

# BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

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*Plant on Pink*, by Cristy Cross (see page 3)

[www.cristycross.com](http://www.cristycross.com)

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**health insurance**  
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## Meetings

### July

- 6**  
**Employment and Labor Law Section BOD,**  
 Noon, State Bar Center
- 12**  
**Appellate Practice Section BOD,**  
 Noon, teleconference
- 13**  
**Children's Law Section BOD,**  
 Noon, Juvenile Justice Center,  
 Albuquerque
- 13**  
**Taxation Section BOD,**  
 11 a.m., teleconference
- 14**  
**Business Law Section BOD,**  
 4 p.m., teleconference
- 14**  
**Elder Law Section BOD,**  
 Noon, State Bar Center
- 14**  
**Public Law Section BOD,**  
 Noon, Montgomery & Andrews, Sant Fe
- 15**  
**Family Law Section BOD,**  
 9 a.m., teleconference

## Workshops and Legal Clinics

### July

- 6**  
**Divorce Options Workshop:**  
 6–8 p.m., State Bar Center, Albuquerque,  
 505-797-6003
- 6**  
**Civil Legal Clinic:**  
 10 a.m.–1 p.m., Second Judicial District  
 Court, Albuquerque, 1-877-266-9861
- 7**  
**Common Legal Issues for**  
**Senior Citizens Workshop:**  
 10–11:15 a.m., workshop noon–1 p.m.,  
 POA AHCD clinic, Las Vegas Senior Center,  
 Las Vegas, 1-800-876-6657
- 13**  
**Sandoval County Free Legal Clinic:**  
 10 a.m.–2 p.m., 13th Judicial District Court,  
 Bernalillo, 505-867-2376
- 14**  
**Valencia County Free Legal Clinic:**  
 10 a.m.–2 p.m., 13th Judicial District Court,  
 Los Lunas, 505-865-4639
- 19**  
**Cibola County Free Legal Clinic:**  
 10 a.m.–2 p.m., 13th Judicial District Court,  
 Grants, 505-287-8831

#### About the Cover Image: *Plant on Pink*, photography

Cristy Cross is a wedding and portrait photographer and the sole proprietor of Cristy Cross Photography, which has been in business for 11 years. She is based out of Clovis, but her work takes her all over the country. Cross is a proud alumna of Texas Tech University. She graduated from there in 2003 with a bachelors degree in photocommunications with a minor in fine art photography. She enjoys photographing people, portraits and weddings, but her first love is to photograph nature, still life and Americana. To view more of her work, visit [www.cristycross.com](http://www.cristycross.com).

# Notices

## COURT NEWS

### Supreme Court of New Mexico Notice of Vacancies on Committees

The Supreme Court of New Mexico is seeking applications to fill vacancies on the following Supreme Court committees: Board of Bar Examiners (one vacancy), Joint Committee on Rules of Procedure (one vacancy), Metropolitan Courts Rules Committee (one vacancy), and Rules of Criminal Procedure (one vacancy for a district court judge). 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, PO Box 848, Santa Fe, New Mexico 87504-0848, by fax to 505-827-4837, or by email to [nmsupremecourtclerk@nmcourts.gov](mailto: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 July 8.

### Fifth Judicial District Court Investiture Ceremony for Dustin K. Hunter

Members of the legal community are invited to attend the swearing-in ceremony for Dustin K. Hunter as district judge, Division X, Fifth Judicial District Court at 3 p.m. on July 8 at the Chaves County Courthouse, 400 North Virginia Ave., Roswell.

### Notice of Mass Reassignment

Gov. Susana Martinez has appointed Dustin K. Hunter to fill the judicial vacancy in Chaves County, Division X. Effective June 29, a mass reassignment of cases will occur pursuant to NMSC Rule 23-109. Judge Hunter will be assigned all cases previously assigned to Judge Steven L. Bell, Division X. Pursuant to Supreme Court Rule 1-088.1, parties who have not yet exercised a peremptory excusal will have 10 days from July 27 to excuse Judge Hunter.

## STATE BAR NEWS

### Attorney Support Groups

- July 11, 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#.

## Professionalism Tip

### With respect to the courts and other tribunals:

When hearings or depositions are cancelled, I will notify opposing counsel, necessary parties, and the court (or other tribunal) as early as possible.

- July 18, 7:30 a.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
- Aug. 1, 5:30 p.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)  
*Note: the Attorney Support Group did not meet on July 4 due to the Independence Day Holiday.*

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

## 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 from 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](mailto:alison.pauk@lopdm.us).

## Committee on Women and the Legal Profession Professional Clothing Closet

The West Law Firm has volunteered to house the Committee on Women and the Legal Profession Clothing Closet at its offices while the Modrall Sperling Law Firm is under renovation. Those who want to look for a suit can stop by the office, located at 40 First Plaza NW, Suite 735 in Albuquerque during business hours. Call 505-243-4040 to set up an appointment.

Those who want to donate to the closet are asked to drop off gently used, dry cleaned suits at the West Law Firm during business hours. Donations can also be given to Committee Co-chair Laura Castille at Cuddy & McCarthy, LLP, 7770 Jefferson NE, Suite 102, Albuquerque.

## 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

## OTHER BARS

### Albuquerque Bar Association July Membership Luncheon

Join the Albuquerque Bar Association for a membership luncheon on July 12 at the Embassy Suites Hotel. Attorney General Hector Balderas and Krisztina Ford will present "New Mexico's Future for Children" from noon–1 p.m. (arrive for networking at 11:30 a.m.). After the luncheon, Judge Shannon Bacon will present a CLE "Children's Law with Emancipation Certification" (2.0 G) from 1:15–3:15 p.m. To register, visit [www.abqbar.org](http://www.abqbar.org).

### New Mexico Hispanic Bar Association

### CLE: Advocacy in All Venues of Government

The New Mexico Hispanic Bar Association presents a CLE "Effective Advocacy in All Venues: Judicial vs. Executive and Legislative" (3.0 G) on from 9 a.m.–noon, July 15, at the State Personnel Auditorium in Santa Fe. The CLE will explore the use of forms of advocacy in differing venues when appearing before decision makers in all three branches of government. Speakers include Tim Adler, Damian R. Lara and Clifford M. Rees. The cost is \$40 for NMHBA members and \$60 for non-members. To register, visit [www.nmhba.net](http://www.nmhba.net).

# Legal Education

## July

- |   |  |   |
|---|--|---|
| <p><b>13 Hydrology and the Law</b><br/>6.5 G<br/>Live Seminar, Santa Fe<br/>Law Seminars International<br/>www.lawseminars.com</p>  | <p><b>15 The Ethics of Creating Attorney-Client Relationships in the Electronic Age</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>           | <p><b>29 Talkin 'Bout My Generation: Professional Responsibility Dilemmas Among Generations (2015)</b><br/>3.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  |
| <p><b>14 Natural Resource Damages</b><br/>10.0 G<br/>Live Seminar, Santa Fe<br/>Law Seminars International<br/>www.lawseminars.com</p>  | <p><b>15 Effective Advocacy in All Venues; Judicial vs. Executive &amp; Legislative</b><br/>3.0 G<br/>Live Seminar, Santa Fe<br/>New Mexico Hispanic Bar Association<br/>www.nmhba.net</p> | <p><b>29 Civility and Professionalism (Ethicspalooza Redux – Winter 2015 Edition)</b><br/>1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                   |
| <p><b>15 Best and Worst Practices Including Ethical Dilemmas in Mediation (2016)</b><br/>3.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>19 Essentials of Employment Law</b><br/>6.6 G<br/>Live Seminar<br/>Sterling Education Services Inc.<br/>www.sterlingeducation.com</p>  | <p><b>29 Everything Old is New Again - How the Disciplinary Board Works (Ethicspalooza Redux – Winter 2015 Edition)</b><br/>1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>15 The Trial Variety: Juries, Experts and Litigation (2015)</b><br/>6.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                        | <p><b>21 Drafting Sales Agents' Agreements</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |   |
| <p><b>15 Writing and Speaking to Win (2014)</b><br/>5.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                      | <p><b>28 Reciprocity—Introduction to the Practice of Law in New Mexico</b><br/>4.5 G, 2.5 EP<br/>Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>29–30 Joint 2016 TADC &amp; NMDLA Seminar</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Ruidoso<br/>New Mexico Defense Lawyers Association<br/>www.nmdla.org</p>  |

## August

- |   |  |   |
|---|--|---|
| <p><b>2 Due Diligence in Real Estate Acquisitions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>10 Role of Public Benefits in Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                  | <p><b>19–20 2016 Annual Meeting–Bench &amp; Bar Conference</b><br/>Possible 12.0 CLE credits (including at least 5.0 EP)<br/>Live Seminar, Santa Fe<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>5 I'm With Her! Women in the Courtroom VI: Uniting for Success</b><br/>4.5 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>New Mexico Defense Lawyers Association<br/>www.nmdla.org</p> | <p><b>11–12 13th Annual Comprehensive Conference on Energy in the Southwest</b><br/>13.2 G<br/>Live Seminar, Santa Fe<br/>Law Seminars International<br/>www.lawseminars.com</p> | <p><b>23 Drafting Employment Separation Agreements</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>9 Charging Orders in Business Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |  | <p><b>31 Lawyer Ethics and Disputes with Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |

## September

- |   |   |  |
|---|---|--|
| <p><b>9 2015 Fiduciary Litigation Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>20 Spring Elder Law Institute (2016)</b><br/>6.2 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>23 Ethics and Keeping Secrets or Telling Tales in Joint Representations</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                           |
| <p><b>9 Wildlife and Endangered Species on Public and Private Lands</b><br/>6.0 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>20 Estate Planning for Firearms</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>29 Estate Planning for Liquidity</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>15 Liquidated Damages in Contracts</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>22 EEOC Update, Whistleblowers and Wages (2015 Employment and Labor Law Institute)</b><br/>3.2 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>29 Legal Technology Academy for New Mexico Lawyers (2016)</b><br/>4.0 G 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                      |
| <p><b>20 2015 Mock Meeting of the Ethics Advisory Committee</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                 | <p><b>22 The New Lawyer – Rethinking Legal Services in the 21st Century (2015)</b><br/>4.5 G 1.5 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>    | <p><b>29 Civility and Professionalism (Ethicspalooza Redux – Winter 2015 Edition)</b><br/>1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>          |
| <p><b>20 Legal Writing—From Fiction to Fact (Morning Session 2015)</b><br/>2.0 G 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>    | <p><b>22 Law Practice Succession – A Little Thought Now, a Lot Less Panic Later (2015)</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>29 The US District Court: The Next Step in Appealing Disability Denials (2015)</b><br/>3.0 G 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>20 Legal Writing—From Fiction to Fact (Afternoon Session 2015)</b><br/>2.0 G 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>22 Guardianship in NM: the Kinship Guardianship Act (2016)</b><br/>5.5 G 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  | <p><b>29 Invasion of the Drones: IP-Privacy, Policies, Profits, (2015 Annual Meeting)</b><br/>1.5 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>       |

## October

- |   |   |  |
|---|---|--|
| <p><b>4 Indemnification Provisions in Contracts</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>5 Managing Employee Leave</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>10–14 Basic Practical Regulatory Training for the Natural Gas Local Distribution Industry</b><br/>24.5 G<br/>Live Seminar, Albuquerque<br/>Center for Public Utilities New Mexico State University<br/>business.nmsu.edu</p> |
|---|---|--|

*Listings in the Bar Bulletin CLE Calendar are derived from course provider submissions. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location, course provider and registration instructions.*

*Thank You to*

## **BUTT, THORNTON, & BAEHR PC**

*for its Generous Support of the Civil Legal Clinic!*

The Second Judicial District Pro Bono Committee and the Volunteer Attorney Program would like to thank the attorneys of Butt, Thornton, & Baehr PC for volunteering their time and expertise at our June 1, 2016 Civil Legal Clinic. The Clinic is held on the first Wednesday of every month at the Second Judicial District Courthouse in the 3rd floor conference room from 10 a.m. until 1 p.m. Fifteen individuals received assistance at the June clinic thanks to the dedication of six attorneys and one staff member from Butt, Thornton, & Baehr and three attorneys who assist with the clinic on a regular basis:

**Butt, Thornton,  
& Baehr:**  
Sherrill Filter  
Amy Headrick  
Charles Kraft

Quiana Salazar-King  
Scott Stromberg  
Arslan Umarov  
Delight Rylance  
(paralegal)

**Clinic Attorneys:**  
Bill Burgett  
David Gonzales  
Susan Page

**If you or your firm is interested in volunteering to host a clinic, please contact Aja Brooks at [ajab@nmlegalaid.org](mailto:ajab@nmlegalaid.org) or 505-814-5033.**

## *—Featured—* **Member Benefit**



A service of the New Mexico State Bar Foundation, the Center provides live, online webcast, teleseminar, onsite live replay and self study courses that fulfill the minimum requirements of 10.0 G, 2.0 EP credits per year. Call 505-797-6020 or visit [www.nmbar.org](http://www.nmbar.org).



### **New Mexico Lawyers and Judges Assistance Program**

Help and support are only a phone call away.

#### **24-Hour Helpline**

Attorneys/Law Students  
505-228-1948 • 800-860-4914  
Judges 888-502-1289  
[www.nmbar.org/JLAP](http://www.nmbar.org/JLAP)

## **Ninth Judicial District Court Educates Young Women About the Legal System**

On June 9 Judge Donna J. Mowrer, Judge Matthew E. Chandler and Senior Court Attorney Benjamin Cross, Ninth Judicial District Court, taught delegates of the 2016 American Legion Auxiliary New Mexico Girls State about the New Mexico legal system.



