

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

November 9, 2016 • Volume 55, No. 45



Ode to Autumn, by Barbara Meikle (see page 3)

Barbara Meikle Fine Art

Inside This Issue

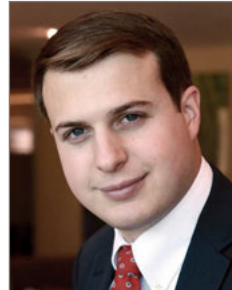
Board of Bar Commissioners 2016 Election Candidates.....	7	Rules/Orders: 2016 Year-End Rule Amendments.....	17
Disciplinary Quarterly Report: July 1–Sept. 30, 2016.....	10	From the New Mexico Court of Appeals	
Clerk's Certificates	15	2016-NMCA-070, No. 34,488: State v. Simpson.....	27

—SPECIAL INSERT—
CLE Planner

WELCOME TO OUR NEW ASSOCIATES



Robin James



Luke Holmen

Modrall Sperling is pleased to announce that Robin James and Luke Holmen have joined our firm's Albuquerque office.

Robin, a *cum laude* graduate of University of New Mexico School of Law, joins our Natural Resources Department, where her interests lie in energy and environmental law. As a law student, Robin was Managing Editor of the Natural Resources Journal, during which time she also earned her Natural Resources Certificate.

As a member of the firm's Litigation Department, Luke, a *magna cum laude* graduate from University of New Mexico School of Law, will practice in the areas of tort and insurance defense, products liability and employment law. Throughout his undergraduate and law school career, Luke served as a member of the New Mexico Air National Guard. He will serve as a member of the Judge Advocate General's Corps (JAG) concurrent with his position at Modrall Sperling.

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November 9, 2016, Vol. 55, No. 45

Table of Contents

Notices	4
Board of Bar Commissioners 2016 Election Candidates	7
Disciplinary Quarterly Report: July 1–Sept. 30, 2016	10
Continuing Legal Education Calendar	12
Court of Appeals Opinions List	14
Clerk's Certificates	15
Rules/Orders	
2016 Year-End Rule Amendments	17
Opinions	
From the New Mexico Court of Appeals	
2016-NMCA-070, No. 34,488: State v. Simpson	27
Advertising	33

Meetings

November

- 9**
Children's Law Section BOD
 Noon, Juvenile Justice Center
- 9**
Taxation Section BOD
 11 a.m., teleconference
- 10**
Elder Law Section BOD
 Noon, State Bar Center
- 10**
Public Law Section BOD
 Noon, Montgomery & Andrews, Santa Fe
- 15**
Solo and Small Firm Section BOD
 11 a.m., State Bar Center
- 15**
Committee on Women and the Legal Profession
 Noon, Modrall Spering, Albuquerque
- 16**
Real Property, Trust and Estate Section: Real Property Division
 Noon, State Bar Center
- 18**
Family Law Section BOD
 9 a.m., teleconference
- 18**
Business Law Section BOD
 4 p.m., teleconference

Workshops and Legal Clinics

November

- 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
- 15**
Cibola County Free Legal Clinic
 10 a.m.–2 p.m., 13th Judicial District Court, Grants, 505-287-8831
- 16**
Family Law Clinic
 10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

December

- 2**
Civil Legal Clinic
 10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

Cover Artist: Barbara Meikle is an artist who paints the simple world outside of her door in Tesuque, N.M. Meikle has been an artist from childhood, sketching the horses she loved and took care of in order to ride. True to her art, in college she earned a bachelor's degree in painting and printmaking at the University of Denver and studied watercolor at Cambridge University in England. Her dream was always to make her living as an artist and in 1990, she returned to New Mexico to pursue that dream. Meikle's art may project peace and harmony exemplified as a colorful burro or explode in the riot of energy of galloping horses. Enveloping skies of yellow, pink and white may hover over a majestic dark blue mountain that smolders with mystery, or stalks of prayerful flowers may reach for distant stars in an attitude of happy reverence. For more of her work, visit Barbara Meikle Fine Art in Santa Fe or www.meiklefineart.com.

Notices

COURT NEWS

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.

Second Judicial District Court Judicial Vacancy Nominees

The District Court Judicial Nominating Commission convened Oct. 31 in Albuquerque and completed its evaluation of five applicants for the vacancy on the Second Judicial District Court. The Commission recommends the following three applicants (in alphabetical order) to Gov. Susana Martinez: Jane Conway Levy, N. Lynn Perls and Elizabeth Rourke.

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

Professionalism Tip

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

I will be considerate of the time constraints and pressures imposed on lawyers by the demands of trial practice.

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.

13th Judicial District Court Closure Dates and New Courthouse Address

The 13th Judicial District Court in Grants will close to move to its new courthouse on Nov. 30, Dec. 1 and Dec. 2. The new courthouse will open for business on Dec. 5. The physical and mailing address of the new courthouse is 700 E. Roosevelt Ave, Suite 60, Grants, N.M. 87020. Telephone numbers will remain the same. During the three days the Court is closed, domestic violence and emergency filings will be accepted. Call Toinette Garcia, 505-240-2718, for assistance with filing. Contact Crystal Anson, 505-337-9151, with further questions.

Exhibit Destruction

The 13th Judicial District Court in Cibola County will destroy exhibits from the following cases listed below on Dec. 15. Parties involved in the cases listed below may retrieve the exhibits before the destruction date by appearing in person at the district court clerk's office in Grants. Call Court Manager Kathy Gallegos at 505-287-8831 ext. 3110 for more information. Below are the cases that will have exhibits destroyed: CR-1333-1985-00053 through CR-1333-2015-00233; JR-1333-1993-00021 through JR-1333-2015-00034; AP-1333-1991-00005 through AP-1333-2002-10; LR-1333-2003-1 through LR-1333-2015-00010; CV-1333-1982-00276 through CV-1333-2014-00228; DM-1333-1984-00150 through DM-1333-2015-00240; DV-1333-1999-00088 through DV-1333-2015-00128; PB-1333-1996-00022 through PB-1333-2015-00011; JQ-1333-1996-00015 through JQ-1333-2015-00001; PQ-1333-2004-00006 through PQ-1333-

2015-00003; SA-1333-2004-00003 through SA-1333-015-00008; SQ-1333-1987-00006 through SQ-1333-2015-00011.

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.

STATE BAR NEWS

Attorney Support Groups

- 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.)
- Dec. 5, 5:30 p.m.
First United Methodist Church, 4th and

Lead SW, Albuquerque (group meets the first 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.

