported on the development efforts regarding annual meeting and the Fellows Program.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Aug. 18 meeting.

Legal Education

June

- | | | |
|--|---|---|
| <p>2 Butt Thornton and Baehr Academy
9.0 G, 3.0 EP
Live Seminar, Albuquerque
Butt Thornton and Baehr
505-884-0777</p> | <p>6 2016 Estate Planning Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Negotiating and Drafting Issues with Small Commercial Leases
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 Lawyers' Duties of Fairness and Honesty (Fair or Foul: 2016)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>7 Conflicts of Interests (Ethicspalooza Redux—Winter 2015 Edition)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>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</p> |
| <p>2 2015 Federal Practice Tips and Advice from U.S. Magistrate Judges
2.0 G 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>7 Beyond Sticks and Stones (2015 Annual Meeting)
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Legal Ethics in Contract Drafting
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 The Trial Variety: Juries, Experts and Litigation (2015)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>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</p> | <p>17 Evidence & Jury Trials in the 21st Century
6.0 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> |
| <p>2 Conflicts of Interest (Ethicspalooza Redux – Winter 2015 Edition)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Legal Issues Facing Women Seeking Healthcare
1.0 G
Live Program, Albuquerque
Southwest Women's Law Center
swwomenslaw.org</p> | |

July

- | | | |
|--|---|---|
| <p>14 Natural Resource Damages
10.0 G
Live Program, Santa Fe
Law Seminars International
www.lawseminars.com</p> | <p>19 Essentials of Employment Law
6.6 G
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com</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>21 Drafting Sales Agents' Agreements
1.0 G
Teleseminar
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>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> | |

August

- | | | |
|---|--|--|
| <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

- | | | |
|--|---|--|
| <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> | |

October

- | | | |
|---|---|--|
| <p>4 Indemnification Provisions in Contracts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 Citizenfour—The Edward Snowden Story
3.2 G
Live Seminar
Federal Bar Association, New Mexico Chapter
505-268-3999</p> | <p>25 Fiduciary Standards in Business Transactions: Good faith and Fair Dealing
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>5 Managing Employee Leave
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Ethics and Cloud Computing
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

Indian Law Section Reception— Presentation of Bar Prep Scholarships and Attorney Achievement Award

Photos by Breanna Henley

On April 28 the Indian Law Section hosted a reception at the Indian Pueblo Cultural Center in honor of Bar Preparation Award recipients **Jay C. McCray**, **Concetta “Connie” Tsosie de Haro** and **Brian T. Smith** and Achievement Award recipients **Michael Gross** and **C. Bryant Rogers**.

To provide support to UNM law students planning to pursue a career in Indian law, the Section created a scholarship to assist with the cost of bar exam preparation. The scholarship is funded by donations from ILS members. This year’s recipients were chosen based on their background in and commitment to practicing Indian law, academic success and financial need. ILS Chair-elect Delilah Tenorio presented UNM graduating students McCray, a member of the Navajo Nation, Tsosie de Haro, a member of the Navajo Nation, and Smith, a member of the Pine Ridge Indian Reservation, with the scholarships.

Gross and Rogers were selected as Achievement Award recipients based on their success in *Salazar v. Ramah Navajo Chapter*, a class-action law suit to recover contract support costs for tribal self-determination and self-governance. Indian Law Section Board member Sarah Stevenson and former Assistant Secretary of Indian Affairs and UNM School of Law Professor Kevin Washburn introduced the awardees, who then shared the story of the lawsuits’ history and encouraged guests to start discussions and make strides in the practice of Indian law.

The Indian Law Section would like to extend a special thank you to its members and donors for their generosity in supporting the scholarship award. These contributions provide tremendous support to the growth and activity of the Indian law community in New Mexico. ■

To view more photos of the event and learn more about the Indian Law Section, visit www.nmbar.org/IndianLawSection.



Bar Prep Scholarship recipients Jay C. McCray, Brian Smith and Concetta Tsosie de Haro



Michael Gross, Kevin Washburn and C. Bryant Rogers



Delilah Tenorio, Brian Smith, Ashley Tellier, C. Bryant Rogers, James M. Burson, Michael Gross, Jay C. McCray, Concetta Tsosie de Haro and Sarah Stevenson

Antonia Roybal-Mack

Honored with Pettijohn Award

Photos by Pam Zimmer

Story by Evann Kleinschmidt

It was standing room only when Antonia Roybal-Mack was honored with the 2016 Henrietta Pettijohn Award by the New Mexico Women's Bar Association on April 28 at the Albuquerque Country Club.

Women's Bar President Barbara Koenig welcomed the audience and thanked the event sponsor and silent auction donors. Southwest Women's Law Center Executive Director Pamela P. Herndon spoke about the Center's "One Woman, One Case, Once A Year" program which pairs high impact policy cases affecting women with attorneys serving in a pro bono capacity. Justice Edward L. Chávez gave some background on the Women's Bar and presented the award to Roybal-Mack. The Association was founded in 1990 by Judge Carol Connor, Margaret Branch and Judge Elizabeth Whitefield. It now has more than 220 active members and supporters throughout the state.



Justice Edward L. Chávez presents the award to Antonia Roybal-Mack

Reflecting on her own journey, Roybal-Mack said she owes much of her success to her roots—the strong Hispanic women of her family, her husband and children, her team at Roybal-Mack Law, PC, mentors and the Women's Bar.



New Mexico Women's Bar Association members Kate Southard, Aja Brooks, Lindsay Griffell, Amy Sirignano, Antonia Roybal-Mack, Deanza Valencia Sapien, Margaret Peggy Graham, Yasmin Dennig and Barbara Koenig

Roybal-Mack has been honored by her service to the legal community and public by the Albuquerque Business First and New Mexico Hispanic Bar Association, among others. She is a litigation and planning attorney with Roybal-Mack Law, PC, in Albuquerque. She is involved with the New Mexico Hispanic Bar Association, Women's Bar, State Bar Committee on Diversity and the Legal Profession, Hispanic National Bar Association and more! Outside of the legal community, Roybal-Mack devotes her time to advocating for those with disabilities through the Rio Grande Down Syndrome Network.

The award is named after the first female attorney admitted to the State Bar in 1892. It is given each year to an attorney who has done an exemplary job advancing the causes of women in the legal profession. ■



Roybal-Mack with her daughter Lea, husband Terry, son Tanner and daughter Lili

For more photos of the event, visit www.nmbar.org/Photos.



The Roybal-Mack Law team



Roybal-Mack with her family including sisters, mother and aunt

Ask-a-Lawyer Law Day Call-in Program



The Young Lawyers Division would like to thank our attorney volunteers for the April 30 Ask-a-Lawyer Law Day Call-in Program which fielded 225 calls from the public in Alamogordo, Albuquerque, Farmington, Las Cruces and Roswell.

Volunteers:

Alejandro Acosta	Phillip Chandler	Sean FitzPatrick	Billy Jimenez	Stormy Ralstin	Maria Tanner
John Armijo	Evan Cochnar	Ignacio Gallegos	Gayolyn Johnson	Rose Rice	James Tawney
Erinna Atkins	Eric Coll	Miguel Garcia	Paula Kahn	David Rosales	Judicial DA
S. Bert Atkins	Rebekah Courvoisier	Debora Gerads	Jared Kallunki	Heather Russell	Rick Tedrow
Stephanie Beninato	Mark Curnutt	Darla Goar	Robert Lara	Sonia Russo	Paul Vaughan
Allison Block-Chavez	Michael Daniels	John Hakanson	Ashley Londy	Michael Sanchez	Katina Watson
Juliane Bradshaw	Jamie Dawson	John Hightower	Dan Macy	Petria Schreiber	Richard Wellborn
Gail Brownfield	Brian Decker	Beth Hightower	Judy Paquin	Chelsea Seaton	Jeremy Worley
Ismael Camacho	Harold Downer	Clayton Hightower	Larry Pickett	Sylvain Segal	
Kelly Cassels	Darla Evans	Calvin Hyer	Anna Rains	David Shelle	



From left, Gayolyn Johnson, Stormy Ralstin, Judy Paquin, John Armijo, Billy Jimenez, Sean FitzPatrick, Juliane Bradshaw, Paula Kahn, David Rosales, David Shelle, Allison Block-Chavez, Stephanie Beninato, Sonia Russo, Mike Daniels, Ignacio Gallegos and Calvin Hyer; not pictured, Sylvain Segal



From left, Judge Counts, Petria Schreiber, Erin Atkins, Bert Atkins, Phillip Chandler, Darla Goar, Heather Russell, Rebekah Courvoisier, Gail Brownfield and John Hakanson



From left, Evan Cochnar, Rick Tedrow, canine volunteer Buttercup, Harold Downer, Ashley Londy, Michael Sanchez, Brian Decker and Mark Curnutt



From left, James Tawney, Alejandro Acosta, Ismael Camacho, Paul Vaughan and Richard Wellborn



From left, Eric Coll, John Hightower, Kelly Cassels, Beth Hightower, Clayton Hightower, Jeremy Worley, Chelsea Seaton and Jamie Dawson; not pictured, Anna Rains, Rose Rice and Jared Kallunki





Catherine T. Goldberg



Scott D. Gordon

Catherine T. Goldberg and **Scott D. Gordon** have become members of the National Association of Distinguished Counsel. Goldberg practices in the areas of real estate, financings, banking, foreclosures, commercial law, leases, contracts and

corporate law. Gordon is a board-certified specialist in civil trials and in employment and labor law. Both attorneys practice with Rodey, Dickason, Sloan, Akin & Robb, PA. NADC is an organization dedicated to promoting the highest standards of legal excellence. Only the top one percent of attorneys in the U.S. are awarded membership in NADC.