2016 Girls State was hosted on the campus of Eastern New Mexico University in Portales from June 5–10. Girls State epitomizes the ALA's mission to honor those who have brought us our freedom through our enduring

commitment to develop young women as future leaders grounded in patriotism and Americanism. The young women become knowledgeable of the democratic process and how our republic form of government works at the city, county and state levels. The 2016 New Mexico team is pictured

with Judge Donna J. Mowrer (bottom row, third from right), Benjamin Cross and Judge Matthew E. Chandler.

For more information about American Legion Auxiliary New Mexico Girls State, visit [www.alanmgirlsstate.org](http://www.alanmgirlsstate.org).

# New Mexico Lawyers and Judges Assistance Program

## Tip of the Month



### Introduction To the Series

State Bar Members:

While recent research confirms that legal professionals experience significantly high rates of alcohol and other drug abuse, depression and anxiety, research also shows we can reduce our individual risk and build fulfilling careers and personal lives by practicing self-care and improving our emotional resilience.

The State Bar of New Mexico's Lawyers and Judges Assistance Program provides confidential assistance to those who struggle with substance abuse and/or other mental health issues, and NMJLAP is also here to support members who want to take action to avoid becoming a statistic. In that vein, NMJLAP is pleased to offer the first in a monthly series of articles that explore tools for healthy living.

Sincerely,

J. Brent Moore  
President,  
State Bar of New Mexico

### Stress Reduction for Busy Lawyers

Stress is inherent in our modern lives and certainly within the legal profession. Just as multiple factors contribute to the level of stress we experience, there are multifaceted methods for mitigating stress. The ideal response is to create a stress management plan to specifically target the factors causing us stress. If the thought of this raises your blood pressure—don't worry!

Below are four quick and effective stress relievers you can fit into your busy schedule. If you don't have the time to devote to a plan at this juncture in your life, these will give you a good return with minimal effort.

#### 1. Practice Breathing Exercises

Breathing exercises are an excellent way to relieve stress anytime and anywhere. They are simple to learn, easy to use and can immediately relieve tension. One effective exercise is to slowly breathe in through your nose to the count of five. Then, slowly exhale through the mouth as you count to eight. Repeat several times and "voila," your blood pressure will descend and a sense of calm will arise.

#### 2. Listen to Music

Music has proven health and stress relief benefits and can be easily integrated into your daily life. Busy lawyers can turn on

music during their morning routine, while commuting to and from work, during case preparations and at many other times to relieve stress. It takes virtually no extra time and provides real benefits. Bonus—some studies find listening to Mozart causes changes in brain wave activity linked to intelligence, memory and problem solving.

#### 3. Take Your Vitamins

Taking your vitamins every morning can help reduce stress and provide more energy. In particular, a combination of a Vitamin B complex, Calcium and Magnesium and Vitamin C make a good daily regimen. Check with your physician before you start to be sure the mix is appropriate and safe for you.

#### 4. Make Time for Fun

Laughter truly is the best medicine. It releases endorphins (the feel-good chemicals produced by the body) that are 10 times more powerful than morphine, and decreases stress hormones. Take in a stand-up comedy show, call or have lunch with a friend who makes you laugh or get in touch with your inner child by scheduling a weekend play date with family or friends.

#### Help and Support Are Only a Phone Call Away

Attorneys and law students can call 800-860-4914 and judges can call 888-502-1289 for confidential helpline assistance, 24 hours every day.

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

## Certiorari Granted but Not Yet Submitted to the Court:

(Parties preparing briefs)		Date Writ Issued	
No. 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 June 24, 2016**

## Unpublished Opinions

No. 33279	1st Jud Dist Santa Fe CR-12-2, STATE v S MAXWELL (affirm in part, reverse in part)	6/20/2016
No. 33280	1st Jud Dist Santa Fe CR-12-3, STATE v M MAXWELL (affirm in part, reverse in part)	6/20/2016
No. 33920	2nd Jud Dist Bernalillo CR-11-1826, STATE v M GALLEGOS (affirm)	6/23/2016

## Published Opinions

No. 35416	2nd Jud Dist Bernalillo CR-04-3303, STATE v K BLANCO (affirm)	6/20/2016
No. 34259	3rd Jud Dist Dona Ana CV-13-2674, H LEYENDECKER v P DANIELS (reverse)	6/21/2016
No. 35387	11th Jud Dist San Juan CR-13-933, STATE v C TILEY (affirm)	6/21/2016
No. 35090	3rd Jud Dist Dona Ana CV-12-2689, A ARCHULETA v COMMUNITY BANK (affirm)	6/21/2016
No. 35026	AD AD 15-27, SAIZ TRUCKING v TAX & REV (affirm)	6/22/2016
No. 35267	9th Jud Dist Curry JQ-13-3, CYFD v SUSAN G (affirm)	6/22/2016
No. 33773	2nd Jud Dist Bernalillo CR-07-3430, STATE v B MONTOYA (affirm)	6/23/2016
No. 34923	2nd Jud Dist Bernalillo CR-14-5917, STATE v M ESPINOZA (affirm)	6/23/2016
No. 35294	3rd Jud Dist Dona Ana CR-14-759, STATE v D BROWN (affirm)	6/23/2016

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

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## CLERK'S CERTIFICATE OF ADMISSION

---

Effective May 31, 2016:  
**Jacob Bradley Brown Booher**  
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PO Box 811031  
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jacob.b.booher@usace.army.mil

Effective June 7, 2016:  
**Michael J. Dawson**  
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Effective June 7, 2016:  
**Sandra Benischek Harrison**  
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Association  
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Effective June 7, 2016:

**Matthew Loftus**  
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512-236-6923  
512-236-6935 (fax)  
matthew.p.loftus@xcelenergy.com

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## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective June 1, 2016:  
**Miguel P. Campos**  
PO Box 31  
1962 Cerro Crest Court  
Los Lunas, NM 87031

Effective June 7, 2016:  
**Anthony W. White**  
15535 Solana Road SE  
Deming, NM 88030

---

## CLERK'S CERTIFICATE OF NAME CHANGE

---

Effective June 7, 2016  
**Mia Kern Lardy f/k/a  
Mia L. Kern:**  
Modrall, Sperling, Roehl,  
Harris & Sisk  
PO Box 2168  
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Albuquerque, NM 87103  
505-848-1819  
mlk@modrall.com

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

---

Effective May 26, 2016:  
**Sandra E. Rotruck**  
PO Box 21324  
Albuquerque, NM 87154  
Effective May 26, 2016:  
**Chad Rhae Yazzie**  
Feldstrasse 63  
8004 Zurich, Switzerland  
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yazzie\_chad@yahoo.com

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## CLERK'S CERTIFICATE OF WITHDRAWAL

---

Effective June 13, 2016:  
**James E. Burke**  
1509 Kit Carson Avenue SW  
Albuquerque, NM 87104

Effective June 9, 2016:  
**Diana J. Harris**  
PO Box 22101  
Santa Fe, NM 87502

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## CLERK'S CERTIFICATE OF NAME CHANGE

---

As of June 14, 2016  
**Veronica C. Gonzales-Zamora  
f/k/a Veronica C. Gonzales**  
David Walther Law  
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veronicaz@davidwaltherlaw.com

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

---

Effective June 13, 2016:  
**Rudy Martin**  
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Effective June 13, 2016:  
**Martin Edwin Threet**  
Martin E. Threet & Associates  
6605 Uptown Blvd. NE,  
Suite 280  
Albuquerque, NM 87110  
505-881-5155

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## CLERK'S CERTIFICATE OF ADMISSION

---

On June 21, 2016:  
**Barbara L. Seaton**  
Office of the Superintendent  
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PO Box 1689  
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On June 14, 2016:  
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480-272-9039 (fax)  
psheston@checkett-law.com

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**CLERK'S CERTIFICATE OF  
NAME CHANGE**

---

As of June 22, 2016

**Allison M. Beaulieu f/k/a  
Allison Micheli Kamm**  
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As of June 22, 2016

**Connor Darius Jackson  
f/k/a Darius V. Jackson**  
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Evanston, IL 60202  
847-440-5028  
connor@jackson-legal.com

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**CLERK'S CERTIFICATE  
OF REINSTATEMENT TO  
ACTIVE STATUS**

---

As of June 21, 2016:

**Michael Sean Casey**  
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As of June 20, 2016:

**Bryan J. Hess**  
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As of June 23, 2016:

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As of June 20, 2016:

**Mary Catherine McCulloch**  
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As of June 20, 2016:

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As of June 20, 2016:

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**IN MEMORIAM**

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As of June 19, 2016:

**Steven Craig Henry**  
PO Box 1249  
Corrales, NM 87048

# Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

**Effective July 6, 2016**

<b>PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:</b>			<b>RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS</b>		
		Comment Deadline			
Rule 1-079	Public inspection and sealing of court records	08/05/16	Rule 5-123	Public inspection and sealing of court records	05/18/16
Rule 1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	08/05/16	Rule 5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/16
Form 4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	08/05/16	<b>RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS</b>		
Rule 5-123	Public inspection and sealing of court records	08/05/16	Rule 6-506	Time of commencement of trial	05/24/16
Rule 5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	08/05/16	<b>RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS</b>		
Form 9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	08/05/16	Rule 7-506	Time of commencement of trial	05/24/16
Rule 10-166	Public inspection and sealing of court records	08/05/16	<b>RULES OF PROCEDURE FOR THE MUNICIPAL COURTS</b>		
Rule 10-171	Notice of federal restriction on right to receive or possess a firearm or ammunition	08/05/16	Rule 8-506	Time of commencement of trial	05/24/16
Form 10-604	Notice of federal restriction on right to possess or receive a firearm or ammunition	08/05/16	<b>CRIMINAL FORMS</b>		
<b>RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2016 NMRA:</b>			Form 9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
		Effective Date	<b>CHILDREN'S COURT RULES AND FORMS</b>		
<b>RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS</b>			Rule 10-166	Public inspection and sealing of court records	05/18/16
Rule 1-079	Public inspection and sealing of court records	05/18/16	Rule 10-171	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/16
Rule 1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16	Form 10-604	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
<b>CIVIL FORMS</b>			<b>SECOND JUDICIAL DISTRICT COURT LOCAL RULES</b>		
Form 4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16	LR2-400	Case management pilot program for criminal cases	02/02/16

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

**PUBLICATION FOR COMMENT  
OF RECENTLY APPROVED AMENDMENTS  
CONCERNING MENTAL-HEALTH RELATED DISPOSITIONS  
THAT AFFECT THE RIGHT TO RECEIVE OR POSSESS  
FIREARM OR AMMUNITION UNDER FEDERAL LAW**

The Supreme Court has provisionally approved the new and amended rules set forth below with a retroactive effective date of May 18, 2016 to coincide with the effective date of related, recently enacted statutory changes. The approved rules and forms are intended to address the new firearm-related notice and reporting requirements under House Bill 336 (HB 336) as they relate to a person who has been “adjudicated as a mental defective” or “committed to a mental institution.” Those terms are used in HB 336 and are taken from the Brady Handgun Violence Protection Act of 1993. *See* 18 U.S.C. § 922(g)(4) (declaring it a federal crime for a person who has been “adjudicated as a mental defective” or “committed to a mental institution” to receive or possess a firearm or ammunition); 27 C.F.R. § 478.11 (defining the terms “adjudicated as a mental defective” and “committed to a mental institution”).

The Court provisionally approved the rules and forms on an emergency basis to comply with the requirements of HB 336, which went into effect on May 18, 2016. *Accord* Rule 23106.1(C) NMRA (providing for outofcycle rulemaking under “emergency circumstances,” including a change in statute). Due to the expedited approval process, the Court is now publishing the rules and forms for comment and has ordered the Ad hoc Committee on Rules for Mental Health Proceedings, with input from the Civil, Criminal, and Children’s Court Rules Committees, to review any comments submitted during the comment period and to recommend revisions to the rules and forms by December 31, 2016. The Court invites input from the bench, bar, and public during the comment period.

The recently approved rules and forms are intended to allow the Administrative Office of the Courts (AOC) to meet two requirements imposed by HB 336. First, Subsection 2(B) of HB 336 requires the AOC to “electronically transmit information about a court order, judgment or verdict to the federal bureau of investigation for entry into the national instant criminal background check system [NICS] regarding each person who has been adjudicated as a mental defective or committed to a mental institution and is therefore, pursuant to federal law, disabled from receiving or possessing a firearm or ammunition.” The AOC has determined that all court records in proceedings that could result in such a “court order, judgment or verdict” are automatically sealed under Rules 1079, 5123, and 10166 NMRA. *See, e.g.,* Rule 1079(C)(5) (providing that “all court records . . . shall be automatically sealed without motion or order of the court” in proceedings under the Mental Health and Developmental Disabilities Code, Chapter 43, Article 1 NMSA 1978). The amendments to Rules 1079, 5123, and 10166 therefore create a limited exception that permits the AOC to report the information that must be transmitted under HB 336 in proceedings that are otherwise automatically sealed.

Second, Subsection 2(C) of HB 336 requires the AOC, “[u]pon entry of a court order, judgment or verdict referred to in Subsection B . . . [to] notify the person that, as an adjudicated mental defective or as a person committed to a mental institution, the person is disabled pursuant to federal law from receiving or possessing a firearm or ammunition.” New Rules 1131, 5615, and 10171 NMRA, together with new Forms 4940, 9515, and 10604 NMRA, establish a procedure for providing the required notice. Rules 1131, 5615, and 10171 identify the specific types of orders for which notice must be given in each court and provide that the notice must be in writing and in the form substantially approved by the Court. Forms 4940, 9515, and 10604 are the forms approved by the Court for providing the notice.

