

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

November 2, 2016 • Volume 55, No. 44



Asleep at the Wheel, by Mark Yale Harris (see page 3)

Greenberg Fine Art, Santa Fe

Inside This Issue

2017 Budget Disclosure	5	Board of Bar Commissioners Meeting Summary	11
NREEL Section Rio Chama Board Retreat	7	From the New Mexico Court of Appeals	
Senior Lawyers Division		2016-NMCA-069, Nos. 33,787/34,042/34,077:	
Attorney Memorial Scholarship Reception.....	8	N.M. State Investment Council v. Weinstein	17
Hearsay/In Memoriam	9		

NEW MEXICO BLACK LAWYERS ASSOCIATION PRESENTS

IMMIGRATION & DEPORTATION

newmexicoblacklawyersassociation.org

8:00 - 8:45 a.m.
Registration.

8:45 - 9:00 a.m.
Welcome
Sonia Gipson Rankin, President, New Mexico Black Lawyers Association

9:00 - 10:00 a.m.
Yearning to Breathe Free: Legal Immigration and its Limitations.
Immigration Attorney Rebecca Kitson

10:00 - 11:00 a.m.
Prosecuting the Federal Immigration Case in New Mexico.
Supervisory Assistant U.S. Attorney Kimberly Brawley

11:15 a.m. - 12:15 p.m.
National Border Issues - National Security, Immigration and Narcotics.
United States Attorney for the District of New Mexico Damon Martinez

12:15 - 1:15 p.m. — LUNCH (provided)

1:15 - 2:15 p.m.
Current Ethical and Professional Issues in Immigration Law.
New Mexico Immigrant Law Center Legal Director Eva Eitzen and Staff Attorney Lauren Garrity

2:30 - 3:30 p.m.
Immigration Law for the Criminal Practitioner.
Assistant Chief Counsel, Dept. of Homeland Security Michael Pleters

3:30 - 4:30 p.m.
Panel discussion - Immigration, Criminal Prosecution and Defense.
United States District Judge Kenneth J. Gonzales, Supervisory Assistant U.S. Attorney Kimberly Brawley, Chief Federal Public Defender Stephen P. McCue.

8:30 a.m. - 4:30 p.m.

State Bar of New Mexico

State Bar Center
5121 Masthead NE
Albuquerque, NM

FRIDAY
{11.18.2016}

CLE CREDIT: 5 Hours General, 1 Hour Ethics/Professionalism

TUITION: \$225 {includes Lunch}

Register online via Paypal

newmexicoblacklawyersassociation.org/cle.html

DEADLINE TO REQUEST A REFUND - NOVEMBER 11, 2016

Last Name First Name Middle Initial

Firm / Organization

Address

Email Address

Phone Number

State Bar Number



Return registration form with payment to:
NMBLA, P.O. Box 11005, Albuquerque, NM 87192
(purchase orders welcome, call (505) 450-1032)

Have Questions? Email Us: nmblacklawyers@gmail.com



Officers, Board of Bar Commissioners

- J. Brent Moore, President
- Scotty A. Holloman, President-elect
- Wesley O. Pool, Vice President
- Gerald G. Dixon, Secretary Treasurer
- Mary Martha Chicoski, Immediate Past President

Board of Editors

- | | |
|-------------------|-----------------|
| Bruce Herr, Chair | Andrew Sefzik |
| Jamshid Askar | Michael Sievers |
| Nicole L. Banks | Mark Standridge |
| Alex Cotoia | Nancy Vincent |
| Curtis Hayes | Carolyn Wolf |

State Bar Staff

- Executive Director Joe Conte
- Communications Coordinator/Editor
Evann Kleinschmidt
505-797-6087 • notices@nmbar.org
- Graphic Designer Julie Schwartz
jschwartz@nmbar.org
- Account Executive Marcia C. Ulibarri
505-797-6058 • mulibarri@nmbar.org
- Digital Print Center
Manager Brian Sanchez
Assistant Michael Rizzo

©2016, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmbar.org.

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

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
email: address@nmbar.org • www.nmbar.org

November 2, 2016, Vol. 55, No. 44

Table of Contents

Notices4
 2017 Budget Disclosure5
 NREEL Section Rio Chama Board Retreat.....7
 Senior Lawyers Division Attorney Memorial Scholarship Reception8
 Hearsay/In Memoriam9
 Continuing Legal Education Calendar..... 12
 Court of Appeals Opinions List..... 14
 Clerk's Certificates 15
 Recent Rule-Making Activity 16
 Opinions
 From the New Mexico Court of Appeals
 2016-NMCA-069, Nos. 33,787/34,042/34,077:
 N.M. State Investment Council v. Weinstein..... 17
 Advertising 31

Meetings

November

- 1**
Health Law Section BOD
Noon, teleconference
- 1**
Bankruptcy Law Section BOD
Noon, U.S. Bankruptcy Court
- 2**
Employment and Labor Law Section BOD
Noon, State Bar Center
- 3**
Indian Law Section BOD
1 p.m., State Bar Center
- 4**
Committee on Diversity in the Legal Profession,
Noon, Faculty Lounge, UNM School of Law, Albuquerque
- 8**
Appellate Practice Section BOD
Noon, teleconference
- 9**
Animal Law Section BOD
Noon, State Bar Center
- 9**
Children's Law Section BOD
Noon, Juvenile Justice Center

Workshops and Legal Clinics

November

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

Cover Artist: Born in Buffalo, New York, Mark Yale Harris spent his childhood enthralled in a world of drawing and painting. Though honored for his creative endeavors, he was encouraged to pursue a more conventional career. After finding conventional success, the artistic passion that existed just beneath the surface was able to present itself. Harris began sculpting, and has since created an evolving body of work in stone and bronze, now featured in public collections, museums and galleries worldwide including Booth Western Art Museum, Cartersville, Ga.; the Four Seasons Hotel, Chicago; and the Open Air Museum, Ube, Japan.

Notices

COURT NEWS

New Mexico Supreme Court Board of Legal Specialization Comments Solicited

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

Employment/Labor Law
Victor P. Montoya

Family Law
Sandra Morgan Little
Tiffany Oliver Leigh

Local County-Municipal Government Law
Harry Sinclair Connelly Jr.

Workers' Compensation Law
Derek Weems

Commission on Access to Justice Meeting Notice

The next meeting of the Commission on Access to Justice is noon–4 p.m., Nov. 4, at the State Bar Center. Interested parties from the private bar and the public are welcome to attend. The Commission's goals include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness through communication and message development, encouraging more pro bono work by attorneys, and improving training and technology. More information about the Commission is available at www.nmcourts.gov/access-to-justice-commission.aspx (currently under reconstruction).

Judicial Performance Evaluation Commission 2016 Election Recommendations

The New Mexico Judicial Performance Evaluation Commission, the nonpartisan volunteer commission established by the New Mexico Supreme Court to make recommendations to voters on judges standing for retention, has published its voter's guide online at www.nmjpec.org. In addition to

Professionalism Tip

With respect to parties, lawyers, jurors, and witnesses:

I will give all cases deliberate, impartial and studied analysis and consideration.

its recommendations, the website contains information on how the commission reached its recommendation on each justice or judge, along with their educational background and experience. NMJPEC is made up of 15 volunteer members from throughout New Mexico, including seven lawyers and eight non-lawyers, who spend hundreds of hours conducting evaluations. Judges standing for retention are rated on legal ability, fairness, communication skills, preparation, attentiveness, temperament and control over proceedings.

New Mexico Court of Appeals Notice of Vacancy

A vacancy on the Court of Appeals exists as of Nov. 1 due to the retirement of Hon. Michael D. Bustamante effective Oct. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Alfred Mathewson, chair of the Appellate Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Download applications at <http://lawschool.unm.edu/judsel/application.php> or request an application by email by contacting the Judicial Selection Office at 505-277-4700. The deadline for applications is 5 p.m., Nov. 17. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Appellate Court Judicial Nominating Commission will meet beginning at 9 a.m., Dec. 1, at the Supreme Court Building, 237 Don Gaspar Ave. in Santa Fe, to interview applicants for the position. The Commission meeting is open to the public and those who have comments about the candidates will have an opportunity to be heard.

Administrative Hearings Office New Office Location

On Nov. 1, the Albuquerque Office of the State of New Mexico Administrative Hearings Office relocated to the Compass Bank Building, 505 Marquette NW, Suite 1150, Albuquerque, NM 87102. All Albuquerque

Implied Consent Act administrative hearings scheduled to occur after Nov. 1 will take place at this new office location, as will be noted on the notices of hearing and subpoenas in the relevant cases. This only impacts cases scheduled to be heard in Albuquerque and no other hearing locations across the state are affected by this move.

Second Judicial District Court Judicial Vacancy Applicants

Five applications were received in the Judicial Selection Office as of 5 p.m., Oct. 20, for the Judicial Vacancy in the 2nd Judicial District Court due to the retirement of Hon. Elizabeth Whitefield, effective Oct. 1. The District Judicial Nominating Commission met on Oct. 31 in Albuquerque, to evaluate the applicants. In alphabetical order, the names of the applicants are: Jane C. Levy, N. Lynn Perls, Elizabeth Rourke, David Standridge and Delilah Tenorio.

Notice of Exhibit Destruction

Pursuant to 1.21.2.617 Functional Records Retention and Disposition Schedules-Exhibits, the Second Judicial District Court will destroy exhibits filed with the Court: the domestic matters/relations and domestic violence cases for 2003–2006, including but not limited to cases which have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through Nov. 16. Those who have cases with exhibits should verify exhibit information with the Special Services Division, at 505-841-6717, from 8 a.m.–5 p.m., Monday–Friday. Plaintiff's exhibits will be released to counsel of record for the plaintiff(s) and defendant's exhibits will be released to counsel of record for defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Sixth Judicial District Court Governor Appoints

Jarod Hofacket as a Judge

On Oct. 21, Gov. Susana Martinez appointed Jarod Hofacket of Deming to

2017 Budget Disclosure Deadline to Challenge Expenditures

Using the form provided on the last page of the budget disclosure document, submit written challenges on or before noon, Dec. 2, 2016, to: Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199. Challenges may also be delivered in person to the State Bar Center, 5121 Masthead NE, Albuquerque; or emailed to jconte@nmbar.org.

The budget disclosure document is available in its entirety on the State Bar website at www.nmbar.org.

Division IV of the Sixth Judicial District Court in Luna County, filling the vacancy created by the retirement of former Judge Daniel Viramontes.

U.S. District Court, District of New Mexico Court Closure

The U.S. District Court for the District of New Mexico will be closed Nov. 24–25 for the Thanksgiving holiday. Court will resume on Monday, Nov. 28. After-hours access to CM/ECF will remain available as regularly scheduled. Stay current with the U.S. District Court for the District of New Mexico by visiting the Court's website at www.nmd.uscourts.gov.

Proposed Amendments to Local Rules of Civil Procedure

Proposed amendments to the Local Rules of Civil Procedure of the U.S. District Court for the District of New Mexico are being considered. The proposed amendments are to D.N.M.LR-Civ. 5, Filing and Service. A "redlined" version (with proposed additions underlined and proposed deletions stricken out) and a clean version of these proposed amendments are posted on the Court's website at www.nmd.uscourts.gov. Members of the bar may submit comments by email to localrules@nmcourt.fed.us or by mail to U.S. District Court, Clerk's Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: Local Rules, no later than Nov. 16.

Projected Expenditure Plan

The following is the Federal Bench and Bar Association's 2017 projected

expenditure plan: wifi at Domenici, 421 Gold, Campos and Las Cruces Court-houses: \$10,000; Santa Fe attorney lounge copier/printer/fax annual maintenance/supplies: \$800; Albuquerque attorney copier/printer/fax annual maintenance/supplies: \$700; Las Cruces copier/printer/fax annual maintenance/supplies: \$680; software maintenance/upgrades (security): \$300; court ceremonies (New Magistrate Judges): \$11,000; wifi at 500 Gold for Bankruptcy Court: \$1,300; Federal Bar seminars and training: \$20,000; Albuquerque Bar Association New Judges' Reception: \$1,500; Bench and Bar wifi at all Courthouse annual maintenance: \$14,000; hospitality baskets for visiting judges: \$1,500; dry cleaning of visiting judges' robes: \$150; magistrate judges' portraits (Albuquerque, Las Cruces): \$278; magistrate judge group photo: \$2,875; brass name tags/plaques for judicial officer portraits (11th, Albuquerque, Las Cruces): \$340; administrative costs (consumable mailing supplies, check stock, etc.): \$400; senior judge portrait: \$14,000. To access this report and other Federal Bench and Bar Association information, visit www.nmd.uscourts.gov/.

Office of the Attorney General New Phone Numbers

Effective Oct. 7, the New Mexico Office of the Attorney General and all employees have new phone numbers. The main line for each office location is as follows:

Albuquerque: 505- 717-3500

Las Cruces: 575-339-1120

Santa Fe: 505 490-4060

Toll free (all locations): 844-255-9210

Contact any number for assistance in reaching individual employees.

—Featured—

Member Benefit



A service of the New Mexico State Bar Foundation, the Center provides programming in live, online webcast, teleseminar, onsite video replay, online anytime video, and DVD formats. CLE courses fulfill the minimum requirements of 10.0 G, 2.0 EP credits per year. Call 505-797-6020 or visit 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

STATE BAR NEWS

Attorney Support Groups

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

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

Board of Bar Commissioners Appointments to Boards and Commissions

The Board of Bar Commissioners will make appointments to the following boards and commissions: Client Protection Commission (one appointment, three-year term); Commission on Professionalism (one lawyer position, one non-lawyer position, two year terms); and the New Mexico Legal Aid Board (one appointment, three year term). Members who want to serve should send a letter of interest and brief résumé by Dec. 1 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to 505-828-3765; or email to jconte@nmbar.org.

Board of Editors Seeking Applications for Open Positions

The State Bar Board of Editors has open positions beginning Jan. 1, 2017. Both lawyer and non-lawyer positions are open. The Board of Editors meets at least four times a year (in person and by teleconference), reviewing articles submitted to the *Bar Bulletin* and the quarterly *New Mexico Lawyer*. This volunteer board reviews submissions for suitability, edits for legal content and works with authors as needed to develop topics or address other concerns. The Board's primary responsibility is for the *New Mexico Lawyer*, which is generally written by members of a State Bar committee, section or division about a specific area of the law. The Board of Editors should represent a diversity of backgrounds, ages, geographic regions of the state, ethnicity, gender, and areas of legal practice and preferably have some experience in journalism or legal publications. Applicants outside of Albuquerque are especially needed. The State Bar president, with the approval of the Board of Bar Commissioners, appoints members of the Board of Editors, often on the recommendation of the current Board. Those interested in being considered for a two-year term should send a letter of interest and résumé to Communications Coordinator/Editor Evann Kleinschmidt at ekleinschmidt@nmbar.org. Apply by Dec. 1.

Solo and Small Firm Section November Luncheon Features Fred Nathan

The Solo and Small Firm Section sponsors monthly luncheon presentations on unique law-related subjects. Fred Nathan,

executive director of Think New Mexico, will speak at noon on Nov. 18, at the State Bar Center in Albuquerque. Think New Mexico is a results-oriented think tank serving New Mexicans. Nathan will discuss the work of Think New Mexico and various policy issues facing the 2017 legislative session. On Jan. 17, 2017, Ron Taylor will share his lawyerly insights as a juror in a long murder trial. To R.S.V.P. for either event, email Breanna Henley at bhenley@nmbar.org.

UNM Law Library Hours Through Dec. 18

Building & Circulation

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

Reference

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

Holiday Closures

Nov. 24–25 (Thanksgiving)

New Mexico Innocence and Justice Project

The New Mexico Innocence and Justice Project, in partnership with the UNM School of Law, brings death row exoneree Anthony Ray Hinton to share his story of wrongful conviction, survival on Alabama's death row, and decades-long journey to exoneration and freedom. Hinton will present "The Cascading Consequences of Wrongful Conviction" at 6 p.m. on Nov. 10 at the UNM School of Law, 1117 Stanford NE, Albuquerque. Q&A and a speaker reception will follow the presentation. Hinton has been featured in the *New York Times*, the *Washington Post*, BBC News, *The Guardian* and several other print, online and broadcast media. This event is free and open to the public, and parking is free in the Law School "L" parking lot. R.S.V.P.s are strongly encouraged as seating is limited. For more information and to register, visit lawschool.unm.edu/ijp/events/hinton.php or call 505-277-8184.