William C. Salmon who retired from law last year, is a finalist in the 2016 New Mexico Music Awards for best country CD for his CD "Bill Salmon, Bottled in Dreams," which was released last year on Amazon, iTunes, cdbaby and Spotify. He is also a finalist for Best Americana song for "Soul In Purgatory," performed with his band Swamp deVille and fiddler Michael Jasper.

From left, William Salmon, Mike Linden and Mike Fox.

Victor A. Titus of the Titus and Murphy Law Firm, was named 2016 Honoree of the Year by the New Mexico Trial Lawyers Association Amicus Committee for his major contributions to the field and practice of law.

Rodey, Dickason, Sloan, Akin & Robb, PA

Southwest Super Lawyers:

Mark K. Adams, Leslie McCarthy Apodaca, Rick Beitler, Perry E. Bendicksen III, Henry M. Bohnhoff, David P. Buchholtz, John P. Burton, Jeffrey M. Croasdel, Jocelyn C. Drennan, Nelson Franse, Kurt B. Gilbert, Catherine T. Goldberg, Paul R. Koller, Bruce D. Hall, Scott D. Gordon, Jeffrey L. Lowry, W. Mark Mowery, Theresa W. Parrish, John N. Patterson, Charles (Kip) Purcell, Edward R. Ricco, John P. Salazar, Andrew G. Schultz, Seth L. Sparks, Aaron C. Viets and Charles J. Vigil.

Southwest Super Lawyers: Rising Star

Cristina A. Adams, Denise M. Chanez, Tyler M. Cuff, Richard E. Hatch, Margot A. Heflick, Justin A. Horwitz, Robert L. Lucero, Todd E. Rinner, Shannon M. Sherrell, Jessica R. Terrazas and Krystle A. Thomas.

In Memoriam



Hon. Carol A. Connor

Hon. Carol A. Connor (Lacan) died in Albuquerque on May 10. Judge Connor, a strong, wise and powerful Assinibione Sioux woman, was born in Wolf Point, Mont., on Dec. 31, 1941, to Lora M. Worthington and Fred Whitebear Connor. Judge Connor was preceded in death by son Robert Mark Gilbert. She is survived by daughters Cindy Montgomery and Lori Matier Vitatote; grandchildren Natalie Montgomery, Rachael Matier, Joseph Montgomery, and William Connor Montgomery; and great

grandchildren Dominique Ortiz, Jordan Connor, Ethan Whitebear, Brendan Barela, and Noah Joseph. Judge Connor graduated with the class of 1978 from the University of New Mexico Law School. She was a member of the Indian Law Center. Her prolific

law career spanned four decades, including practicing law for several tribes across the U.S., including her own Assinibione Sioux tribe in Montana. Judge Connor presided as a federal administrative law judge for 20 years. Judge Connor was a founding member of the New Mexico Women's Bar Association and a tireless advocate for women, Native Americans and land and water rights. Judge Connor was married to her "Cherie" Jacques Lacan for 20 years, whom she met in Normandy while honoring a story of fallen Native Americans in WWII, which included her own father. They were married in a fairy tale French castle and in the church. They resided in Albuquerque with their beloved puppies, Bisoux Boy I, Bisoux Boy II and Kissy Face. Judge Connor's impact on the world will be missed as she truly touched all those she encountered. She always believed her greatest gift to the world was her children, grandchildren and great grandchildren who she loved and adored.

Florence Ruth Jones “Flossie” Brown, 86, of Santa Fe, died April 4. She is survived by her sons, John Brown (Karen) and William Brown (Rita Uranga) of Santa Fe, son-in-law Chris Jimenez of Albuquerque, stepdaughter Gillian Folmar Alessio (Ken) of Las Cruces, grandchildren John Brown (Carla Garcia), Timothy Brown (Isabel Winsor-Sagan), Greg Brown and Tamlin Horne all of Santa Fe and Jessica Stultz, Denver. She was preceded in death by her husbands Herb Brown and Richard Folmar and daughter Ruth Brown Jimenez. Born in Chicago on Nov. 23, 1929, she traveled to Santa Fe with her family and homesteaded in 1935. She graduated from Loretto Academy in 1947 and the UNM Law School in 1953. In law school she ran for Albuquerque City Commissioner against Clyde Tingley but was defeated. She married Herb Brown in October 1954 and together they owned and operated Brown Wrecking and Salvage in the ‘60s. She was a Girl Scout Leader at Salazar and became the Chief Attorney for the Child Support Enforcement program in 1976. In 1978 she transferred to Health and Environment and became the General Counsel. Her husband Herb passed away in 1984 and in 1989 she married Richard Folmar. She retired from the New Mexico Health Department in 1991 and was the first recipient (1996) of the State Bar’s Public Lawyer Award for Distinguished Service. In her retirement she helped her family build and run Santa Fe Skies RV Park and Santa Fe Vacuum Excavation.

Oralia B. Franco died on March 18. She was a beautiful person and will be greatly missed by her family, her friends and her peers in the professional community. Franco, or “Yaya,” as family members and their children called her, was born Sept. 26, 1958, to Raul and Soledad Franco, in Camargo, Chihuahua, Mexico, where her mother is from originally. Her father was born in Chandler, Colo. Franco and her brothers and sisters grew up in Silver City. She was a sweet, kind person who always went out of her way for her family and friends, and later on, for her clients. Franco graduated from Silver High School in 1976 and became a student at Western New Mexico University as one of its first pre-med students. She was a whirlwind of energy, devoting time to her studies, a work-study position, various university organizations and clubs, as well as acting in the first Spanish play produced at WNMU. During this time, several key relationships were formed with professors who became mentors to her. They strongly encouraged her to pursue her field of study and to keep an open mind to all avenues and

careers available to her. After graduating from WNMU in 1980, she attended NMSU for a year to fulfill pre-med requirements and was selected to attend a summer internship at the Cancer Institute in Washington, D.C. It was a turning point in her career of choice. She knew she would never be able to give a family bad news about a terminal illness or impending death. Upon returning to New Mexico, Franco decided she could best serve her community as an attorney and so she applied and was accepted to UNM School of Law in 1983, graduating in 1986. She worked for Southern New Mexico Legal Services in Silver City, until Tommy Foy Jr. of the District Attorney’s Office, offered her a position. She was employed there until Foy’s untimely death. Shortly afterward, she relocated to Las Cruces and established her private practice. She specialized in bankruptcy law and was appointed as a judicial trustee for bankruptcy for Chapter 7 and Chapter 13 by the state. Her greatest joy in doing this work was to be able to tell her clients, “Now you can have a fresh start.” Franco was preceded in death by her brother, Juan Manuel Franco; nephew Donaciano Franco; and father, Raul Franco. She is survived by her mother, Soledad Franco; brother Omero Franco; brother Onorio Franco and wife, Beverly, their daughter Laura Bates and husband, Luke, and their son John Bates, and sons Raul and Onorio Franco Jr.; Olga Franco, her son, Jason Jordan and wife, Audrey, and their children Asia and Jayla Jordan, her daughter Victoria Manyfield and her son Tyree and daughter Avery Manyfield, and her son Justin Manyfield and his son Jeremiah Manyfield; sister Onorina Franco; brother Oscar Franco and wife Lisa and their sons Estefan and Tristin Franco; brother Orlando Franco and wife Kelly and their sons Rodney and Dustin Franco; and brother Omar Franco and wife Kristi and their daughters Solimar, Yselle and Zelaihza Franco.

Hon. Richard B. Traub died on April 30. He was born in Mason City, Iowa, on Oct. 8, 1927. Richard graduated from Drake University with a law degree. He moved to Albuquerque to practice law with brother, Ben Traub. Hon. Traub served as a New Mexico state representative and was on the board of Carrie Tingley Hospital. He was appointed District Judge by Gov. Bruce King. He was a district judge for 15 years. He is survived by his daughters Heidi, Gail, and Heather; son, Jacob Saydie; and grandchildren, Connor and Hannah Veseth, Carson and Isabella Komes and Magnum and Paradise Traub.