Business Law Section David Buchholtz Chosen as 2016 Business Lawyer of the Year

The Business Law Section will present the 2016 Business Lawyer of the Year Award to David Buchholtz at 4:45 p.m., Nov. 18, at the State Bar Center. The award presentation will follow the Section's annual CLE program (register at www.nmbar.org/CLE). Buchholtz practices with the Rodey Law Firm and focuses on government finance law, economic development and state tax incentive law, financial institutions law, government relations, securities law and corporate matters. The Section invites all to attend the award ceremony. For more information, contact Breanna Henley at bhenley@nmbar.org.

Solo and Small Firm Section November Luncheon Features Fred Nathan

The Solo and Small Firm Section's monthly series of provocative luncheon programs will continue Nov. 15 with Fred Nathan, director of the Santa Fe think tank ThinkNewMexico. He will discuss some of the prospects and implications of the recent special legislative session and the presidential election. On Jan. 17, 2017, Ron Taylor will share his lawyerly insights as a juror in a long murder trial. Both presentations will take place from noon-1 p.m. at the State Bar Center and

lunch is free. Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P. for either event.

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)

Natural Resources and Environmental Law Program Federal Lands Transfer and National Forests

Steven Hattenbach regional director of the U. S. Forest Service, will discuss and analyze the major legal arguments, case law and positions surrounding the current debate over ownership and administration of Federal-owned lands at 5:15 p.m., Nov. 15, in Room 2402 of the UNM School of Law. The presentation will focus from the context of the history and current status of National Forests in the Southwest. The program offers 1.0 G. and requires no pre-registration. The CLE and parking in Lot L are free of charge. Call Laura Burns, 505-277-3253 for more information. This program is held in cooperation with the State Bar Natural Resources, Energy and Environmental Law Section.

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. 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

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Women's Law Caucus Award Nominations

The Women's Law Caucus at the UNM School of Law seeks nominations for an outstanding woman in the New Mexico legal community to honor in the name of former Justice Mary Walters, who was the first woman appointed to the New Mexico Supreme Court. Those who want to make a nomination should submit the following information to [Lindsey Goodwin](mailto:goodwili@law.unm.edu) at goodwili@law.unm.edu by Nov. 30: 1) nominee's name, 2) nominee's firm organization/title, 3) why the nominee should receive the award, 4) if the nominator is willing to introduce the nominee should

she be chosen, and 5) any other relevant information.

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

American Bar Association Section of State and Local Government Law Fall CLE and Networking Conference

The American Bar Association Section of State and Local Government Law presents the 2016 Fall CLE and Networking Conference (10.5 G) on Nov. 17–20 in Phoenix, Ariz. Topics include cybersecurity, election dissection, energy on Indian lands, green building and sustainable development and more. Register online at <http://ambar.org/2016slgfall>.

First Judicial District Bar Association November Luncheon

Join the First Judicial District Bar Association for its next luncheon event at noon, Nov. 21, at the Santa Fe Hilton. Judge Sarah M. Singleton will discuss her experience as chief judge. She will be

joined by Director of Administrative Offices of the Courts Artie Pepin to discuss the judiciary budget and other matters affecting the First Judicial District Court. The cost of the luncheon is \$15. R.S.V.P. to David Pumarejo at djp@santafelawgroup.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, 1.0 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 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 Center for Civic Values Gene Franchini High School Mock Trial Competition Needs Judges

The Gene Franchini High School Mock Trial Competition needs judges. Registration is now open for judges and administration volunteers for the qualifier competition (Feb. 17–18, 2017) and state competition (March 17–18, 2017). Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. Sign up at www.civicvalues.org. For more information, contact Kristen Leeds at the Center for Civic Values at 505-764-9417 or kristen@civicvalues.org.

Voting in the 2016 election for the State Bar of New Mexico Board of Bar Commissioners will begin Nov. 10 and close at noon on Nov. 30. There are two open positions in the **Seventh Bar Commissioner District** (Catron, Dona Ana, Grant, Hidalgo, Luna, Sierra, Socorro and Torrance counties). Four candidates submitted nomination petitions for the two positions (see below), so there will be a contested election in that district. Voting will be conducted electronically (see details on page 9).

There were two open positions in the **First Bar Commissioner District** (Bernalillo County). Two nomination petitions were received from Joshua A. Allison and Carla C. Martinez, so they will be elected by acclamation.

There were two open positions in the **Third Bar Commissioner District** (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties). One nomination petition was received from Carolyn A. Wolf, so she will be elected by acclamation. The Board will appoint a member from that district to fill the other position at the January meeting. There was one open position in the **Fourth Bar Commissioner District** (Colfax, Guadalupe, Harding, Mora, San Miguel, Taos and Union counties). One nomination petition was received from Ernestina R. Cruz, so she will be elected by acclamation. There was one open position in the **Fifth Bar Commissioner District** (Chaves, Eddy, Lea, Lincoln and Otero counties). One nomination petition was received from Erinna M. Atkins, so she will be elected by acclamation.

Seventh Bar Commissioner District Candidates

Frank N. Chavez



Biography

Frank N. Chavez graduated from the UNM School of Law and began practicing in 1969. He began his career with the NM State Attorney General's office, and continued as an assistant city attorney and City Attorney for the City of Las Cruces. Frank joined Reeves Chavez Albers and Walker, and served as president of this firm for 22 years. He later formed a new law firm

Rosner and Chavez LLC. Frank has been a Martindale-Hubbell AV rated attorney since 1995. Frank has served: as a Bar examiner, on judicial selection panels for both the District Court and Court of Appeals, as a board member for the Code of Professional Conduct, as the Chairperson for the Code of Judicial Conduct, as a Commissioner for the Client Protection Fund, and as an arbitrator for the State Bar of New Mexico. His hobby is very long distance bicycle touring.

1. What do you believe is the mission of the State Bar? Do you think it is fulfilling that objective?

The mission of the State Bar is to facilitate and nurture the professional development of all New Mexico licensed attorneys. During my three years of serving as a Bar Commissioner I know that this is occurring with the extensive development of the published *Bar Bulletin*, Continuing Education, and creation of committees to assist the Supreme Court with the constant need to evolve all of its rules and regulations.