OTHER BARS Albuquerque Bar Association Seeking Nominations for Annual Awards

The Albuquerque Bar Association is looking for an Outstanding Lawyer and

Judge to honor at the Annual Meeting on Dec. 6. Nominate an attorney or judge who upholds: personal integrity, legal skills and professional competence, contributions to the bar, contributions outside the profession, or any other accomplishment that improves the image of the legal profession. The nomination deadline is Nov. 9. Send nominations to Executive Director Terah Beckmann by email to TBeckmann@abqbar.org

Albuquerque Lawyers Club Journalism and the Law

Karen Moses, managing editor of the *Albuquerque Journal*, will present "The Unique and Crucial Relationship between Journalism and the Law" at a lunch meeting at noon, Nov. 2, at Seasons Restaurant, 2031 Mountain Road, NW, Albuquerque. The cost is \$30 in advance; \$35 at the door. Non-members are also welcome to attend. Visit www.albuquerquelawyersclub.com.

New Mexico Black Lawyers Association Immigration Law CLE

The New Mexico Black Lawyers Association invites members of the legal community to attend its "Immigration and Deportation" CLE (5.0 G, 1 EP) from 8 a.m.–4:30 p.m., on Nov. 18, at the State Bar Center in Albuquerque. Registration is \$225 and lunch is included. For more information or to register, visit www.newmexicoblacklawyersassociation.org. The deadline to request a refund is Nov. 11.

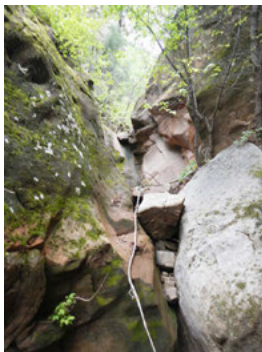
New Mexico Women's Bar Association Open Board Positions

Elections for two year terms, beginning Jan. 2017, for the New Mexico Women's Bar Association will be held on Nov. 18, 2016. The Board invites interested members of the association to apply with a short letter of interest and a resume. Send the letter and resume to the secretary at wbanominations@hotmail.com by noon on Nov. 10.

Board members are expected to attend an overnight retreat Jan. 21-22, 2017; attend bi-monthly meetings in person or by phone; to actively participate on one or more committees; and to support the events sponsored by the Women's Bar

continued on page 11

*Adrian Oglesby, NREEL Past-chair
Sally Paez, NREEL Chair*



In most years the Board of Directors of the Natural Resources, Energy and Environmental Law Section takes a retreat to discuss hot legal topics, plan section activities and get to know one another better. In August, the Board retreat took the form of a three-day rafting trip down the Rio Chama, a major tributary of the Rio Grande located in Northern New Mexico. The group gathered just below El Vado Dam and floated a 31 mile stretch of

the river to Abiquiu Reservoir. The paddling route transected the Chama River Canyon Wilderness and covered over 24 miles of river included in the National Wild and Scenic Rivers System. Red rock cliffs, blue herons and class II and III rapids greeted the group as they enjoyed good weather, tasty meals and great company. Campfire discussions centered on water law and river management, including environmental restoration and remediation. Participants represented a cross section of our membership, coming from the State Land Office, the Attorney General's Office, the Supreme Court, and the Utton Center. Many thanks to all who participated and to the excellent and accommodating guides from Far Flung Adventures. For more information about the Section, visit www.nmbar.org/NREEL. ■



From left to right: UNMSOL Utton Center Student Technical Specialist, Colin McKenzie, and NREEL Board members Adrian Oglesby, Bill Grantham, Sally Paez, and Michelle Miano.



Far Flung Adventure guide Steve Harris' dog, Stubby

Third Annual
Senior Lawyers Division
ATTORNEY MEMORIAL
SCHOLARSHIP PRESENTATION
AND RECEPTION

Tuesday, Nov. 15 • 5-7 p.m.
State Bar Center



Two UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The Senior Lawyers Division invites all State Bar members and UNM School of law faculty, staff, and students to attend.

R.S.V.P. to Breanna Henley, bhenley@nmbar.org.





Tim Adler has been certified in appellate practice by the New Mexico Board of Legal Specialization. Adler is one of only seven attorneys recognized as appellate specialists in New Mexico. He is the owner of Adler Law Firm, PC, an individual law practice focusing primarily on civil appeals and commercial litigation. He is a 2006 graduate of the University of New Mexico School of Law and is rated AV Preeminent by Martindale-Hubbell.



Chris R. Marquez has joined Keleher & McLeod, PA, as an associate attorney. His practice areas include civil rights and constitutional law, construction law, employment law, business and commercial litigation, civil litigation, construction litigation and employment litigation. Marquez attended the University of Phoenix (B.B.A.) and the University of New Mexico School of Law (J.D., *magna cum laude*).

Jeffrey B. Diamond of the Jeff Diamond Law Firm has achieved recertification as a Social Security/disability law trial advocate through the National Board of Trial Advocacy. Diamond has been a NBTA member in good standing for 10 years. Diamond earned his undergraduate degree in political science from Dickinson College. He attended the Pepperdine University School of Law and is licensed to practice in New Mexico and Texas. Diamond is a member of the New Mexico Rehabilitation Council, Disability Rights of New Mexico and the Anti-Defamation League.



Rodina Cave Parnall has joined the American Indian Law Center, Inc., as an assistant director of the Pre-law Summer Institute or American Indians and Alaskan Natives. Cave Parnall recently returned to New Mexico from Washington, D.C. where she served, by presidential appointment, as senior policy advisor to the assistant secretary Indian affairs. She is an adjunct professor at the University of New Mexico School of Law. She attended the ASU College of Law (J.D., certificate in Indian law, Outstanding Law Graduate Award) and the University of Massachusetts Amherst (B.B.A., M.Ed.).



Corinne L. Holt of Allen, Shepherd, Lewis & Syra was recently named Young Lawyer of 2016 by the New Mexico Defense Lawyers Association for her exemplary achievements in the legal profession.



Dan Lewis of Allen, Shepherd, Lewis & Syra was recently elected and sworn in as a national vice president for the 10th Circuit in the Federal Bar Association at the FBA's annual meeting in Cleveland. Lewis will serve a two-year term working with Federal Bar Association chapters throughout the 10th Circuit promoting local participation in continuing legal education events and community outreach programs for federal practitioners and judges throughout the 10th Circuit.



Christopher P. Winters has been elected shareholder at Allen, Shepherd, Lewis & Syra, PA. He attended Brigham Young University (B.A., Political Science, 2004) and the University of Kansas School of Law (2009). His practice concentrates in personal injury defense, defense of professionals including real estate and accounting, insurance coverage, construction defect litigation, workers' compensation and appeals.

Modrall, Sperling, Roehl, Harris & Sisk, PA
Benchmark Litigation "Under 40 Hot List": **Tiffany Roach Martin** and **Alex C. Walker**

Law Offices of rank E. Murchison PC (Taos)
2017 Best Lawyers in America "Best Law Firms"
2017 Best Lawyers in America: **Frank E. (Dirk) Murchison**

In Memoriam



Doug Schneebeck, law partner with Modrall, Sperling, Roehl, Harris & Sisk, PA, died on Oct. 17 after a long and challenging battle with ALS. Schneebeck's award-winning blog at www.osohigh.com provides an unblinking, poignant

and somehow often humorous account of the effect of ALS on his life and those around him. His Oso High organization has raised more than \$400,000 (and counting) to fight ALS. Although

Schneebeck grew up in Virginia, his sense of adventure (with prompting from a Sandia Peak poster his law school roommate at UVA had on the wall) and love of the outdoors, brought him to New Mexico in 1985. He received his undergraduate degree from the James Madison University, *summa cum laude*, in 1982. To the chagrin of his mother Joann Patton (a lifelong public school teacher), but to the ultimate benefit of the legal community, Schneebeck chose to attend law school and become a lawyer. He graduated from the University of Virginia School of Law in 1985. As an associate, Schneebeck immediately welcomed and embraced challenging and complicated legal work of every stripe. He participated and led Modrall Sperling associates in the special assistant prosecutor program for the New Mexico district

attorney's office, prosecuting DWIs and domestic violence cases. Before he made shareholder, he acted as lead counsel on numerous significant matters. Shortly after becoming shareholder, he made his name representing 3M in breast implant cases, being named to the 3M national trial team. From there, he took on lead local counsel role for numerous national companies such as Johnson & Johnson, Ethicon, GSK, Walgreens and others. In his defense of insurance companies in putative nationwide class action cases regarding modal premium installment fees, he successfully obtained dismissals of all of his clients without them having to provide any compensation to the class members, named plaintiffs, or plaintiffs' counsel. In short, Schneebeck proved throughout his career that a New Mexico lawyer can be a national presence. He also proved that a fierce advocate could be a compassionate soul. In what has to be more than coincidence, Schneebeck dedicated much of his spare time in his 20s and 30s helping persons with physical handicaps ski in the Adaptive Ski Program. After he was diagnosed with ALS, he was able to bike and ski through use of equipment he and others in the Adaptive Ski Program designed. In 2012, he qualified and became a member of the USA National Paralympic team. In addition to his brilliant analytical mind, persistence and sharp wit, one of Schneebeck's greatest attributes was his ability to develop lifelong friendships with clients, national counsel and opposing counsel. Indeed,

many fierce and intense legal battles resulted in opposing counsel becoming lifelong admirers of his. This is not only the essence of professionalism, but reflects a ninja-like mastery of the human spirit. Exhibit A: when diagnosed with ALS, he calmly said, "Well, I just need to treat each day as the best day that I have." And so he did. Had Schneebeck never been diagnosed with ALS, his legacy was intact. However, the manner in which he dealt with this insidious disease provided inspiration for all those dealing with adversity, which is to say all of us. At the pinnacle of his health, Schneebeck was a nationally ranked hurdler, marathon runner, highly decorated road cyclist and mountain biker and elite skier. As ALS day by day took away his physical abilities, leaving him quadriplegic and unable to speak, his vitality and force of will shone through his eyes, with which he typed his amazing blog. And so he became a hero. An adoring family man, Doug leaves behind his proud mother Joann; his beautiful wife and soulmate Jean; his brilliant and vibrant children Jimmy and Abby; and his strong and compassionate step-daughter Jessica. He also leaves behind a slew of best friends, pets and all those who loved to hear him laugh. Perhaps it is his laughter we will miss most.

James E. Kirk was born Jan. 26, 1936 and died Aug. 3. He was an Albuquerque attorney since 1961. He is survived by his widow, three sons and five grandchildren.

Editor's Note: The contents of Hearsay and In Memoriam are submitted by members or derived from news clippings. Send announcements to notices@nmbar.org.



Join a State Bar Practice Section

Benefits of Membership include:

- Practice area-targeted resources
- Networking
- Leadership experience
- Discounts on CLE programs
- Legislative advocacy
- Public service opportunities
- *And so much more!*

Up to \$10-25 for one year
Choose from 20 practice sections

Sign up now,
and enjoy membership
through the end of
next year.

Browse sections and join today at www.nmbar.org > [About Us](#) > [Sections](#)



Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners met on Sept. 30 at the State Bar Center in Albuquerque. Action taken at the meeting was as follows:

- Approved the Aug. 18 meeting minutes;
- Accepted the August 2016 financials and executive summaries
- Approved the 2017 State Bar and New Mexico State Bar Foundation budgets;
- Approved an intercompany transfer from the Bar Foundation to the State Bar of up to \$225,000 in the fourth quarter with the approval of the Executive Committee;
- Approved a one-year extension of the audit contract with Burt & Co., and approved an amendment to the audit policy to request proposals at six-year intervals, rather than three years;
- Tabled a request for the Justice Patrio M. Serna Endowed Scholarship Fund to the December Board meeting;
- Received a report on the Sept. 23 Executive Committee meeting to review the meeting agendas;
- By acclamation, re-elected Gerald G. Dixon as secretary-treasurer and elected Commissioner Wesley Pool as president-elect for 2017;
- Received correspondence from the Committee on Diversity in the Legal Profession on the recent bar exam results; representatives from the Committee on Diversity and UNM School of Law attended the meeting to discuss the results;
- Received a request from the Supreme Court Judicial Information Systems Council to support an e-filing increase of \$2 and voted 9 to 7 in favor of the increase;
- Approved a request from the ATJ Commission to support a Justice for All Grant to conduct a state assessment/inventory of relevant available resources and to design a strategic action plan to achieve access to justice for all;
- Reviewed and approved petitions for continuance from the Legal Services and Programs Committee, the Animal Law Section, the Health Law Section, the Immigration Law Section and the Natural Resources, Energy and Environmental Law Section, pursuant to the State Bar bylaws;
- Received a report from Ian Bezpalko regarding options for legal research providers because the State Bar's contract is up for renewal next year.;
- Received an update on Entrepreneurs in Community Lawyering; the participants were selected and started the program on Sept. 28; and
- Denied a request for funding assistance with a documentary on former Territorial Governor of New Mexico Edmund Ross.

Note: The minutes in their entirety will be available on the State Bar website following approval by the Board at the Dec. 14 meeting.

continued from page 7

Association. The New Mexico Women's Bar does not discriminate on the basis of sex or gender and encourages all licensed attorneys to become members and apply to be on the Board. For more information about the Women's Bar Association or to become a member, visit www.nmwba.org.

Seeking Nominations for Inaugural Award

The New Mexico Women's Bar Association seeks nominations for its inaugural Support for Women in the Law award. This new honor will be awarded to an individual or law firm actively engaged in promoting a culture of success for women attorneys in New Mexico. For guidance on the considerations that will be used by the selection committee, visit www.facebook.com/nmwba. Submit nominations to Christina West at cwest@indiancountrylaw.com by Nov. 18 by providing the name of the individual or law firm and

1–2 paragraphs on the reasons for the nomination.

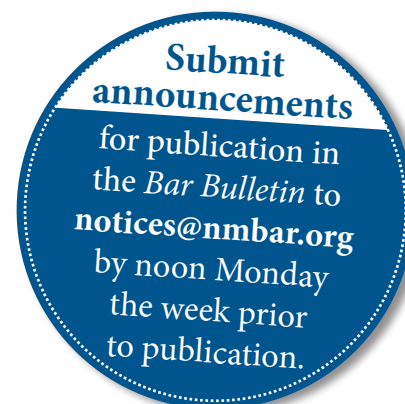
OTHER NEWS New Mexico Association of Drug Court Professionals 2016 Training Conference

Join the New Mexico Association of Drug Court Professionals for the 2016 Training Conference on Nov. 2–3 at the Sheraton Uptown in Albuquerque. The conference will offer up to 12.0 CLE credits (including a possible 1.5 EP). Topics include drug court standards and the statewide self-assessment report, the DWI offender as opposed to the drug offender, Register online at www.regonline.com/nmadcp2016fallconference.

Santa Fe Neighborhood Law Center Law and Policy for Neighborhoods CLE

Join the Santa Fe Neighborhood Law Center for its annual CLE "Law and Policy

for Neighborhoods" (10.0 G, 2.0 EP), Dec. 8–9 at the Santa Fe Convention Center. Featured speakers include Chief Justice Charles W. Daniels and recently retired Justice Richard C. Bosson. A discounted rate for early registration is available through Nov. 25. A free continental breakfast and box lunch will be provided both days on site for CLE attendees and faculty. For more information or to register, visit www.sfnlc.com/.