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 20, 2016

Petitions for Writ of Certiorari Filed and Pending:			No.				
		Date Petition Filed					
No. 35,903	Las Cruces Medical v. Mikeska	COA 33,836	05/20/16	No. 35,682	Peterson v. LeMaster	12-501	01/05/16
				No. 35,677	Sanchez v. Mares	12-501	01/05/16
No. 35,900	Lovato v. Wetsel	12-501	05/18/16	No. 35,669	Martin v. State	12-501	12/30/15
No. 35,898	Rodriguez v. State	12-501	05/18/16	No. 35,665	Kading v. Lopez	12-501	12/29/15
No. 35,897	Schueller v. Schultz	COA 34,598	05/17/16	No. 35,664	Martinez v. Franco	12-501	12/29/15
No. 35,896	Johnston v. Martinez	12-501	05/16/16	No. 35,657	Ira Janecka	12-501	12/28/15
No. 35,894	Griego v. Smith	12-501	05/13/16	No. 35,671	Riley v. Wrigley	12-501	12/21/15
No. 35,893	State v. Crutcher	COA 34,207	05/12/16	No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,891	State v. Flores	COA 35,070	05/11/16	No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15
No. 35,895	Caouette v. Martinez	12-501	05/06/16	No. 35,661	Benjamin v. State	12-501	12/16/15
No. 35,889	Ford v. Lytle	12-501	05/06/16	No. 35,654	Dimas v. Wrigley	12-501	12/11/15
No. 35,886	State v. Otero	COA 34,893	05/06/16	No. 35,635	Robles v. State	12-501	12/10/15
No. 35,885	Smith v. Johnson	12-501	05/06/16	No. 35,674	Bledsoe v. Martinez	12-501	12/09/15
No. 35,884	State v. Torres	COA 34,894	05/06/16	No. 35,653	Pallares v. Martinez	12-501	12/09/15
No. 35,882	State v. Head	COA 34,902	05/05/16	No. 35,637	Lopez v. Frawner	12-501	12/07/15
No. 35,880	Fierro v. Smith	12-501	05/04/16	No. 35,268	Saiz v. State	12-501	12/01/15
No. 35,873	State v. Justin D.	COA 34,858	05/02/16	No. 35,522	Denham v. State	12-501	09/21/15
No. 35,876	State v. Natalie W.P.	COA 34,684	04/29/16	No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,870	State v. Maestas	COA 33,191	04/29/16	No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,864	State v. Radosevich	COA 33,282	04/28/16	No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,866	State v. Hoffman	COA 34,414	04/27/16	No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,861	Morrisette v. State	12-501	04/27/16	No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,863	Maestas v. State	12-501	04/22/16	No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,857	State v. Foster	COA 34,418/34,553	04/19/16	No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,858	Baca v. First Judicial District Court	12-501	04/18/16	No. 35,353	Collins v. Garrett	COA 34,368	06/12/15
No. 35,853	State v. Sena	COA 33,889	04/15/16	No. 35,335	Chavez v. Hatch	12-501	06/03/15
No. 35,849	Blackwell v. Horton	12-501	04/08/16	No. 35,371	Pierce v. Nance	12-501	05/22/15
No. 35,835	Pittman v. Smith	12-501	04/01/16	No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15
No. 35,828	Patscheck v. Wetzel	12-501	03/29/16	No. 35,261	Trujillo v. Hickson	12-501	04/23/15
No. 35,825	Bodley v. Goodman	COA 34,343	03/28/16	No. 35,097	Marrah v. Swisstack	12-501	01/26/15
No. 35,822	Chavez v. Wrigley	12-501	03/24/16	No. 35,099	Keller v. Horton	12-501	12/11/14
No. 35,821	Pense v. Heredia	12-501	03/23/16	No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14
No. 35,814	Campos v. Garcia	12-501	03/16/16	No. 34,932	Gonzales v. Sanchez	12-501	10/16/14
No. 35,804	Jackson v. Wetzel	12-501	03/14/16	No. 34,907	Cantone v. Franco	12-501	09/11/14
No. 35,803	Dunn v. Hatch	12-501	03/14/16	No. 34,680	Wing v. Janecka	12-501	07/14/14
No. 35,802	Santillanes v. Smith	12-501	03/14/16	No. 34,775	State v. Merhege	COA 32,461	06/19/14
No. 35,771	State v. Garcia	COA 33,425	02/24/16	No. 34,706	Camacho v. Sanchez	12-501	05/13/14
No. 35,749	State v. Vargas	COA 33,247	02/11/16	No. 34,563	Benavidez v. State	12-501	02/25/14
No. 35,748	State v. Vargas	COA 33,247	02/11/16	No. 34,303	Gutierrez v. State	12-501	07/30/13
No. 35,747	Sicre v. Perez	12-501	02/04/16	No. 34,067	Gutierrez v. Williams	12-501	03/14/13
No. 35,746	Bradford v. Hatch	12-501	02/01/16	No. 33,868	Burdex v. Bravo	12-501	11/28/12
No. 35,722	James v. Smith	12-501	01/25/16	No. 33,819	Chavez v. State	12-501	10/29/12
No. 35,711	Foster v. Lea County	12-501	01/25/16	No. 33,867	Roche v. Janecka	12-501	09/28/12
No. 35,718	Garcia v. Franwer	12-501	01/19/16	No. 33,539	Contreras v. State	12-501	07/12/12
No. 35,717	Castillo v. Franco	12-501	01/19/16	No. 33,630	Utley v. State	12-501	06/07/12
No. 35,702	Steiner v. State	12-501	01/12/16				

Certiorari Granted but Not Yet Submitted to the Court:

(Parties preparing briefs)		Date Writ Issued	
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

Writ of Certiorari Quashed:

		Date Order Filed	
No. 33,930	State v. Rodriguez	COA 30,938	05/03/16

Petition for Writ of Certiorari Denied:

		Date Order Filed	
No. 35,869	Shah v. Devasthali	COA 34,096	05/19/16
No. 35,868	State v. Hoffman	COA 34,414	05/19/16
No. 35,865	UN.M. Board of Regents v. Garcia	COA 34,167	05/19/16
No. 35,862	Rodarte v. Presbyterian Insurance	COA 33,127	05/19/16
No. 35,860	State v. Alvarado-Natera	COA 34,944	05/16/16
No. 35,859	Faya A. v. CYFD	COA 35,101	05/16/16
No. 35,851	State v. Carmona	COA 35,851	05/11/16
No. 35,855	State v. Salazar	COA 32,906	05/09/16
No. 35,854	State v. James	COA 34,132	05/09/16
No. 35,852	State v. Cunningham	COA 33,401	05/09/16
No. 35,848	State v. Vallejos	COA 34,363	05/09/16
No. 35,634	Montano v. State	12-501	05/09/16
No. 35,612	Torrez v. Mulheron	12-501	05/09/16
No. 35,599	Tafoya v. Stewart	12-501	05/09/16
No. 35,845	Brotherton v. State	COA 35,039	05/03/16
No. 35,839	State v. Linam	COA 34,940	05/03/16
No. 35,838	State v. Nicholas G.	COA 34,838	05/03/16
No. 35,833	Daigle v. Eldorado Community	COA 34,819	05/03/16
No. 35,832	State v. Baxendale	COA 33,934	05/03/16
No. 35,831	State v. Martinez	COA 33,181	05/03/16
No. 35,830	Mesa Steel v. Dennis	COA 34,546	05/03/16
No. 35,818	State v. Martinez	COA 35,038	05/03/16
No. 35,712	State v. Nathan H.	COA 34,320	05/03/16
No. 35,638	State v. Gutierrez	COA 33,019	05/03/16
No. 34,777	State v. Dorais	COA 32,235	05/03/16

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 20, 2016

Published Opinions

No. 34488 11th Jud Dist San Juan CR-14-592, STATE v T SIMPSON (affirm) 5/19/2016

Unpublished Opinions

No. 33021 8th Jud Dist Taos CV-09-298, ONEWEST BANK v E ROMERO (reverse and remand) 5/17/2016
No. 33716 2nd Jud Dist Bernalillo CR-12-228, STATE v D HUNT (affirm) 5/17/2016
No. 34341 2nd Jud Dist Bernalillo PB-10-431, IN RE J STEVENS (affirm) 5/17/2016
No. 34954 2nd Jud Dist Bernalillo CR-15-1447, STATE v S GONZALES (reverse and remand) 5/17/2016
No. 35368 11th Jud Dist San Juan CR-15-6, STATE v G VICENTE (reverse and remand) 5/18/2016
No. 35237 8th Jud Dist Taos CV-14-174, K KRUSKAL v J MARTINEZ (affirm) 5/18/2016
No. 33697 2nd Jud Dist Bernalillo CR-0-3351, STATE v G ARVIZO (affirm in part, reverse in part and remand) 5/19/2016
No. 33986 2nd Jud Dist Bernalillo LR-12-20, STATE v G CARRERA (affirm) 5/19/2016

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Dated May 12, 2016

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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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

Certiorari Denied, February 15, 2016, No. S-1-SC-35708

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-022

No. 33,715 (filed December 22, 2015)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

TARRAH HOBBS,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

BRIANA H. ZAMORA, District Judge

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Opinion

Linda M. Vanzi, Judge

{1} The Legislature has delegated to the Scientific Laboratory Division of the Department of Health (SLD) administrative authority over blood and breath tests administered to persons suspected of driving while under the influence of intoxicants. *See* NMSA 1978, § 24-1-22 (2003). In *State v. Martinez*, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894, our Supreme Court held that “a threshold showing” that the instrument used to administer a breath alcohol test (BAT) was SLD-certified at the time of the test is a Rule 11-104(A) NMRA foundational requirement for admission of the BAT results into evidence. *Martinez*, 2007-NMSC-025, ¶¶ 9, 11-12, 23. *Martinez* went on to hold that this foundational

requirement was satisfied by the hearsay testimony of the officer who administered the BAT that he saw a “sticker” on the breathalyzer instrument indicating that it was SLD-certified at the time of the defendant’s BAT. *Id.* ¶ 23. Defendant Tarrah Hobbs contends that, although this foundational requirement was satisfied in her case, the trial court should not have admitted her BAT results into evidence because there was no testimony that the officer who administered her BAT “witnessed documentation from SLD approving” (1) the gas tank (also referred to as the gas canister) that was attached to the breathalyzer instrument and (2) the gas reference standard inside the tank, “much less that such documentation was present at the time the test was taken.”¹ The district court affirmed and so do we, although on different grounds.