Of particular interest, Rules 1131, 5615, and 10171 list the types of orders identified by the AOC, with input from state and federal officials, that may be issued in proceedings under New Mexico law that fall within the federal definitions of “adjudicated as a mental defective” or “committed to a mental institution.” The federal definitions do not align perfectly with the findings required in state proceedings. *Compare* 27 C.F.R. § 478.11 (defining “adjudicated as a mental defective” in part as “[a] determination by a court . . . that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease . . . [l]acks the mental capacity to contract or manage his own affairs”), *with, e.g.,* NMSA 1978, § 455304(C)(1) (providing that a guardian shall be appointed under the Uniform Probate Code based upon a finding by clear and convincing evidence that the person is “incapacitated”); § 455101(F) (“[I]ncapacitated person” means either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that the person is unable to manage the person’s personal affairs or the person is unable to manage the person’s estate or financial affairs or both.”). The Court recognizes that some of the dispositions listed in the rules are a better fit with the federal definitions than others, and welcomes input regarding whether the listed dispositions fall within the federal definitions.

If you would like to comment on the recently approved new and amended rules and forms set forth below before the Court takes further action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments by mail, email or fax to:

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 875040848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
5058274837 (fax)

**Your comments must be received by the Clerk on or before Aug. 5, 2016, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s web site for public viewing.**

## 1079. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) "court record" means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) "lodged" means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) "protected personal identifier information" means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver's license number, and all but the year of a person's date of birth;

(4) "public" means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) "public access" means the inspection and copying of court records by the public; and

(6) "sealed" means a court record for which public access is limited by order of the court or as required by Paragraphs C or D of this rule.

C. **Limitations on public access.** In addition to court records protected pursuant to Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

(1) proceedings commenced under the Adoption Act, Chapter 32A, Article 5 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Subsection A of Section 32A58 NMSA 1978;

(2) proceedings to detain a person commenced under Section 24115 NMSA 1978;

(3) proceedings for testing commenced under Section 242B5.1 NMSA 1978;

(4) proceedings commenced under the Adult Protective Services Act, Sections 27714 to 27731 NMSA 1978, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA 1978;

(5) proceedings commenced under the Mental Health and Developmental Disabilities Code, Chapter 43, Article 1 NMSA 1978, subject to the disclosure requirements in Section 43119 NMSA 1978 and the firearm-related reporting requirements in Section 34-9-19 NMSA 1978;

(6) wills deposited with the court pursuant to Section 452515 NMSA 1978 that have not been submitted to informal or formal probate proceedings. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Section 452515 NMSA 1978;

(7) proceedings commenced for the appointment of a person to serve as guardian for an alleged incapacitated person subject to the disclosure requirements of Subsection I of Section 455303 NMSA 1978 and the firearm-related reporting requirements in Section 34-9-19 NMSA 1978; [and]

(8) proceedings commenced for the appointment of a

conservator subject to the disclosure requirements of Subsection M of Section 455407 NMSA 1978 and the firearm-related reporting requirements in Section 34-9-19 NMSA 1978; and

(9) proceedings commenced to remove a firearm-related disability under Section 34-9-19(D) NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

### D. Protection of personal identifier information.

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a nonsanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person's name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

E. **Motion to seal court records required.** Except as provided in Paragraphs C and D of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. Any party or member of the public may file a response to the motion to seal. The movant shall lodge the court record with the court pursuant to Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph F. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

F. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rules 1008.1 and 1010 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a filestamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

## G. Requirements for order to seal court records.

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

- (a) the existence of an overriding interest that overcomes the right of public access to the court record;
- (b) the overriding interest supports sealing the court record;
- (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;
- (d) the proposed sealing is narrowly tailored; and
- (e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

## H. Sealed court records as part of record on appeal.

(1) Court records sealed in the magistrate, metropolitan, or municipal court, or records sealed in an agency proceeding in accordance with the law, that are filed in an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal such records or modify a sealing order entered in the magistrate, metropolitan, or municipal court shall be filed in the district court pursuant to Paragraph I of this rule if the case is pending on appeal.

(2) Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

## I. Motion to unseal court records.

(1) A sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph G. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court

record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

J. **Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Adopted by Supreme Court Order No. 108300004, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 108300023 temporarily suspending Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No. 108300037, extending the temporary suspension of Paragraph D for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 118300006, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order No. 138300017, effective for all cases pending or filed on or after December 31, 2013; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

**Committee commentary.** — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that all court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases identified in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless, a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule.

For some of the classes of cases identified in Paragraph C, automatic sealing is subject to other statutory disclosure or reporting requirements. For example, under NMSA 1978, Section 34-9-19, the administrative office of the courts (AOC) is required to transmit to the federal bureau of investigation's national instant criminal background check system (NICS) information about a court order, judgment, or verdict regarding each person who has been "adjudicated as a mental defective" or "committed to a mental institution" under federal law. Automatic sealing under Paragraph C therefore does not prevent the AOC from transmitting such information to the NICS in the proceedings described in Subparagraphs C(4), (5), (7) and (8). A person who is the subject of the information compiled and reported by the AOC to NICS has a right to obtain and inspect that information. See NMSA 1978, § 34-9-19(K).

Aside from entire categories of cases that may warrant limitations on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. See, e.g., Section 714.2(H) NMSA 1978 (providing for confidentiality of taxpayer information); Section 1461(A) NMSA 1978 (providing for confidentiality of patient health information); Section 2419.5 NMSA 1978 (limiting disclosure of test results for sexually transmitted diseases); Section 29104 NMSA 1978 (providing for confidentiality of certain arrest record information); Section 2912A4 NMSA 1978 (limiting disclosure of local crime stoppers program information); Section 29168 NMSA 1978 (providing for confidentiality of DNA information); Section 31253 NMSA 1978 (providing for confidentiality of certain communications between victim and victim counselor); Section 4082 NMSA 1978 (providing for sealing of certain name change records); Section 406A312 NMSA 1978 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); Section 4010A209 NMSA 1978 (providing for limitations on disclosure of certain information during proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act); Section 40137.1 NMSA 1978 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); Section 401312 NMSA 1978 (providing for limits on internet disclosure of certain information in domestic violence cases) Section 447A18 NMSA 1978 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of such items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph G of this rule before deciding whether to seal any particular court record.

Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a non-sanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected

personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information. Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion, the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled "conditionally under seal." If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent

disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court's register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access. If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act

in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 108300004, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 118300006, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

## [NEW MATERIAL]

### 1-131. Notice of federal restriction on right to possess or receive a firearm or ammunition.

**A. Notice required.** The court shall provide written notice to a person who is the subject of an order set forth in Paragraph B of this rule that the person is prohibited under federal law from receiving or possessing a firearm or ammunition. The notice shall further state that the person's identifying information will be transmitted to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System.

**B. Orders requiring notice.** The notice required under Paragraph A of this rule shall be in the form substantially approved by the Supreme Court and shall be attached to the following:

- (1) An order appointing a guardian for an adult under Section 45-5-304(C) NMSA 1978;
- (2) An order appointing a conservator for an adult under Section 45-5-407(I) NMSA 1978;
- (3) An order of commitment under Sections 43-1-11, -12, or -13 NMSA 1978;
- (4) An order appointing a treatment guardian under Section 43-1-15 NMSA 1978;
- (5) An order for involuntary protective services or protective placement under Section 27-7-24 NMSA 1978; and
- (6) An order to participate in assisted outpatient treatment under Chapter 84 of New Mexico Laws of 2016.

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders issued on or after May 18, 2016.]

**Committee commentary.** — Enacted in 2016, NMSA 1978, Section 34-9-19(C) requires the Administrative Office of the Courts to notify a person who has been “adjudicated as a mental defective” or “committed to a mental institution” that the person “is disabled pursuant to federal law from receiving or possessing a firearm or ammunition.” Federal law declares it a crime for a person who has been “adjudicated as a mental defective” or “committed to a mental institution” to, among other things, receive or possess a firearm or ammunition. *See* 18 U.S.C. § 922(g)(4) (“It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”).

The terms “adjudicated as a mental defective” and “committed to a mental institution” are defined under federal regulation as follows:

*Adjudicated as a mental defective.*

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.
- (b) The term shall include—
  - (1) A finding of insanity by a court in a criminal case; and
  - (2) Those persons found incompetent to stand trial . . .

*Committed to a mental institution.* A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution voluntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

27 C.F.R. § 478.11.

This rule sets forth the procedure for providing the notice required under Section 34-9-19(C) and identifies the orders under New Mexico law for which notice must be given in a civil proceeding. *See also* Form 4-940 NMRA (Notice of federal restriction on right to possess or receive a firearm or ammunition).

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders issued on or after May 18, 2016.]

**[NEW MATERIAL]**

**4-940. Notice of federal restriction on right to possess or receive a firearm or ammunition.**

[For use with Rule 1-131 NMRA]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_  
 \_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
 Petitioner,

v. No. \_\_\_\_\_

\_\_\_\_\_  
 Respondent.

**NOTICE OF FEDERAL RESTRICTION  
 ON RIGHT TO POSSESS OR RECEIVE A  
 FIREARM OR AMMUNITION**

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_

YOU ARE HEREBY NOTIFIED that as a result of the order entered against you in this proceeding, you are prohibited from possessing or receiving a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

YOU ARE FURTHER NOTIFIED that the Administrative Office of the Courts is required under Section 34-9-19(B) NMSA 1978 to report information about your identity to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System (NICS).

YOU ARE FURTHER NOTIFIED that you may petition the Court as provided in Section 34-9-19 NMSA 1978 to restore your right to possess or receive a firearm or ammunition and to remove your name from the NICS.

**DISTRICT COURT**

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016.]

5123. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “court record” means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the court or as required by Paragraphs C or D of this rule.

C. **Limitations on public access.** In addition to court records protected pursuant to Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

(1) grand jury proceedings in which a no bill has been filed under Section 3165 NMSA 1978;

(2) proceedings for testing commenced under Section 242B5.1 NMSA 1978;

(3) proceedings commenced upon an application for an order for wiretapping, eavesdropping or the interception of any wire or oral communication under Section 30123 NMSA 1978;

(4) preindictment proceedings commenced under Chapter 31, Article 6 NMSA 1978 or Rule 5302A NMRA; [and]

(5) proceedings to determine competency under Chapter 31, Article 9 NMSA 1978, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA 1978; and

(6) proceedings commenced to remove a firearm-related disability under Section 34-9-19(D) NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

#### **D. Protection of personal identifier information.**

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a nonsanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person's name, address, and telephone number along with a government issued form of identification or other acceptable form of identification.

**E. Motion to seal court records required.** Except as provided in Paragraphs C and D of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 5120 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been filed or is to be filed. Any party or member of the public may file a response to the motion to seal under Rule 5120 NMRA. The movant shall lodge the court record with the court pursuant to Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph F. Pending the court's ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court's ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

**F. Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court "CONDITIONALLY UNDER SEAL" and affix to the envelope or container a cover sheet that contains the information required under Rule 5202 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)" and shall attach a filestamped copy of the court's order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

#### **G. Requirements for order to seal court records.**

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

- (a) the existence of an overriding interest that overcomes the right of public access to the court record;
- (b) the overriding interest supports sealing the court record;
- (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;
- (d) the proposed sealing is narrowly tailored; and
- (e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

#### **H. Sealed court records as part of record on appeal.**

(1) Court records sealed in the magistrate, metropolitan, or municipal court that are filed in an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal such records or modify a sealing order entered in the magistrate, metropolitan, or municipal court shall be filed in the district court pursuant to Paragraph I of this rule if the case is pending on appeal.

(2) Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

#### **I. Motion to unseal court records.**

(1) A sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 5120 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph G. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court's order unseals only part of the court record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are

unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

**J. Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

[Adopted by Supreme Court Order No. 108300007, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 108300023 temporarily suspending Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No. 108300037, extending the temporary suspension of Paragraph D for an additional 90 days, effective November 10, 2010; as amended by Supreme Court Order No. 118300009, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order No. 138300016, effective for all cases pending or filed on or after December 31, 2013; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

**Committee commentary.** — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public's right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that all court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases identified in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless, a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule. For some of the classes of cases identified in Paragraph C, automatic sealing is subject to other statutory disclosure or reporting

requirements. For example, under NMSA 1978, Section 34-9-19, the administrative office of the courts (AOC) is required to transmit to the federal bureau of investigation's national instant criminal background check system (NICS) information about a court order, judgment, or verdict regarding each person who has been "adjudicated as a mental defective" or "committed to a mental institution" under federal law. Automatic sealing under Paragraph C therefore does not prevent the AOC from transmitting such information to the NICS in the proceedings described in Subparagraphs C(5) and (6). A person who is the subject of the information compiled and reported by the AOC to NICS has a right to obtain and inspect that information. See NMSA 1978, § 34-9-19(K).

Aside from entire categories of cases that may warrant limitations on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g.*, Section 714.2(H) NMSA 1978 (providing for confidentiality of taxpayer information); Section 1461(A) NMSA 1978 (providing for confidentiality of patient health information); Section 2419.5 NMSA 1978 (limiting disclosure of test results for sexually transmitted diseases); Section 29104 NMSA 1978 (providing for confidentiality of certain arrest record information); Section 2912A4 NMSA 1978 (limiting disclosure of local crime stoppers program information); Section 29168 NMSA 1978 (providing for confidentiality of DNA information); Section 31253 NMSA 1978 (providing for confidentiality of certain communications between victim and victim counselor); Section 4082 NMSA 1978 (providing for sealing of certain name change records); Section 406A312 NMSA 1978 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); Section 4010A209 NMSA 1978 (providing for limitations on disclosure of certain information during proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act); Section 40137.1 NMSA 1978 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); Section 401312 NMSA 1978 (providing for limits on internet disclosure of certain information in domestic violence cases); Section 447A18 NMSA 1978 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of such items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph G of this rule before deciding whether to seal any particular court record. Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a nonsanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.