2. Give your perspective on any important issues that you believe the profession and State Bar should be addressing.

As a profession we need to take care of and assist our newest and youngest attorneys who many times are thrown into the profession with no mentorship or direction. The incubation program is helping, but there is more that needs to be done.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

Service on the Client Protection fund for over four years has been rewarding. As a committee member on the Code of Professional Conduct and the Code of Judicial conduct, and having conducted a fee arbitration for the State Bar my commitment is to continue to serve. After all so many have helped me along the way, and to them I say "thank you."

Mick I.R. Gutierrez



Biography

1980 law degree, four years legal aid in Las Cruces, Special Assistant AG two years, ADA Third Judicial DA's office four years, private law firm four years and twenty-one years DOJ. Wife, three daughters, five grandkids. Currently in Hawaii visiting grandkids. Make sure you vote, if not for me one of the others.

1. What do you believe is the mission of the State Bar? Do you think it is fulfilling that objective?

My personal cell is 575-386-2171 and my email: mickgutierrez@gmail.com. I will do my very best to respond within 24 hrs. of you contacting me. Now to answer the first question, mission: To represent all the members and where possible streamline and simplify administrative requirements.

2. Give your perspective on any important issues that you believe the profession and State Bar should be addressing.

A colleague mentioned to me that it would be so nice to Not have to pay \$1 per CLE credit, I agree. Gets back to answer #1,

streamline administrative requirements. Affirm we are spending the Bar dues and not being “penny wise, pound foolish.”

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

As most of you I assist in various functions, most recently Constitution week where I gave presentations to two fifth grade classes at a school about forty miles from my home, Chaparral. Do high school mock trial coaching. Former member of International Prosecutors Association, mock trial at law school in Jamaica and Ghana.

Robert Lara



Biography

Robert Lara is an Associate Attorney with Roybal-Mack and Cordova, P.C. and is a 2007 graduate from the University of New Mexico School of Law where he was honored with the Dean's Award for Service to the Law School Community. The State Bar of New Mexico recently recognized his work as a Staff Attorney for the Self Help Center at the 3rd Judicial District Court with

the 2016 Outstanding Legal Program of the Year. His legal practice focuses on administrative law, election law, and family law. He currently serves on the Board of Directors for the New Mexico Young Lawyers Division, the New Mexico Statewide Alumni Chapter of Phi Alpha Delta Law Fraternity, and is the Treasurer for the Democratic Party of New Mexico. When not in the office Robert can be found advocating for dachshund rights, peddling his bike in a triathlon, behind two turntables and a microphone.

1. What do you believe is the mission of the State Bar? Do you think it is fulfilling that objective?

The mission of the State Bar is to promote the development of the legal profession and its practitioners through public service and professional development. The State Bar is not fulfilling this mission outside of the Santa Fe/Albuquerque area. Upon moving to Las Cruces, I was struck by the lack of programming for our members and the public. While a majority of our membership works in the center of our state, the majority of the need for legal programs for the public and support for the profession is here. The State Bar needs to increase our efforts to promote ethics within our membership, increase continuing educational opportunities

for our members, and educate the public through pro-bono efforts about what we can offer New Mexico.

2. Give your perspective on any important issues that you believe the profession and State Bar should be addressing.

The administration of justice has been stunted by our state's financial situation. Everyone is being ordered to do more with less, and it is the public that suffers. The State Bar should address this issue on behalf of all of our members to ensure that the fundamental rights we advocate for on behalf of our clients are protected. The Bar must do more to help our legislators to understand the fundamental damage happening right now in light of the slashing of the budgets of our judiciary and law enforcement. The struggle to manage a court docket, find social services for our clients, or to get a setting is harming our clients and we can do more to help our state understand and address these issues.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I began my work on behalf of the State Bar in 2009 with the Equal Access to Justice Ball as a coordinator. Since 2009 I have served on the State Bar Young Lawyers Division Board of Directors. I organize public services projects such as Wills for Hero's, High School Essay Contest, Law School Mentorship Program and our annual meeting CLE, among many other programs. I am a member of the Board of Directors for the New Mexico Statewide Alumni chapter of Phi Alpha Delta. We are a professional co-educational fraternity dedicated to service to the law school, law students, the legal profession, and our community. In addition, I have served two terms as Treasurer for the New Mexico Hispanic Bar Association.

David Lutz



Biography

I was born in Las Cruces, New Mexico. I graduated from Oate High School. I attended college at Claremont McKenna College and law school at Cornell Law School. I have practiced law with my father at our firm, currently Martin & Lutz, P.C., since 2004 here in Las Cruces. Our practice covers a wide variety of legal areas in both civil and family law. I have appeared

and practice regularly in the Third, Sixth, and Seventh Judicial Districts. When I am not working, I enjoy playing soccer and going with my family to cultural and/or sporting events at New Mexico State University.

1. What do you believe is the mission of the State Bar? Do you think it is fulfilling that objective?

I believe the mission of the State Bar should include both internal and external functions. Internally, the State Bar should serve and improve the legal infrastructure that governs the profession here in New Mexico. Externally, the State Bar serves an essential two-way function as both a mechanism to provide a voice for the profession to the general public and as a receptacle for feedback from the public regarding questions, information and concerns about the profession and the legal system in general. I believe the State Bar does a good job in both of these areas and that the current staff and Board of Bar Commissioners is working hard to maintain and improve the legal system. I would like to assist in those efforts.

2. Give your perspective on any important issues that you believe the profession and State Bar should be addressing.

The current budget challenges in New Mexico have dominated headlines and create concern to ensure the judiciary is properly funded and the legal system has the resources to operate smoothly. The State Bar has an important role to play in terms of public outreach on this issue, but the State Bar must also strive to be

realistic on what can actually be achieved and focus its efforts accordingly. The State Bar should also continue its commitment to member services particularly as overhead costs continue to increase for small firms and solo practitioners.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I served as the Region 4 Director on the Board of the Young Lawyers Division from 2007 through 2011. I am a member of the bar both in New Mexico and Texas. I also attempt to stay active with respect to activities in the Texas bar to understand issues that relate to the practice in both states in the greater El Paso-Las Cruces area.

Electronic Voting Procedures

A link to the electronic ballot and instructions will be emailed on Nov. 10 to all members in the Seventh Bar Commissioner District using email addresses on file with the State Bar. To provide an email address if one is not currently on file or to request a mailed ballot, contact Pam Zimmer at pzimmer@nmbar.org.

The election will close at noon on Nov. 30, at which time the ballots will be tallied.