BACKGROUND

{2} In the early morning hours of January 14, 2012, Officer Richard Locke of the Albuquerque Police Department (APD) pulled Defendant over for driving 51 miles per hour in a 40 mile-per-hour zone. Defendant appeared to be intoxicated and, pursuant to APD policy, Officer Locke requested a special unit to investigate her for driving under the influence (DUI).

{3} Officer Jared Frazier responded to the scene and administered field sobriety tests, which Defendant failed. Officer Frazier determined that Defendant was impaired and placed her under arrest for DUI. After Defendant agreed to submit to a BAT, Officer Frazier started the required twenty-minute deprivation period.

{4} Officer Frazier was certified by the SLD to administer BATs on the Intoxilyzer 8000 instrument (IR 8000), which he called the “machine,” and he administered Defendant’s BAT on the IR 8000 located at the prisoner transport center. Officer Frazier testified that he used a clean mouthpiece, explained the procedure to Defendant, and ran a total of five air-blank checks. He testified that air-blank checks flush out the machine and check the ambient air for interference, and that all of the air-blank checks he ran resulted in readings of .00. He also explained the range of allowable results on calibration checks of the IR 8000 and testified that diagnostic and calibration checks were run and passed. Officer Frazier further testified that he saw a copy of the SLD certification affixed to the front of the IR 8000 and that the machine appeared to be functioning normally. The machine collected two breath samples from Defendant.

{5} The State moved to admit Defendant’s BAT results. At defense counsel’s request, the trial court deferred ruling on the admission of the BAT results until after cross-examination. On cross-examination, Officer Frazier conceded that he did not know who had prepared the SLD certification of the IR 8000; nor did he have anything to do with ensuring that the machine complied with SLD regulations, or with inspections, or other accuracy aspects of the machine. {6} When questioned specifically about the gas canisters used on the machine, Officer Frazier testified that he has nothing to do

¹The parties dispute whether Defendant preserved a foundational challenge to the gas reference standard within the tank as well as to the tank itself. Given our disposition, we need not and do not reach the preservation issue.

with their approval, selection, or purchase, and that he did not know the make, model, or serial number of the canister used on the day of Defendant's test. About eight months after Defendant's BAT, Officer Frazier went to SLD and the APD Crime Lab, where he learned that the gas canisters used on the machine were the same make and model as those listed in the SLD regulations.

{7} At the end of Officer Frazier's testimony, defense counsel moved to exclude Defendant's BAT results on the ground that they lacked a sufficient foundation to support their admission into evidence. Specifically, defense counsel argued that the gas canister is a piece of equipment separate from the IR 8000, and that Officer Frazier failed to "make the connection that this is a SLD approved piece of equipment" because he did not know the canister's serial number, the manufacturer, or its expiration date.

{8} The trial court admitted the BAT results over Defendant's objection. Officer Frazier was recalled to the stand and testified that Defendant's two BAT results were .11. The trial court found Defendant guilty of DUI under New Mexico's "per se" DUI statute, which provides that it is illegal for a person to drive a vehicle with "an alcohol concentration of eight one hundredths [.08] or more in [his or her] blood or breath." See NMSA 1978, § 66-8-102(C)(1) (2010). Defendant appealed to the Second Judicial District Court, challenging the admission of her BAT results on the basis that the State failed to establish that the gas canister complied with "accuracy ensuring" SLD regulations. The district court affirmed on the ground that "Officer Frazier's testimony was sufficient to establish, by a preponderance of the evidence, the [gas reference standard] was approved by SLD." This appeal timely followed.

DISCUSSION

Standard of Review

{9} "The interpretation of an administrative regulation is a question of law that we review de novo," applying the same rules we use to interpret statutes. *State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481, 212 P.3d 369. "The principal command of statutory construction is that the court should determine and effectuate the intent of the [L]egislature, using the plain language of the statute as the primary indicator of legislative intent." *Id.* (alteration, internal quotation marks, and citation omitted). If the plain meaning is "doubtful, ambiguous, or if an adherence

to the literal use of the words would lead to injustice, absurdity or contradiction, we will construe the statute according to its obvious spirit or reason." *Id.* (alteration, internal quotation marks, and citation omitted).

{10} "We review an alleged error in the admission of evidence for an abuse of discretion" and will overturn a trial court's evidentiary ruling "only when the facts and circumstances of the case do not support [its] logic and effect." *Martinez*, 2007-NMSC-025, ¶ 7 (internal quotation marks and citation omitted).

Statutory Structure

{11} New Mexico's Implied Consent Act (ICA) requires that "[a] test of blood or breath or both, approved by the [SLD] pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug." NMSA 1978, § 66-8-107(B) (1993). Such test results "may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs." NMSA 1978, § 66-8-110(A) (2007). Pursuant to Section 24-1-22, the Legislature has delegated authority over all aspects of such testing to SLD. That statute provides, in pertinent part, as follows:

A. The [SLD] is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle . . . under the influence of drugs or alcohol and to issue certification for test operators and their instructors. . . . The [SLD] is further authorized to establish or approve quality control measures for alcohol breath testing and to establish or approve standards of training necessary to ensure the qualifications of individuals conducting these analyses or collections.

B. The [SLD] shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

Section 24-1-22(A), (B).

The Regulations

{12} Under its statutory authority, the SLD has promulgated regulations in the form of a rule (Rule) governing "the certification of laboratories, breath alcohol instruments, operators, key operators, and operator instructors of the breath alcohol instruments as well as establish[ing] the methods of taking and analyzing samples of blood and breath testing for alcohol or other chemical substances under the [ICA]." 7.33.2.2 NMAC. The stated objective of the many regulations set forth in the Rule is "to establish standards and procedures" for certification and "methods of taking and analyzing samples" for such testing. *Id.* 7.33.2.6 NMAC.

{13} The Rule defines "Breath alcohol instrument" as "[a]ny evidential breath testing device that is capable of analyzing breath to establish the concentration of alcohol contained in a breath sample" and requires that "[s]uch instruments must be approved and individually certified by SLD for use in testing pursuant to the [ICA] and this rule." 7.33.2.7(G) NMAC (emphasis added). It defines "Equipment" as "[d]evices which are not a component of the breath alcohol instrument but assist in meeting the requirements of an evidentiary breath test, including but not limited to simulators, gas tanks, gas brackets, and reference standards." 7.33.2.7(L) NMAC. Defendant's argument presumes that the Rule 11-104(A) foundational requirements applicable to an individual "breath alcohol instrument" also apply to individual pieces of "equipment"—here, the gas tank attached to the instrument and the gas reference standard it contains. The Rule itself, however, treats the "breath alcohol instrument" (hereinafter, instrument) very differently from "equipment."

{14} SLD selects the instruments used in New Mexico based on criteria that include performance in SLD's evaluation process, field history, manufacturer support capability, and evaluations by other users, including approval by the National Highway Traffic Safety Administration. 7.33.2.9 NMAC. The Rule requires that both instruments and equipment (as relevant here, gas tanks and reference standards) must be approved by SLD before they may be used in BATs. See 7.33.2.9(A) NMAC (stating that manufacturers of instruments and reference standards must "submit their instrumentation and equipment to SLD for approval"); 7.33.2.9(H) NMAC (stating that SLD may withdraw approval of instrument and equipment "if the manufacturer fails to

comply with the provisions of the approval criteria or the terms of any contracts with SLD²). It also requires that SLD maintain a list of the instruments and equipment it has approved for use under the ICA. See 7.33.2.16(B) NMAC. Finally, as the State notes in its answer brief, the SLD publishes a list of SLD approved breath and blood alcohol testing or collection devices. Although there is nothing in the record concerning the contents of the list in 2012, the current list, updated on April 2, 2014, identifies the IR 8000 as the approved instrument; identifies by manufacturer and model approved gas reference standard tanks; and clarifies that “[a]ll tanks, which are compatible with the [IR] 8000, containing an approved reference standard, are approved for use.” N.M. Dep’t of Health, List of Approved Breath & Blood Alcohol Testing or Collection Devices & Accessories, available at <http://nmhealth.org/publication/view/general/1537/>.

{15} As to equipment, the only other requirements stated in the Rule are that breath alcohol samples “shall be collected and analyzed pursuant to the procedures prescribed by SLD and employing only SLD approved equipment[.]” 7.33.2.15(B) (1) NMAC (emphasis added), and that “calibration checks” of instruments must be performed using gas reference standards that have been approved by SLD. 7.33.2.14(C)(2)(b) NMAC. The Rule defines “Calibration check” as “[t]he analysis of an externally delivered, controlled, ethanol vapor specimen of known alcohol concentration” and requires that “SLD shall determine the breath alcohol simulators² or gases to be used.” 7.33.2.7(I) NMAC. In a calibration check, the instrument is checked to ensure that its analysis of one or more reference standards (here, gas) of known alcohol concentration produces a reading within a specified range. 7.33.2.14(C)(2)(b)(i)-(iii) NMAC.