Legal Education

November

- | | | |
|---|---|---|
| <p>1 Journalism, Law and Ethics (2016 Annual Meeting)
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>1 Law Practice Succession – A Little Thought Now, a Lot Less Panic Later (2015)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>1 The Rise of 3-D Technology: What Happened to IP? (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>1 Animal Law: Wildlife and Endangered Species on Public and Private Lands—The Tipping Point 6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>2 Estate Planning for Religious and Philosophical Beliefs of Clients
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>2 Top 8 Title Defects—Cured
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> <p>2–3 New Mexico Association of Drug Court Professionals Training Conference
12.0 CLE credits (including a possible 1.5 EP)
Live Seminar, Albuquerque
New Mexico Association of Drug Court Professionals
www.regonline.com/
nmadcp2016fallconference</p> | <p>3 Indian Law in 2016: What Indian Law Practitioners Need to Know
1.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>4 ADR Institute: Mindful Mediation Skills for the Lawyer (and Non-Lawyer) Handling Conflict Resolution
5.2 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>4 DWI 2016: Dark Side of the Moon
6.5 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> <p>10 Acquisitions of Subsidiaries and Divisions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>10 Charter School Law in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> <p>10 Estate Planning and Retirement Benefits
4.0 G
Live Seminar
Santa Fe Estate Planning Council
www.sfestateplanning.com</p> <p>11 Ethics and Identifying Your Client: It's Not Always 20/20
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>14 Top Estate Planning Techniques
6.6 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com</p> | <p>16 The Art of Effective Speaking for Lawyers
4.5 G, 1.2 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>16 Sophisticated Deposition Strategies
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> <p>17 2016 Probate Institute
6.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>17 2016 Attorney-Client Privilege Update
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 2016 Business Law Institute
5.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Ethics and Dishonest Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Immigration and Deportation
5.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Black Lawyers Association
www.newmexicoblacklawyersassociation.org</p> <p>22 Effective Use of Trial Technology (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
|---|---|---|

November

- | | | |
|---|---|--|
| <p>22 Best and Worst Practices Including Ethical Dilemmas in Mediation (2016)
3.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Navigating the Amenity Process in Youthful Offender Cases (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Building Your Civil Litigation Skills
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> |
| <p>28 CLE at Sea Trip, Western Caribbean Cruise (Nov. 28–Dec. 4)
10.0 G, 2.0 EP
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Environmental Regulations of the Oil and Gas Industry (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

December

- | | | |
|--|--|--|
| <p>1 Piercing the Entity Veil: Individual Liability for Business Acts
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 Justice with Compassion— Courthouse Facility Dogs Improving the Legal System
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>8 2016 Real Property Institute
4.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 Reforming the Criminal Justice System
3.0 G
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5–9 Forensic Evidence
24.9 G, 1.2 EP
Live Seminar, Santa Fe
National District Attorneys Association
www.ndaa.org</p> | <p>8 Structuring Minority Interests in Businesses
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 As Judges See It: Best (and Worst) Practices in Civil Litigation
6.0 G
Live Seminar, Las Cruces
NBI Inc.
www.nbi-sems.com</p> | <p>6 Transgender Law and Advocacy
4.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>8–9 Law and Policy for Neighborhoods Conference
10.0 G, 2.0 EP
Live Program, Santa Fe
Santa Fe Neighborhood Law Center
www.sfnlc.com</p> |
| <p>2 Personal Injury Evidence: Social Media, Smartphones, Experts and Medical Records
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>6 Medical Marijuana Law in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>9 The Ethics of Bad Facts: The Duty to Disclose to the Tribunal
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 Third Annual Wage Theft CLE
3.0 G, 1.0 EP
Live Seminar, Gallup
New Mexico Hispanic Bar Association
www.nmhba.net</p> | <p>7 HR Legal Compliance: Advanced Practice
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>9 Water Rights in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> |
| | | <p>9 As Judges See It: Top Mistakes Attorneys Make in Civil Litigation
6.0 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com</p> |

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 October 21, 2016

PUBLISHED OPINIONS

No. 33618	1st Jud Dist Santa Fe CV-11-646, C BEAUDRY v FARMERS INSURANCE (affirm)	10/17/2016
No. 34180	11th Jud Dist San Juan CV-11-841, M WILLIAMS v T MANN (affirm in part, reverse in part)	10/17/2016

UNPUBLISHED OPINIONS

No. 35576	AD AD AQCB-16-1, IN RE: AIR QUALITY (dismiss)	10/18/2016
No. 35357	13th Jud Dist Valencia JQ-11-2, CYFD v BRIAN S (affirm)	10/19/2016
No. 35437	1st Jud Dist Santa Fe CV-14-1963, P ORTEGA v G JOHNSON (affirm)	10/19/2016
No. 35435	9th Jud Dist Curry CR-14-498, STATE v T NEWKIRK (affirm)	10/19/2016

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

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

As of October 7, 2016:
Kathleen Rosemary Bryan
308 E. Seventh Avenue
Tampa, FL 33602
505-750-8724
rose.bryan@gmail.com

As of September 27, 2016:
Curtis Jay Lombardi
10 AV. A 4-51 STA. Catalina
Casa K-99 Condado Zona 6
Catalina Con. Keral 10
Villa Nueva, Guatemala
505-907-7355
curtislombardi14@gmail.com

As of October 7, 2016:
Michael N. Prinz
1517 Bishops Lodge Road,
Unit B
Santa Fe, NM 87506
505-906-1614
mnprinz@gmail.com

CLERK'S CERTIFICATE OF ADMISSION

On October 11, 2016:
Elizabeth S. Fitch
Righi Fitch Law Group
2111 E. Highland Avenue,
Suite B440
Phoenix, AZ 85016
602-385-6776
602-385-6777 (fax)
beth@righilaw.com

CLERK'S CERTIFICATE OF CORRECTION

Lori Lynette Jensen
401 Canyon Way #2
Sparks, NV 89434
775-842-0992
lljensenxq@att.net

IN MEMORIAM

As of August 3, 2016:
James Ellis Kirk
19927 Menaul Blvd. NE
Albuquerque, NM 87112

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective October 1, 2016:
Anita Podell Miller
2020 Quail Run Drive NE
Albuquerque, NM 87122
505-856-6406

CLERK'S CERTIFICATE OF NAME CHANGE

As of September 30, 2016:
**Misty M. Schoepner
f/k/a Misty M. Braswell**
N.M. Public Employees
Retirement Association
PO Box 2123
33 Plaza la Prensa (87507)
Santa Fe, NM 87504
505-476-9355
505-476-9403 (fax)
misty.braswell@state.nm.us

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 November 2, 2016

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

*There are no proposed rule changes
currently open for comment.*

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2016 NMRA:

Effective Date

RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS

Rule 1-079 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 05/18/16

CIVIL FORMS

Form 4-940 Notice of federal restriction on
right to possess or receive a
firearm or ammunition 05/18/16

RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS

Rule 5-123 Public inspection and sealing
of court records 05/18/16

Rule 5-615 Notice of federal restriction on
right to receive or possess a
firearm or ammunition 05/18/16

RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS

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

RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS

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

RULES OF PROCEDURE FOR THE MUNICIPAL COURTS

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

CRIMINAL FORMS

Form 9-515 Notice of federal restriction on
right to possess or receive a
firearm or ammunition 05/18/16

CHILDREN'S COURT RULES AND FORMS

Rule 10-166 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

Form 10-604 Notice of federal restriction on
right to possess or receive a
firearm or ammunition 05/18/16

SECOND JUDICIAL DISTRICT COURT LOCAL RULES

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>.

Certiorari Denied, July 20, 2016, No. S-1-SC-35943

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-069

Nos. 33,787, 34,042 and 34,077 (Consolidated) (filed April 28, 2016)

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

NEW MEXICO STATE INVESTMENT COUNCIL, as Trustee, Administrator,
and Custodian of the LAND GRANT PERMANENT FUND and the SEVERANCE TAX PERMANENT FUND,
Plaintiff-Appellee,

and

STATE OF NEW MEXICO ex rel. FRANK FOY, SUZANNE FOY, and JOHN CASEY,
Plaintiffs-Intervenors-Appellants,

v.

DANIEL WEINSTEIN, VICKY L. SCHIFF, WILLIAM HOWELL, and MARVIN ROSEN,
Defendants-Appellees.

and

GARY BLAND, et al.,
Defendants.

(Consolidated with)

NEW MEXICO STATE INVESTMENT COUNCIL, as Trustee, Administrator,
and Custodian of the LAND GRANT PERMANENT FUND and the SEVERANCE TAX PERMANENT FUND,
Plaintiff-Appellee,

and

STATE OF NEW MEXICO ex rel. FRANK FOY, SUZANNE FOY, and JOHN CASEY,
Plaintiffs-Intervenors-Appellants,

v.

SAUL MEYER and RENAISSANCE PRIVATE EQUITY PARTNERS, LP, d/b/a ALDUS EQUITY PARTNERS, LP,
Defendants-Appellees,

and

GARY BLAND, et al.,
Defendants.

(Consolidated with)

NEW MEXICO STATE INVESTMENT COUNCIL as Trustee, Administrator,
and Custodian of the LAND GRANT PERMANENT FUND and the SEVERANCE TAX PERMANENT FUND,
Plaintiff-Appellee,

and

STATE OF NEW MEXICO ex rel. FRANK FOY, SUZANNE FOY, and JOHN CASEY,
Plaintiffs-Intervenors-Appellants,

v.

ELLIOT BROIDY,
Defendant-Appellee,

and

GARY BLAND, et al.,
Defendants.**APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

Sarah M. Singleton, District Judge

BRUCE A. BROWN
Special Assistant Attorney General
NEW MEXICO STATE INVESTMENT
COUNCIL

Santa Fe, New Mexico

KENNETH W. RITT
Special Assistant Attorney General
DAY PITNEY LLP

Stamford, Connecticut
for Plaintiff-Appellee

VICTOR R. MARSHALL
VICTOR R. MARSHALL
& ASSOCIATES, P.C.
Albuquerque, New Mexico
for Appellants

MEL E. YOST
SCHEUER YOST & PATTERSON
Santa Fe, New Mexico

OWEN C. PELL
JOSHUA D. WEEDMAN
WHITE & CASE LLP
New York, New York
for Defendant-Appellee Rosen

RODNEY L. SCHLAGEL
EMILY A. FRANKE
BUTT THORNTON & BAEHR PC
Albuquerque, New Mexico
for Defendant-Appellee Howell

ERIC M. SOMMER
SOMMER, UDALL, SUTIN, HARD-
WICK & HYATT, PA
Santa Fe, New Mexico
for Defendants-Appellees Weinstein
and Schiff

DANIEL YOHALEM
Santa Fe, New Mexico
for Amici Curiae New Mexico Founda-
tion for Open Government and
New Mexico Press Association

Opinion

Michael D. Bustamante, Judge

{1} Appellants' motion for rehearing is denied. The opinion filed in this case on March 24, 2016, is withdrawn and this Opinion is substituted in its place.

{2} Intervenors Frank Foy, Suzanne Foy, and John Casey (Appellants) appeal the district court's approval of settlements between the New Mexico State Investment Council (NMSIC) and three sets of defendants. Having consolidated the three appeals, we consider whether the district court's approval of the settlements was consistent with the Fraud Against Taxpayers Act and whether NMSIC's Litigation Committee complied with the Open Meetings Act, among other arguments. We affirm the district court's approval of the settlements.

BACKGROUND

{3} Most of the following facts are derived from the district court's findings of fact. Appellants do not specifically challenge any of these findings. "An unchallenged finding of the trial court is binding on appeal." *Seipert v. Johnson*, 2003-NMCA-119, ¶ 26, 134 N.M. 394, 77 P.3d 298; see Rule 12-213(A)(4) NMRA ("The argument shall set forth a specific attack on any finding, or such finding shall be deemed conclusive.").

A. The Parties

{4} Appellants are qui tam plaintiffs in two actions filed in 2008 and 2009 under the New Mexico Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to -14 (2007, as amended through 2015). *State*

ex rel. Frank C. Foy v. Vanderbilt Capital Advisors, LLC, No. D-101-CV-2008-1895 (*Vanderbilt*); *State ex rel. Frank C. Foy v. Austin Capital Mgmt. Ltd.*, No. D-101-CV-2009-1189 (*Austin*). Foy is the former chief investment officer at New Mexico's Educational Retirement Board (ERB).

{5} NMSIC is a state agency that serves as trustee of, and is responsible for investing, among other funds, the Land Grant Permanent Fund and the Severance Tax Permanent Fund, which are established under the New Mexico Constitution for the benefit of citizens of New Mexico. N.M. Const. art VIII, § 10, art. XII, §§ 2, 7; NMSA 1978, §§ 6-8-2 to -7 (1957, as amended through 2015); NMSA 1978, § 7-27-3.1 (1983).

{6} The defendants in the present suit are three groups of individuals and entities alleged to have engaged in misconduct related to NMSIC's management of the funds. Each of the three groups is named and discussed in more detail below. For ease of reference we refer to the defendants collectively as Defendants.

B. The Qui Tam Actions

{7} We begin with a discussion of the Appellants' qui tam actions under FATA because they form the backdrop against which we consider the three cases now before us. Section 44-9-5(A) of FATA permits the filing of a "qui tam action," which is "an action . . . that allows a private person to sue for a penalty, part of which the government will receive." *State ex rel. Foy v. Austin Capital Mgmt., Ltd. (Austin II)*, 2015-NMSC-025, ¶ 3, 355

P.3d 1 (alterations, internal quotation marks, and citation omitted). A qui tam plaintiff is required to serve the complaint and a disclosure of supporting evidence under seal to the attorney general, who "may intervene and proceed with the action within sixty days after receiving the complaint and the material evidence and information." Section 44-9-5(C). If the attorney general declines to intervene in the action, the qui tam plaintiff may proceed with the action. Section 44-9-5(D). "Notwithstanding [these] provisions . . . , the attorney general or political subdivision may elect to pursue the state's or political subdivision's claim through any alternate remedy available" and "[a] finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under [FATA]." Section 44-9-6(H). If the attorney general initiates an alternate proceeding, "the qui tam plaintiff shall have the same rights in such a proceeding as the qui tam plaintiff would have had if the action had continued pursuant to [FATA]." *Id.* As to the qui tam action, the state or political subdivision may choose to settle the action "notwithstanding any objection by the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate[,] and reasonable under all of the circumstances." Section 44-9-6(C).

{8} In their qui tam actions, Appellants alleged that Vanderbilt Capital Advisors, LLC and Austin Capital Management, Ltd., as well as other defendants, made false

claims to the ERB and to NMSIC about the risks associated with, and performance of, certain financial instruments and hedge funds. They also alleged that there was “pay-to-play”¹ at the ERB and NMSIC.

{9} *Vanderbilt* and *Austin* were heard by two different judges. Judge Pfeffer, presiding over *Vanderbilt*, dismissed some of the Appellants’ claims on the ground that retroactive application of FATA to conduct occurring before its effective date would violate the ex post facto clauses in both the United States and New Mexico Constitutions. U.S. Const. art. 1, § 10; N.M. Const. art. II, § 19. Judge Pope entered a similar order in *Austin*. This Court declined to hear an interlocutory appeal in *Vanderbilt*, but later allowed an interlocutory appeal of this issue in *Austin* and affirmed. *See State ex rel. Foy v. Austin Capital Mgmt., Ltd. (Austin I)*, 2013-NMCA-043, ¶¶ 1, 3, 297 P.3d 357.

{10} At the time the district court approved the settlements in the cases now before us, the Supreme Court had granted certiorari but had not yet decided the question. In June 2015 the Supreme Court reversed, holding that the treble damages available under FATA “are predominantly compensatory [and] do not violate the ex post facto clause[s] and may be awarded for conduct occurring prior to the effective date of FATA.” *Austin II*, 2015-NMSC-025, ¶ 44. It also held that, as to the civil penalties available under FATA, “[i]t is . . . conceivable that the amount awarded in civil penalties could be punitive in effect, particularly if the trial judge awards the maximum [of] \$10,000 per violation” and that, consequently, “[i]t is not practical to make that determination without knowing the actual amount assessed with full briefing on appeal addressed to a specific dollar figure.” *Id.* ¶ 49. Hence, the Supreme Court declined to decide “whether the civil penalties awarded under FATA are punitive and violate ex post facto principles until there is a definitive amount awarded.” *Id.*

C. NMSIC’s Plan and the Present Suit

{11} While the Appellants’ qui tam actions were proceeding as just described, NMSIC developed its own plan to recover from those involved in pay-to-play schemes, including some of the defendants in *Vanderbilt* and *Austin*. NMSIC

is pursuing recovery using theories of liability other than FATA, focusing first on individuals involved in the schemes. Using information gleaned from these individuals, NMSIC plans to pursue the entities involved. NMSIC anticipates greater recoveries from the entities than from individual defendants.

{12} Consistent with this plan, NMSIC took several actions. First, it declined to intervene in Appellants’ qui tam suits and moved to dismiss the pay-to-play claims involving NMSIC—but only those claims—from *Vanderbilt* and *Austin*. *See* § 44-9-6(B) (“The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and to present evidence at a hearing.”). The motions to dismiss did not address Appellants’ claims regarding nondisclosure of investment risks in *Vanderbilt* and *Austin*, nor did they address the claims of pay-to-play at the ERB. NMSIC’s motion to dismiss the pay-to-play claims from *Vanderbilt* were granted. It appears that as of June 2015 the district court had not yet ruled on the motion to dismiss these claims from *Austin*.