# 2016 *Staff Directory*

## › *Executive Director*



Joe Conte

Joe has overall responsibility for the day-to-day operations of the State Bar of New Mexico and the New Mexico State Bar Foundation, with a combined budget of more than \$4 million. He is responsible to and reports to the 22-member Board of Bar Commissioners and oversees State Bar employees. Joe became the executive director in July 2003. He was director of communications for the State Bar from 1998–2001 and then was director of communications for the State Bar of Georgia, returning to New Mexico in 2003. He has nearly three decades of experience in marketing, communications and non-profit management. He was deputy director of communications for the Michigan House of Representatives and senior editor for a California-based publishing company. Joe attended Oakland University (bachelor's degree) and Michigan State University (master's degree).

## › *Executive Team*



Kris Becker

### **Governance and Special Projects Administrator**

Kris is responsible for the administration of the Board of Bar Commissioners, including coordinating meetings, elections, judicial nominating commissions and appointments to the Supreme Court Boards, Committees and Commissions. She works with the internal committees of the board and maintains the State Bar Bylaws and Policies. Kris coordinates the annual service awards and is the project manager for the State Bar Annual Meeting—Bench & Bar Conference. She also manages the State Bar Center and the front desk customer service staff who handle the coordination of meetings and events, including scheduling, room rentals and catering.



Chris Morganti

### **Chief Operating Officer**

Chris oversees the Communications and Member Services Department, the Digital Print Center and the Center for Legal Education. The Communications and Member Services Department provides assistance to sections, committees and divisions; produces State Bar publications; administers and promotes member benefits and services; and handles media relations. In addition to State Bar publications, the Digital Print Center provides an array of printing services to the State Bar, its members and the public. The Center for Legal Education is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community.



David Powell

### **Chief Financial Officer**

David oversees all accounting functions for the State Bar and State Bar Foundation, including financial reporting, cash management, and financial compliance issues. He assists with preparation of the annual budget and participates in operational planning to accomplish program goals and objectives.



**Stormy K. Ralstin**  
**Director of Legal Services**

Stormy has overall responsibility for the community legal service programs of the State Bar and State Bar Foundation, including the Legal Resources for the Elderly Program, the State Bar General Referral Program, State Bar Workshops and Entrepreneurs in Community Lawyering. Stormy is also the managing attorney for LREP, which includes supervising staff attorneys and case management, providing legal advice and brief services through the LREP helpline and conducting legal workshops throughout New Mexico. Stormy is the Bar Foundation liaison to other legal services entities.



**Richard B. Spinello**  
**General Counsel**

Richard oversees a professional office to protect the legal and policy interests of the State Bar. He assists in the areas of regulatory functions; provides a professional legal resource for the State Bar leadership, volunteers and staff; administers and manages programs assigned to the office; assists with outreach to the judiciary; and advises in legislative, executive and judicial processes. He also oversees human resources and benefits.



## *State Bar of New Mexico*

The State Bar of New Mexico was organized in 1886 and is composed of more than 9,000 members. Its purposes are to aid the courts in administering justice and preserving the rule of law and to foster a high standard of integrity and competence within the legal profession. The Board of Bar Commissioners is comprised of 21 representative attorneys from throughout the state who are elected by the State Bar membership and the chair of the Paralegal Division.

## › *Accounting Department* • 505-797-6015

The Accounting Department oversees daily accounting activities including licensing fees, membership status applications, payroll, accounts payable/receivable. The department also administers the IOLTA program.



**Angela Sanchez**  
**Accounts Receivable/Payable**

Angela assists members with the annual licensing fee process, including payment of Bridge the Gap Mentorship Program fees. She is responsible for accounts receivable and payable, including but not limited to State Bar Center room rentals, *Bar Bulletin*, *Bench & Bar Directory*, pro hac vice registrations, the Center for Legal Education and the Annual Meeting—Bench & Bar Conference.

## › *Communications and Member Services Department* • 505-797-6087

The Communications and Member Services Department provides assistance to sections, committees and divisions; produces State Bar publications (*Bar Bulletin*, *Bench & Bar Directory*, *New Mexico Lawyer* and *eNews*); administers and promotes member benefits and services; and handles media relations.



**Marcia C. Ulibarri**  
**Account Executive**

Marcia is the point of contact for printing services, advertising and marketing in the *Bar Bulletin*, the *New Mexico Lawyer*, *Bench & Bar Directory* and *eNews*. Marcia is also involved with production of the Annual Meeting program.



**Evann Kleinschmidt**  
**Communications Coordinator/Editor**

Evann is responsible for general production of the weekly *Bar Bulletin* and *eNews* and has editorial responsibility for the *Bench & Bar Directory* and *New Mexico Lawyer*. She writes and sends news releases and promotional emails for events and programming and maintains State Bar social media. Evann also serves as the State Bar photographer.



**Julie Schwartz**  
**Graphic Designer**

Julie is the designer for State Bar publications and projects submitted by other law-related entities. In addition to the *Bar Bulletin*, *Bench & Bar Directory* and *New Mexico Lawyer*, she designs advertisements, newsletters, brochures, flyers and other publications.



**Breanna Henley**  
**Member Services Coordinator**

Breanna coordinates the activities of State Bar practice sections, committees, divisions and law student members. She also serves as the liaison to voluntary bar associations. In addition to performing a variety of administrative duties, Breanna staffs meetings and advises these groups.

## › *Development and Fundraising* • 505-797-6007



**Stephanie Wagner**  
**Development Director**

Stephanie is responsible for the overall development efforts of the State Bar of New Mexico and the New Mexico State Bar Foundation (see pages 6–7 for more information about the Bar Foundation). Stephanie's responsibilities include developing partners and sponsors for State Bar events and publications, fundraising for the Bar Foundation and developing participation in the IOLTA program by local financial institutions.

## › *Digital Print Center* • 505-797-6058

The Digital Print Center provides an array of printing services to the State Bar, its members and the public.



**Brian Sanchez**  
**Digital Print Center Manager**

Brian is responsible for the coordination and execution of print services. The DPC prints the weekly *Bar Bulletin*; special inserts, handbooks, brochures, newsletters, business cards and stationery for the State Bar, members and the public.



**Michael Rizzo**  
**Digital Print Center Assistant**

Michael's primary focus is production and on-time delivery of the weekly *Bar Bulletin* and preparation of course materials for the Center for Legal Education. He also assists in other areas of digital print production as needed and performs maintenance at the State Bar Center.

## › *The Executive Office* • 505-797-6038

The Executive Office is responsible for the administration related to the management, policies and mission of the State Bar and New Mexico State Bar Foundation. This department also is responsible for the administration of the Board of Bar Commissioners.

## › *The State Bar Center* • 505-797-6000

State Bar Center staff coordinate room rentals for members and outside entities, including room preparation, catering and audiovisual services. The Bar Center offers a variety of meeting spaces including an auditorium, conference rooms, visiting attorney offices and classrooms.



**Andrea Watson**  
**Customer Service/Facilities Assistant**

Andrea is one of the first points of contact for anyone who calls the State Bar. She handles member inquiries and directs the public to other agencies when needed. Andrea takes care of all aspects of Bar Center room rentals from reservations to billing. In addition,

she assists with coordinating service and maintenance of the Bar Center.



**Cecilia Webb**  
**Customer Service/Facilities Assistant**

Cecilia is one of the first points of contact for anyone who calls the State Bar. She handles member inquiries and directs the public to other agencies when needed. Cecilia takes care of all aspects of Bar Center room rentals from reservations to billing. In addition,

she assists with coordinating service and maintenance of the Bar Center.



**Tony Horvat**  
**Customer Service/Database Coordinator**

Tony assists with the dues process which includes collecting and processing payments and forms. He helps maintain the database through address changes. Tony assists with the new member mailings, prepares membership letters and provides bar cards. Additionally, he handles office supply orders and maintains inventory and processes incoming and outgoing mail.

## › *IT Department* • 505-797-6086

The IT Department provides technical support to State Bar staff and members; website and database maintenance; and troubleshooting.



**April Armijo**  
**IT Manager**

April oversees the State Bar network, database and website. She manages data reporting, security systems and the use of audio-visual equipment with in the State Bar Center. April also provides

technical support to staff and State Bar members.



**Pam Zimmer**  
**Database Administrator**

Pam maintains the State Bar database. She enters new admittee information, status changes, pro hac vice certificates and works closely with the Supreme Court on all address changes. She coordinates mailings that involve variable data, handles

the new member packets and issues bar cards. During the dues season, she coordinates the data process and assists the Accounting Department in entering payments.



**Christopher M. Lopez**  
**AV/IT Assistant**

Chris provides technical assistance and support throughout the State Bar Center. He also supports staff and State Bar members with audio-visual services for meetings and events.

## › *Lawyers and Judges Assistance Program* • 505-797-6003

The Lawyers and Judges Assistance Program provides free, confidential assistance for law students and members of the bench and bar concerned about their own, a colleague's or family member's alcohol/other drug abuse, depression, stress, cognitive impairment or other mental health issues. Clinical services include information and referrals, assessments, peer support, and professional interventions.

## › *Bridge the Gap Mentorship Program* • 505-797-6003

The Bridge the Gap Mentorship Program is designed to facilitate the transformation of newly admitted lawyers from a legal academic environment into fully functioning professional practitioners who serve the public with best practices and the highest professional standards. Over the course of a year, each new lawyer works through their selected curriculum with an experienced attorney who has been approved as a BTG mentor. Upon completing the curriculum, the new lawyer and the mentor receive a full year of required CLE credits.



**Jill Anne Yeagley**  
**Lawyers and Judges Assistance  
Program/Mentorship Program  
Administrator**

Jill, a licensed social worker and alcohol and drug counselor, provides mental health and substance abuse-related assessments, interventions, and consultations for members

of the bench and bar. She also works closely with JLAP Committee members to provide outreach, peer assistance and prevention initiatives. In addition, Jill has overall management responsibility for BTG, including program development, evaluation and mentor and new lawyer orientation.



**Elizabeth Aikin**  
**Mentorship Program Coordinator**

Elizabeth assists the administrator of the Bridge the Gap Mentorship Program, maintaining documents and providing compliance status, guidance and support to new attorneys and program mentors. She has an associates degree in paralegal studies.

## › *Office of General Counsel* • 505-797-6050

The Office of General Counsel works to protect the legal and policy interest of the State Bar and Bar Foundation; provides a professional legal resource for leadership, volunteers, and staff; and assists with the outreach to members, the courts and the public. This department helps coordinate the efforts of legal programs and services including Fee Arbitration, Ethics Helpline, Attorney Resource Helpline, Ethics Advisory Committee, Lawyers Professional Liability and Insurance Committee, the Access to Justice Fund including the statewide IOLTA program and pro hac vice registrations.



**Lizeth Cera**  
**OGC Programs Coordinator**

Lizeth provides administrative assistance and database maintenance for the Office of General Counsel and the programs and projects assigned to the office, including the IOLTA Program, Fee Arbitration Program and several committees. In addition, Lizeth assists with administrative duties for human resources.



## *New Mexico State Bar Foundation*

The New Mexico State Bar Foundation is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the State Bar Foundation are to: enhance access to legal services for underserved populations; promote innovation in the delivery of legal services; and provide legal education to members and the public. The State Bar Foundation is a 501(c)(3) non-profit corporation and was established in 1991.



**Maria Tanner**  
**Legal Services Program Coordinator**

Maria coordinates the activities of the legal service programs of the Bar Foundation including the Legal Resources for the Elderly Program, the General Referral Program and State Bar workshops for the public (see page 7 for more information about these programs). For LREP, Maria organizes statewide workshops, manages case referrals and oversees case intake. Maria is fluent in Spanish.

## › *Center for Legal Education* • 505-797-6020

The Center for Legal Education is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community. CLE offers a full range of educational services including live seminars, live webcasts, live replays, national series teleseminars, online self-study videos and self-study DVDs.



**Marian Chavez**  
**CLE Program Manager**

Marian provides leadership and strategic management of the Center for Legal Education in all areas, including programs and services, financial management, marketing, human resources management, member relations and business partnerships.



**Heather Kleinschmidt**  
**CLE Program Coordinator**

Heather assists with all aspects of program implementation. Once course topics and speakers have been established, she handles coordination of programs including working with speakers, compiling written materials for dissemination, registering attendees, filing credits and maintaining the programs on the CLE website.



**Vanessa Sanchez**  
**CLE Program Assistant**

Vanessa provides a variety of administrative support for the Center of Legal Education. She works closely with the other CLE staff to support and assist with implementation of legal education programs for member sections, divisions and committees of the State Bar.

## » *Entrepreneurs in Community Lawyering* • 505-797-6053

Entrepreneurs in Community Lawyering is a 24-month legal incubator program that will help new attorneys 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 experience who are passionate about starting their own practices and serving middle income New Mexicans.



Ruth O. Pregenzer

### **Entrepreneurs in Community Lawyering Program Director**

Ruth is responsible for all aspects of ECL. Her responsibilities include assuring that attorneys participating in ECL receive high quality mentoring to assist them in becoming successful solo practitioners and that these attorneys fulfill their commitments to ECL.