{16} In contrast to equipment, instruments, once approved, must also be certified by SLD. See 7.33.2.10(A) NMAC (“[B]reath alcohol instruments to be used for implied consent evidential testing must be approved and certified by SLD.”). The Rule’s certification requirements for instruments are extensive. 7.33.2.10 NMAC. So too, are the certification requirements for operators, 7.33.2.11 NMAC; key operators, 7.33.2.12 NMAC; and operator

instructors, 7.33.2.13 NMAC. For example, each individual instrument must be certified “for a period of up to one year,” and “[a] certificate shall be issued for each instrument and shall be maintained by the responsible agency.” 7.33.2.10(A) NMAC. The certification of each instrument must be renewed annually based on compliance with the Rule and, again, a certificate must be issued for each instrument and maintained by the responsible agency. 7.33.2.10(C) NMAC. To obtain initial certification an individual instrument must be inspected and calibration-checked by SLD, 7.33.2.10(A)(1) NMAC, and at least one certified key operator must be responsible for its maintenance. 7.33.2.10(A)(2) NMAC. The Rule contains numerous continuing requirements for individual instruments, including submission of logbooks and records at scheduled times; annual analysis of four proficiency samples; calibration checks at least once every seven days or with each subject test or both; biannual inspections that include evaluation of the instrument’s electronic functions and settings, analysis of a series of alcohol controls with an accuracy requirement of the greater of +5 percent or .005 on all target values, and review of the instrument’s sensitivity for the detection of any interfering substances. 7.33.2.10(B)(1) NMAC. For instruments used at fixed locations, the Rule imposes additional requirements. 7.33.2.10(B)(2) NMAC. SLD may deny, suspend, or revoke the certification of any instrument for ICA testing on grounds including that the instrument is not on the SLD-approved list and that calibration results do not meet criteria established by SLD. 7.33.2.10(D)(1) NMAC.

{17} As noted, the Rule requires that breath samples must be collected and analyzed “pursuant to the procedures prescribed by SLD and employing only SLD approved equipment and certified instruments.” 7.33.2.15(B)(1) NMAC. These procedures include collection and analysis by certified operators or certified key operators, a good faith attempt to collect and analyze at least two samples, taken not more than fifteen minutes apart and after a twenty-minute period (often referred to as the “deprivation period”) during which the subject has not had anything to eat, drink or smoke. 7.33.2.15(2) NMAC. As

relevant here, the Rule also specifies the following “minimum requirements” for an ICA breath sample: (a) a system air-blank analysis before each sample; and (b) a calibration check using SLD-approved gas standards in accordance with one or both of the following procedures: (i) the instrument must be maintained and calibration-checked by the key operator, with calibration checks at least once every seven days resulting in readings within prescribed ranges upon analysis of two separate gas standards, each simulating a different specified alcohol concentration; (ii) a single calibration check with each subject test using a gas standard that simulates 0.08 grams per 210 liters, resulting in a reading within ± 0.01 of the specified standard. 7.33.2.14(C)(2) NMAC.

Confirmation That SLD Has Approved the Equipment On a Breath Alcohol Instrument Is Not Required by SLD Regulations and Is Not a Foundational Prerequisite to Admission of BAT Results

{18} Our Supreme Court has held that, to meet foundational requirements under Rule 11-104(A), the State need not show strict compliance with all SLD regulations set forth in the Rule, but only with those regulations that are “accuracy-ensuring.” *Martinez*, 2007-NMSC-025, ¶ 11 (citing *State v. Dedman*, 2004-NMSC-037, ¶ 13, 136 N.M. 561, 102 P.3d 628, *overruled on other grounds by State v. Bullcoming*, 2010-NMSC-007, 147 N.M. 487, 226 P.3d 1). In *Martinez*, our Supreme Court held that SLD regulations governing certification of instruments “clearly exist to ensure that the result of a test conducted on a breathalyzer is accurate[.]” and thus, a threshold showing of current SLD certification of an instrument at the time of the BAT is a foundational prerequisite for admission of BAT results into evidence. 2007-NMSC-025, ¶¶ 11-12. In *Dedman*, the Court held that the purpose of an SLD regulation requiring collection of a blood alcohol sample by “venipuncture” was not to ensure the accuracy of the test and, as a result, a showing of compliance with that requirement was not a foundational prerequisite to the admissibility of blood alcohol reports. 2004-NMSC-037, ¶¶ 14-19.

{19} Defendant asserts that SLD approves tanks and gases because they are used in

² The BAT in this case was conducted with an instrument that uses a gas reference standard. “Simulator solutions” are reference standards used with instruments that measure breath alcohol by a different methodology. Defendant sometimes refers to the reference standards as the “simulator solution” or “solution,” but there is no dispute that a gas reference standard was used in this case.

“self-calibration checks by an [IR 8000] during a breath test” and that “[i]t follows that both the process of approval and the purpose of the tanks and gases should ensure the accuracy of breath test results.” She concludes that “[t]he minimum foundation for showing approval of the simulator solution [sic] is the same as that for showing certification of a breath machine[.]” and therefore, “upon objection, the officer testifying for this foundation should be aware of SLD documentation asserting the approval of both the certification of the breath machine and approval of accessories.” The argument lacks merit.

{20} The certification requirements for the instrument relate to its “routine function . . . in order to [ensure] that it gives accurate readings.” *Dedman*, 2004-NMSC-037, ¶ 12 (internal quotation marks and citation omitted). Similarly, “[t]he purpose of calibration is to ensure that the machine is working properly so that a valid breathalyzer test result is obtained.” *State v. Montoya*, 1999-NMCA-001, ¶ 12, 126 N.M. 562, 972 P.2d 1153. The calibration check specified in the Rule checks the instrument to ensure that its analysis of one or more gas reference standards of known alcohol concentration produces a reading within a specified range. 7.33.2.14(C)(2)(b)(i)-(iii) NMAC. If it does, the instrument is deemed to be functioning properly; if it does not, there is a problem. While it is possible that a given tank may contain a gas that is not at the alcohol concentration specified by the Rule, the defect presumably would be revealed in an instrument reading outside the range prescribed by the Rule. In this case, Officer Frazier testified that calibration checks were run and passed.

{21} The Legislature has delegated full authority to SLD over the testing of per-

sons believed to be DUI, including the establishment of criteria and specifications for equipment, quality control, testing methodology and standards, and the certification of breath alcohol instruments, operators, and instructors. Section 24-1-22(A), (B). And the regulations embodied in the SLD Rule plainly treat instruments very differently from equipment used with instruments. As discussed, the Rule imposes extensive and explicit certification requirements on instruments (as well as operators, key operators, and operator instructors), including that each individual instrument have a current certificate evidencing compliance with SLD regulations. In contrast, the only requirements for equipment stated in the Rule are that SLD approve and maintain a list of approved manufacturer’s equipment, *see* 7.33.2.9(A) NMAC; 7.33.2.16(B) NMAC; that SLD-approved equipment be used to collect and analyze breath alcohol samples, *see* 7.33.2.15(B)(1) NMAC; and that instrument calibration checks be performed using SLD-approved gas reference standards, *see* 7.33.2.14(C)(2)(b) NMAC. The Rule contains no requirement that SLD or certified instrument operators must confirm that each individual tank and its contents are SLD-approved before a BAT is administered. The Rule itself contains no indication that such individual confirmation is necessary to ensure the accuracy of a BAT result. And the SLD’s current approved list suggests the contrary, stating that “[a]ll tanks, which are compatible with the [IR] 8000, containing an approved reference standard, are approved for use.” N.M. Dep’t of Health, List of Approved Breath & Alcohol Testing or Collection Devices & Accessories, *available at* <http://nmhealth.org/publication/view/general/1537/>.

{22} Neither the plain language nor the “obvious spirit or reason” of the SLD Rule even suggests that the regulations requiring SLD approval of equipment are “accuracy ensuring” in the same manner as the regulations imposing numerous certification requirements on SLD-approved instruments on a per-instrument basis. And Defendant has provided no basis from which to conclude that confirmation by the certified instrument operator at the time of the BAT that the gas tank and the reference standard it contains are SLD-approved is necessary to ensure the accuracy of the BAT. We conclude that the State need not make a threshold showing that the certified operator of a certified breath alcohol instrument confirmed at the time of the test that equipment attached to the instrument is SLD-approved in order to lay a sufficient foundation under Rule 11-104(A) for the admission of BAT results into evidence. As noted in *Martinez*, “once the trial court determines that the [s]tate has met the foundational requirements for the admission of a BAT card, a defendant may successfully challenge the reliability of the breath test.” 2007-NMSC-025, ¶ 24. And a defendant is entitled to discovery concerning SLD-approved equipment to use in challenging the foundation for or the reliability of his or her BAT results. *Id.*

CONCLUSION

{23} The trial court did not abuse its discretion in admitting Defendant’s BAT results into evidence. We affirm.

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

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

TIMOTHY L. GARCIA, Judge

Certiorari Denied, February 15, 2016, No. S-1-SC-35709

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-023

No. 33,725 (filed December 23, 2015)

RUTH E. DILLS,
Plaintiff-Appellant,

v.