{13} Second, because it wanted to pursue recovery for pay-to-play in NMSIC’s investment process through non-FATA claims, NMSIC initiated the present suit, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of contract, and unjust enrichment. Although the present suit involves different claims than those in *Austin*, fifteen of the seventeen named defendants in this suit are also named in *Austin*. The district court granted Appellants’ motion to intervene. *See* Rule 1-024 NMRA.

{14} The parties agree that the present suit is an “alternate remedy” under FATA and that, therefore, Appellants are entitled to the same rights in this suit as they enjoy in *Austin*, including the right to a hearing on the fairness, adequacy, and reasonableness of settlements. *See* § 44-9-6(C).

{15} Third, NMSIC adopted a Recovery Litigation Settlement Policy (Settlement

Policy). The Settlement Policy, which is discussed in more detail below, also created a Litigation Committee with the power to “actively participate in settlement negotiations, as appropriate, with the authority of [NMSIC] for settlement resolution and related decisions.” Over objection by Appellants, the district court adopted a discovery plan meant to facilitate settlement discussions. Under this plan, only discovery essential for settlement discussions was permitted.

{16} Pursuant to the Settlement Policy and the district court’s discovery plan, Day Pitney LLP, a firm engaged by NMSIC, initiated settlement negotiations with some of the defendants, all of whom are represented by experienced attorneys. It also began an investigation of the possible recoveries against individuals and entities. As part of this investigation, Day Pitney reviewed (1) over 2.5 million pages of documents from the SEC, (2) 130,000 pages of documents from third parties, (3) desktop or laptop data from twenty-two NMSIC employees, (4) 70,000 paper documents from NMSIC, (5) complete images of NMSIC file and email servers, (6) sixty-eight server backup tapes, (7) complete copies of server folders used by NMSIC employees to store investment-related documents through December 2010, (8) updated email files for NMSIC employees through December 2010, (9) server home directories for twenty-two NMSIC employees, (10) email files for email addresses used by NMSIC investment groups, and (11) audio recordings of NMSIC and subcommittee meetings. Its document review was facilitated by e-discovery techniques of predictive coding, concept grouping, near-duplication detection, and email threading. Day Pitney also conducted interviews with twenty-three individuals, including over a dozen NMSIC employees. Discovery was obtained from NMSIC, the SEC, and third parties, as well as from some of the defendants.

D. The Path to the Present Appeals

{17} Each of the three cases now on appeal took similar but slightly different routes through the district court. We begin with the district court’s review of the

¹In an announcement of 2010 rules addressing the practices, the Securities and Exchange Commission (SEC) stated that “pay-to-play” practices involve “[e]lected officials who allow political contributions to play a role in the management of [public pension plan] assets and who use these assets to reward contributors” and “investment advisers that seek to influence government officials’ awards of advisory contracts by making or soliciting political contributions to those officials.” *See* Release No. IA-3043, Political Contributions by Certain Investment Advisers p. 6 (July 1, 2010) <https://www.sec.gov/rules/final/2010/ia-3043.pdf>; *see* 17 CFR 275.206(4)-5 (2012).

settlements with the Weinstein Defendants because (1) of the settlements now on appeal, they were the first approved, and (2) the procedures adopted by the district court for considering these settlements set the stage for its consideration of the subsequent settlements. The cases on appeal are also discussed in the order in which the district court considered the settlement agreements.

1. The Weinstein Defendants

{18} In April 2013 NMSIC reached settlement agreements with Daniel Weinstein, Vicky L. Schiff, Marvin Rosen, and William Howell (the Weinstein Defendants). In these agreements, the Weinstein Defendants agreed to provide information and answer questions about pay-to-play practices at NMSIC, make themselves available to do so, execute affidavits truthfully setting forth their knowledge of such practices, appear without subpoena to provide testimony at depositions or at other civil actions NMSIC may initiate, and appear without subpoena at trial. The Weinstein Defendants agreed to payments to NMSIC ranging from \$100,000 to \$300,000. In return, NMSIC agreed to release these Defendants from any claim “arising out of or relating to the investments by NMSIC.” Importantly, the district court found that NMSIC’s release “does not cover claims relating to [the] ERB.” The settlement agreements were executed by a member of NMSIC’s Litigation Committee.

{19} On April 18, 2013, NMSIC moved for the district court’s approval of the settlements and dismissal of the Weinstein Defendants. *See* § 44-9-6(C) (“The state . . . may settle the action with the defendant notwithstanding any objection by the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate[,] and reasonable under all of the circumstances.”). Appellants filed an objection to the settlements, but did not argue that

the settlements were unfair, inadequate, or unreasonable, and did not request an evidentiary hearing. At a hearing on July 15, 2013, Appellants first challenged the fairness, adequacy, and reasonableness of the settlements and requested an evidentiary hearing, claiming that they had “enough of the things that [they] put together independently that” a hearing was appropriate. The district court ordered Appellants to submit a memorandum within two weeks stating the grounds for their objections and identifying supporting evidence. It also ordered NMSIC to prepare an order memorializing its oral orders. But Appellants did not file a memorandum as directed by the district court. Instead, Appellants filed objections to the proposed order prepared by NMSIC and requested a stay in the proceedings pending the Supreme Court’s decision in *Austin II*. The district court denied the motion to stay the proceedings and Appellants’ objections to the proposed order.

{20} In August 2013 the district court scheduled an evidentiary hearing for November 25 and 26, 2013, on Appellants’ objections to the settlements. On September 1, 2013, the district court entered an order defining the procedures for briefing and other issues related to Appellants’ objections to the settlements. We refer to this order as the Settlement Process Order. Appellants were required to file “a memorandum that sets forth the basis for their position that the proposed settlements . . . are not fair, adequate[,] and reasonable under all [of] the circumstances and identifies the evidence upon which they will rely at the hearing.” The order noted that Appellants must overcome a presumption that the settlements are fair, adequate, and reasonable. It also set out factors under which the fairness and adequacy of the settlements would be assessed. Finally, the order mandated that a similar memorandum would be required for all future motions for dismissal based on settlement with other defendants.

{21} When Appellants failed to file the required memorandum by the date set by the district court, NMSIC moved to dismiss the Weinstein Defendants without a hearing. The district court denied NMSIC’s motion and extended the deadline for Appellants’ memorandum by approximately two weeks. Although Appellants filed a memorandum by this later deadline, it did not address the specific points listed by the district court’s order.

{22} On November 1, 2013, Appellants represented at a motion hearing that they had evidence to support their opposition to the settlements but argued that they needed information about gains and losses on particular investments that NMSIC had withheld from them for years. Appellants argued that they needed to see the figures for “cash out, cash in.” Counsel for Appellants stated that they “want[ed] to ask somebody from [NMSIC], . . . what was the gain or loss on this particular investment.” Approximately two weeks later, NMSIC served a response to the Appellants’ oral discovery request that provided gain and loss information on all thirteen of the investments associated with the Weinstein Defendants, together with a chart showing “cash in, cash out,” and, where applicable, residual values.²

{23} At the November 25-26, 2013, evidentiary hearing, NMSIC presented the testimony of six witnesses by affidavit and direct testimony. These witnesses included a member of the Litigation Committee and a Day Pitney attorney, as well as the four Weinstein Defendants. After the witnesses attested that their affidavits were an accurate representation of their testimony and provided the foundation for exhibits, Appellants were afforded an opportunity to cross-examine them. Appellants did not testify, nor did they present evidence related to the investment loss information they had requested.

{24} After the hearing, the district court entered seventy-three findings of fact and forty-nine conclusions of law. In a

²Although Appellants maintain on appeal that they never received this information, the district court found that “NMSIC served a response to [Appellants’] oral discovery request that provided current . . . gain and loss information on all [thirteen] of the investments associated with the [Weinstein] Defendants, together with a chart showing cash in, cash out, and, where applicable, residual values.” We defer to this finding because it is supported by the record. *See Phelps Dodge Corp. v. N.M. Emp’t Sec. Dep’t*, 1983-NMSC-068, ¶ 8, 100 N.M. 246, 669 P.2d 255 (“If . . . substantial evidence [to support a finding] appears in the record, the district court’s findings will not be disturbed.”). In a motion for rehearing, Appellants point out that, in later proceedings relating to settlement with another defendant, the district court found that NMSIC had failed to provide documents elucidating the data as ordered. However, the district court also found that NMSIC’s “failure to produce did not prevent the consideration of the reasonableness of the settlement [with that defendant].” Although they point to NMSIC’s failure to produce these documents, Appellants do not demonstrate that the failure prevented the district court from considering the reasonableness of the settlements with the Weinstein, Meyer, or Broidy Defendants either.

subsequent order, it granted NMSIC's motion to dismiss the Weinstein Defendants. The findings of fact and conclusions of law are discussed more fully in the context of Appellants' arguments on appeal.

2. The Meyer Defendants

{25} A few months after reaching agreement with the Weinstein Defendants, NMSIC reached a settlement agreement with Saul Meyer and Renaissance Private Equity Partners, LP, d/b/a Aldus Equity Partners, LP (the Meyer Defendants) in July 2013. The provisions of this settlement agreement substantially mirrored those with the Weinstein Defendants. This settlement agreement also was signed by a member of the Litigation Committee.

{26} NMSIC moved for approval of the settlement with the Meyer Defendants on January 10, 2014. The motion included the settlement agreement and sworn financial statements from the Meyer Defendants. Appellants filed a response to the motion objecting to the settlement and requesting an evidentiary hearing. The district court held a two-hour hearing on June 19, 2014, on NMSIC's motion to dismiss and Appellants' motion for an evidentiary hearing, and ruled that Appellants had failed to file a memorandum consistent with the Settlement Process Order. No evidence was presented at this hearing.

{27} Roughly a month later, the district court granted the motion to dismiss the Meyer Defendants noting that "[Appellants] were given the opportunity to identify the evidence they would present in opposition to the settlement[s but] indicated at the . . . hearing that they had no evidence to present in opposition to the settlement." It therefore concluded that an evidentiary hearing was unnecessary and denied Appellants' motion. The district court acknowledged Appellants' argument that further discovery was necessary to obtain evidence to support their position but concluded that Appellants were not entitled to full discovery because "[t]he extent of discovery appropriate in connection with a settlement approval hearing is limited to whether the settlement is fair, adequate, and reasonable." It concluded, "[the Meyer] Defendants have admitted liability, have agreed to cooperate with [NMSIC], and have demonstrated that they have limited financial means[.]" and found that the settlements were fair, adequate, and

reasonable. The Meyer Defendants were dismissed.

3. The Broidy Defendants

{28} Elliott Broidy (Broidy) was the founder and chairman of Markstone Capital Group, LLC (Markstone) (collectively, the Broidy Defendants). NMSIC alleged that Broidy secured an investment from NMSIC in Markstone's private equity fund by making undisclosed and illegal quid pro quo payments to another defendant, thereby aiding other defendants in breaching their fiduciary duties to NMSIC. In June 2014 NMSIC and Markstone reached a settlement agreement. In exchange for a payment of \$1,000,000 by Markstone, NMSIC released Markstone and Broidy from "any and all claims . . . arising out of, [or] in connection with, or relating to any activities by . . . Markstone [and Broidy] . . . with respect to . . . NMSIC . . . , including NMSIC's investments in the Markstone Fund." The agreement with the Broidy Defendants did not require Broidy or Markstone to cooperate in NMSIC's civil actions against other defendants. This agreement was signed by Governor Susana Martinez as Chair of NMSIC. *See* § 6-8-2(B) (stating that the chair of NMSIC shall be the Governor).

{29} Shortly thereafter, NMSIC filed a motion to dismiss the Broidy Defendants asserting that Appellants had no standing to object to the dismissal because they had not named Broidy or Markstone in their qui tam actions. Nevertheless, Appellants filed a response to the motion to dismiss stating their objections to the settlement. The district court decided that no hearing was necessary because the cases on which Appellants relied to establish standing to challenge the Broidy Defendants' dismissal were all distinguishable, and because Appellants' objections to the settlement had been previously rejected and Appellants presented no new reasons to change the district court's decision. NMSIC's motion to dismiss Broidy was granted.

{30} Appellants now appeal the district court's approval of the settlements and dismissal of the Weinstein Defendants, the Meyer Defendants, and Defendant Broidy from NMSIC's suit.

DISCUSSION

A. Preliminary Matters³

1. Finality

{31} To the extent that Appellants argue that the district court's orders dismissing

the Defendants were not final appealable orders, we disagree. *See* Rule 1-054(B) (2) NMRA. Appellants argue that the orders are not final because they "do[] not adjudicate all issues relating to these . . . [D]efendants, because [they] do[] not adjudicate the [twenty-five] to [thirty percent] share of the settlement [that] goes to [Appellants], or the amount of attorney fees [that will be] paid by these [D]efendants." Appellants' argument is based on NMSA 1978, Section 44-9-7 (2015), which sets out how a qui tam plaintiff may be compensated when the state prevails in a FATA action. Section 44-9-7(A)-(C) guides how much a qui tam plaintiff may recover. Section 44-9-7(D) provides that "[a]ny award to a qui tam plaintiff shall be paid out of the proceeds of the action or settlement, if any. The qui tam plaintiff shall also receive an amount for reasonable expenses incurred in the action plus reasonable attorney fees that shall be paid by the defendant."

{32} Here, Appellants never filed a motion for the statutory award and attorney fees, and the district court did not hold a hearing on these issues. The orders dismissing Defendants do not address the statutory award or attorney fees. We disagree with Appellants that the pendency of these issues renders the dismissal orders non-final for two reasons.

{33} First, the language of FATA itself contemplates resolution of the merits of the action before determination of the qui tam plaintiff's award and attorney fees. Section 44-9-7 provides for such awards when the state "prevails in the action" and when there are "proceeds of the action or settlement." This language indicates that calculation of the qui tam plaintiff's award is subsequent to and supplementary to adjudication of the merits of the action or resolution by settlement. *See Valley Improvement Ass'n v. Hartford Accident & Indem. Co.*, 1993-NMSC-061, ¶ 11, 116 N.M. 426, 863 P.2d 1047 (distinguishing between attorney fees that are an integral part of compensatory damages and attorney fees that are "analogous to costs" and thus "supplementary to relief on the merits").

{34} Second, our Supreme Court has held that "[w]here a postjudgment request, such as one for attorney[] fees, raises issues 'collateral to' and 'separate from' the

³Appellants argue before this Court that Day Pitney "has disqualifying conflicts of interest." We decline to address this issue because it was never considered in the first instance by the district court. Appellants' motions to supplement the record on appeal related to this argument are denied.

decision on the merits, such a request will not destroy the finality of the decision[.]” *Kelly Inn No. 102, Inc. v. Kaprison*, 1992-NMSC-005, ¶ 21, 113 N.M. 231, 824 P.2d 1033. Here, by approving the settlements and dismissing Defendants, the district court’s orders “declare[d] the rights and liabilities of the parties to the underlying controversy,” i.e., the settlement amounts and terms. *Id.* Any determination as to the Appellants’ proper share of the settlement amount and attorney fees “will not alter[,] . . . moot or revise” the district court’s approval of the rights and liabilities set out in the settlement agreements. *Id.* Hence, the proceedings to determine Appellants’ share of the settlements are “collateral to” and “separate from” the approval of the settlements. *Id.*

2. Jurisdictional Limits

{35} Appellants also argue briefly that the district court acted beyond its jurisdiction in approving the settlements (1) because the settlements released Defendants from the FATA claims in *Austin*, which was presided over by another judge, and (2) because those claims could not be released while the *Austin* case was stayed pending appeal. For the most part, Appellants provide no authority for these contentions or to support their argument that the district court’s jurisdiction here is limited by proceedings in an entirely separate case. Generally, this Court will not consider propositions that are unsupported by citation to authority. *ITT Educ. Servs., Inc. v. Taxation & Revenue Dep’t*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969.

{36} In any case, we are unpersuaded that the district court exceeded its jurisdiction. There is no dispute that the district court had jurisdiction over this case. The fact that a decision in this case may have an impact on another pending proceeding does not diminish its jurisdiction here. Indeed, Section 44-9-6(H) states that “[a] finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under [FATA].” Thus, this provision appears to contemplate the disposal of claims in a qui tam action by decisions rendered in an alternate remedy proceeding. See *In re Pharm. Indus. Average Wholesale Price Litig.*, 892 F. Supp. 2d 341, 343-45 (D. Mass. 2012) (recognizing that a settlement agreement in a separate qui tam action may extinguish a qui tam plaintiff’s

claims and holding that such a settlement was an “alternate remedy” under Section 3730(c)(5) of the False Claims Act (FCA), 31 U.S.C. §§ 3729–3733 (2012)).