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REPORT BY DISCIPLINARY COUNSEL

DISCIPLINARY QUARTERLY REPORT

Reporting Period: July 1–Sept. 30, 2016

Final Decisions

Final Decisions of the NM Supreme Court 4

Matter of Arthur M. Kohler, an unauthorized person practicing law, (No. S-1-SC-35787). The New Mexico Supreme Court entered an order pursuant to a consent agreement enjoining Respondent, an attorney not licensed in New Mexico, from engaging in the unauthorized practice of law. Respondent was further ordered to pay costs to the Disciplinary Board.

Matter of Jane E. Granier, f/k/a/ Jane E. Abrams, Esq. (Disciplinary No. 02-2013-663). The New Mexico Supreme Court entered an order reinstating Respondent to the practice of law under probationary status.

Matter of Michelle Renee Mladek, Esq. (Disciplinary No. 11-2013-680). The New Mexico Supreme Court issued a Public Censure in compliance with the Supreme Court Order dated February 18, 2015.

Matter of Jacqueline Bennett, Esq. (Disciplinary No. 04-2016-741). The New Mexico Supreme Court accepted a conditional agreement and entered an order suspending Respondent from the practice of law for failing to communicate. The Court deferred the suspension and placed Respondent on probation with conditions.

Summary Suspensions

Total number of attorneys summarily suspended 0

Administrative Suspensions

Total number of attorneys administratively suspended 0

Disability Suspensions

Total number of attorneys placed on disability suspension 0

Charges Filed

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to keep the client reasonably informed about the status of the matter and failing to comply with reasonable requests for information; failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the matter; failing to make reasonable efforts to expedite litigation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly having a concurrent conflict of interest by virtue of the relationship with client and by virtue of attorney's own personal interests; failing to deposit into a client trust account legal fees and expenses paid in advance; failing to hold funds in which the client claimed an interest; sharing legal fees with a nonlawyer; forming a partnership with a nonlawyer where the activities of the partnership consist of the practice of law; permitting a person who recommends, employs, or pays to direct the creation of clients' trusts; and failing to deposit unearned client funds in an IOLTA.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to keep her client reasonably informed about his matter; failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding

representation; bringing a proceeding where there was no jurisdiction therefore there was no basis in law or fact for doing so that was not frivolous; and by engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to represent the client diligently; failing to communicate with his client; failing to expedite litigation; and by engaging in conduct that is prejudicial to the administration of justice.

Petitions for Administrative Suspension Filed

Petitions for administrative suspension filed 0

Petitions for Reciprocal Discipline Filed

Petitions for reciprocal discipline filed 0

Petitions for Reinstatement Filed

Petitions for reinstatement filed 1

Andrea Christman, Esq. (Disciplinary No. 04-2014-689) Respondent petitioned for reinstatement to the practice of law. The matter is before a Board Panel.

Formal Reprimands

Total number of attorneys formally reprimanded 1

Matter of Peter A. Keys, Esq. (Disciplinary No. 01-2016-734) a Formal Reprimand was issued at the Disciplinary Board meeting of Sept. 23, 2016, for violations of Rule 16-304(C), by knowingly disobeying a Court's Order; Rule 13-305 (D), engaging in conduct intended to disrupt a tribunal; and 16-804(D), by engaging in conduct prejudicial to the administration of justice. The Formal Reprimand was published in the *Bar Bulletin* issued Oct. 19, 2016.

Informal Admonitions

Total number of attorneys admonished 6

An attorney was informally admonished for failing to properly deposit funds in an IOLTA in violation of Rule 16-115 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation; failing to act with reasonable diligence and promptness in representing a client; and failing to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rules 16-101, 16-103, and 16-302 of the Rules of Professional Conduct.

An attorney was informally admonished for representing multiple parties in the same matter causing a conflict of interest with clients in violation of Rule 16-107 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to maintain a strictly professional relationship with a client in violation of Rule 16-107(A)(2) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation; failing to act with reasonable diligence and promptness in representing a client; failing to keep the client reasonably informed about the status of the matter; and failing to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rules 16-101, 16-103, 16-104, and 16-302 of the Rules of Professional Conduct.

An attorney was informally admonished pursuant to a Conditional Agreement Admitting the Allegations and Consent to Discipline for failing to explain or inform the client on the case; failing to keep the client reasonably informed about the status of the matter; and engaging in conduct that interfered with the administration of justice in violation of Rules 16-102, 16-104, and 16-804(D) of the Rules of Professional Conduct.

Letters of Caution

Total number of attorneys cautioned 13

Attorneys were cautioned for the following conduct: (1) contempt of tribunal (2 letters of caution issued); (2) failure to protect interest of client; (3) failure to communicate (two letters of caution issued); (4) bank overdraft; (5) general incompetence (two letters of caution issued); (6) failure to comply with court order; (7) aiding the unauthorized practice of law; (8) harassment; (9) overreaching/excessive fees; and (10) improper withdrawal.

Complaints Received

<i>Allegations</i>	<i>No. of Complaints</i>
Trust Account Violations	3
Conflict of Interest	0
Neglect and/or Incompetence	87
Misrepresentation or Fraud	18
Relationship with Client or Court	33
Fees.....	11
Improper Communications.....	1
Criminal Activity	0
Personal Behavior	9
Other.....	6
Total number of complaints received	168

Third Annual Senior Lawyers Division ATTORNEY MEMORIAL SCHOLARSHIP PRESENTATION AND RECEPTION

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



Philip Davies and **Harlena Reed**, 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.