## » *Legal Resources for the Elderly Program* • 505-797-6005

The Legal Resources for the Elderly Program is a statewide, free legal helpline for New Mexico residents age 55 and older. LREP provides legal advice and brief services to more than 4,000 New Mexico seniors annually. LREP also provides referrals to the private Bar for clients who need full, direct representation.



J. Gayolyn Johnson

### **LREP Staff Attorney**

Gayolyn conducts legal workshops and client clinics at senior centers throughout the state. She provides legal advice and information on the LREP helpline.



Richard Weiner

### **LREP Staff Attorney**

Rich provides legal information, legal advice, and brief services on the LREP helpline. He also gives presentations on landlord/tenant and fair housing law. Rich is fluent in Spanish.



Anita Letter

### **LREP Staff Attorney**

Anita provides legal advice and brief services on the LREP helpline. She also conducts legal workshops and meets individually with clients at senior centers throughout the state.



Daniel Macy

### **Intake Clerk**

Daniel is the primary intake staff person for LREP and assists the Disciplinary Board of the New Mexico Supreme Court with Client Protection Fund matters. He also assists as needed with the Divorce Options workshops.

## » *State Bar General Referral Program* • 505-797-6066

The General Referral Program assists members of the public who need assistance finding an attorney. A fee of \$35 is charged to the caller who receives a 30-minute consultation with a referral panel attorney in the needed practice area.



Cassie King

### **Administrative Clerk for the State Bar General Referral Program**

Cassie is the primary intake staff person for the State Bar of New Mexico General Referral Program.

# Staff and Program Directory

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505-797-6000 • 1-800-876-6227 • Fax 505-828-3765 • sbnm@nmbar.org • www.nmbar.org



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State Bar.....address@nmbar.org / fax 828-3765

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Advertising/Printing Services .....mulibbari@nmbar.org / 797-6058

Attorney Resource Helpline .....rspinello@nmbar.org / 797-6050

*Bar Bulletin*

Advertising .....mulibbari@nmbar.org / 797-6058

CLE Calendar..... notices@nmbar.org / 797-6087

Editorial/Announcements ..... notices@nmbar.org / 797-6087

Subscriptions

(electronic and printed)..... pzimmer@nmbar.org / 797-6092

Bar Cards..... 797-6092

*Bench & Bar Directory*

Editor .....ekleinschmidt@nmbar.org / 797-6087

Advertising .....mulibbari@nmbar.org / 797-6058

Orders.....797-6015

Board of Bar Commissioners ..... 797-6038

Bridge the Gap Mentorship Program ..... 797-6003

Certificate of Good Standing (NM Supreme Court) ..... 827-4860

CLE Registration (*MCLE, see below*) ..... 797-6020

Dues/Licensing .....license@nmbar.org / 797-6083

*eNews* .....sbnm-enews@nmbar.org / 797-6087

Entrepreneurs in Community Lawyering ..... 797-6053

Ethics Advisory Opinions ..... 797-6050

Ethics Helpline .....1-800-326-8155

Fastcase ..... 797-6086

Fee Arbitration ..... 797-6054

IOLTA ..... 797-6050

IT Help..... 797-6086

Judges Assistance Helpline .....1-888-502-1289

Legal Resources for the Elderly (LREP) ... 797-6005 / 1-800-876-6657

Lawyers and Judges Assistance Program (JLAP) ..... 797-6003

Letter of Membership ..... 797-6092

MCLE (not a State Bar department/program) ..... 505-821-1980

Member Benefits Program ..... 797-6007

Membership Database/Mailing Services ..... 797-6092

Membership/Status Inquiries ..... 797-6092

Mentorship Program..... 797-6003

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News/Media Inquiries..... 797-6087

Pro Hac Vice..... 797-6092

Reciprocity/Bar Exam

(NM Board of Bar Examiners)..... nmexam.org / 505-271-9706

Reservations/Meetings, State Bar Center..... 797-6000

State Bar General Referral Program ..... 1-800-876-6227 / 797-6066

Website/Web Services ..... 797-6086

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion, the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled "conditionally under seal." If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court's register

of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of

free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 108300007, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 118300009, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

## [NEW MATERIAL]

### 5-615. Notice of federal restriction on right to receive or possess a firearm or ammunition.

A. **Notice required.** The court shall provide written notice to a person who is the subject of an order set forth in Paragraph B of this rule that the person is prohibited under federal law from receiving or possessing a firearm or ammunition. The notice shall further state that the person's identifying information will be transmitted to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System.

B. **Orders requiring notice.** The notice required under Paragraph A of this rule shall be in the form substantially approved by the Supreme Court and shall be attached to the following:

- (1) An order finding a defendant incompetent to stand trial; and
- (2) An order finding a defendant not guilty by reason of insanity at the time of the offense.

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016.]

**Committee commentary.** — Enacted in 2016, NMSA 1978, Section 34-9-19(C) requires the Administrative Office of the Courts to notify a person who has been “adjudicated as a mental defective” or “committed to a mental institution” that the person “is disabled pursuant to federal law from receiving or possessing a firearm or ammunition.” Federal law declares it a crime for a person who has been “adjudicated as a mental defective” or “committed to a mental institution” to, among other things, receive or possess a firearm or ammunition. *See* 18 U.S.C. § 922(g)(4) (“It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”).

The terms “adjudicated as a mental defective” and “committed to a mental institution” are defined under federal regulation as follows:

Adjudicated as a mental defective.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

- (1) A finding of insanity by a court in a criminal case;

and

- (2) Those persons found incompetent to stand trial . . .

*Committed to a mental institution.* A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution voluntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. 27 C.F.R. § 478.11.

This rule sets forth the procedure for providing the notice required under Section 34-9-19(C) and identifies the orders under New Mexico law for which notice must be given in a criminal proceeding. *See also* Form 9-515 NMRA (Notice of federal restriction on right to possess or receive a firearm or ammunition).

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016.]

## [NEW MATERIAL]

### 9-515. Notice of federal restriction on right to possess or receive a firearm or ammunition.

[For use with Rule 5-615 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

STATE OF NEW MEXICO,

v. No. \_\_\_\_\_

\_\_\_\_\_  
Defendant.

### NOTICE OF FEDERAL RESTRICTION ON RIGHT TO POSSESS OR RECEIVE A \ FIREARM OR AMMUNITION

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

YOU ARE HEREBY NOTIFIED that as a result of the order entered against you in this proceeding, you are prohibited from possessing or receiving a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

YOU ARE FURTHER NOTIFIED that the Administrative Office of the Courts is required under Section 34-9-19(B) NMSA 1978 to report information about your identity to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System (NICS).

YOU ARE FURTHER NOTIFIED that you may petition the Court as provided in Section 34-9-19 NMSA 1978 to restore your right to possess or receive a firearm or ammunition and to remove your name from the NICS.

## DISTRICT COURT

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016.]

### 10166. Public inspection and sealing of court records.

A. **Presumption of public access; scope of rule.** Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule. This rule does not apply to court records sealed under Rule 10262 NMRA or Section 32A226 NMSA 1978, unless otherwise specified in this rule.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “court record” means all or any portion of a document, paper, exhibit, transcript, or other material filed or lodged with the court, and the register of actions and docket entries used by the court to document the activity in a case;

(2) “lodged” means a court record that is temporarily deposited with the court but not filed or made available for public access;

(3) “protected personal identifier information” means all but the last four (4) digits of a social security number, taxpayer-identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth;

(4) “public” means any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel;

(5) “public access” means the inspection and copying of court records by the public; and

(6) “sealed” means a court record for which public access is limited by order of the court or as required by Paragraphs C or D of this rule.

C. **Limitations on public access.** In addition to court records protected pursuant to Paragraphs D and E of this rule, court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

(1) proceedings commenced under the Adoption Act, Chapter 32A, Article 5 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Subsection A of Section 32A58 NMSA 1978;

(2) proceedings for testing commenced under Section 242B5.1 NMSA 1978;

(3) proceedings commenced under the Family in Need of Court-Ordered Services Act, Chapter 32A, Article 3B NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Subsections (1) through (6) of Subsection B of Section 32A3B22 NMSA 1978;

(4) proceedings commenced under the Abuse and Neglect Act, Chapter 32A, Article 4 NMSA 1978. The automatic sealing provisions of this subparagraph shall not apply to persons and entities listed in Subsections (1) through (6) of Subsection B of Section 32A433 NMSA 1978, and disclosure by the Children, Youth, and Families Department as governed by Section 32A433 NMSA 1978;

(5) proceedings commenced under the Children’s Mental Health and Developmental Disabilities Code, Chapter 32A, Article 6A NMSA 1978, subject to the disclosure requirements in Section 32A6A24 NMSA 1978, and subject to the firearm-related

reporting requirements in Section 34-9-19 NMSA 1978; [and]

(6) court records in delinquency proceedings protected by Section 32A232 NMSA 1978; and

(7) proceedings commenced to remove a firearm-related disability under Section 34-9-19(D) NMSA 1978.

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

### D. Protection of personal identifier information.

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court’s judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a nonsanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse.

(2) The court clerk is not required to review documents for compliance with this paragraph and shall not refuse for filing any document that does not comply with this paragraph. The court clerk is not required to screen court records released to the public to prevent disclosure of protected personal identifier information.

(3) Any person requesting public access to court records shall provide the court with the person’s name, address, and telephone number along with a government-issued form of identification or other acceptable form of identification.

E. **Motion to seal court records required.** Except as provided in Paragraphs C and D of this rule, no portion of a court record shall be sealed except by court order. Any party or member of the public may file a motion for an order sealing the court record. The motion is subject to the provisions of Rule 10111 NMRA, and a copy of the motion shall be served on all parties who have appeared in the case in which the court record has been filed or is to be filed. Any party or member of the public may file a response to the motion to seal under Rule 10111 NMRA. The movant shall lodge the court record with the court pursuant to Paragraph F when the motion is made, unless the court record was previously filed with the court or good cause exists for not lodging the court record pursuant to Paragraph F. Pending the court’s ruling on the motion, the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any motion, response or reply, and any supporting documents, shall be filed in a redacted version that will be subject to public access and lodged in a complete, unredacted version that will remain conditionally sealed pending the court’s ruling on the motion. If the court denies the motion, the clerk shall return any lodged court records and shall not file them in the court file.

F. **Procedure for lodging court records.** A court record that is the subject of a motion filed under Paragraph E of this rule shall be secured in an envelope or other appropriate container by the movant and lodged with the court unless the court record was previously filed with the court or unless good cause exists for not lodging the court record. The movant shall label the envelope or container lodged with the court “CONDITIONALLY UNDER SEAL” and affix to the envelope or container a cover sheet that contains the information required under Rules 10112 and 10114 NMRA and which states that the enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the court record unless the court orders it filed. If the court grants an order sealing a court record, the clerk shall substitute the label provided by the movant on the envelope or container with a label prominently stating “SEALED BY ORDER

OF THE COURT ON (DATE)” and shall attach a filestamped copy of the court’s order. Unless otherwise ordered by the court, the date of the court order granting the motion shall be deemed the file date of the lodged court record.

## G. Requirements for order to seal court records.

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following:

- (a) the existence of an overriding interest that overcomes the right of public access to the court record;
- (b) the overriding interest supports sealing the court record;
- (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;
- (d) the proposed sealing is narrowly tailored; and
- (e) no less restrictive means exist to achieve the overriding interest.

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

**H. Sealed court records as part of record on appeal.** Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

## I. Motion to unseal court records.

(1) Court records sealed under Rule 10262 NMRA or Section 32A226 NMSA 1978 shall not be unsealed under this paragraph. In all other cases, a sealed court record shall not be unsealed except by court order or pursuant to the terms of the sealing order itself. A party or member of the public may move to unseal a sealed court record. A copy of the motion to unseal is subject to the provisions of Rule 10111 NMRA and shall be served on all persons and entities who were identified in the sealing order pursuant to Subparagraph (6) of Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any response or reply, and supporting documents shall be filed in a redacted version and lodged in a complete and unredacted version.

(2) In determining whether to unseal a court record, the court shall consider the matters addressed in Subparagraph (1) of Paragraph G. If the court grants the motion to unseal a court record, the order shall state whether the court record is unsealed entirely or in part. If the court’s order unseals only part of the court record or unseals the court record only as to certain persons or entities, the order shall specify the particular court records that are unsealed, the particular persons or entities who may have access to the court record, or both. If, in addition to the court records

in the envelope or container, the court has previously ordered the sealing order, the register of actions, or individual docket entries to be sealed, the unsealing order shall state whether those additional court records are unsealed.

**J. Failure to comply with sealing order.** Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate. [Adopted by Supreme Court Order No. 108300008, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 108300023, temporarily suspending Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No. 108300037, extending the temporary suspension of Paragraph D for an additional 90 days, effective November 10, 2010; by Supreme Court Order No. 118300010, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites on or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

**Committee commentary.** — This rule recognizes the presumption that all documents filed in court are subject to public access. This rule does not address public access to other records in possession of the court that are not filed within the context of litigation pending before the court, such as personnel or administrative files. Nor does this rule address the manner in which a court must provide public access to court records.

Although most court records are subject to public access, this rule recognizes that in some instances public access to court records should be limited. However, this rule makes clear that no court record may be sealed simply by agreement of the parties to the litigation. And except as otherwise provided in this rule, public access to a court record may not be limited without a written court order entered in accordance with the provisions of this rule. Unless otherwise ordered by the court, any limitations on the public’s right to access court records do not apply to the parties to the proceeding, counsel of record and their employees, and court personnel. While employees of a lawyer or law firm who is counsel of record may have access to sealed court records, the lawyer or law firm remains responsible for the conduct of their employees in this regard.