3. Violation of Stay

{37} Appellants also argue that the stay was violated because the district court released the FATA claims before the Supreme Court had a chance to rule on the constitutional/retroactivity issue in *Austin II* and that, consequently, the Supreme Court’s authority was “usurp[ed].” But the district court assumed that FATA was constitutional, an assumption that favored Appellants’ position because, generally speaking, the longer the period of alleged misconduct, the weaker the settlements appear. Conversely, if the Supreme Court had decided that the retroactivity provision of FATA was unconstitutional, then the period encompassing the alleged misconduct would have been shorter, which would have weighed in favor of the adequacy of the settlements and against Appellants’ position. We conclude that the district court properly assessed the settlements in light of the pending appeals in *Austin* and did not usurp the Supreme Court’s authority.

B. Appellants Do Not Have Standing to Challenge the Dismissal of Defendant Broidy

{38} The district court held that Appellants did not have standing to challenge the settlement with the Broidy Defendants because they were not named as defendants in Appellants’ qui tam actions. The district court reasoned that, because Appellants’ rights in the present action stem solely from their rights in their qui tam actions, Appellants’ failure to name the Broidy Defendants there means that they had no rights as to them here.

{39} Although Appellants appealed the district court’s decision and dismissal of the Broidy Defendants, they did not address the legal principles of standing in their brief in chief nor specifically argue that the district court’s ruling was incorrect. Nor did they address this issue in their reply brief even after NMSIC raised it in its answer brief. “In this circumstance, such a failure to respond constitutes a concession on the matter.” *Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174. “This Court has no duty to search the record or research the law to ‘defend’ in a civil case a party

that fails to defend itself on an issue.” *Id.* This issue having been waived, we turn to Appellants’ substantive arguments as to the district court’s approval of the settlements with the Weinstein and Meyer Defendants.

C. Appellants’ Substantive Arguments as to the Weinstein and Meyer Defendants

{40} In these two appeals, Appellants raise the same four arguments. First, they maintain that the district court erred in limiting discovery before approving the settlements. Second, they argue that the district court’s rulings violate FATA. Third, they argue that NMSIC violated the Open Meetings Act (OMA), NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013),⁴ the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013), and the statute governing NMSIC, Section 6-8-2. Finally, Appellants contend that the district court erred in ruling that they lacked standing to raise issues related to alleged conflicts of interest of the former attorney general, Gary King, and his staff. We address the first two arguments together, then the third and fourth in turn.

1. The District Court Did Not Abuse its Discretion as to Discovery nor Violate FATA

{41} Appellants argue that the district court erred when it “refused to allow discovery” and “refused to allow the [Appellants] to take any depositions . . . [o]r to propound any interrogatories . . . [o]r to serve any requests for production.” In essence, they maintain that they were denied the opportunity to present evidence that the settlements were unfair and unreasonable—an opportunity to which they are entitled by statute—because they were unduly limited in their ability to propound discovery. See § 44-9-6(C). “Although the rules favor the allowance of liberal pretrial discovery, the trial court is vested with discretion in determining whether to limit discovery.” *DeTevis v. Aragon*, 1986-NMCA-105, ¶ 10, 104 N.M. 793, 727 P.2d 558 (citation omitted). Hence, “[a] trial court’s ruling limiting discovery is subject to reversal only upon a showing of an abuse of discretion.” *Id.*

{42} We begin by addressing Appellants’ argument that, because of the differences between FATA and the FCA, it is inappropriate to rely on federal cases construing the FCA in construing FATA. They point

⁴The 2013 amendments to the OMA were effective June 14, 2013, after some of the settlements were signed by the Litigation Committee. The 2013 amendments do not alter our analysis.

to *San Juan Agricultural Water Users Ass'n v. KNME-TV*, in which the Supreme Court stated that “[t]he differences in substantive text and legislative purposes [between a federal statute and a New Mexico statute] make the application of federal . . . law inappropriate when construing [that New Mexico statute].” 2011-NMISC-011, ¶ 38, 150 N.M. 64, 257 P.3d 884. We therefore consider whether differences between the FCA and FATA make federal case law inapposite.

{43} Our courts have recognized that “FATA closely tracks the longstanding federal [FCA]” and that “cases construing FATA’s federal analogue, the [FCA], [are] helpful in understanding the context and purpose of FATA.” *Austin II*, 2015-NMISC-025, ¶¶ 16, 25; see *State ex rel. Peterson v. Aramark Corr. Servs., LLC*, 2014-NMCA-036, ¶ 4, 321 P.3d 128 (recognizing that FATA is similar to the FCA). Appellants argue that this principle is inapplicable because the differences between FATA and the FCA indicate that the New Mexico Legislature intended to afford qui tam plaintiffs broader protections than those provided under the FCA. They derive this idea from the fact that, whereas the FCA permits settlement “after a hearing,” FATA permits settlement “after a hearing providing the qui tam plaintiff an opportunity to present evidence.” Compare 31 U.S.C. § 3730(c)(2) (B), with § 44-9-6(C) (emphasis added).

{44} Under the FCA, a qui tam plaintiff may request an evidentiary hearing, which “should be granted only upon a showing by the [qui tam plaintiff] of ‘substantial and particularized need.’” Claire M. Sylvia, *The False Claims Act: Fraud Against the Government* § 11:127 (2d ed. 2015); see *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 935 (10th Cir. 2005); *Nasuti ex rel. United States v. Savage Farms, Inc.*, No. 12-30121-GAO, 2014 WL 1327015, at *13 (D. Mass. Mar. 27, 2014) (order), *aff’d*, No. 14-1362, 2015 WL 9598315 (Mar. 12, 2015). Thus, the opportunity to present evidence at a hearing is permissible under the FCA upon a sufficient showing, but required under FATA. Federal case law addressing when an evidentiary hearing should be

granted is therefore likely inapposite to Section 44-9-6(C) of FATA. Once granted, however, we see no reason why federal case law addressing the conduct of the evidentiary hearing itself is inapplicable to evidentiary hearings under FATA.⁵

{45} In addition to federal case law addressing the FCA, the law governing review of class action settlements is also instructive here. In *United States ex rel. Schweizer v. Océ North America Inc.*, the court held that case law addressing the fairness, adequacy, and reasonableness of class action settlements is analogous to the same analysis under the FCA. 956 F. Supp. 2d 1, 10-11 (D.D.C. 2013); see Fed. R. Civ. P. 23(e)(2) (stating that class action settlements may be approved “only after a hearing and on finding that it is fair, reasonable, and adequate”). This approach has been adopted by other federal courts. See, e.g., *United States ex rel. Nudelman v. Int’l Rehab. Assocs., Inc.*, No. CIV A 00-1837, 2004 WL 1091032, at *1 n.1 (E.D. Pa. May 14, 2004) (order); *United States ex rel. Resnick v. Weill Med. Coll. of Cornell Univ.*, No. 04 CIV 3088(WHP), 2009 WL 637137, at *2 (S.D.N.Y. Mar. 5, 2009).

{46} Similarly, in New Mexico, class action settlements are evaluated by the district court for their fairness, adequacy, and reasonableness. See *Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 43, 143 N.M. 158, 173 P.3d 765 (stating that the settlement proponents bear the burden of demonstrating that the settlement is fair, adequate, and reasonable). Given the similarity between the standards for approval of settlement of false claims actions and class actions, we look to class action law for guidance on FATA settlement hearings.

{47} Having concluded that federal case law governing objections to settlements under the FCA and case law on class action settlements is applicable, we next examine that law. In *Schweizer*, the court considered whether a qui tam plaintiff “who objects to a proposed [FCA] settlement reached between the government and the defendant [is] entitled to full-blown discovery on her claims in order to prove that the settlement

[is] inadequate[.]” 956 F. Supp. 2d at 11. The court concluded that the hearing required by statute “serves a . . . limited purpose of forcing the government to provide some reasoning behind its decision to settle the case and giving the plaintiff-relators an opportunity to direct the court’s attention to facts or allegations that would suggest the settlement was not ‘fair, adequate[,] and reasonable under all the circumstances[.]’” *Id.* Based on this limited purpose, it further concluded that “allowing full-blown discovery as of right would risk transforming the [FCA settlement] hearing into a trial on the merits of [the qui tam] plaintiff’s claims and the government’s estimations of the litigation risks. It would put the cart before the horse, in essence making trial a precondition of settlement.” *Id.* Although it held that there was no right to full discovery, the court noted that limited discovery would be appropriate when “the government has not adequately explained its reasoning behind the settlement.” *Id.*; see *United States ex rel. McCoy v. Cal. Med. Review, Inc.*, 133 F.R.D. 143, 149 (N.D. Cal. 1990) (stating that although a qui tam plaintiff is entitled “to discovery on the fairness of the proposed settlement, the discovery must be limited to effectuate the goal of allowing plaintiffs meaningful participation in the fairness hearing without unduly burdening the United States or the defendants or causing unnecessary delay”); 5B Fed. Proc., L. Ed. § 10:73 (2004) (“The qui tam plaintiffs may be allowed limited discovery to enable them to play an active role in hearings on a proposed settlement agreement.”); *cf.* 32B Am. Jur. 2d *Federal Courts* § 1870 (2016) (stating that “formal discovery is not a prerequisite to the approval of a [class action] settlement as long as the plaintiffs’ negotiators had access to sufficient information regarding the facts of the case, and if the terms of the settlement are fair, the court may reasonably conclude that counsel performed adequately in obtaining a working knowledge of the case”).

{48} The *Schweizer* holding is paralleled in *Rivera-Platte*,⁶ in which this Court

⁵We note that Appellants relied on FCA cases in other contexts in the district court and thus appear to recognize that FCA cases are useful to construe FATA when the specific provisions at issue in the two statutes are similar.

⁶Appellants argue that *Rivera-Platte* cannot be relied upon because the Supreme Court deemed it of no “force or effect” after all the parties “[sought] to implement the district court’s [f]inal [o]rder in the interest of achieving a class-wide settlement.” *Platte v. First Colony Life Ins. Co.*, 2008-NMISC-058, ¶¶ 6, 8, 145 N.M. 77, 194 P.3d 108. Although this Court’s order was deemed of no force or effect as to the parties, the legal propositions set out in the Opinion remain precedential and have been cited in other cases, including by our Supreme Court. See, e.g., *Davis v. Devon Energy Corp.*, 2009-NMISC-048, ¶ 38, 147 N.M. 157, 218 P.3d 75; *Atherton v. Gopin*, 2012-NMCA-023, ¶ 7, 272 P.3d 700; *State v. Pacheco*, 2008-NMCA-131, ¶ 34, 145 N.M. 40, 193 P.3d 587.

considered whether “the settlement process was unfair because [the objectors] . . . requests for discovery were denied.” 2007-NMCA-158, ¶ 52. We rejected the objectors’ argument that “informal” discovery was inadequate to permit the court to evaluate the settlement, *id.* ¶ 49, and that they had “an absolute right to discovery.” *Id.* ¶ 94 (internal quotation marks and citation omitted). Instead, we stated that informal discovery is appropriate so long as it is sufficient “to fairly evaluate the merits of [the d]efendants’ positions during settlement negotiations.” *Id.* ¶ 49. We also noted that “[o]ne of the major reasons courts encourage settlement is to reduce the cost of litigation” and that because settlement is “an extra judicial process, informality in the discovery of information is desired.” *Id.* ¶ 51 (internal quotation marks and citation omitted). Although in *Rivera-Platte* we reversed the district court’s denial of discovery, we held that “the district court would not have abused its discretion in denying discovery if it had sufficient information before it to determine whether to approve the settlement.” *Id.* ¶ 95; *accord* *Hershey v. Exxon-Mobil Oil Corp.*, No. 07-1300-JTM, 2012 WL 4758040, at *2 (D. Kan. Oct. 5, 2012) (stating that “[t]he fundamental question is whether the district [court] has sufficient facts before [it] to intelligently approve or disapprove the settlement” (internal quotation marks and citation omitted)).

{49} Consistent with these principles, the district court here properly concluded that “[Appellants] are not entitled to conduct or complete full-blown discovery prior to proposed settlement approval.” Hence, we reject Appellants’ contention that the district court violated FATA by limiting discovery before settlement.

{50} We turn next to Appellants’ arguments that the way the district court limited discovery unduly hindered their ability to challenge the settlements contrary to FATA. Appellants argue that they were improperly denied any discovery. They also argue that the district court improperly ruled that damages calculations were not important for evaluation of the settlements and therefore denied their request for discovery as to damages. Neither of these contentions is supported by the record.

{51} Contrary to their statement that they were denied all discovery, we note that Appellants were provided with all of the discovery obtained by NMSIC from Defendants. Also, Appellants conceded

in the district court that they had received some discovery from NMSIC, that they were “satisfied” with NMSIC’s response, and that there was “no dispute with the [q]ui [t]am [p]laintiffs and [NMSIC] with [how] they have responded to discovery,” and the district court entered an order stating that Appellants were entitled to receive any further materials that were produced to NMSIC counsel by Defendants. In addition, the district court ordered that “basic documents relating to the transactions at issue in this case” must be produced by Defendants to both NMSIC and Appellants. The district court also ordered that personal financial information for Defendants should be produced to Appellants. Finally, the district court ordered that “each [D]efendant shall provide to [Appellants] . . . a copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in this suit or to indemnify or reimburse any defendant for payments made to satisfy any judgment in this suit.”

{52} Given the production of the above described discovery, we understand Appellants’ argument to be that their other specific requests for discovery were improperly denied. Appellants requested “the name and . . . address . . . of each individual likely to have discoverable information” about the case; copies of “all documents, electronically stored information, and tangible things that the disclosing party” might “use to support its claims or defenses”; “a computation of each category of damages claimed by the disclosing party”; and a “copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment.” They argued below and on appeal that these four requests “track[] the list in Rule 1-026(B) (3) [NMRA]” and in its federal counterpart, Fed. R. Civ. P. 26(a)(1)(A), and that this information is “part of the minimal due diligence and competence that is required in every case.” In addition, they asked Defendants to “describe all communications between you and any of the other parties to this lawsuit,” “[p]rovide a copy of all documents, electronically stored information, and tangible things that record or reflect any [such] communications,” and “[p]rovide a copy of all documents, electronically stored information, and tangible things relating to the transactions giving rise to this lawsuit.”

{53} Defendants objected to these requests and some sought protective orders.

The district court issued an order preventing Appellants from promulgating the requested discovery on Defendants, with the exception of the materials discussed in paragraph 50. In its oral remarks, the district court stated that “[it did] not believe that due diligence requires answers to the mandatory . . . disclosures” in Rule 1-026(B)(3) and that the answers to those requests were not necessary for it to evaluate the settlements.

{54} We conclude that the district court did not abuse its discretion in limiting Appellants’ discovery as it did. In the Settlement Process Order, the district court notified Appellants that they must demonstrate that

(1) there is a low risk of . . . failing to establish liability against [the] settling [d]efendants under FATA,

(2) there is a low risk of . . . failing to establish damages against [the settling defendants] under FATA,

(3) the settlement amounts are not within the range of reasonableness in light of the best possible recovery[,] and

(4) the settlement amounts are not within the range of reasonableness in light of all . . . the attendant risks of litigation.

{55} Appellants did not demonstrate to the district court, and do not demonstrate on appeal, how their broad discovery requests were related to the factors the district court considered to assess the settlements. As discussed above, in the months leading up to the evidentiary hearing on the settlements with the Weinstein Defendants, Appellants were given multiple opportunities to present the evidence they claimed they already had and to state why the settlements were not fair, adequate, or reasonable. Considering the stage of the proceedings, the amount of discovery produced to Appellants, Appellants’ multiple opportunities to present evidence they claimed to have, and Appellants’ opportunity to cross-examine the witnesses presented by NMSIC, it was within the district court’s discretion to curb Appellants’ discovery.

{56} Appellants next argue that the district court erred by ruling that calculation of damages was not important to evaluation of the settlements. They glean this argument from an exchange at a motion hearing after Appellants stated that they wanted “all documents relating to the various investments” in order “to do a

real calculation with admissible evidence as to what the loss or gain . . . might be on a particular investment.” They stated that “the best way of doing that is cash out, cash in.”