Legal Education

November

- | | | |
|---|--|--|
| <p>10 Acquisitions of Subsidiaries and Divisions
1.0 G
Teleseminar
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>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> |
| <p>10 Charter School Law in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>17–20 2016 Section of State and Local Government Law Fall CLE and Networking Conference
10.5 G
Live Seminar, Phoenix, Ariz.
American Bar Association
http://ambar.org/2016slgfall</p> | <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>10 Estate Planning and Retirement Benefits
4.0 G
Live Seminar
Santa Fe Estate Planning Council
www.sfestateplanning.com</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>22 31st Annual Bankruptcy Year in Review Seminar (2016)
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</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>18 Ethics and Dishonest Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</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>14 Top Estate Planning Techniques
6.6 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com</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>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>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>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> | <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> |
| <p>16 Sophisticated Deposition Strategies
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <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 Building Your Civil Litigation Skills
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> | | |

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>6 Medical Marijuana Law in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>9 Medical Marijuana Law in New Mexico
6.0 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com</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>7 HR Legal Compliance: Advanced Practice
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>12 Ethicspalooza: The Ethics of Managing and Operating an Attorney Trust Account
2.0 EP
Webcast/Live Seminar, Albuquerque
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>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>12 Ethicspalooza: Ethically Managing Your Law Practice
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</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>8 Structuring Minority Interests in Businesses
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 Ethicspalooza: Ethical Issues of Using Social Media and Technology in the Practice of Law
1.0 EP
Webcast/Live Seminar, Albuquerque
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>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>12 Ethicspalooza: The Disciplinary Process
2.0 EP
Webcast/Live Seminar, Albuquerque
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>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>13 Trials of the Century II
5.0 G, 1.0 EP
Webcast/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>9 Water Rights in New Mexico
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | <p>13 How to Get Your Social Media, Email and Text Evidence Admitted (and Keep Theirs Out)
6.0 G
Live Seminar, Santa Fe
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>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> | <p>13 Collection Law from Start to Finish
6.0 G
Live Seminar, Albuquerque
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 28, 2016

PUBLISHED OPINIONS

No. 33718	2nd Jud Dist Bernalillo LR-11-64, STATE v L VARGAS (affirm in part, reverse in part and remand)	10/25/2016
No. 34195	1st Jud Dist Rio Arriba CV-07-54, P HOLZEM v PRESBYTERIAN HEALTH (affirm in part, reverse in part and remand)	10/26/2016
No. 34451	5th Jud Dist Lea LR-13-11, STATE v M NAEGLE (affirm in part and remand)	10/28/2016

UNPUBLISHED OPINIONS

No. 33678	8th Jud Dist Taos CR-13-44, STATE v A GONZALES (affirm)	10/24/2016
No. 34039	3rd Jud Dist Dona Ana CV-13-1562, A MARTINEZ v M MUNOZ (affirm)	10/24/2016
No. 33789	1st Jud Dist Santa Fe CV-11-2730, DEUTSCHE BANK v R TODD (reverse and remand)	10/24/2016
No. 35590	9th Jud Dist Roosevelt PB-15-26, ESTATE OF J WHITTENBURG (affirm)	10/24/2016
No. 34095	6th Jud Dist Grant CR-13-168, STATE v M LOPEZ (affirm)	10/25/2016
No. 33685	2nd Jud Dist Bernalillo CR-11-4228, STATE v M LUCERO (affirm)	10/27/2016
No. 35557	9th Jud Dist Curry CR-15-136, STATE v J JACKSON (affirm)	10/27/2016
No. 35625	2nd Jud Dist Bernalillo CR-13-547, STATE v A SANCHEZ (affirm)	10/27/2016

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

Dated Oct. 19, 2016

CLERK'S CERTIFICATE OF ADDRESS AND/OR TELEPHONE CHANGES

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THE SUPREME COURT OF NEW MEXICO ANNOUNCES

2016 YEAR-END RULE AMENDMENTS

Under Rule 23-106.1 NMRA, the Supreme Court now adopts most rule changes once per year in the fall. Because of the large number of year-end rule amendments for 2016, the actual text of the rule amendments will not be published in the *Bar Bulletin* due to space constraints. Instead, what follows is a summary of the new rule amendments that the Court recently approved, which go into effect on December 31, 2016, unless otherwise noted in the history note at the end of each approved rule. The full text of the new rule amendments can be viewed on the New Mexico Compilation Commission's website at www.nmcompcomm.us/nmrules/NMRuleSets.aspx.

Children's Court Rules and Forms

Service of Process

[Rule 10-103 NMRA]

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

Consent to Special Masters

[Rule 10-163 NMRA and new Form 10-727 NMRA]

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

Waiver of Affirmative Defenses in Abuse and Neglect Proceedings

[Rule 10-322 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules Committee to amend Rule 10-322 NMRA to clarify that, absent good cause shown, the waiver of any defense not affirmatively pled by a respondent is left to the discretion of the children's court.

Advisement of Child's Right to Attend Hearing in Abuse and Neglect Proceedings

[New Rule 10-325 NMRA and new Form 10-570 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules Committee to adopt new Rule 10-325

NMRA and new Form 10-570 NMRA to require attorneys in abuse and neglect proceedings for children 14 years of age and older to give notice to the court at least 15 days before each hearing that the attorney has notified the child of the hearing and has advised the child of the right to attend the hearing.

Child Testimony in Abuse and Neglect Proceedings

[New Rule 10-340 and new Form 10-571 NMRA]

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

Subpoenas

[Rule 10-560 NMRA and new Form 10-721 NMRA]

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

Delinquency Forms

[Recompiled and amended Forms 10-701, 10-702, 10-703, 10-704, 10-705, 10-706, 10-707, 10-711, 10-712, 10-713, 10-714, 10-715, 10-716, 10-717, 10-718, 10-722, 10-723, 10-724, 10-725, 10-726, 10-731, 10-732, 10-741, 10-742, 10-743, 10-744, and 10-745 NMRA; and withdrawn Forms 10-408A, 10-413, 10-414, and 10-417 NMRA]

The Supreme Court has approved the recommendation of the Children's Court Rules Committee to recompile the delinquency forms into new Article 7 of the Children's Court Rules and Forms. The Court also has approved the committee's recommendation to amend and withdraw certain delinquency forms as part of the recompilation.

Domestic Relations Rules and Forms

Kinship Guardianship Rule and Forms

[Rule 1-120 NMRA; recompiled and amended Forms 4A-501, 4A-505, 4A-506, 4A-509, 4A-510, 4A-511, and 4A-512 NMRA; new Forms 4A-502, 4A-503, 4A-504, 4A-507, 4A-508, and 4A-513 NMRA; and withdrawn Forms 4-982, 4-986, 4-989, 4-990 NMRA]

The Supreme Court has approved the recommendation of the Domestic Relations Rules Committee to amend Rule 1-120

NMRA to add the Kinship Guardianship Forms to the forms that must be used by self-represented litigants in a domestic relations proceeding. The Court also has approved the committee's recommendation to recompile the current Kinship Guardianship Forms into new Article 5 of the Domestic Relations Forms and to revise the forms to conform to current practice.