Paragraph C of this rule recognizes that court records within certain classes of cases should be automatically sealed without the need for a motion by the parties or court order. Most of the classes of cases identified in Paragraph C have been identified by statute as warranting confidentiality. However, this rule does not purport to cede to the legislature the final decision on whether a particular type of case or court record must be sealed. Paragraph C simply lists those classes of cases in which all court records shall be automatically sealed from the commencement of the proceedings without the need for a court order. Nonetheless, a motion to unseal some or all of the automatically sealed court records in a particular case still may be filed under Paragraph I of the rule.

For some of the classes of cases identified in Paragraph C, automatic sealing is subject to other statutory disclosure or reporting requirements. For example, under NMSA 1978, Section 34-9-19, the administrative office of the courts (AOC) is required to transmit to the federal bureau of investigation’s national instant criminal background check system (NICS) information about a court order, judgment, or verdict regarding each person who

has been “adjudicated as a mental defective” or “committed to a mental institution” under federal law. Automatic sealing under Paragraph C therefore does not prevent the AOC from transmitting such information to the NICS in the proceedings described in Subparagraphs C(5) and (7). A person who is the subject of the information compiled and reported by the AOC to NICS has a right to obtain and inspect that information. See NMSA 1978, § 34-9-19(K).

Aside from entire categories of cases that may warrant limitations on public access, numerous statutes also identify particular types of documents and information as confidential or otherwise subject to limitations on disclosure. *See, e.g.*, NMSA 1978, § 714.2(H) (providing for confidentiality of taxpayer information); NMSA 1978, § 1461(A) (providing for confidentiality of patient health information); NMSA 1978, § 2419.5 (limiting disclosure of test results for sexually transmitted diseases); NMSA 1978, § 29104 (providing for confidentiality of certain arrest record information); NMSA 1978, § 2912A4 (limiting disclosure of local crime stoppers program information); NMSA 1978, § 29168 (providing for confidentiality of DNA information); NMSA 1978, § 31253 (providing for confidentiality of certain communications between victim and victim counselor); NMSA 1978, § 4082 (providing for sealing of certain name change records); NMSA 1978, § 406A312 (providing for limitations on disclosure of certain information during proceedings under the Uniform Interstate Family Support Act); NMSA 1978, § 4010A209 (providing for limitations on disclosure of certain information during proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act); NMSA 1978, § 40137.1 (providing for confidentiality of certain information obtained by medical personnel during treatment for domestic abuse); NMSA 1978, § 401312 (providing for limits on internet disclosure of certain information in domestic violence cases); NMSA 1978, § 447A18 (providing for limitations on disclosure of certain information under the Uniform Arbitration Act). However, Paragraph C does not contemplate the automatic sealing of such items. Instead, if a party believes a particular statutory provision warrants sealing a particular court record, the party may file a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision notwithstanding, the court must still engage in the balancing test set forth in Subparagraph (1) of Paragraph G of this rule before deciding whether to seal any particular court record.

Paragraph D of this rule recognizes that certain personal identifier information often included within court records may pose the risk of identity theft and other misuse. Accordingly, Paragraph D discourages the inclusion of protected personal identifier information in a court record unless the court or a party deems its inclusion necessary for the effective operation of the court's judicial function. Although the decision to include protected personal identifier information in the court record is a nonsanctionable decision, the rule nonetheless prohibits public access to protected personal identifier information on court web sites and also prohibits the court from publicly displaying protected personal identifier information in the courthouse, which would include docket call sheets, court calendars, or similar material intended for public viewing.

The court need not review individual documents filed with the court to ensure compliance with this requirement, and the clerk may not refuse to accept for filing any document that does not comply with the requirements of Paragraph D. Moreover, the clerk is not required to screen court records released to the

public to prevent the disclosure of protected personal identifier information. However, anyone requesting public access to court records shall provide the court with his or her name, address, and telephone number along with a government issued form of identification or other acceptable form of identification. The court may also consider maintaining a log of this information.

Paragraphs E and F set forth the procedure for requesting the sealing of a court record. Any person or entity may file a motion to seal a court record, and all parties to the action in which the court record was filed, or is to be filed, must be served with a copy of the motion. Any person or entity may file a response to the motion to seal the court record, but, if the person or entity filing the response is not a party to the underlying litigation, that person or entity does not become a party to the proceedings for any other purpose.

Ordinarily, the party seeking to seal a court record must lodge it with the court at the time that the motion is filed. A lodged court record is only temporarily deposited with the court pending the court's ruling on the motion. Accordingly, a lodged court record is not filed by the clerk and remains conditionally sealed until the court rules on the motion. To protect the lodged court record from disclosure pending the court's ruling on the motion, the movant is required to enclose the lodged court record in an envelope or other appropriate container and attach a cover sheet to the envelope or container that includes the case caption, notes that the enclosed court record is the subject of a pending motion to seal, and is clearly labeled “conditionally under seal.” If necessary to prevent disclosure pending the court's ruling, the motion, any response or reply, and other supporting documents should either be lodged with the court as well or filed in redacted and unredacted versions so that the court may permit public access to the redacted pleadings until the court rules on the motion.

Although a lodged court record is not officially filed with the court unless and until the motion to seal is granted, the clerk need not keep lodged court records in a physically separate location from the rest of the court file. In this regard, the rule does not purport to require the clerk to maintain lodged court records in any particular manner or location. As long as the lodged record is protected from public disclosure, each court retains the discretion to decide for itself how it will store lodged court records, and this rule anticipates that most courts will choose to store and protect lodged and sealed court records in the same way that those courts have traditionally stored and protected sealed and conditionally sealed court records filed with the court before the adoption of this rule.

When docketing a motion to seal, the clerk's docket entry should be part of the publicly available register of actions and should reflect that a motion to seal was filed, the date of filing, and the name of the person or entity filing the motion. However, any docket entries related to the motion to seal should avoid including detail that would disclose the substance of the conditionally sealed material before the court has ruled. If necessary to prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the sealing of previous or future docket entries related to the sealed court records provided that the court's register of actions contains, at a minimum, a docket entry containing the docket number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone inspecting the court's docket will know of its existence.

If the court denies the motion to seal, the clerk will return the lodged court record to the party, it will not become part of the case file, and will therefore not be subject to public access. However, even if the court denies the motion, the movant still may decide to file the previously lodged court record but it then will be subject to public access.

If the court grants the motion to seal, it must enter an order in accordance with the requirements of Paragraph G. The order must state the facts supporting the court's decision to seal the court record and must identify an overriding interest that overcomes the public's right to public access to the court record and that supports the need for sealing. The rule itself does not identify what would constitute an overriding interest but anticipates that what constitutes an overriding interest will depend on the facts of the case and will be developed through case law on a case by case basis. The rule further provides that the sealing of the court record must be narrowly tailored and that there must not be a less restrictive alternative for achieving the overriding interest. To that end, the rule encourages the court to consider partial redactions whenever possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G also requires the court to specify whether any other matter beyond the court record (such as the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure. The sealing order also must specify who may and may not have access to a sealed court record, which may include prohibiting access to certain parties or court personnel. In addition, the sealing order must specify a date or event upon which the order expires or provide that the sealing remains in effect until further order of the court. Finally, the order must list those persons or entities who must be given notice of any subsequently filed motion to unseal the court record or modify the sealing order.

Any court records sealed under the provisions of this rule remain sealed even if subsequently forwarded to the appellate court as part of the record on appeal. However, sealed court records forwarded to the appellate court as part of the record on appeal may be reviewed by the appellate court judges and staff unless otherwise ordered by the appellate court. Any other motions requesting modification to a sealing order in a case on appeal must be filed with the appellate court.

Motions to unseal previously sealed court records are governed by Paragraph I of this rule. A party or any member of the public may move to unseal a court record, and the rule does not provide a time limit for filing a motion to unseal a court record. Motions to unseal follow the same general procedures and standards used for motions to seal. A copy of a motion to unseal must be served on all persons and entities identified in the sealing order as entitled to receive notice of a future motion to unseal.

Although most court records should remain available for public access, when a court record is sealed under this rule, all persons and entities who do have access to the sealed material must act in good faith to avoid the disclosure of information the court has ordered sealed. That said, the protections provided by this rule should not be used to effect an unconstitutional prior restraint of free speech. But in the absence of a conflict with a countervailing First Amendment principle that would permit disclosure, any knowing disclosure of information obtained from a court record sealed by the court may subject the offending person or entity to being held in contempt of court or other sanctions as deemed appropriate by the court.

[Adopted by Supreme Court Order No. 108300008, for all court records filed on or after July 1, 2010; as amended by Supreme Court Order No. 118300010, effective for all court records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible court web sites or after February 7, 2011; as provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

## [NEW MATERIAL]

### **10-171. Notice of federal restriction on right to receive or possess a firearm or ammunition.**

A. **Notice required.** The court shall provide written notice to a child who is the subject of an order set forth in Paragraph B of this rule that the child is prohibited under federal law from receiving or possessing a firearm or ammunition. The notice shall further state that the child's identifying information will be transmitted to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System.

B. **Orders requiring notice.** The notice required under Paragraph A of this rule shall be in the form substantially approved by the Supreme Court and shall be attached to the following:

- (1) An order appointing a treatment guardian under Section 32A-6A-17 NMSA 1978; and
- (2) An order for placement in involuntary residential treatment under Section 32A-6A-22 NMSA 1978.

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders issued on or after May 18, 2016.]

**Committee commentary.** — Enacted in 2016, NMSA 1978, Section 34-9-19(C) requires the Administrative Office of the Courts to notify a person who has been "adjudicated as a mental defective" or "committed to a mental institution" that the person "is disabled pursuant to federal law from receiving or possessing a firearm or ammunition." Federal law declares it a crime for a person who has been "adjudicated as a mental defective" or "committed to a mental institution" to, among other things, receive or possess a firearm or ammunition. *See* 18 U.S.C. § 922(g)(4) ("It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.").

The terms "adjudicated as a mental defective" and "committed to a mental institution" are defined under federal regulation as follows:

Adjudicated as a mental defective.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage

his own affairs.

(b) The term shall include—

- (1) A finding of insanity by a court in a criminal case; and
- (2) Those persons found incompetent to stand trial . . .

. . .

*Committed to a mental institution.* A formal commitment of a person to a mental institution by a court, board, commission,

or other lawful authority. The term includes a commitment to a mental institution voluntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

27 C.F.R. § 478.11.

This rule sets forth the procedure for providing the notice required under Section 34-9-19(C) and identifies the orders under New Mexico law for which notice must be given in a children's court proceeding. *See also* Form 10-604 NMRA (Notice of federal restriction on right to possess or receive a firearm or ammunition).

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders issued on or after May 18, 2016.]

**[NEW MATERIAL]**

**10-604. Notice of federal restriction on right to possess or receive a firearm or ammunition.**

[For use with Rule 10-171 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT  
IN THE CHILDREN'S COURT

In the matter of \_\_\_\_\_, a child.  
No. \_\_\_\_\_

**NOTICE OF FEDERAL RESTRICTION  
ON RIGHT TO POSSESS OR RECEIVE  
A FIREARM OR AMMUNITION**

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

YOU ARE HEREBY NOTIFIED that as a result of the order entered against you in this proceeding, you are prohibited from possessing or receiving a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

YOU ARE FURTHER NOTIFIED that the Administrative Office of the Courts is required under Section 34-9-19(B) NMSA 1978 to report information about your identity to the Federal Bureau of Investigation for entry into the National Instant Criminal Background Check System (NICS).

YOU ARE FURTHER NOTIFIED that you may petition the Court as provided in Section 34-9-19 NMSA 1978 to restore your right to possess or receive a firearm or ammunition and to remove your name from the NICS.

DISTRICT COURT

[Provisionally Adopted by Supreme Court Order No. 16-8300-003, effective for all orders filed on or after May 18, 2016.]

**Certiorari Denied, March 10, 2016, No. S-1-SC-35754**

From the New Mexico Court of Appeals

**Opinion Number: 2016-NMCA-031**

No. 33,524 (filed January 13, 2016)

MANUEL VALENZUELA,  
Worker-Appellant,

v.

A.S. HORNER, INC. and MOUNTAIN STATES MUTUAL CASUALTY COMPANY,  
Employer/Insurer-Appellees.**APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

SHANON S. RILEY, Workers' Compensation Judge

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HOLLY R. HARVEY  
JULIE A. KOSCHTIAL  
AUDRA DAVIE  
THE LAW OFFICES OF ROBERT  
BRUCE COLLINS  
Albuquerque, New Mexico  
for Appellees**Opinion****M. Monica Zamora, Judge**

{1} Manuel Valenzuela (Worker) appeals a workers' compensation judge's (WCJ) order rating his permanent impairment at zero percent. Worker argues that the WCJ erred in relying solely on an inadmissible independent medical examination (IME) report as the basis for determining that Worker reached maximum medical improvement (MMI) with an impairment rating of zero percent. As a matter of first impression, we must decide whether an IME report itself is admissible under any exception to the hearsay rule. We conclude that it is not and agree with Worker that admission of the IME report without supporting testimony was reversible error.

**I. BACKGROUND**

{2} Worker suffered compensable injuries to his spine and right foot in the course and scope of his employment with A.S. Horner, Inc. on May 18, 2011. A.S. Horner was insured by Mountain States Mutual Casualty Co., Inc. (both referred to as Employer herein). Worker continued to work for Employer at a light duty restriction. Employer paid for the cost of treatment provided by Worker's authorized health care providers (HCPs). In March 2012 Dr.