Counsel for Appellants: So there is complexity there. And without simply having had discovery, we don’t have that information.

Court: Mr. Marshall, to me, the issue at this hearing is not whether you had the ability to make that calculation now, but . . . whether somebody who is making the decision to settle considered those facts.

Counsel for Appellants: I want the facts, Your Honor.

Court: I understand you want the facts, but that’s not important for settlement purposes.

. . . .

Counsel for Appellants: I want to ask somebody from the [NMSIC], . . . what was the gain or loss on this particular investment.

We don’t know that information.

Court: I don’t think you need to know that at this stage.

{57} Appellants misinterpret the district court’s ruling. The district court did not decide that calculation of damages was irrelevant to the fairness, adequacy, and reasonableness of the settlements: it ruled that it was not critical to evaluation of the settlements that *Appellants* have the information on which NMSIC’s damages calculations were based, so long as NMSIC could demonstrate to the district court that it adequately considered the potential damages. *See Hershey*, 2012 WL 4758040, at *2 (stating that “[t]he fundamental question is whether the district [court] has sufficient facts before [it] to intelligently approve or disapprove the settlement.” (internal quotation marks and citation omitted)).

{58} Furthermore, Appellants’ contention that the district court did not consider the potential damages is contradicted by the record. The district court made several findings of fact related to potential damages. Additionally, in its conclusions of law, the district court noted that assessment of the settlement included examination of “the range of reasonableness of the settlement fund in light of the best possible recovery.” It further concluded that NMSIC had conducted sufficient discovery to “fairly evaluate the . . . range of [best] possible recovery.” In other conclusions, the

district court considered the “complexity of establishing damages,” recognized that Appellants estimated damages to be in excess of \$300,000,000 based on investment losses, and contemplated the possible types of damages available under FATA. These findings and conclusions indicate that the district court properly considered damages in its assessment of the settlements.

{59} Appellants also argue that the district court deprived them of their rights under FATA, specifically the “right to [Appellants’] reward and attorney fees, the right to intervene and participate as a party in the alternate action, and the right to present evidence in the alternate action.” But Appellants were permitted to intervene as parties and, as already discussed, were permitted to present evidence at the fairness hearing. Because the propriety of the settlements is on appeal, Appellants’ right to a reward and attorney fees has yet to be litigated. Thus, Appellants have not been deprived of these rights.

{60} Appellants’ general arguments that the district court violated FATA by “rubber-stamping” the settlements are unpersuasive. As discussed above, the district court requested memoranda on Appellants’ opposition to the settlements multiple times, held several hearings, and conducted a two-day evidentiary hearing. It issued seventy-three detailed findings of fact. In its evaluation, the district court indulged several presumptions in Appellants’ favor. For example, although the issue of the constitutionality of FATA’s retroactivity provision was on appeal to the Supreme Court, the district court assumed that it was constitutional. In spite of its reservations about whether Appellants had a right to object to settlements with defendants on whom process was not served in their *qui tam* actions, it also presumed that Appellants had a right to object to those settlements. Moreover, although Appellants “ha[d] not articulated a viable FATA claim against any of the [Weinstein] Defendants,” the district court nevertheless assumed that Appellants might yet do so and therefore assumed they had a right to object to settlements with those defendants. The district court did not “rubber-stamp” the settlement agreements.

{61} Finally, Appellants argue that the district court violated NMSA 1978, Section 6-8-24 (2011). This statute provides that “[n]othing in this 2011 act shall prejudice or impair the rights of a *qui tam* plaintiff pursuant to [FATA].” Since we

have determined that Appellants’ rights under FATA were not infringed, we further conclude that no violation of Section 6-8-24 occurred. Appellants also make several statements that because of the inadequate discovery “the proposed settlement amounts are grossly inadequate.” Other than these statements, however, Appellants do not challenge the district court’s factual findings or conclusions as to adequacy, fairness, or reasonableness, which involved a number of findings and conclusions on the settling defendants’ resources, the likelihood of success at trial, and the role of the settlements in the State’s litigation plan, among others. In the absence of particularized challenges to these findings and conclusions, we do not address Appellants’ general assertions that the settlements are inadequate. *See* Rule 12-213(A)(4) (stating that “[t]he argument shall set forth a specific attack on any finding, or such finding shall be deemed conclusive”).

{62} We conclude that the district court did not abuse its discretion in limiting discovery, nor did it fail to adequately assess the settlements. In addition, we discern no violation of FATA by the district court.

2. The Settlement Agreements are Valid as of May 2015

{63} Appellants, together with Amici New Mexico Foundation for Open Government (NMFOG) and New Mexico Press Association, argue that the settlements are void for three reasons. First, NMSIC did not have the power to delegate authority to settle with Defendants to the Litigation Committee. Second, even if settlement authority was properly delegated, the Litigation Committee was a public body subject to the requirements of the OMA and failed to comply with those requirements. Section 10-5-1. Third, the Litigation Committee was improperly constituted because it did not conform with NMSIC’s settlement policy or Section 6-8-2(B), which states that “[a]ll actions of the [NMSIC] shall be by majority vote, and a majority of the members shall constitute a quorum.”

{64} Appellants made these arguments in the district court as well. The district court disagreed and held that NMSIC properly delegated settlement authority to the Litigation Committee and that the OMA does not require litigation decisions, including settlement decisions, to be made in a public meeting. *See* § 10-15-1(H)(7) (excluding “meetings subject to the attorney-client privilege pertaining

to threatened or pending litigation in which the public body is or may become a participant” from the scope of the OMA). In reaching this conclusion, the district court relied in part on the fact that NMSIC delegated authority to the Litigation Committee in its Settlement Policy, which was voted on and approved by NMSIC at a public meeting.

{65} NMSIC’s position on appeal is multifaceted. First, NMSIC argues that Appellants “implicitly conceded” that delegation of settlement authority to the Litigation Committee was proper, and thus the issue is not preserved for appeal. Next, it argues that “the actions of the Litigation Committee are the very type of attorney-client privileged litigation decision-making exempted by [the] OMA.” In addition, it argues that “[e]ven if the Litigation Committee were subject to the OMA, the processes followed here satisfied [the] OMA’s purposes and therefore did not violate [the] OMA.” Finally, it maintains that any violation of the OMA was cured by NMSIC’s ratification of the settlements in a properly-noticed public meeting held in May 2015, approximately thirty months after the Litigation Committee approved the first settlements, and that, therefore, this issue is moot.

{66} We begin by addressing NMSIC’s preservation and mootness arguments. The district court’s conclusion that the issue of whether settlement authority was properly delegated was “implicitly conceded” is based on a pleading in which Appellants argued that there were no records of such a delegation and requested that any records of delegation be produced. But Appellants also stated in that pleading that “a blanket delegation [of settlement authority] to the [state investment officer] . . . would be in derogation of the statutory and fiduciary obligations of [NMSIC] members themselves” and that decisions about “settlement of actual or potential litigation . . . must be made by the . . . [NMSIC] itself, by vote.” By making these arguments, Appellants sufficiently apprised the district court of their contention that the authority to settle litigation rests solely with NMSIC. Thus, this argument was sufficiently preserved for appeal.

{67} As to NMSIC’s argument that this Court need not address Appellants’ arguments as to the OMA because the May

2015 meeting cured any OMA violations, we disagree. Even if an issue is moot as between the parties, we may address it if it is an issue “of substantial public interest, and capable of repetition, yet evading review.” *Howell v. Heim*, 1994-NMSC-103, ¶ 7, 118 N.M. 500, 882 P.2d 541 (internal quotation marks and citation omitted). The present matter satisfies both of these criteria. In promulgating the OMA, the New Mexico Legislature has evinced a strong interest in transparency in government and agency compliance with the OMA is an issue of substantial public interest. Furthermore, the problems in NMSIC’s processes here are capable of repetition by it and other agencies. See *Paragon Found., Inc. v. State Livestock Bd.*, 2006-NMCA-004, ¶ 10, 138 N.M. 761, 126 P.3d 577 (stating that “the implication of the OMA is an important policy issue that is likely to occur again if the issue is not directly addressed” and examining the OMA issues even though the matter was moot).

{68} We move on to the parties’ substantive arguments, which present a series of questions. First, are the actions of the Litigation Committee void, because either (1) NMSIC improperly delegated authority to settle with Defendants, or (2) the Litigation Committee failed to comply with the OMA? Second, did the May 2015 meeting cure any improper delegation or violation of the OMA such that the settlements are now valid?

a. Actions of the Litigation Committee Were Void

{69} As to the first question, we agree with Appellants and Amici that the Litigation Committee’s actions were void because the Committee did not have the authority to settle with Defendants. In addition, even if settlement authority was properly delegated, the Litigation Committee’s meetings did not comply with the OMA and hence were invalid. We address the delegation issue first.

{70} In pertinent part, the Settlement Policy states that the Litigation Committee “may actively participate in settlement negotiations, as appropriate, with the authority of the [NMSIC] for settlement resolution and related decisions.” It also states that “the authority to settle legal matters rests not with the [State Investment Officer] but with [NMSIC’s L]itigation [C]ommittee.” The Settlement Policy specifies that the Litigation Committee “shall

be comprised of at least three [NMSIC] members” and permits the Governor’s general counsel to serve on the committee. Pursuant to the Settlement Policy, a Litigation Committee consisting of two NMSIC members and the Governor’s general counsel met “seven or eight” times to discuss the settlement negotiations with Defendants. The Litigation Committee approved the settlement agreements with Defendants without obtaining a vote on the final decision by NMSIC. These settlement agreements were signed on behalf of NMSIC by Litigation Committee members.

{71} As a creature of statute, NMSIC functions solely within the powers granted by the Legislature. *Chalamidas v. Env’tl. Improvement Div.*, 1984-NMCA-109, ¶ 13, 102 N.M. 63, 691 P.2d 64. NMSIC’s powers are limited by Section 6-8-2(B) and Section 6-8-7(A) and (E). Under Section 6-8-2(B), “[a]ll actions of the council shall be by majority vote, and a majority of the members shall constitute a quorum.” (Emphasis added). The only mention of NMSIC’s ability to delegate its responsibilities states that “[t]he [NMSIC] may delegate administrative and investment-related functions to the state investment officer.” Section 6-8-7(A). Section 6-8-7(E) provides that NMSIC may “form and use committees,” but only to “study and make recommendations to [NMSIC].” Notwithstanding the Settlement Policy, these provisions do not permit NMSIC to delegate authority to settle litigation to a committee. Indeed, read together, they prohibit such delegation. Cf. *Kerr-McGee Nuclear Corp. v. N.M. Env’tl. Improvement Bd.*, 1981-NMCA-044, ¶ 52, 97 N.M. 88, 637 P.2d 38 (stating that “[a]dministrative bodies and officers cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character, or which require[] the exercise of judgment”). Because the Litigation Committee did not have the authority to do so, its approval of the settlements in 2013 and 2014 was without any binding effect.⁷

b. Litigation Committee Was Subject to the OMA

{72} Even if NMSIC’s delegation of settlement authority to the Litigation Committee had been proper, the Litigation Committee violated the OMA’s requirements

⁷Since we conclude that the Litigation Committee did not have the authority to act on the settlements, we need not address whether it was properly constituted.

for closed meetings. Hence, its actions are void for that reason as well. We explain.⁸ {73} The OMA embodies the Legislature's declaration that "[the] public policy of this state [is] that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Section 10-15-1(A). In keeping with this policy, we construe the OMA's provisions broadly and their exceptions narrowly. Cf. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶ 22, 287 P.3d 364 ("We emphasize, however, that [the] IPRA should be construed broadly to effectuate its purposes, and courts should avoid narrow definitions that would defeat the intent of the Legislature."); see also NMSA 1978, § 14-2-5 (1993) (stating that, under the IPRA, "it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees[,] which is nearly identical to the policy declaration in the OMA).

{74} The OMA provides that All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policy[-]making body of any state agency . . . , held for the purpose of formulating public policy, . . . discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policy[.]making body are declared to be public meetings open to the public at all

times, except as otherwise provided in the constitution of New Mexico or the [OMA]. Section 10-15-1(B) (emphasis added).

{75} We conclude that this provision applied to the Litigation Committee because the Litigation Committee was intended to be a "policy[-]making body" and its meetings were for the purpose of taking an action within the authority of NMSIC.⁹ NMSIC, which is unquestionably subject to the OMA, attempted to delegate its authority to take action on the settlements to the Committee. It is patently contrary to the OMA's purpose to permit a public body to avoid the OMA's requirements simply by delegating its responsibilities to a smaller body. Indeed, Section 10-15-1(B) states that "[n]o public meeting once convened that is otherwise required to be open pursuant to the [OMA] shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting." We agree with a 1990 Advisory Opinion by the then-Attorney General that "it is the nature of the act performed by the committee, not its makeup or proximity to the final decision, which determines whether an advisory committee is subject to open meetings statutes." N.M. Att'y Gen. Op. 90-27 (1990). The current Attorney General's Open Meetings Act *Compliance Guide* echoes this thinking, stating,

even a non-statutory committee appointed by a public body may constitute a "policy[-]making body" subject to the [OMA] if it makes any decisions on behalf

of, formulates recommendations that are binding in any legal or practical way on, or otherwise establishes policy for the public body. A public body may not evade its obligations under the [OMA] by delegating its responsibilities for making decisions and taking final action to a committee.

p. 9 (8th ed. 2015) <http://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>.

{76} In *Paragon Foundation, Inc.*, this Court considered whether the acts of an individual on behalf of a public agency were subject to the OMA. 2006-NMCA-004, ¶¶ 2-3. After a federal district court ordered the plaintiffs to remove their livestock from United States Forest Services land, the Forest Service and the executive director of the New Mexico Livestock Board (Board) entered into a memorandum of understanding (MOU) governing how the livestock would be removed. *Id.* The plaintiffs filed suit, alleging that the MOU violated the OMA because "no public meeting of the Board was held and a majority of the Board did not approve or authorize the MOU before the MOU was executed by" the executive director. *Id.* ¶ 4. The Board moved for summary judgment on the ground that the MOU was not voted on or executed by a quorum of the Board and that, because the Board did not so act, the OMA did not apply. *Id.* ¶ 5. The district court granted the motion for summary judgment. *Id.* ¶ 7.

⁸Given our resolution of the delegation issue we could perhaps avoid discussion of the OMA issues. We have determined to give the OMA issues full consideration because they are squarely presented and because it is important to fill out our OMA law as it applies to policy-making subcommittees of public entities.

⁹We note that there is nothing in the statutes governing NMSIC explicitly indicating that it has the authority to settle litigation either. Compare NMSA 1978, §§ 6-8-1 to -24 (1957, as amended through 2015), with NMSA 1978, § 58-24-5(A) (1983) (stating that the Industrial and Agricultural Finance Authority "shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Industrial and Agricultural Finance Authority Act, including, . . . the power . . . to sue and be sued"), and NMSA 1978, § 72-14-21 (1955) (stating that the Interstate Stream Commission "shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this state or any other state, any actions, suits and special proceedings necessary to enable it to acquire, own and hold title to lands for dam sites," and other sites), and NMSA 1978, § 36-1-19(B) (1985) (stating that "a board of county commissioners may contract with private counsel for legal assistance to or representation of the county" and that "[s]uch private counsel shall have the same powers of compromise, satisfaction or release in civil proceedings as are held by district attorneys"). NMSIC states in its brief that the power to settle litigation is vested in the Attorney General and that the Attorney General delegated such power to NMSIC or to NMSIC's counsel, but conceded at oral argument that the record does not reflect such delegation. See § 36-1-19 and NMSA 1978, § 36-1-22 (1875-1876) (stating that the Attorney General represents the state and that the Attorney General has the authority to settle matters involving the state). Moreover, the settlement agreements were signed by members of the Litigation Committee or the Governor, not the New Mexico Attorney General's Office or NMSIC counsel. Other than this brief statement, both parties predicate their arguments on the assumption that NMSIC has settlement authority. We therefore do not address this issue further and assume for the purposes of this opinion that NMSIC had authority to settle with the defendants. *In re Doe*, 1982-NMSC-099, ¶ 3, 98 N.M. 540, 650 P.2d 824 (stating that "courts risk overlooking important facts or legal considerations when they take it upon themselves to raise, argue, and decide legal questions overlooked by the lawyers who tailor the case to fit within their legal theories." (alteration, internal quotation marks, and citation omitted)).