Uniform Collaborative Law Rules

[New Rules 1-128 to 1-128.13 NMRA]

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

Final Decrees of Dissolution of Marriage

[Forms 4A-305, 4A-306, 4A-314, and 4A-315 NMRA]

The Supreme Court has approved the Domestic Relations Rules Committee's recommendation to amend the final decree forms used in dissolution of marriage proceedings. The amended forms prompt the parties to enter their full legal names (first, middle, and last) when requesting to have their names restored in the proceeding.

Local Rules for the District Courts and Related Statewide Rules

[Rules 1-083, 5-102, and new Rule 10-168 NMRA; and Recom-piled and Amended Local Rules for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth District Courts]

The Supreme Court has approved a recommendation from the Ad Hoc Committee on District Court Local Rules to amend the statewide rules governing the local rules process and to recompile and amend the local rules in each of New Mexico's thirteen judicial districts. The Court created the ad hoc committee to undertake a comprehensive review of all local rules along with a reevaluation of the process for amending local rules. As a result of that process, the ad hoc committee recommended, and the Court has approved, amendments to the statewide rules governing the local rules process for civil and criminal cases in the district courts. See Rules 1-083 and 5-102 NMRA. The committee also recommended, and the Court approved, the adoption of new Rule 10-168 NMRA to govern the local rules process for children's court cases. The amendments to the statewide rules governing the local rules process implement a regular review process for each district's local rules and contemplate the creation of a new standing committee appointed by the Court to oversee future local rulemaking activity.

In addition, the Court has approved the ad hoc committee's recommendation to amend and recompile the local rules for each of the state's thirteen judicial districts. The amendment and re-compilation of each district's local rules is intended to accomplish four goals: (1) identify and eliminate any local rules in conflict with statewide rules and other laws; (2) identify and eliminate any local rules that were simply reiterating procedures already contained in statewide rules; (3) identify and eliminate any local rules that the respective districts considered obsolete and no longer consistent with local practice; and (4) create a uniform numbering system and organizational structure that would enhance the format and usability of each district's local rules, especially for outofdistrict

litigants and their attorneys who would likely be unfamiliar with the local customs and practices that the local rules are intended to codify.

Rules Governing Discipline

Trust Account Requirements

[Rules 17-204 NMRA]

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

Reinstatements from Disability Inactive Status

[Rules 17-208 and 17-214 NMRA]

The Supreme Court has approved the Disciplinary Board's recommendation to amend Rules 17208 and 17214 NMRA to clarify the reinstatement procedure for an attorney seeking to be reinstated from disability inactive status.

Rules Governing the New Mexico Bar

Return to Active Status from Withdrawn, Inactive or Administrative Suspension Status

[Rules 24-102, 15-302, and 17-202 NMRA]

The Supreme Court has approved a recommendation by the Board of Bar Commissioners to amend Rule 24102 NMRA, which revises and clarifies the procedure attorneys must follow when going inactive, withdrawing from the bar, or seeking reinstatement or readmission after doing so or after being administratively suspended for noncompliance with bar dues, MCLE, and other licensing requirements. The proposal was developed in conjunction with the Board of Bar Examiners and Disciplinary Board, who recommended coordinating amendments to Rules 15302 and 17202 NMRA that the Court also has approved.

Noncompliance with the Bridge the Gap Mentorship Program

[Rule 24-110 NMRA]

The Supreme Court has approved amendments to Rule 24-110 NMRA to clarify and revise the process for addressing noncompliance with the mandatory Bridge the Gap mentorship program for newly admitted attorneys in New Mexico.

Emeritus Attorneys

[New Rule 24-111 NMRA and Rule 17-202 NMRA]

The Supreme Court has approved a joint recommendation from the Lawyers Succession and Transition Committee and Disciplinary Board to adopt new Rule 24-111 NMRA, which creates a new emeritus attorney pro bono program. Under this new rule, an

inactive status attorney or an attorney who has withdrawn from the New Mexico Bar may apply to become an “emeritus attorney” who is authorized to provide pro bono legal services under the supervision of a supervising attorney and in association with an approved legal aid organization. Approved emeritus attorneys would be exempt from certain fees, reporting and disclosure requirements, and continuing legal education requirements while participating in an emeritus pro bono program. The Court also approved coordinating amendments to Rule 17-202 NMRA that recognize the existence of this new attorney status.

Rules Governing the Recording of Judicial Proceedings

Applicability of Rules to Court Reporters

[Rule 22-101 NMRA]

The Supreme Court has approved the recommendation of the Board Governing the Recording of Judicial Proceedings to amend Rule 22-101 NMRA to clarify the extent to which the Rules Governing the Recording of Judicial Proceedings apply to court reporters acting under their New Mexico certification.

Temporary Court Reporter Certification

[New Rule 22-204.1 NMRA]

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

Rules Governing the Unauthorized Practice of Law

Proceedings to Prohibit the Unauthorized Practice of Law

[Rules 17B-005 and 17B-006 NMRA]

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

Rules of Appellate Procedure

Scope of the Rules of Appellate Procedure

[Rule 12-101 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-101 NMRA. The amendments to Paragraph A provide a general description of the scope of the Rules of Appellate Procedure. The amendments to Paragraph B revise the citation format in accordance with the appendix to the Supreme Court’s citation rule, Rule 23-112 NMRA. Finally, a reference to the citation rule, Rule 23-112, has been added to the committee commentary.

Cross-appeals and Motions That Toll the Time to

Appeal in Criminal Cases

[Rule 12-201 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-201 NMRA. The deadline for cross-appeals has been moved from Paragraph A

to Paragraph B and has been changed from ten days to fourteen days. Additionally, Subparagraph (D)(1) and the committee commentary have been amended to clarify that in a criminal case, a timely filed motion that has the potential to affect the finality of the underlying judgment renders the judgment non-final and tolls the time to appeal until the motion has been disposed of, automatically denied, or withdrawn. The amendments to Subparagraph (D)(1) effectuate rulings in *State v. Suskiewich*, 2014-NMSC-040, 339 P.3d 614, and *State v. Romero*, 2014-NMCA-063, 327 P.3d 525. The Supreme Court also approved new committee commentary to Rules 5-614 and 5-801 NMRA of the Rules of Criminal Procedure for the District Courts, referencing the proposed amendments to Rule 12-201(D)(1).