Thomas Whalen, Worker's treating physician and authorized HCP, referred Worker to Dr. Richard Miller for a consultation on the foot injury. Dr. Whalen also referred Worker to Dr. James Harrington for a consultation on the spine injury. Employer did not immediately authorize the referral to Dr. Miller, and denied the referral to Dr. Harrington.

{3} On April 13, 2012, Worker underwent a panel IME with Dr. Marjorie Eskay-Auerbach and Dr. Roya Mirmiran. The IME panel concluded that Worker reached MMI with respect to both his back and foot injuries on April 13, 2012.

{4} On May 23, 2012, Worker filed a complaint for workers' compensation benefits, disputing the findings of the IME report. Worker continued treatment with his HCP, who wrote a letter in June 2012 disputing the findings of the IME report and seeking authorization to refer Worker to Dr. Miller. On June 26, 2013, Worker saw Dr. Miller who determined that Worker would not likely benefit from surgical treatment, but that Worker would benefit from a "custom Plastazote insole" and accommodative shoes. Worker's employment was terminated on August 1, 2012, due to a workforce reduction. Worker received temporary total disability (TTD) payments beginning August 8, 2012.

{5} A formal hearing on Worker's claim was held on October 22, 2013. The deposition testimony of Dr. Whalen was admitted into evidence without objection. Dr. Whalen testified that Worker had not reached MMI and that an impairment rating could not be determined until MMI was reached. Employer offered the IME report as evidence, and the report was admitted over Worker's objection. The WCJ entered a compensation order on January 10, 2014, finding that Worker had a continuing need for medical care stemming from the work-related condition and that the custom insole and accommodative shoes recommended by Dr. Miller were reasonable and necessary medical care related to Worker's accident. Based on the IME report, the WCJ found that Worker reached MMI for his injuries on April 13, 2012 and that Worker had zero percent permanent physical impairment. Worker filed a motion for reconsideration and/or clarification of the compensation order regarding the WCJ's ruling on Worker's MMI and permanent impairment rating. The WCJ did not reconsider the MMI or impairment ruling. This appeal followed.

**II. DISCUSSION**

{6} Worker argues that Employer failed to authenticate or lay a sufficient foundation for the admission of the IME report, and the report therefore, constitutes inadmissible hearsay. Worker further argues that the WCJ erred in adopting the IME report, disregarding substantial admissible evidence contradicting the IME report's conclusions with respect to Worker's MMI and impairment rating.

**A. Admissibility of Medical Evidence Under the Workers' Compensation Act**

{7} Once an employer has notice of a work-related accident, it is required under the Workers' Compensation Act, NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2015) (the Act), to "provide the worker in a timely manner reasonable and necessary health care services from a health care provider." Section 52-1-49(A). In doing so, the employer is entitled to make the initial HCP selection or to permit Worker to make the selection. See Section 52-1-49(B). If there is a disputed medical issue, such as "the reasonableness or necessity of medical or surgical treatment, the date upon which [MMI] was reached, [or] the correct impairment rating for the worker, [and] the parties cannot agree upon the use of a specific independent medical examiner, either

party may petition a workers' compensation judge for permission to have the worker undergo an [IME]." Section 52-1-51(A). "Only a[n HCP] . . . or [IME provider] may offer testimony at any workers' compensation hearing concerning the particular injury in question." See Section 52-1-51(C). Employer asserts that the IME report constitutes admissible medical testimony under Section 52-1-51(C). Worker concedes that if the report was not hearsay it could be considered medical testimony for the purposes of admissibility under the statute.

### **B. The IME Report Constitutes Inadmissible Hearsay**

{8} The parties do not dispute that an IME report constitutes hearsay. A hearsay statement consists of an out-of-court statement offered to prove the truth of the matter asserted. Rule 11-801(C) NMRA 2003. An out-of-court statement is inadmissible unless it is specifically excluded as non-hearsay under Rule 11-801(D) or falls within a recognized exception in the rules of evidence, *see, e.g.*, Rule 11-803 NMRA 2003, or is otherwise made admissible by rule or statute. Rule 11-802. This Court reviews the WCJ's determination of whether testimony is within exceptions to the hearsay rule for an abuse of discretion. *State v. Salgado*, 1999-NMSC-008, ¶ 5, 126 N.M. 691, 974 P.2d 661.

{9} The Workers' Compensation Administration (WCA) has adopted by regulation the rules of evidence and rules of civil procedure for the district courts of New Mexico, and the rules apply to and govern proceedings within the adjudication of workers' compensation claims unless the regulations otherwise state or necessarily imply. See 11.4.4.13(K) NMAC (10/1/2015). The regulations limit the presentation of medical testimony, barring the use of live testimony, unless ordered by the WCJ. 11.4.4.13(D)(1) NMAC ("Live medical testimony shall not be permitted, except by an order of the judge."). Instead, the WCA regulations provide that certain documents may be admitted into evidence without additional foundational testimony. Thus, "[a] form letter to [an] HCP, completed by an authorized HCP may be admitted into evidence." 11.4.4.13(D) (2) NMAC. In addition, "[d]eposition testimony of authorized HCPs shall be admissible, in lieu of live testimony." 11.4.4.13(E)(4) NMAC. The regulations limit admissibility of documents to these two circumstances and do not provide for admission of any other documentary

evidence as an exception to the hearsay rule. In contrast, the WCA regulations are silent with regard to the admission of an IME provider's written evaluation report. Thus, the rules of evidence govern the admissibility of the IME report.

{10} We agree with Worker that under the rules of evidence the IME report is inadmissible hearsay. See Rule 11-801(C) NMRA (providing that an out of court statement that is offered in evidence to prove the truth of the matter asserted in the statement constitutes hearsay); Rule 11-802 NMRA (stating that hearsay is inadmissible in the absence of a specific exception). Employer offered the IME report as evidence of the truth of the assertion that Worker had reached MMI with an impairment rating of zero percent, and therefore was hearsay. Employer does not argue that the IME report is admissible under any exception and we see no basis for admitting the report without implicating Worker's right to due process. See *Camino Real Mobile Home Park P'ship v. Wolfe*, 1995-NMSC-013, ¶ 37, 119 N.M. 436, 891 P.2d 1190 ("Hearsay statements are generally considered to be unreliable because they are not given under oath and cannot be tested by cross-examination to determine the truthfulness of the declarant."), *overruled on other grounds by Sunnysland Farms, Inc. v. Cent. N.M. Elec. Coop.*, 2013-NMSC-017, ¶¶ 14, 16, 301 P.3d 387; *Ennen v. Sw. Potash Co.*, 1959-NMSC-025, ¶¶ 16, 22, 65 N.M. 307, 336 P.2d 1062 (holding that two doctors' reports admitted to show a worker's decreased impairment rating constituted inadmissible hearsay, explaining that "[i]t would not require the citation of authority to support the proposition that a witness may not give testimony in a cause unless he is placed under oath and the other party is given an opportunity to cross-examine him"); *Waldroop v. Driver-Miller Plumbing & Heating Corp.*, 1956-NMSC-081, ¶¶ 21-22, 61 N.M. 412, 301 P.2d 521 (affirming the exclusion of a written medical report in a workers' compensation hearing; stating that "[i]t requires no citation of authority to show that the excluded testimony is clearly hearsay"); *see also State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-045, ¶¶ 17-18, 108 N.M. 658, 777 P.2d 386 (recognizing that administrative proceedings adjudicating substantial rights are bound by fundamental principles of justice and procedural due process, which require that testifying witnesses be sworn and be subject to cross-examination).

{11} We see no basis for creating an exception where none exists. We hold that an IME report admitted as stand-alone evidence concerning a worker's medical condition constitutes hearsay subject to no exceptions in the rule, statutes or regulations. Accordingly, the WCJ erred in admitting the IME in this case and relying solely on it as a basis for determining that Worker reached maximum medical improvement with a zero percent impairment rating.

{12} We recognize that a doctor's unsworn written evaluation report does not fit the traditional definition of testimony. See *Black's Law Dictionary* 1704 (10th ed. 2014) (defining "testimony" as "[e]vidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition"). We also note that New Mexico case law does not clearly establish that documentary evidence, such as medical records and doctor's reports, constitutes medical testimony under Section 52-1-51(C). In *Lopez v. City of Albuquerque*, 1994-NMCA-122, 118 N.M. 682, 884 P.2d 838, this Court stated that under Section 52-1-51(C) the rule is "that only authorized health care providers may give evidence," implying that the Section 52-1-51(C) limitation applies to any medical evidence instead of just medical testimony. *Lopez*, 1994-NMCA-122, ¶ 12 (emphasis added). This statement of the rule was recently cited with approval by our Supreme Court in *Dewitt v. Rent-A-Center, Inc.*, 2009-NMSC-032, ¶ 33, 146 N.M. 453, 212 P.3d 341. However, we also stated in *Lopez* that medical records from a provider who was neither an HCP nor an IME provider were inadmissible, since the provider "was not one of the only two types of [HCP]s which may provide testimony at compensation hearings [under Section 52-1-51(C)]." *Lopez*, 1994-NMCA-122, ¶ 13 (emphasis added). In *Jurado v. Levi Strauss & Co.*, 1995-NMCA-129, 120 N.M. 801, 907 P.2d 205, we interpreted this statement in *Lopez* as a presupposition that medical records constitute testimony under Section 52-1-51(C). *Jurado*, 1995-NMCA-129, ¶ 23. Based on our reading of *Lopez*, we held a doctor's written evaluation report also constituted testimony, such that it was subject to the statute's limitation on the types of medical testimony admissible at the compensation hearing. *Jurado*, 1995-NMCA-129, ¶ 24. Because the outcome in this case does not turn on whether the IME report at issue is considered testimony or documentary evidence, but rather on

whether the report is inadmissible hearsay, we need not address any inconsistency or ambiguity in these decisions.

**C. Lack of Substantial Evidence To Support WCJ's Compensation Order**

{13} We review the findings of the WCJ "under a whole record standard of review." *Moya v. City of Albuquerque*, 2008-NMSC-004, ¶ 6, 143 N.M. 258, 175 P.3d 926. Whole record review involves a review of all the evidence bearing on the WCJ's decision in order to determine if there is substantial evidence to support the result. See *Leonard v. Payday Prof'l*, 2007-NMCA-128, ¶ 10, 142 N.M. 605, 168 P.3d 177. "We view the evidence in the light most favorable to the decision[.]" *Dewitt v. Rent-A-Ctr., Inc.*, 2009-NMSC-032, ¶ 12, 146 N.M. 453, 212 P.3d 341. "Substantial evidence on the record as a whole is evidence demonstrating the reasonableness of an agency's decision," and we will not

"reweigh the evidence nor replace the fact[-]finder's conclusions with our own." *Id.* (citation omitted). "Where the testimony is conflicting, the issue on appeal is not whether there is evidence to support a contrary result, but rather whether the evidence supports the findings of the trier of fact." *Tom Gowney Equip. Co. v. Jouett*, 2005-NMSC-015, ¶ 13, 137 N.M. 497, 113 P.3d 320 (internal quotation marks and citation omitted).

{14} Here, neither Worker nor Employer disputes that the only evidence supporting the WCJ's determination that Worker reached MMI, with an impairment rating of zero percent, was the inadmissible IME report. Aside from the report, the only evidence relevant to Worker's MMI and impairment rating was the deposition testimony of Dr. Whalen. See *Smith v. Cutler Repaving*, 1999-NMCA-030, ¶ 10, 126 N.M. 725, 974 P.2d 1182 ("Key to determining MMI is expert medical

testimony regarding whether the injured worker is more likely than not to recover further." (internal quotation marks and citation omitted)). According to Dr. Whalen, Worker had not yet reached MMI, so the level of Worker's impairment could not be assessed. After a review of all the admissible evidence, there is no evidence to support the WCJ's decision. We conclude that there is no substantial evidence in the record to support the WCJ's conclusions concerning Worker's MMI and impairment rating.

**III. CONCLUSION**

{15} Based on the foregoing reasons, we reverse the WCJ's compensation order.

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**LINDA M. VANZI, Judge**

**Certiorari Denied, March 8, 2016, No. S-1-SC-35753**

From the New Mexico Court of Appeals

**Opinion Number: 2016-NMCA-032**

No. 33,561 (filed January 19, 2016)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
LEROY ERWIN,  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

CHARLES W. BROWN, District Judge

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JORGE A. ALVARADO  
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ALLISON H. JARAMILLO  
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Santa Fe, New Mexico  
for Appellant

**Opinion****James J. Wechsler, Judge**

{1} We address in this appeal the elements required to convict for the crime of criminal sexual contact of a minor under NMSA 1978, Section 30-9-13(B) (2)(a) (2003), when the perpetrator is a household member.

{2} Defendant Larry Erwin was convicted for sexually abusing his girlfriend's daughter, a person over whom he held a position of authority as a household member. He appeals, principally arguing that, although the child was a household member, the State failed to prove that he used this position of authority to coerce the child to submit to sexual contact. He alternatively argues that the evidence was insufficient to sustain his convictions because of inconsistencies in the testimony and that the district court did not properly instruct the jury because the court's elements instruction allowed the jury to convict because Defendant was a household member without finding that he was also actually in a position of authority over the child. We hold that, under the definition of "position of authority" in NMSA 1978, Section 30-9-10(E) (2005), a household member is presumed to be able to exercise undue influence over a child such that

additional proof concerning a perpetrator's use or possession of such position of authority is not required. We further hold that the evidence was sufficient to support Defendant's convictions. We therefore affirm the judgment, partially suspended sentence and commitment of the district court.