{77} On appeal, we affirmed. Relying on Section 10-15-1(B), quoted above, we held that “[u]nder the law, if a quorum of the Board members did not act on the MOU, the OMA was inapplicable, there was no OMA violation, and summary judgment was proper.” *Paragon Found., Inc.*, 2006-NMCA-004, ¶¶ 12, 13. We also noted that the executive director’s “largely unilateral action [in signing the MOU was] non-binding and meaningless, as he can only act pursuant to those powers delineated in the Code.” *Id.* ¶ 24.

{78} Importantly, we noted that the executive director “did not have the authority or approval of the Board to enter into the MOU” and that the “MOU was not approved or authorized by a quorum of the Board in public or private meetings.” *Id.* ¶¶ 15, 16. We repeatedly reiterated the fact that members of the Board had limited or no knowledge of the MOU before it was signed, and that some members were “surprised” when presented with it after its execution. *Id.* ¶¶ 17-22. These facts clearly distinguish *Paragon Foundation, Inc.* from the present matter. Unlike in that case, here, NMSIC unanimously approved the Settlement Policy, purportedly giving the Litigation Committee authority to act on its behalf. See Signed Minutes, pg. 5-7, NMSIC Meeting June 26, 2012, available at http://www.sic.state.nm.us/uploads/Fil_eLinks/39153cc7c39a496c823e7a6fdb7dad6/6_26_12_SIC_SIGNED_MINUTES.pdf. It is clear that NMSIC fully endorsed the actions of the Litigation Committee and intended it to take action that would be subject to the OMA if acted on by the full NMSIC.

c. Litigation Committee Actions Were Subject to the OMA

{79} Having determined that the Litigation Committee was a body subject to the OMA, we turn to whether the Litigation Committee’s actions were subject to the OMA. NMSIC relies on *Board of County Commissioners v. Ogden* to argue that the Litigation Committee’s approval of the settlements falls within an exception to the OMA. 1994-NMCA-010, 117 N.M. 181, 870 P.2d 143. The focus of the *Ogden* opinion is on construction of Section 10-15-1(H)(7) (the litigation exception),¹⁰ which states that “meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant” are not subject to the OMA. *Ogden*,

1994-NMCA-010, ¶ 13. There, the issue was whether the “threatened or pending litigation” exception included the Board of Commissioners’ decision to sue the defendants. *Id.* The Court concluded “that ‘pending’ or ‘threatened’ litigation can include litigation that the public body may initiate and legal disputes that have not yet reached the courts” and that “under [this exception], [the Board of Commissioners] could properly discuss and decide to file suit against [the d]efendants in a closed session.” *Id.* ¶¶ 15-16.

{80} More pertinent to our purposes is the Court’s rejection of the argument that “even if [the Board of Commissioners was] allowed to obtain legal advice in closed session, [it] was required to make its decision to sue [the d]efendants in an open meeting.” *Id.* ¶ 17. We reasoned that, unlike some of the other exceptions, the litigation exception “does not require that a decision regarding litigation be made in an open meeting.” *Id.*; see, e.g., § 10-15-1(H)(6) (actual approval of certain purchases must be made in open meeting).

{81} Amici argue that the holding in *Ogden* has been overruled by the *Board of Commissioners of Doña Ana County v. Las Cruces Sun-News*, in which this Court stated that “settlement agreements entered into between parties are outside the privilege” addressed by the litigation exception. 2003-NMCA-102, ¶ 25, 134 N.M. 283, 76 P.3d 36, overruled on other grounds by *Republican Party of N.M. v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, ¶ 16, 283 P.3d 853. But the focus of that case was on whether executed settlement agreements involving a public entity were subject to public disclosure under the IPRA. *Id.* ¶¶ 1, 25. The holding that settlement agreements are disclosable under the IPRA does not contradict the *Ogden* holding that the decision to settle may be made in a closed meeting. Based on *Ogden*, we conclude that the district court did not err in holding that the OMA was not violated by the Litigation Committee’s approval of the settlement agreements in private meetings.

{82} However, the district court’s analysis did not go far enough because other provisions of the OMA were violated. For instance, Section 10-15-1(I)(1) states that if [the decision to hold a closed session is] made in an open meeting, [it] shall be approved by a majority vote of a quorum of the policy[-]making body; the

authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes.

{83} Section 10-15-1(I)(2) provides that when the decision to hold a closed session is not made in a public meeting, “the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.” Finally, Section 10-15-1(J) states that

the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body . . . as part of the minutes.

{84} The parties do not direct us to evidence in the record that NMSIC and the Litigation Committee complied with these requirements. Thus, these provisions of the OMA were violated and the Litigation Committee’s approval of the settlement agreements was invalid.

d. May 2015 Meeting Cured OMA Violations

{85} The final question is whether the settlement agreements became valid when nine of the eleven members of NMSIC voted to approve them in May 2015. Assuming NMSIC has the power to enter into such agreements, we conclude that the May 2015 vote rectified the delegation issue.

{86} We also conclude that the May 2015 meeting cured the OMA violations. “[P]rocedural defects in [compliance with the OMA] may be cured by taking prompt corrective action.” *Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 30, 107 N.M. 38, 751 P.2d 722. Previous cases have affirmed the cure of the OMA violations where the curing actions were

¹⁰At the time of the *Ogden* decision, the litigation exception was Section 10-15-1(E)(5).

taken four days later, *see id.* ¶ 15, and eleven months later. *See Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 1, 270 P.3d 1281, *rev'd on other grounds by*, 2013-NMSC-029, 306 P.3d 447. Here, the curing meeting occurred thirty months after the first settlement was approved by the Litigation Committee. Although thirty months stretches the bounds of “prompt” remedial action as contemplated in *Kleinberg*, we conclude that it was sufficient to remedy the Litigation Committee’s improper action because “the legislature did not intend to unduly burden the appropriate exercise of governmental decision-making and ability to act.” 1988-NMCA-014, ¶ 31. “To rule otherwise would improperly elevate form over substance” and wreak havoc on a process already fraught with complexity. *Id.* Most importantly, the May 2015 meeting was preceded by proper notice to the public, included a public agenda and was open to the public, NMSIC members publicly voted on the settlements, and minutes of the meeting were published online. *See* <http://www.sic.state.nm.us/state-investment-council.aspx> (providing access to NMSIC meeting calendar, and agendas and minutes of NMSIC meetings) (last visited Mar. 17, 2016). The purpose of the OMA was thus achieved by this public meeting. *See Kleinberg*, 1988-NMCA-014, ¶ 31 (concluding that an OMA violation was cured where “[t]he local board, in affording [the plaintiff] a full and fair hearing in compliance with due process guarantees, and ultimately, in taking a public vote and openly announcing its decision in a forum where the interested public could observe the action, carried out the intent and purpose of the [OMA]”).

{87} We recognize that our holding could be seen as stretching the notion of prompt remedial action beyond the breaking point, effectively giving license to public agencies to flout OMA standards without penalty. We caution strongly against any such reading and emphasize that our decision to not invalidate the settlements is driven by the fact that they were subjected to reasonable and appropriate review by the district court. That independent review—which we have approved—provides us assurance that the public fisc has been protected. Without the presence of judicial review we would not be tolerant of the delay seen here. In addition, we are confident that our ruling as to the reach and effect of the OMA in situations such as we review here will result in suitable caution by public agencies of all stripes.

To the extent public agencies fail to meet their obligations under the OMA, the public—including Amici—will have strong authority to enforce compliance.

{88} We also emphasize that the ratification of the settlements at the May 2015 meeting does not operate retroactively to make the settlement agreements valid as of the date they were originally signed. *See Palenick*, 2012-NMCA-018, ¶ 9 (stating that “no authority in New Mexico supports the [defendant’s] attempt to retroactively make the prior invalid action valid and effective as of the date it was taken”). The settlement agreements became valid only at the May 2015 meeting.

{89} Given this holding, the district court considered and approved settlements that were void at the time. The question arises whether this requires that the entire matter be remanded for reconsideration. We conclude that remand for what would be a hearing of form only is not in the best interests of the public, the courts, or the parties. The district court approved the settlements on their merits. We have found no error in its process or final decision, with the exception of the delegation and the OMA issues. These issues do not speak to the merits of the settlements. Requiring reconsideration of the substance of the settlements would serve no purpose at this point.

e. No IPRA Violation Shown by Appellants

{90} Finally, in the course of their arguments, Appellants also make several references to violations of the IPRA and argue that the settlement agreements were “kept secret for months.” The district court concluded that “[t]here is no evidence of any attempt to shield these settlements from the IPRA. Moreover, the [s]ettlement [a]greements have been publicly filed in this action and the [district c]ourt has held a public hearing about them.” We agree with the district court. The IPRA provides for public access to records; it does not require public entities to provide records in the absence of a request for them. *See* NMSA 1978, § 14-2-8(A) (2009) (stating the procedures for requesting public records). On appeal, Appellants do not argue that they requested records from NMSIC and were denied. *See* NMSA 1978, § 14-2-12(A)(2) (1993) (stating that “[a]n action to enforce the [IPRA] may be brought by . . . a person whose written request has been denied”). Appellants have failed to demonstrate that the IPRA was violated here.

{91} In sum, the Litigation Committee did not have the authority to settle with Defendants here and we reverse the district court’s conclusion to the contrary. We also hold that the Litigation Committee meetings violated the OMA’s notice and documentation requirements. However, the settlement agreements were validated when they were approved by NMSIC in an open meeting in May 2015. We affirm the district court’s conclusion that Appellants have not shown a violation of the IPRA.

3. The District Court did not Err in Denying Appellants’ Motion to Disqualify the Attorney General’s Office

{92} Finally, Appellants argue that the district court erred in dismissing their motion to disqualify former Attorney General, Gary King, for conflicts of interest involving representation by his office of NMSIC. They maintain that the district court erroneously ruled that they lacked standing to raise these issues. In fact, the district court rejected Appellants’ motion on its merits as to two of their three allegations.

{93} As to the third allegation, the district court ruled that Appellants lacked standing to move for disqualification of the Attorney General’s office based on the fact that a member of that office had served as counsel to NMSIC. Generally speaking, “only a current or former client has standing to move for disqualification of counsel based on an alleged conflict of interest.” Eric C. Surette, Annotation, *Standing of Person, Other than Former Client, to Seek Disqualification of Attorney in Civil Action*, 72 A.L.R. 6th 563 § 2 (2012); *cf. Sanchez v. Siemens Transmission Sys.*, 1991-NMCA-028, ¶ 36, 112 N.M. 236, 814 P.2d 104 (stating that “[t]o the extent that employer[respondent] attempts to raise [a conflict of interest between the petitioner and her attorney] on claimant’s[/petitioner’s] behalf, however, we fail to see how employer has standing”), *rev'd in part on other grounds by*, 1991-NMSC-093, 112 N.M. 533, 817 P.2d 726. However, a nonclient party may have standing to move for disqualification when “the nonclient establishes that the conflict prejudices or injures the nonclient’s own rights.” Surette, *supra*, at § 2; *cf. Evink v. Pekin Ins. Co.*, 460 N.E.2d 1211, 1214 (Ill. App. Ct. 1984) (stating that the “plaintiffs would have no standing to challenge [the] defense counsel’s ability to represent [two defendants] without some showing that this representation adversely affects their interests”).

{94} Here, the district court held a hearing on Appellants' motion to disqualify. After the hearing, it concluded that Appellants did not have standing to challenge a conflict of interest between the Attorney General's office and NMSIC. We infer from this ruling that the district court determined that Appellants failed to demonstrate that their interests were sufficiently adversely affected by the alleged conflict of interest to overcome the general rule. Neither a transcript of the hearing nor a CD recording of it is in the record on appeal. In the absence of a transcript or CD, we presume the district court's ruling is supported by the evidence. *Michaluk v.*

Burke, 1987-NMCA-044, ¶ 25, 105 N.M. 670, 735 P.2d 1176 ("Where the record on appeal is incomplete, the ruling of the trial court is presumed to be supported by the evidence."); see *Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 65, 146 N.M. 853, 215 P.3d 791 ("It is the duty of the appellant to provide a record adequate to review the issues on appeal."). We conclude that the district court did not err in denying Appellants' motion.

CONCLUSION

{95} Although we reverse the district court's ruling as to the delegation of settlement authority to NMSIC's Litiga-

tion Committee and its conclusion that the OMA was not violated, we conclude that the settlements are now valid because they have been approved by NMSIC at a public meeting. We discern no error in the district court's other rulings. We therefore affirm the district court's approval of the settlements with the Weinstein, Meyer, and Broidy Defendants.

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

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

M. MONICA ZAMORA, Judge



Doughty, Alcaraz & deGraauw
Attorneys at Law



Doughty, Alcaraz and deGraauw
are pleased to announce the
addition of Associate Attorneys
Philip B. Huntteman and Gina V. Downes.

Congratulations and welcome to the team!



20 First Plaza NW, Suite 412, Albuquerque, NM 87102
505-242-7070 • dadglaw.com

Ignite Referrals with ARAG®



- ✓ Gain clients from ARAG's more than one million plan members
- ✓ Increase your visibility for no fee or subscription charges
- ✓ Work with clients who want an ongoing relationship

ARAG® is a leading Legal Plan Administrator. ARAG believes every American should have affordable access to legal help and provides attorneys access to gain free referrals, increased visibility for their firm and an opportunity to build more meaningful client relationships.

Learn more: ARAGlegal.com/attorneysSF2 or call 866-272-4529, ext. 3

JOIN US FOR OUR
Open House!
 November 4th

We invite you to come and see why our families love Sunset Mesa!
 Join us for an introduction and tour of our school. Preschool will meet on our South Campus and K-5 on our North Campus.

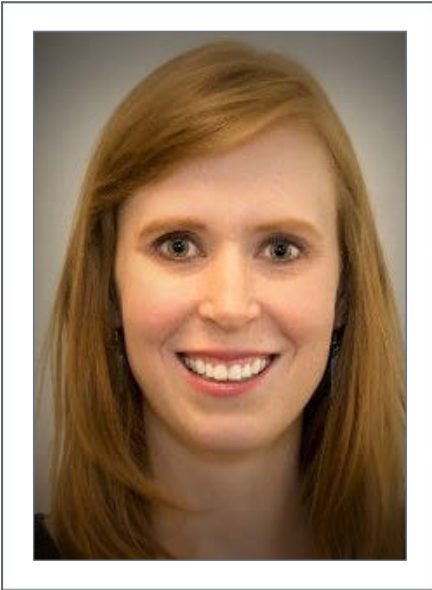
Excellence in Preschool & K-5 Education Since 1948

8:45AM - REGISTRATION
 9:00AM - INFORMATION SESSION
 9:30AM - CAMPUS TOURS

505-298-7626
sunset-mesa.com

Sunset Mesa School

NORTH CAMPUS • K-5: 3020 MORRIS NE 87111 SOUTH CAMPUS • PRESCHOOL: 2900 MORRIS NE 87112



SUTIN, THAYER & BROWNE
 WELCOMES

**JACQUELINE K.
 KAFKA**

MS. KAFKA PRACTICES PRIMARILY
 IN THE AREA OF COMMERCIAL LITIGATION

SUTIN
 THAYER &
 BROWNE
 LAWYERS

TWO PARK SQUARE | 6565 AMERICAS PARKWAY NE
 ALBUQUERQUE, NEW MEXICO 87110 | 505-883-2500

▼

317 PASEO DE PERALTA
 SANTA FE, NEW MEXICO 87501 | 505-988-5521



Zia Trust, Inc.

The Advisors' Trust Company[®]

Independent Fiduciary Serving All Kinds of Appointments



John Attwood
Vice President & Business Development

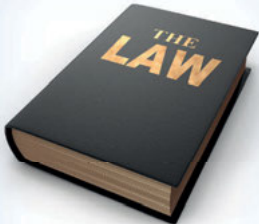
- Personal Injury Settlement Trust
- Special Needs Trusts
- Conservatorships

We work alongside your client's investment advisor

505.881.3338 | www.ziatrust.com

6301 Indian School Rd. NE Suite 800, Albuquerque, NM 87110

You spent years preparing
for the Bar Exam...



Luckily, you could save right now with
GEICO'S SPECIAL DISCOUNT.

Years of preparation come down to a couple days of testing and anxiety. Fortunately, there's no studying required to save with a special discount from GEICO just for being a member of State Bar of New Mexico. Let your professional status help you save some money.