Related, Joint, and Consolidated Appeals

[Rules 12-202 and 12-208 NMRA; and new Rule 12-317 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to adopt a new Rule 12-317 NMRA, addressing joint and consolidated appeals. The rule is modeled after Federal Rule of Appellate Procedure 3(b) and existing Rule 12-202(G) NMRA. The Supreme Court also approved the addition of new “related appeal” provisions to Rules 12-202(G) and 12-208(E), requiring the parties to identify any related appeals. The “related appeal” provisions respond to *State v. Gonzales*, 2014-NMSC-039, 339 P.3d 612, which addressed the parties’ failure to alert the Court of Appeals to related appeals, resulting in different outcomes by two Court of Appeals panels.

Reply Provisions

[Rule 12-203 NMRA, recompiled and amended Rule 12-203.1 NMRA, and Rules 12-206, 12-309, 12-503, 12-504, and 12-505 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the existing reply provisions in Rule 12-309 NMRA (motions) and to add new reply provisions to Rules 12203, 12203.1, 12206, 12503, 12504, and 12505 NMRA. The new provisions provide that (1) a reply is not permitted without leave of the appellate court, (2) a motion seeking leave to file a reply must be filed and served within seven days after service of the response, and (3) the proposed reply must be filed conditionally with the motion.

Deadline to Appeal Class Certification Order

[Recompiled and amended Rule 12-203.1 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the rule governing appeals from class certification orders, which has been recompiled and amended as Rule 12-203.1 NMRA. As amended, the rule gives a party fifteen days to appeal a class certification order, and it gives any other party fifteen days to file a response. The Supreme Court has approved a corresponding revision to Rule 1-023 NMRA of the Rules of Civil Procedure for the District Courts.

Appeal from Pretrial Release Order

[Rule 12-204 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-204 NMRA. The amendments to Paragraph A and the committee commentary reflect the Supreme Court’s holding in *State v. Brown*, 2014-NMSC038, ¶ 17, 338 P.3d 1276, that the Supreme Court has “exclusive jurisdiction over interlocutory appeals from pretrial release orders in cases

where the defendant faces a possible sentence of life imprisonment or death.” Additionally, a new Paragraph D has been added to expressly recognize that the defendant may seek further review by certiorari.

Stay Pending Appeal in Children’s Court Matters

[Rule 12-206 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to delete the words “ex parte” from the last two paragraphs in Rule 12-206 NMRA. The amendments clarify that the Court of Appeals may grant a stay before receiving a response from the opposing party and before deciding whether to grant a stay for the entire time that the appeal is pending. The Supreme Court also approved the addition of new committee commentary, explaining that the rule “does not apply to a motion to stay a children’s court custody order pending expedited appeal under Rule 12206.1 NMRA.”

Revised Rule Titles

[Recompiled and amended Rule 12-203.1 NMRA; and Rules 12501, 12504, 12505, 12601, 12602, 12604, 12606, 12607, and 12608 NMRA.]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to revise the titles of the above-listed rules to more accurately reflect the scope of the rules.

Modification of the Appellate Record

[Rule 12-209 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to add a provision to Rule 12-209(C) NMRA, requiring an appellate court to notify the parties when the appellate court has supplemented the record on its own accord.

Attorney Withdrawal and Substitution

[Rule 12-302 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-302 NMRA to more accurately reflect the procedure for attorney withdrawal or substitution. The revisions provide that an attorney may withdraw from a case only upon motion and order from the appellate court, except that an attorney of a law firm or governmental entity may withdraw by notice if at least one other attorney from the firm or entity remains in the case as counsel of record.

Handwritten Submissions and Captions on

Extraordinary Writ Petitions

[Rule 12-305 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-305 NMRA, which addresses the form of papers prepared by parties. The amendments to Paragraph C set forth formatting requirements for handwritten papers and provide that only self-represented, non-attorney litigants may file handwritten papers. The amendments to Paragraph F clarify the caption requirements that apply to extraordinary writ petitions under Rule 12-504 NMRA.

Duty of Clerk to Provide Copy of Opinion

[Rule 12-310 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-310(D) NMRA. The amendments provide that when an opinion is issued, the

appellate court shall email or call one attorney of record for each party to advise the attorney of the result. The amendments also state that, on request, the court shall send each attorney one copy of the opinion in either paper or electronic form.

Briefs

[Recompiled and amended Rule 12-318 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the brief rule, which has been recompiled and amended as Rule 12318 NMRA. The amendments to Subparagraph (A)(3) add a reference to the appendix to the Supreme Court’s citation rule, Rule 23112 NMRA, which sets forth the appropriate format for citing the record. The amendments to Subparagraph (A)(6) and Paragraph C provide that, if a party makes a request for oral argument on the cover of a brief, the party is not required to support the request with a separate statement of the reasons why oral argument would be helpful to a resolution of the issues. The amendments to Subparagraph (A)(6) and Paragraph C correspond to Supreme Court-approved amendments to the oral argument rule, which has been recompiled and amended as Rule 12-319 NMRA.

Oral Arguments

[Recompiled and amended Rule 12-319 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the oral argument rule, which has been recompiled and amended as Rule 12319 NMRA. The amendments to Paragraph A clarify that the appellate court may order oral argument at its discretion. The amendments to Paragraph B permit a party to request oral argument either by motion or on the first page of any submission. Under Paragraph B, a party who requests oral argument by separate motion must support the request with a statement of the reasons why oral argument would be helpful to a resolution of the issues. But a party who requests oral argument on the first page of a submission is no longer required to include such a statement. The amendments to Paragraph C require a party to file a motion to reset oral argument within ten (10) days after service of notice of setting. The amendments to Paragraph D address the order of argument on crosspetitions and consolidated actions. New Paragraph F has been added to govern the use of physical exhibits. The amendments to Paragraph I clarify that a judge or justice who was not present for the oral argument may participate in the case by reviewing a recording or transcript of the oral argument. And finally, new committee commentary has been adopted.

Amicus Rule

[Recompiled and amended Rule 12-320 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the amicus rule, which has been recompiled and amended as Rule 12-320 NMRA. The amendments clarify that the appellate court may permit amicus participation in matters seeking discretionary review, such as petitions for writs of certiorari, applications for interlocutory appeal, and proceedings seeking extraordinary relief. The proposed amendments also address the topic of amicus participation more broadly, in contrast to the former version of the rule, which focused on amicus briefs.

Scope of Review; Preservation

[Recompiled and amended Rule 12-321 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the preservation rule, which

December
2016

CLE Planner

Your Guide to Continuing Legal Education



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Live Programs



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December

New!