**BACKGROUND**

{3} Defendant was convicted of three counts of criminal sexual contact with a minor—one a second degree felony and the others third degree felonies. The child was thirteen years of age at the time of the incidents, which occurred between July 12, 2011 and December 30, 2011. Defendant had been the boyfriend of the child's mother. Defendant had moved into the home with the mother and her children in late 2009. By December 30, 2011, Defendant and the child's mother may no longer have been a couple, but Defendant continued to live in the home.

{4} The child testified that Defendant began abusing her when she was about twelve or thirteen and that the abuse entailed numerous, almost daily sexual contact and sexual acts, including intercourse. She stated that Defendant made her promise not to tell anybody and that she complied because she was afraid that Defendant would hurt her. She also testified that she did not refuse Defendant's actions because

she was afraid Defendant would hurt her or her mother and that she did not want her mother "to get mad" or "to stress out about it." She believed that Defendant bought her things so that she would not tell her mother.

**SUFFICIENCY OF THE EVIDENCE****Statutory Requirement and Position of Authority**

{5} Defendant's main argument concerns the sufficiency of the evidence underlying his convictions; he claims that the evidence did not meet the statutory requirement that he was both a "household member" and a "person who, by reason of [his] position, [was] able to exercise undue influence over a child[.]" Section 30-9-10(E). We review this argument de novo because it raises an issue of statutory interpretation. *State v. Smith*, 2009-NMCA-028, ¶ 8, 145 N.M. 757, 204 P.3d 1267. In interpreting a statute, we seek to fulfill the legislative intent in adopting the statute. *State v. Torres*, 2006-NMCA-106, ¶ 8, 140 N.M. 230, 141 P.3d 1284. The "primary indicator" of such intent is the language that the Legislature used in the statute. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 ("We use the plain language of the statute as the primary indicator of legislative intent." (alterations, internal quotation marks, and citation omitted)).

{6} Defendant was convicted of criminal sexual contact of a child thirteen to eighteen years of age under Subsections (B) and (C) of Section 30-9-13. Subsection (B), the second degree conviction, includes sexual contact of unclothed intimate parts. *Compare* § 30-9-13(B), *with* § 30-9-13(C). Both convictions, however, require that a perpetrator be "in a position of authority over the child and use[ ] that authority to coerce the child to submit[.]" Section 30-9-13(B), (C). Section 30-9-10(E) defines "position of authority" as "that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child[.]" {7} Defendant's argument, therefore, requires that the language "who, by reason of that position, is able to exercise undue influence over a child" pertains to each of the types of position of authority listed in the definition. We do not believe, however, that such a reading is consistent with the apparent legislative intent.

{8} In Section 30-9-10(E), the Legislature has designated certain relationships with a child that represent a "position of authority." The designation contains the common

relationships that generate such authority: parents, relatives, household members, teachers, and employers. Section 30-9-10(E). The statutory language further indicates that the Legislature understood that those designations were not exclusive and that it additionally intended to include other relationships in which an adult can develop an authoritative position with a child that do not fall under the designated common relationships. The Legislature thus added a catch-all designation to embrace persons who are able to exercise undue influence over a child by virtue of another, undesignated, type of relationship.

{9} The Legislature added this catch-all category using the disjunctive “or.” As a result, a perpetrator need only fall within any of the designated relationships to hold a position of authority. *See Wilson v. Denver*, 1998-NMSC-016, ¶ 17, 125 N.M. 308, 961 P.2d 153 (“As a rule of construction, the word ‘or’ should be given its normal disjunctive meaning unless the context of a statute demands otherwise.” (internal quotation marks and citation omitted)). But, the disjunctive joining the catch-all category does not also link the language describing the type of “other person” who also can hold a position of authority. Such a requirement would be inconsistent with the Legislature’s designating the specific relationships. Indeed, if the requirement of the ability to exercise undue influence over a child by reason of a position applied to each of the designated relationships, those relationships would become surplusage to the definition. All persons, regardless of their specific relationship to a child, would have a position of authority if they can exercise undue influence over a child because of their relationship with the child. *See Whitely v. N.M. Pers. Bd.*, 1993-NMSC-019, ¶ 5, 115 N.M. 308, 850 P.2d 1011 (“No part of a statute should be construed so that it is rendered surplusage.”). And, while there may in fact be rare circumstances in which a parent or teacher is not able to exercise authority over a child, by listing each of the relationships in which an adult would naturally have such authority, the statute indicates the legislative intent of assuming that the expected authority exists.

{10} Defendant does not dispute the evidence that he was a household member. Under Section 30-9-10(E), Defendant thus held a position of authority as a household member over the child for purposes of prosecution under Section 30-9-13(B)

and (C). Defendant’s challenge to the sufficiency of the evidence fails in this regard.

#### **Inconsistencies in the Evidence**

{11} Defendant additionally argues that the evidence supporting his convictions was insufficient because of inconsistencies in the evidence. According to Defendant, the child and her mother testified in a conflicting manner as to details relating to the circumstances surrounding the mother’s discovery of Defendant with the child, in particular with respect to the location of a blanket, the source of light on the scene, the position of the child’s shorts, and the mother’s possession of her cell phone.

{12} As Defendant acknowledges, however, “it is the role of the factfinder to judge the credibility of witnesses and determine the weight of evidence.” *State v. LaPietra*, 2010-NMCA-009, ¶ 11, 147 N.M. 569, 226 P.3d 668 (alteration, internal quotation marks, and citation omitted). Moreover, the facts Defendant questions do not undermine the more specific testimony of sexual abuse that Defendant does not dispute. Under our standard of review, the inconsistencies Defendant points out do not render the evidence insufficient to support the verdicts. *State v. Ortiz-Burciaga*, 1999-NMCA-146, ¶ 22, 128 N.M. 382, 933 P.2d 96 (“It is the exclusive province of the jury to resolve factual inconsistencies in testimony.” (internal quotation marks and citation omitted)).

#### **VALIDITY OF THE JURY INSTRUCTION**

{13} Defendant additionally argues that the district court improperly instructed the jury because its instruction did not require the jury to find all the elements of criminal sexual contact with a minor. This argument parallels Defendant’s main argument concerning the sufficiency of the evidence by arguing that the jury instruction allowed the jury to convict without finding that he was a person in a position of authority over the child.

{14} Defendant did not raise this objection to the jury instruction in the district court and thus argues on appeal that the instruction given constituted fundamental error. *See* Rule 12-216(B)(2) NMRA (“This rule shall not preclude the appellate court from considering jurisdictional questions or, in its discretion, questions involving . . . fundamental error.”). “[F]undamental error occurs where there has been a miscarriage of justice, the conviction shocks the conscience, or substantial justice has been denied.” *State v. Cabezuella*, 2011-NMSC-041, ¶ 49, 150 N.M. 654, 265 P.3d

705 (internal quotation marks and citation omitted).

{15} The elements instruction given for each of the crimes of which Defendant was convicted read:

[D]efendant was a household member or person who by reason of [D]efendant’s relationship to [the child] was able to exercise undue influence over [the child] AND used this authority to coerce [the child] to submit to sexual contact[.]

Defendant argues that the instruction was in error because the “use of the ‘or’ in the instruction allowed a conviction for simply being a household member” without requiring the jury to additionally find that Defendant was in a position of authority over the child and used that authority to coerce the child. However, as we have held with respect to Defendant’s sufficiency of the evidence argument, Section 30-9-13(B) and (C) do not require the additional finding that Defendant states that the instruction lacks.

{16} Nor do we agree with Defendant that the given instructions deviated from the applicable uniform jury instruction (UJI). UJI 14-926 NMRA reads:

For you to find the defendant guilty of criminal sexual contact of a minor by use of coercion by a person in a position of authority [as charged in Count \_\_\_\_\_], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant  
[touched or applied force to the  
[unclothed] \_\_\_\_\_  
of \_\_\_\_\_ (name of  
victim);]  
[OR]  
[caused \_\_\_\_\_  
(name of victim) to touch the  
\_\_\_\_\_ of the de-  
fendant;]

2. The defendant was a  
[parent] [relative] [household  
member] [teacher] [employer]  
[person who by reason of the  
defendant’s relationship to  
\_\_\_\_\_ (name of victim) was able to  
exercise undue influence over  
\_\_\_\_\_ (name  
of victim)]  
AND used this authority to co-  
erce \_\_\_\_\_

(name of victim) to submit to sexual contact;

3. \_\_\_\_\_ (name of victim) was at least thirteen (13) but less than eighteen (18) years old;

[4. The defendant's act was unlawful;]

5. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Emphasis omitted). Use Note 4 to UJI 14-926 instructs the court to “[u]se the applicable alternative” for the bracketed language in paragraph two of the instruction. {17} While we agree with Defendant that UJI 14-926 does not specify the use of “or” in stating the specified relationships listed in the UJI, Use Note 4 clearly indicates that the bracketed descriptions are alternatives. An “alternative” offers “a choice of two or more things.” *Webster's Third New Int'l Dictionary* 63 (2002). Like “or,” it is dis-

junctive. *See id.* 651 (defining “disjunctive” in part as “expressing an alternative”). The court's jury instruction comports with UJI 14-926.

#### CONCLUSION

{18} We affirm Defendant's convictions.

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

**JAMES J. WECHSLER, Judge**

#### WE CONCUR:

**MICHAEL D. BUSTAMANTE, Judge**

**RODERICK T. KENNEDY, Judge**

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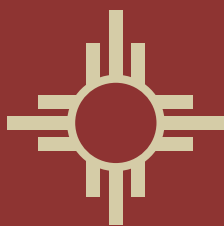
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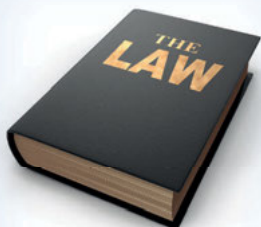
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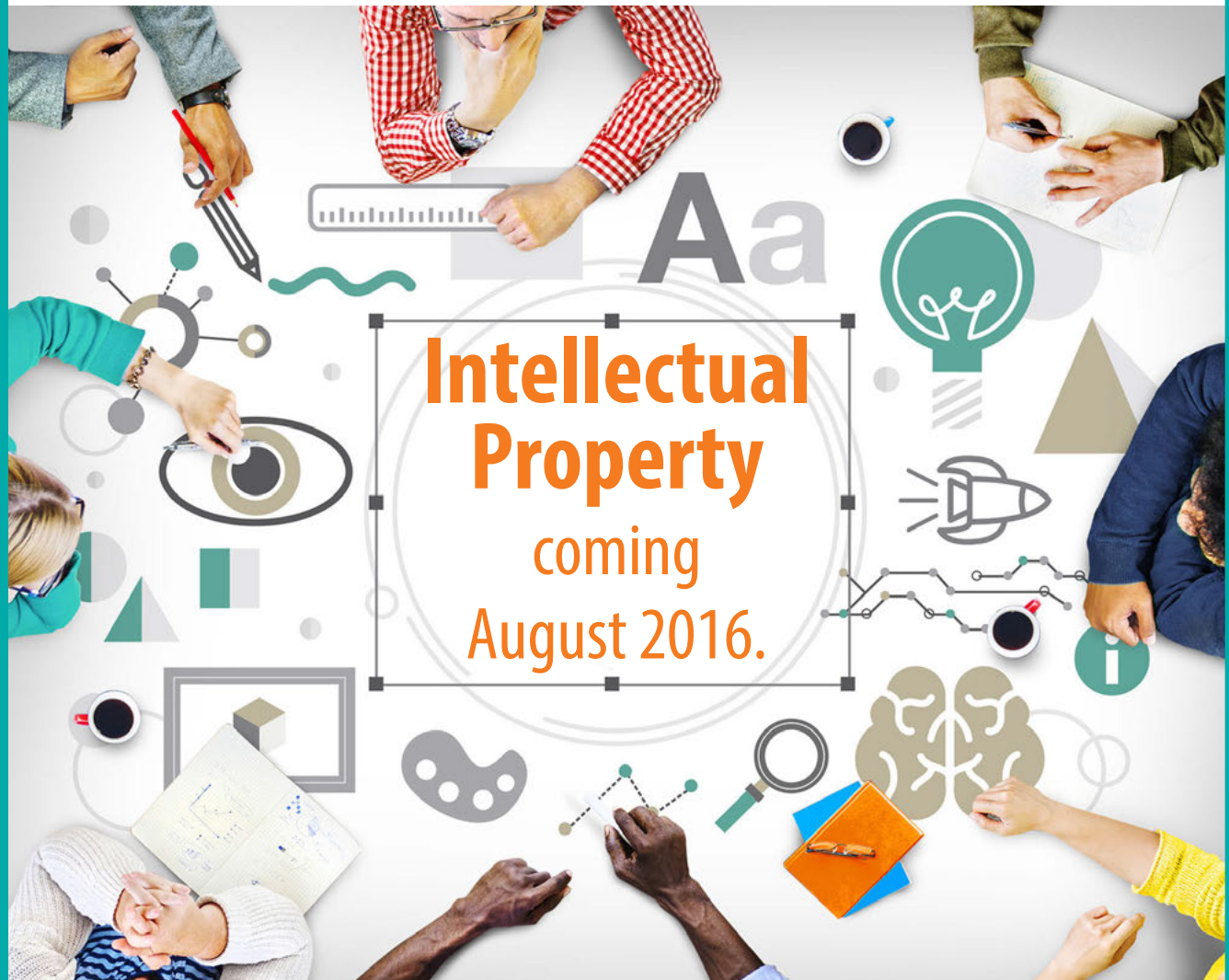
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