NEW MEXICO HEART INSTITUTE, P.A.,
Defendant-Appellee.**APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

SARAH M. SINGLETON, District Judge

BEN DAVIS
THE DAVIS LAW FIRM, LLC
Albuquerque, New MexicoBRYAN J. DAVIS
DAVIS, GILCHRIST & LEE, P.C.
Albuquerque, New Mexico
for AppellantTHOMAS C. BIRD
KATHLEEN M. WILSON
MARY BEHM
CASSANDRA R. MALONE
KELEHER & MCLEOD, P.A.
Albuquerque, New Mexico
for Appellee**Opinion****James J. Wechsler, Judge**

{1} The opinion filed in this case on November 23, 2015 is hereby withdrawn and the following substituted therefor. Plaintiff's motion for rehearing is denied.

{2} In this medical malpractice case, we consider the propriety of the district court's jury instruction concerning the obligation of a doctor to inform a patient of treatment alternatives. We hold that, under the facts of this case, the district court did not err by instructing the jury that a "doctor has no duty to discuss alternatives to and risks of treatment which the doctor can reasonably expect to be known to the patient." Accordingly, we affirm.

BACKGROUND

{3} Plaintiff Ruth E. Dills had a history of tachybrady syndrome for which she received a pacemaker, with implanted leads, in 1996. She received a new pacemaker, manufactured by Medtronic, in 2006. Plaintiff went to the emergency department of the Heart Hospital in Albuquerque, New Mexico on February 10, 2009 with a fractured lead placement. The following day, she met with Dr. Kathleen Blake at the New Mexico Heart Institute who recommended that Plaintiff have her pacemaker leads

extracted and the generator replaced. Dr. Blake explained to Plaintiff the risks and benefits of the lead extraction procedure. On February 20, 2009, Plaintiff met with Dr. Luis Constantin who was to perform the procedure that day with Dr. Blake's assistance. For reasons unrelated to this case, the procedure was rescheduled and performed on March 4, 2009. Plaintiff was discharged on March 6, 2009. She returned to the Heart Hospital emergency department three days later and was diagnosed with tricuspid valve regurgitation, atrial fibrillation, and right-sided congestive heart failure. She was admitted to the hospital in May 2009 and various procedures were performed, including open heart surgery to repair the torn tricuspid valve and other repairs to correct heart defects caused by her underlying heart disease process.

{4} Plaintiff brought this action against Defendant, which operates the Heart Hospital, alleging the medical malpractice of Defendant's doctors and agents, Dr. Blake and Dr. Constantin. Plaintiff originally named Dr. Blake and Dr. Constantin as defendants, but, for reasons not related to this appeal, the claims against Dr. Constantin were dismissed, and Dr. Blake was granted summary judgment with respect to the claims against her.

{5} The gravamen of Plaintiff's action, as relevant to this appeal, was that she was not informed of alternative procedures to the lead extraction procedure and that the lead extraction procedure was not indicated under the circumstances. In this regard, Plaintiff maintained, among other things, that when she went to the Heart Hospital emergency department on February 10, 2009, checking by the Medtronic representative only indicated that one of the two pacemaker leads was malfunctioning and leaking current, not that the leads needed to be changed, and that checking the pacemaker again on the following day also did not confirm the need for lead replacement. Plaintiff further maintained that Dr. Blake did not inform Plaintiff of alternative courses of action, including "reprogramming the pacemaker to unipolar mode and capping and abandoning the existing leads and implanting new ones" and that Dr. Constantin also "did not provide Plaintiff with information regarding alternatives to [pacemaker] lead extraction." Plaintiff contended, among other things, that Dr. Constantin damaged a leaflet on her tricuspid valve during the lead extraction procedure and that she developed severe pain from the pacemaker pocket Dr. Constantin made to implant an antibiotic pouch.

{6} At trial, two issues were presented to the jury: whether Dr. Constantin failed to offer and inform Plaintiff of alternatives to pacemaker lead extraction and whether Dr. Constantin performed a medical procedure, the lead extraction, that was not reasonably necessary for Plaintiff's condition. The jury returned a verdict for Defendant. Plaintiff appealed from the district court's judgment. On appeal, this Court decided Plaintiff's appeal in part by memorandum opinion on the summary calendar and assigned to the general calendar the single issue of whether the district court correctly instructed the jury concerning the law of informed consent.

FACTUAL BASIS UNDERLYING THE JURY INSTRUCTION

{7} While Plaintiff contended that neither Dr. Blake nor Dr. Constantin informed her of treatment alternatives to lead replacement, Defendant offered the testimony of the doctors at trial in support of its position that Plaintiff had been informed of treatment alternatives. Because Plaintiff did not originally designate trial transcripts for review on appeal, Defendant provided with its answer brief a transcript of the testimony of Dr. Blake in which she discussed her receipt of Plaintiff's informed consent. See Rule 12-211(E) NMRA ("Each appellant

shall be responsible for the timely preparation and filing of the transcript of proceedings.”). Defendant also referred to portions of Dr. Constantin’s deposition that Plaintiff discussed in her brief in chief on appeal. By way of motion, Plaintiff was permitted to supplement the record on appeal at the time of her reply brief with transcripts of Plaintiff’s trial testimony and the trial testimony of Dr. Constantin that was presented as part of Plaintiff’s case. Plaintiff did not, however, supplement the record with Dr. Constantin’s trial testimony when he was called as a witness during Defendant’s case.¹

{8} Dr. Blake testified that she did not have an independent recollection of her conversation about informed consent with Plaintiff that had occurred seven years earlier. She testified, however, that she had obtained informed consent for a medical procedure from patients approximately 8,000 to 10,000 times and that she followed the same typical format to do so. She testified that she would routinely “talk about what the problem is and what the alternatives are for treating that problem and what the risks are for those alternatives, [and] what the benefits are.” She would have given Plaintiff three treatment options: (1) not to have taken any action and leaving the pacemaker programmed as it was, (2) surgically replacing the pacemaker ventricular lead, and (3) surgically extracting both leads and replacing them with new ones.

{9} Dr. Blake’s summary in her notes reflects that she discussed with Plaintiff “the need for lead extraction” and advised “that both leads be removed because we may otherwise be back in a short time from now to deal with an old worn-out lead.” The notes further state, “all questions answered, good understanding confirmed, and she agrees to proceed next week with me and Dr. Constantin.” Dr. Blake also testified that when she concluded her discussion with Plaintiff, she believed that she had “a full and thorough informed consent discussion with her.” She did not expect that Dr. Constantin “would then redo or do again another full informed consent discussion”

because Plaintiff was Dr. Blake’s patient, with whom she had established a long-term relationship, and Dr. Blake was making the recommendation. In his deposition, Dr. Constantin testified that when he offered to discuss the procedure with Plaintiff, at which time he also intended to discuss alternatives, Plaintiff “indicated that she had already had a discussion with Dr. Blake and that she was very comfortable . . . with the fact that I was doing the procedure on the recommendation of Dr. Blake.”

PROPRIETY OF THE JURY INSTRUCTION

{10} Our Supreme Court in *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180, discussed in detail the law on informed consent in medical malpractice lawsuits. The Court explained that when a cause of action is in negligence—as opposed to battery—the physician has the obligation to obtain the patient’s informed consent and also to communicate to a patient information concerning “the inherent and potential hazards of the proposed treatment, the alternatives to that treatment, if any, and the results likely if the patient remains untreated.” *Id.* ¶ 65 (quoting *Canterbury v. Spence*, 464 F.2d 772, 787-88 (D.C. Cir. 1972)). Our jury instructions concerning informed consent and duty to inform are consistent with *Gerety*. Relevant here, the duty to inform instruction, UJI 13-1104B NMRA, states:

In treating [his] [her] patient, a doctor is under the duty to communicate to the patient [, or to the patient’s representative when the patient is a minor or is incapacitated,] that information which a reasonably prudent patient under similar circumstances would need to know about:

1. the patient’s condition; [and]
2. the alternatives for treatment; [and]
3. the inherent and potential hazards of the proposed treatment; [and]
4. the likely result if the condition remains untreated.

The duty to inform does not require a doctor to discuss with [his] [her] patient every risk of proposed treatment no matter how small or remote. [A doctor has no duty to discuss risks which the doctor can reasonably expect to be obvious or known to the patient.]

UJI 13-1104B (alterations in original).

{11} The Use Note to UJI 13-1104B further instructs that the bracketed sentence in the second paragraph “should not be used unless the jury could find that the information which the patient contends was not disclosed is information which the patient already knew or is a matter of common understanding.”

{12} The district court in this case modified the above instruction to read as follows: In treating his patient, Dr. Constantin[] is under the duty to communicate to [Plaintiff] that information which a reasonably prudent patient under similar circumstances would need to know about:

1. the alternatives for treatment; and
2. the likely result if the lead condition remained untreated.

A doctor has no duty to discuss alternatives to and risks of treatment which the doctor can reasonably expect to be known to the patient.

On appeal, Plaintiff contends that the district court erred as a matter of law in giving the modified instruction because the bracketed sentence only applies to the “inherent and potential hazards of the proposed treatment” as stated in UJI 13-1104B(3) and not to the “alternatives for treatment” set forth in UJI 13-1104B(2).