Get a free quote.

GEICO
1-800-368-2734

geico.com/bar/SBNM

**MENTION YOUR STATE BAR OF NEW MEXICO
MEMBERSHIP TO SAVE EVEN MORE.**

Some discounts, coverages, payment plans and features are not available in all states or in all GEICO companies. See geico.com for more details. GEICO and Affiliates, Washington DC 20076. GEICO Gecko image © 1999-2012. © 2012 GEICO.



Specializing in Serving Attorneys and Law Firms

- No Fee Business Checking Accounts
- Business VISA Credit Cards
- Law Office Construction Loans
- Lines of Credit
- IOLTAs

Tommy F.,
Member Since 2003



Visit useaglefcu.org
Call 888-342-8766

ALBUQUERQUE • BERNALILLO • FARMINGTON • SANTA FE

The Law Office of George "Dave" Giddens is now:

Bankruptcy
Creditor's Rights



GIDDENS|GATTON|JACOBUS|P.C.

Personal Injury
Employment Law
Business Law
Real Estate Law

EXPERTISE WITH *Compassion.*

Christopher M. Gatton

Jesse Jacobus

George "Dave" Giddens

505.271.1053
www.GiddensLaw.com



10400 Academy Rd NE. | Suite 350 | Albuquerque, NM 87111

Grow your law firm.

State Bar of New Mexico
members receive an exclusive
10% lifetime discount.

Sign up today at
landing.goclio.com/nmbar



State Bar Center



*Your Meeting
Destination*

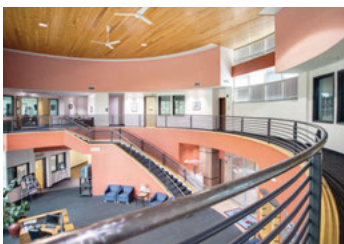


- Multi-media auditorium
- Board room
- Small to medium conference rooms
- Classrooms
- Reception area
- Ample parking
- Free Wi-Fi

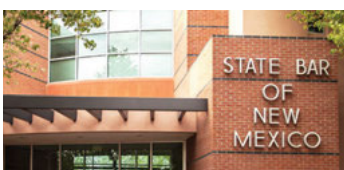


5121 Masthead NE
Albuquerque, NM 87109

Conveniently located in Journal Center



Hold your conference, seminar, training, mediation, reception, networking social or meeting at the State Bar Center.



For more information, site visits and reservations, contact 505-797-6000, cwebb@nmbar.org, or awatson@nmbar.org.



Bill Chesnut, MD

Orthopedic Surgeon, Retired



Expert Medical Witness
Medical Record Review
and IMEs

<http://billchesnutmd.com/>
BillChesnutMD@comcast.net
505-501-7556

A Civilized Approach to Civil Mediation...

- Creating a safe and respectful environment for parties
- Facilitating communication and promoting understanding
- Focusing parties on prioritizing their interests and options
- Helping parties assess the strengths and weaknesses of their positions
- Assisting parties evaluate likely outcomes in Court if they cannot reach settlement
- Vigorous reality testing
- Creativity

Karen S. Mendenhall

The Mendenhall Firm, P.C.

(505) 243-3357

KarenM@Mendenhallfirm.com

Anita A. Kelly

RN, MEd, CRC, CDMS, CCM, CLCP



Life Care Planner
Medical Care Manager

New Frontiers, Inc.

505.369.9309

www.newfrontiers-nm.org



THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS

AMERICA'S PREMIER CIVIL MEDIATORS & ARBITRATORS PROFILED ONLINE

CHECK AVAILABLE DATES FOR NEW MEXICO'S TOP ADR PROFESSIONALS AT

www.NMMEDIATORS.ORG

PROUD PARTNER TO THE NATIONAL
DEFENSE & PLAINTIFF BAR ASSOCIATIONS

Walter M. Drew

Construction Defects Expert

40 years of experience

*Construction-quality disputes
between owners/contractors/
architects, slip and fall, building
inspections, code compliance,
cost to repair, standard of care*

(505) 982-9797

waltermdrew@gmail.com

SETTLE NOW

Louis M. Druxman
Attorney

MEDIATION

SETTLEMENT FACILITATION

505.821.8155

Lmdmediator@comcast.net

Caren I. Friedman
APPELLATE SPECIALIST

505/466-6418
cf@appellatecounsel.info

David Stotts
Attorney at Law

Business Litigation
Real Estate Litigation

242-1933

JANE YOHALEM
Appeals Specialist

(505) 988-2826 • jbyohalem@gmail.com

No need for another associate
Bespoke lawyering for a new millennium
THE BEZPALKO LAW FIRM
Legal Research and Writing
(505) 341-9353
www.bezpalkolawfirm.com

Classified

Positions

Associate Attorney

The Law Office of Robert F. Turner is receiving applications for an associate attorney position to practice in the areas of Criminal matters, some civil and domestic matters. Strong academic credential, and research and writing skills are required. We offer a great work environment and opportunities for future growth. Office is located in Deming, NM. Telephone Number 575-544-4306. Please send your cover letter and resume to smvturnerlaw@qwestoffice.net

Request for Proposals to Provide Legal Services

The New Mexico Medical Insurance Pool (NMMIP) is seeking proposals to provide legal services and representation as General Counsel. NMMIP is a non-profit entity legislatively created in 1986 to provide access to health insurance coverage to all residents of New Mexico who are denied adequate health insurance. With the implementation of the Affordable Care Act, current activities also include transitioning existing members to other coverage. The selected Offeror will be responsible for interpretation of federal and state statutes and appropriate representation in administrative and judicial proceedings regarding NMMIP program and operations. Required services include: attendance at all Board and relevant Committee meetings; representing NMMIP's interest in federal and state lawsuits, audits and evaluations; procurement and contract negotiations; and any other legal matters regarding NMMIP operations. Minimum of five years experience is required and experience in health insurance is strongly desired. Proposal information can be accessed at www.nmmip.org.

Contract Attorney

Nonprofit children's legal services agency seeks contract attorneys to represent children in Abuse and Neglect cases in the Second Judicial District. Demonstrated interest in working on behalf of children and youth required. Excellent interpersonal skills, writing skills, attention to detail, and ability to multi-task are required. No minimum case load required. Training and mentoring provided as necessary. Persons of color, LGBTQ individuals, veterans, persons with disabilities, and persons from other underrepresented groups are encouraged to apply. No telephone calls please. Submit resume with cover letter to bette@pegasuslaw.org.

Wanted for Immediate Hire a Bilingual (Spanish/English) Associate!

Our busy Albuquerque workers' compensation and personal injury firm seeks a junior associate to assist senior attorneys and paralegals with: Assisting with discovery requests, depositions, hearings and mediations; Researching and drafting motions, pleadings, memoranda of law and other legal documents; Covering hearings, depositions and mediations; Communicating and meeting with clients; Related duties. Excellent opportunity to grow for the right person! Requirements: You must be a member of the New Mexico Bar; You must be Spanish/English bilingual; You must be enthusiastic; You must be a reliable team player that is willing to learn; You must be client-driven and highly motivated. Benefits offered include medical, dental, vision and life insurance, as well as 401k, paid firm holidays and paid time off. Compensation commensurate with experience. Please send resume to jobs@mslfirm.com

Immigration Attorney

Mary Ann Romero & Associates is dedicated to providing exceptional immigration legal services in Albuquerque, New Mexico. We are seeking a motivated, experienced bilingual (Spanish/English) immigration attorney to join our team. Primary duties include providing advice, representation and case management in family, employment and deportation immigration cases. Must be knowledgeable in preparing and submitting applications, motions and appeals in administrative law remedies. This position requires the candidate to have advanced legal research and writing skills, ability to identify and handle complex legal issues, demonstrate accuracy and attention to detail, have strong organizational skills, be able to work under pressure and handle multiple deadlines effectively, can act both independently and as part of a team while exercising sound judgement and have strong advocacy skills. **QUALIFICATIONS:** JD from ABA certified law school, Admission to any State bar, Minimum 1-year experience working with immigrant community. Oral & Written fluency in English & Spanish. Please email cover letter & resume to mar@marausa.net

Attorney

The Fifth Judicial District Attorney's office has an immediate position open to a new or experienced attorney. Salary will be based upon the District Attorney Personnel and Compensation Plan with starting salary range of an Associate Trial Attorney to a Senior Trial Attorney (\$41,685.00 to \$72,575.00). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to DLuce@da.state.nm.us.

DDPC Office of Guardianship Contract Attorneys Needed

Developmental Disabilities Planning Council/Office of Guardianship, a state agency provides free legal services pursuant to the Uniform Probate Code for low-income adult New Mexicans alleged to be incapacitated and unable to make decisions regarding their medical and personal care. The Office of Guardianship is seeking to contract with attorneys to serve as both petitioning attorneys and court-appointed guardian ad litem. These attorneys play an important role in assisting vulnerable adults whose intellectual or developmental disabilities, mental illness or whose capacity warrants protection. Attorneys obtain valuable experience in adult guardianship proceedings and great satisfaction in helping others. The Office of Guardianship provides training and mentorship to interested attorneys. Submit letters of interest and résumés to Maria Bourassa, Manager, at maria.bourassa@state.nm.us or DDPC Office of Guardianship, 625 Silver Avenue SW, Suite 100, Albuquerque NM 87102.

Immigration Staff Attorney

New Mexico Immigrant Law Center is a social justice organization that advances equity and justice for low-income immigrants through collaborative legal services, advocacy, and education. NMILC is seeking a staff attorney for our Albuquerque office who will primarily serve survivors of domestic violence, trafficking, and other serious crimes in applying for immigration benefits before USCIS and the Immigration Court. This position will also require public speaking and leading trainings and workshops for community partner organizations and members. The attorney must be bilingual (Spanish-English). This position requires NMILC offers a competitive nonprofit salary and generous benefits. For more information, see nmilc.org/get-involved/opportunities/. Please send your resume and a cover letter to jobs@nmilc.org.

Attorney

Allen, Shepherd, Lewis & Syra, P.A. is seeking a New Mexico licensed attorney with 0-5 years of litigation experience. Experience in worker's compensation, construction defects, professional malpractice or personal injury preferred. Candidates considered for a position must have excellent oral and written communication skills. Available position is considered regular and full time. Please send resume with cover letter, unofficial transcript, and writing sample to HR@allenlawnm.org or Allen, Shepherd, Lewis & Syra, P.A. Attn: Human Resources, PO Box 94750, Albuquerque, NM 87199-4750. All replies will be kept confidential. EEO.

Associate Attorney

Gorence & Oliveros, P.C. is seeking an associate attorney to join the firm. Must have impeccable research and writing skills and excellent credentials. Three (3) years of experience is required. This is not a litigation position. Competitive salary and benefits. Please submit a cover letter, resume, references and at least one writing sample directed to the Hiring Partner via email only to al@golaw.us.

Legal Assistant or Secretary

Domenici Law Firm, PC seeks an experienced legal assistant/secretary to work part-time to perform secretarial, administrative and legal work. The position requires excellent communication, organizational, scheduling, transcribing, and computer skills. Please send a letter of interest and resume by fax to 505-884-3424 Attn: Tammy Culp, or by e-mail to tculp@domicilaw.com

Legal Secretary/Assistant

Well established civil litigation firm seeking Legal Secretary/Assistant with minimum 3- 5 years' experience, including knowledge of local court rules and filing procedures. Excellent clerical, organizational, computer & word processing skills required. Fast-paced, friendly environment. Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to: e_info@abrfirm.com

Experienced Paralegal

Domestic Relations firm seeking an experienced paralegal. Salary compensable based on work experience. Applicant must be able to multitask and work Odyssey efficiently. Please email all applications to staff@jgentrylaw.com

Part Time Admin Assistant

Houser & Allison, APC seeks Part Time Admin Assistant. 15-20 hours per week/flexible schedule. \$12-\$15 per hour - DOE. Proficient in Microsoft Word, Excel, Outlook. Ability to type 40 WPM. Email resume to: sclere@houser-law.com

Experienced Paralegal

F/T experienced paralegal needed for fast paced family law office. Excellent computer skills, ability to multitask and being a good team player are all required. Pay DOE. Fax resume: 242-3125 or mail: Law Offices of Lynda Latta, 715 Tijeras NW, 87102 or email: holly@lyndalatta.com No calls.

Positions Wanted

Legal Assistant/Paralegal Seeks FT Employment

9 yrs. exp., P/I, Ins. Def., W/C, Gen./Civil Litigation, Transcription, Type 60 wpm, Draft Corres., Basic Pldgs., Proofrdg., Formatting, Odyssey-CM/ECF-WCA, Cust. Svc., Client Interaction/Communication, Prepare/Answer Discovery, Med. Rcrd/Bill Requests and F/U, Notary. Word-Excel-Outlook- Email, Calendar/File Maintenance, A/R, A/P. Passionate, Hard-Working, Attn./Detail, Punctual, Quick Study, Profssnl. Able to start in 2 weeks. For Resume, Salary Expectations and References, please contact LegalAssistant0425@yahoo.com.

Services

Briefs, Research, Appeals— Leave the writing to me.

Experienced, effective, reasonable. cindi.pearlman@gmail.com; (505) 281 6797

Experienced Santa Fe Paralegal

Civil paralegal with over 20 years' experience available for part-time work in Santa Fe. For resume and references: santafeparalegal@aol.com.

Attention Foreclosure Attorneys:

Experienced Court Appointed Receiver. Responsible for Assets up to \$16 Million. Hotels, Offices, Apartments, Retail. Attorney References Available. Larry Levy 505.263.3383

BAR
BULLETIN

Official Publication of the State Bar of New Mexico

SUBMISSION DEADLINES

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

For more advertising information, contact: Marcia C. Ulbarri at 505-797-6058 or email mulbarri@nmbar.org

Office Space

Perfect for Law Office

I-25 corridor location in professional office plaza, 15 minutes from courthouses. 1,400 square feet. \$1,000/month, utilities included. Call Dan at 830-0405.

620 Roma N.W.

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

Nob Hill Offices

For Lease. Available January 2017. Terrific Nob Hill Offices on Campus NE in the heart of Nob Hill. 2100 Sq. Feet. Flexible floorplan w/ large private offices, conf. rms. & 3 baths. 12 off street parking spaces. Modern electrical service, dual zone heating. Refrig. A/C. \$2650.00/mo. & Utilities. Min. 1 year lease. This building has been home to several successful law practices. Call Linda at 507-2459 to make yours the next one

Downtown Office Building for Rent

Charming converted casa located in beautiful cul-de-sac of professional offices. 1001 Luna Circle: 1500 sq. ft., attached parking lot, handicap accessible, walking distance from District Court. \$1800/month. Call Ken at 238-0324

1516 San Pedro Drive NE (near Constitution)

Two updated office spaces for rent with work station. Rent includes utilities, fax, internet, janitorial service, copy machine, conference room, etc. Furnished as an option. Lots of parking and friendly environment. Rent is \$550 per month. Call 610-2700.

Miscellaneous

Will for Joe A. Branch Jr

Searching Will and Trust for Joe A. Branch Jr. deceased 8\13\16 in Espanola. Please call Joseph Branch (505) 440-3651.

**Bridge the Gap
Mentorship Program**

For more information and to apply,
go to www.nmbar.org

To learn more, contact Jill Yeagley
505-797-6003, or email
bridgethegap@nmbar.org

**STATE BAR
of NEW MEXICO**



DPC

Digital Print Center

Quality, **full-color** printing.
Local service with fast turnaround.



Business Cards • Letterhead • Envelopes • Booklets
Brochures • Calendars • Greeting Cards • Invitations • and much more!

For more information, contact Marcia Ulibarri at
505-797-6058 or mulibarri@nmba.org



**Disability Income Insurance
for the Legal Community**

Get the coverage you need
before you need it.

Lost income due to a disability resulting
from sickness or injury could be devastating.

**Protect yourself with disability
income insurance.**



**Short Term/Long Term
Personal • Business • Group**

Also available: Life Insurance, Key Person Insurance and Long Term Care Insurance.

**THE
EDWARD GROUP LLC**
INSURANCE & REAL ESTATE

Contact the
Edward Group for a
free consultation.

**jbedward@edwardgroup.net
www.edwardgroup.net**

877-880-4041 • 505-242-5646

P.O. Box 26506 Albuquerque, NM 87125-6506

Licensed in NM #100009838 & 68944 • Plus Many Other States!