{13} We review de novo the district court’s instruction to the jury. See *Benavidez v. City of Gallup*, 2007-NMSC-026, ¶ 19, 141 N.M. 808, 161 P.3d 853 (“We review jury instructions de novo to determine whether they correctly state the law and are supported by the evidence introduced at trial.” (internal quotation marks and citation omitted)).²

¹In his reply brief, Plaintiff did not address Dr. Constantin’s deposition testimony discussed by Defendant in its answer brief or Dr. Constantin’s testimony as part of Defendant’s case at trial. See *Delta Automatic Sys. Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174 (treating the failure of reply brief to respond to an issue specifically addressed in answer brief as a concession); *Anderson v. Jenkins Constr. Co.*, 1971-NMCA-119, ¶ 3, 83 N.M. 47, 487 P.2d 1352 (accepting statements made in answer brief as true when they were not controverted or disputed in reply brief).

²Rule 1-051(D) NMRA requires the use of an applicable uniform jury instruction “unless under the facts or circumstances of the particular case the published UJI Civil is erroneous or otherwise improper, and the trial court so finds and states of record its reasons.” Plaintiff does not argue that the district court did not follow Rule 1-051(D). Because we do not have a complete trial transcript on appeal, we cannot determine the manner in which the district court addressed Rule 1-051(D) or even whether it considered it necessary to do so. It is not an issue in this appeal.

{14} We do not read *Gerety* or UJI 13-1104B in the limited manner Plaintiff urges. To the contrary, the language of *Gerety*, adopted from *Canterbury*, indicates a flexibility that depends on a rule of reason and the particular circumstances.

The scope of the standard is not subjective as to either the physician or the patient; it remains objective with due regard for the patient's informational needs and with suitable leeway for the physician's situation.

....

There is no bright line separating the significant from the insignificant; the answer in any case must abide a rule of reason. Some dangers—infection, for example—are inherent in any operation; there is no obligation to communicate those of which persons of average sophistication are aware. Even more clearly, the physician bears no responsibility for discussion of hazards the patient has already discovered, or those having no apparent materiality to patients' decision on therapy. . . . Whenever non-disclosure of particular

risk information is open to debate by reasonable-minded men, the issue is for the finder of the facts.

Gerety, 1978-NMSC-097, ¶ 65 (internal quotation marks and citation omitted).

{15} Under Defendant's theory of this case, Plaintiff's approach would require, as a matter of law, that a doctor provide information to a patient that the patient not only already had been provided but that the patient indicated that she did not wish to receive. The doctor would have this burden, according to Plaintiff, because the information related to alternative treatment rather than the risks of a procedure. Plaintiff finds rationale in such a distinction because alternatives to treatment are not likely known to the general public. However, the knowledge of the general public is not the issue; it is whether the doctor can reasonably expect that the information is either obvious to or known by the patient. *See* UJI 13-1104B. There is no clear distinction between alternative treatment and treatment risks in this regard.

{16} A party is entitled to a jury instruction on the party's theory of the case if it is supported by the evidence. *Benavidez*, 2007-NMSC-026, ¶ 19. From the limited record of the trial that we have before us

in this appeal, it appears that Defendant presented evidence that Dr. Blake provided informed consent to Plaintiff that included alternatives to treatment. Under Plaintiff's position, the jury would not address whether Dr. Constantin, on behalf of Defendant, acted reasonably in his communication with Plaintiff. This reading of exceptions to disclosure discussed in *Gerety* is overly restrictive. Rather, we read *Gerety* as embracing an approach based on reasonableness and the particular circumstances of the doctor-patient relationship. The district court did not err by instructing the jury in this manner.

CONCLUSION

{17} The district court did not err in its jury instruction concerning Dr. Constantin's duty to discuss alternatives to treatment with Plaintiff. We affirm the district court's judgment on the jury verdict in favor of Defendant.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

LINDA M. VANZI, Judge

M. MONICA ZAMORA, Judge

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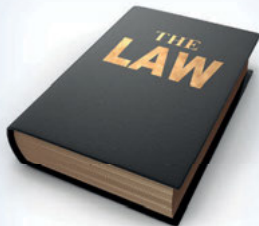
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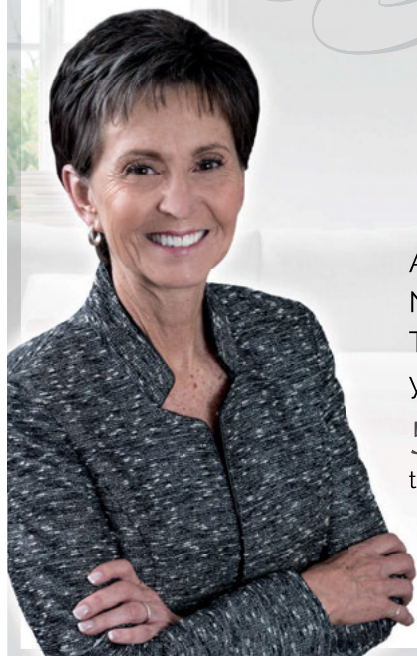
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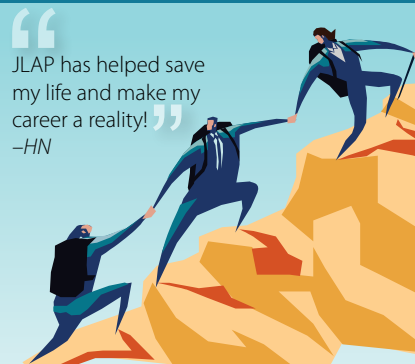
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Positions

Site Contracts Administrator

Laguna Development Corporation seeks a Site Contracts Administrator with experience in contracts and Indian law. In working with Corporate Chief Legal Counsel, the Incumbent shall provide legal support to protect LDC's rights on matters concerning the obligations, risks and privileges of LDC, an enterprise owned by a federally recognized tribe. Juris doctorate and license to practice in N.M. within one-year of employment required. Please visit www.lagunadevcorp.com Careers section for full job description, requirements and to apply. Contact HR at (505)352-7900 with any questions.

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.

Associate Attorneys

The Santa Fe office of Hinkle Shanor LLP seeks two associate attorneys with 0 to 5 years of experience for its employment and civil rights defense practice. Candidates should have a strong academic background, excellent research and writing skills, and the ability to work independently. Applicants must live in or be willing to relocate to Santa Fe. Please send resume, law school transcript, and writing sample to Hiring Partner, P.O. Box 2068, Santa Fe, New Mexico 87504-2068

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.

13th Judicial District Attorney Assistant Trial Attorney, Associate Trial Attorney

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

Attorney

Little, Bradley & Nesbitt, PA, is seeking attorney to handle litigated residential foreclosure cases. No billable hours requirement. Prior foreclosure, real estate title, &/or litigation experience required. Send cover letter, resume, salary requirements & references to Karen-b@littlepa.com, fax to 254-4722 or mail to PO Box 3509, Alb 87190.

Associate Attorney

Doughty, Alcaraz & deGraauw, P.A., a growing AV-rated civil litigation firm located downtown, seeks an associate attorney with 0-3 years of experience. Ideal candidates should have strong writing skills and an interest in all aspects of litigation, including oral advocacy. We offer a competitive salary and excellent benefits package, as well as a fun work environment. All inquiries will be kept strictly confidential. Please email applications to drew@DAdGlaw.com.

Assistant Trial Attorney and Experienced Senior Trial Attorney

The 11th Judicial District Attorney's Office, Division I, (San Juan County) is accepting resumes for immediate positions of Assistant Trial Attorney and Experienced Senior Trial Attorney. Salary is based on experience (\$48,980 - \$78,364). Send resumes to Lori Holesinger, HR Administrator, 335 S. Miller Ave. Farmington, NM 87401, or via e-mail lholesinger@da.state.nm.us. Equal Opportunity Employer.

New Mexico Supreme Court Santa Fe - Law Clerk

The New Mexico Supreme Court in Santa Fe, is recruiting for a law clerk. The job description can be viewed at: [http://www.nmcourts.gov/newface/hr/job_desc/Law%20Clerk%20\(At-Will\).pdf](http://www.nmcourts.gov/newface/hr/job_desc/Law%20Clerk%20(At-Will).pdf). The position is a full-time, at-will. The annual salary is: \$56,328.48. Under general supervision, the law clerk will work directly with justice on assigned cases, perform legal research and analysis, and write and edit opinions. Attention to detail and a strong work ethic are critical and required. Required Education: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association. Experience: At least one (1) year of experience performing legal research, analysis, writing, and editing. General knowledge of substantive and procedural law; manual and online legal research, analysis and writing; proper English usage, grammar and punctuation; computer applications; legal terminology; proofreading and editing; judicial ethics; and general office practices, filing systems, and office equipment; New Mexico case law and statutes and court jurisdiction. Other: Completion of a post offer background check may be required. Resume, references, law school and undergraduate transcripts should be emailed to Joey D. Moya at supjdm@nmcourts.gov.

Trial Lawyer Wanted

Senior Associate wanted for litigation position with busy, state-wide PI firm. Out of state first-chair jury experience considered. Good earnings potential, excellent trial support available. resumes to Will@fergusonlaw.com.

Position Announcement Administrative Assistant 2016-03

The Federal Public Defender for the District of New Mexico is accepting applications for the position of Administrative Assistant. The Administrative Assistant provides assistance in a variety of administrative and management matters including but not limited to: policy, operations, finance, property, and procurement. This position will be located in the Albuquerque office. The Federal Defender organization operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, to provide defense services in federal criminal cases and related matters by appointment from the court. Requirements: To qualify at entry level, a person must be a high school graduate or equivalent, have at least three years of general experience, and at least two years of progressively responsible administrative experience. Some higher education may be substituted for experience. Candidate must have experience with accounting, purchasing, and general office management. Computer skills including familiarity with financial software and electronic spreadsheets, excellent interpersonal and organizational skills, and excellent written and oral communication skills are required. Candidate must be a highly motivated self-starter, extremely detail and policy oriented, able to effectively multitask, and exhibit professional conduct at all times. Law office management and federal experience a plus. Duties include but are not limited to: Review and prepare purchase orders and obligations in accounting system; Follow up on pending purchase orders for resolution; Prepare vouchers for payment of all invoicing, ensuring accuracy and appropriateness; Ensure office wide adherence to policies and procedures; Assist in managing office travel, including creation of travel vouchers; Manage office supplies, ordering, and restocking; Manage and maintain office furniture and general equipment needs; Manage vendor issues, including telecomm issues with the detention facilities; Do market research for office procurement requests; Attend to all administrative needs of both local and branch offices, including space and facilities projects. As an Administrative Assistant in the Federal Public Defender office, you are a representative of a well-respected law firm and part of a cohesive management team. You work closely with all staff to fulfill the mission of a very fast paced legal office. Duties will be progressively responsible as the needs of the office change. Physical Demands and Work Environment: Candidate must be physically capable of meeting the requirements of the job, which may include moving and lifting furniture and items up to and sometimes in excess of 25 lbs. Reasonable accommodations may be made to enable individuals with disabilities to perform essential job functions. The Administrative Assistant will spend most

of his/her time in an office environment, with a large amount of computer work. Occasional travel is required. Salary and Benefits: The starting salary for the position falls within a range of \$48,977 (JSP-9, Step 1) to \$71,025 (JSP-12, Step 1). The salary of the successful applicant will be commensurate with the person's qualifications and experience. The position does offer federal government employee benefits, including health and life insurance programs, retirement, and the Thrift Savings Plan. Salary is payable only by Electronic Funds Transfer (direct deposit). This position is classified as a high-sensitive position. Appointment and retention is subject to a satisfactory background investigation, including, but not limited to, an FBI fingerprint and name check, as well as a credit check. How to Apply: In one PDF document, submit a letter of interest, resume, and at least 3 employment references to: Melissa Dearing, Administrative Officer, zzNMml_HR@fd.org. Reference 2016-03 in the subject. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted. Applications must be received by June 10th, 2016. The Federal Public Defender is an equal-opportunity employer.

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

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

Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.

For more advertising information, contact:

Marcia C. Ulibarri at 505-797-6058 or email mulibarri@nmbar.org

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

The New Mexico Administrative Hearings Office (AHO) seeks applications for its Advanced Tax Hearing Officer-Attorney IV position in its Santa Fe Hearing Office. This hearing officer will primarily conduct tax protest hearings under the Administrative Hearings Office Act, the Tax Administration Act, and the Property Tax Code. This hearing officer position will manage a large docket of tax cases, handle complex tax cases, address motions, write orders, control the conduct of the litigants at hearing and comply with various statutory and regulatory time deadlines for conducting a hearing and writing a final decision. Tax decisions and orders are subject to direct appeal to the New Mexico Court of Appeals, creating an exciting opportunity for someone with knowledge of tax law to do high-level work. The preferred candidate will possess strong organizational, analytical, and writing skills, as well as significant direct experience in state tax matters and administrative law. This classified position requires a law degree from an accredited law school and a license as an attorney by the Supreme Court of New Mexico or the qualifications to apply for a limited practice license, which requires licensure in good standing in another state and sitting for the next eligible New Mexico State Bar exam. As an AHO attorney, the applicant must be current with all tax reporting and payment requirements and have a valid driver's license. The position is pay band 85 with an hourly salary range of \$24.47/hr. to \$42.56/hr. (\$50,898/yr. to \$88,525/yr.) depending on qualifications. For more information and to submit your application please review the posting on the State Personnel website, <https://www.governmentjobs.com/careers/newmexico>, position number 00001993.

Attorney

O'Brien & Padilla, P.C., an AV-rated insurance defense firm, is seeking an attorney with more than 3 years of civil litigation experience. The firm's area of practice include insurance coverage, bad faith defense, personal injury defense, Worker's Compensation defense and general civil defense. Competitive salary and benefits offered. Send resume and references to: rpadilla@obrienlawoffice.com

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

Assistant General Counsel - Lawyer Advanced (NMDOT)

The New Mexico Department of Transportation is recruiting to fill a Lawyer Advanced position. The position provides representation of the Department in construction claims and litigation in state and federal court, in construction and procurement-related administrative hearings, and in other practice areas as assigned by the General Counsel. Experience in construction litigation, governmental entity defense litigation or representation in complex civil litigation matters is highly desirable. Experience in environmental law, public works procurement or financing or transportation planning would be useful. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which three (3) years must be in litigation. The position is a Pay Band 80, annual salary range from \$44,782 to \$77,917 depending on qualifications and experience. All state benefits will apply. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions: Primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at <http://www.spo.state.nm.us/>, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Shannell Montoya, Human Resources Division, New Mexico Department of Transportation, located at 1120 Cerrillos Road, Room 135, P.O. Box 1149, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

Request for Applications City of Albuquerque

Assistant City Attorney Position

ASSISTANT CITY ATTORNEY: Assistant City Attorney position is available within the Municipal Affairs Division of the Legal Department for an attorney with 10+ years of experience to assist the Albuquerque Police Department with reform efforts and maintenance of constitutional and community policing. The position will be responsible for providing advice and counsel in many areas, including policies, training, administrative investigations, internal audits, and compliance with the Settlement Agreement entered into between the City of Albuquerque and the U.S. Department of Justice. Experience with federal court litigation and constitutional policing is preferred. Strong writing skills required. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to attention of "APD Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Application deadline is June 13, 2016.

Paralegal

Litigation Paralegal with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules, online research, trial preparation, document control management, and familiar with use of electronic databases and related legal-use software technology. Seeking skilled, organized, and detail-oriented professional for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Experienced Paralegal/Legal Assistant

Busy Plaintiff's PI and MedMal Law Firm is looking for an experienced paralegal/legal assistant. Candidate must have excellent organizational skills and attention to detail with strong litigation experience. Competitive salary and benefits. Submit resumé and cover letter with salary history to pi.paralegal.5@gmail.com

Legal Assistant

Downtown plaintiff's P.I. firm seeking FT legal assistant with at least 3 years of legal experience. Heavy transcription and filing; Federal & State e-filing; organize medical records and bills; light bookkeeping. Good benefits. Fax resume with salary requirements to 505-246-9797 or mail to P.O. Box 527, Albuquerque, NM, 87103.

Experienced Santa Fe Paralegal \$45k+

Santa Fe Law Firm has an immediate opening for a 10 yr+ EXPERIENCED SANTA FE PARALEGAL — bright, conscientious, hardworking, self-starter, mature, meticulous, professional to join our team. Excellent attention to detail, written and oral communication skills and multitasking. Our firm is computer intensive, informal, non-smoking and a fun place to work. Very Competitive Compensation package \$45,000+ pa (plus fully paid health insurance and a Monthly Performance Bonus), paid parking, paid holidays + sick and personal leave. All responses will be kept strictly confidential. Please send us your resume and a cover letter in PDF format by eMail to sfelegalsecretary@gmail.com

Positions Wanted

Part-Time or Contract Legal Work

Attorney/Registered Nurse licensed to practice law in New Mexico since 1988 with 25+ years of litigation experience in medical malpractice cases. Seeking part-time or contract legal work, defense or plaintiff. Contact gdicharry@gmail.com or (505) 269-3757.

Services

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

620 Roma N.W.

620 ROMA N.W., located within two blocks of the three downtown courts. Rent includes utilities (except phones), fax, internet, janitorial service, copy machine, etc. All of this is included in the rent of \$550 per month. Up to three offices are available to choose from and you'll also have access to five conference rooms, a large waiting area, access to full library, receptionist to greet clients and take calls. Call 243-3751 for appointment to inspect.

820 Second Street NW

820 Second Street NW, offices for rent, one to two blocks from courthouses, all amenities including copier, fax, telephone system, conference room, high-speed internet, phone service, receptionist, call Ramona at 243-7170.



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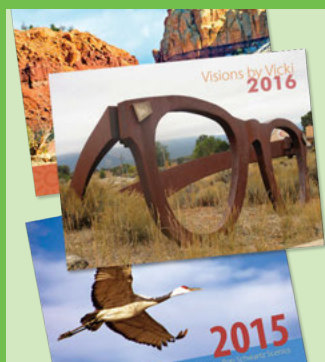
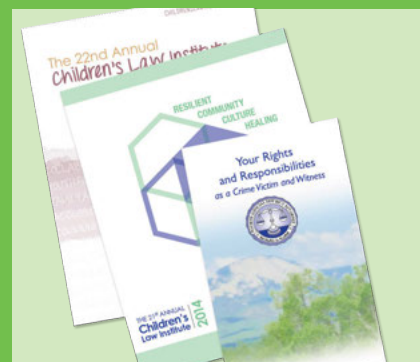
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