Reforming the Criminal Justice System

Friday, Dec. 2, 2016 • 1:30 p.m.–4:45 p.m.

UNM School of Law, Albuquerque

Co-sponsor: Criminal Law Section

This newly added CLE program is sure to benefit criminal law practitioners, judges and advocates as well as other community members. The program will include sessions discussing eyewitness misidentification and false confessions, federal civil rights crimes and performing public service in private.

3.0 G



Justice with Compassion—Courthouse Facility Dogs Improving the Legal System

Monday, Dec. 5, 2016 • Noon – 4 p.m.

Co-sponsor: Animal Law Section

This workshop is designed to instruct prosecuting attorneys, defense attorneys, judges and victim advocates about best practices in the use of courthouse facility dogs so that these dogs can enhance the services offered to clients without raising any legal issues in the courtroom.

3.0 G



Transgender Law and Advocacy

Tuesday, Dec. 6, 2016 • 8:30 a.m.–4:15 p.m.

This program will provide participants with a fundamental understanding of the complex issues facing transgender people, including recommended etiquette and ethical/professional considerations, obtaining and changing identity documents, safe schools and educational concerns and discrimination cases. The program is intended to personalize transgender individuals and increase visibility and awareness while decreasing the discrimination, fear, hostility and violence that is routinely directed towards members of this population.

4.0 G

2.0 EP



27th Annual Real Property Institute

Thursday, Dec. 8, 2016 • 9 a.m.–4:15 p.m.

Co-sponsor: Real Property, Trust and Estate Section

Topics of the 2016 Real Property Institute will include LLC considerations, tax LLC issues, the impact of the TEFRA repeal and Bank of New York v. Romero, ethical considerations, eminent domain, the nuances of deferred tax exchange and more.

4.5 G

1.0 EP



Save the Date!

2016 Immigration Law Institute

Friday, Dec. 9, 2016



Ethicspalooza: All You Need to Know About Attorney Ethics (full program)

Monday, Dec. 12, 2016

Taught by members of the Disciplinary Board of the New Mexico Supreme Court, Office of Disciplinary Counsel, "Ethicspalooza" is a series of one- or two-hour courses covering important ethics and professionalism topics including law practice management, proper trust accounting, ethical billing practices, charging and accounting for reasonable attorneys' fees and dealing with disciplinary complaints. This program will also feature a mock disciplinary trial. Take one, two, three or all four Ethicspalooza courses.

1.0-6.0 EP



Trials of the Century II

Presented by Todd Winegar, one of America's highest rated CLE speakers

Tuesday, Dec. 13, 2016 • 8:30 a.m.–4 p.m.

Todd Winegar builds on the success of his popular "Trials of the Century" program with more great trials, more actual video and transcripts—all illustrating techniques to examine and depose witnesses—the major part of an attorney's practice. Watch entertaining top courtroom drama from the century's most famous trials. Learn techniques for examining, cross-examining, deposing and interviewing witnesses in deposition and trial. Observe world-class attorneys showing how to question a witness—and how not to. Finally, learn from the century's greatest trial attorneys and adopt their examination techniques.

5.0 G

1.0 EP



Live Programs



2016 Intellectual Property Law Institute— Copy That! Copyright Topics Across Diverse Fields

Wednesday, Dec. 14, 2016 • 9 a.m.–4:45 p.m.

Co-sponsor: Intellectual Property Law Section

5.0 G 1.0 EP



The 2016 Intellectual Property Law Institute will address a range of topics relating to copyright and the legal profession. Topics covered will include an explanation of fair use and work for hire, recent infringement case law, licensing in the music industry, copyright issues on the internet, and copyright law related to utilitarian articles, such as clothing or furniture. An ethics credit will be offered on the subject of managing an intellectual property law firm.

Save
the
Date!

2016 Mock Meeting of the Ethics Advisory Committee

Thursday, Dec. 15, 2016



Living with Turmoil in the Oil Patch—What it Means for New Mexico

Friday, Dec. 16, 2016 • 8:30 a.m.–5 p.m.

Co-sponsor: Natural Resources, Energy and Environmental Law Section

5.8 G 1.0 EP



This course will discuss oil and gas revenues, state and federal law, the Clean Air Act, the Oil Conservation Act, the Water Quality Act and professionalism.

Save
the
Date!

Judge vs. Attorney Discipline: Everything You Need to Know!

*presented by Randy Roybal, executive director and general counsel of the
New Mexico Judicial Standards Commission*

Monday, Dec. 19, 2016



New Mexico DWI Cases: From the Initial Stop to Sentencing; Evaluating Your Case

Tuesday, Dec. 20, 2016 • 9 a.m.–12:30 p.m.

2.0 G 1.0 EP



Become up to date on the most recent DWI legislation, ethically apply the rules of evidence in court and learn how to evaluate your case from the initial stop to sentencing. Don't miss this program presented by Hon. Conrad F. Perea of the Doña Ana County Magistrate Court.



The Fear Factor: How Good Lawyers Get Into (and Avoid) Ethical Trouble

with Stuart Teicher, the "CLE Performer"

Wednesday, Dec. 21 • 8:30 a.m. – 11:45 a.m.

3.0 EP



The scariest stories of attorney ethical violations are those tales where responsible lawyers who care about acting in an appropriate manner get into disciplinary trouble. In this program, attendees will learn about the common missteps that are made by otherwise responsible attorneys. After hearing this program attendees will be able to embark upon their career as a safer, stronger attorney.



Drafting and Litigating Pre-Injury Exculpatory Contracts

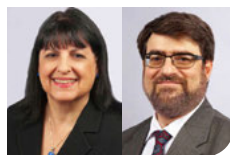
presented by Kendrick Dane, The Dane Law Firm PC

Thursday, Dec. 22, 2016 • 9–11 a.m.

2.0 G



This course will discuss litigating and drafting pre-injury exculpatory release contracts, or waivers. Topics will include which claims can and cannot be waived, the Berlangieri test for enforcing New Mexico waivers, special relationships in and interrelation of waivers and the doctrine of assumption of risk, drafting considerations and miscellaneous clauses such as jury trial waivers, mandatory arbitration, punitive damages waivers, warranty waivers, indemnity and fee-shifting.



How to Become Your Own Cybersleuth: Conducting Effective Internet Investigative and Background Research

with Carole Levitt, Esq., and Mark Rosch, Internet for Lawyers

Tuesday, Dec. 27, 2016 • 9 a.m.–4:15 p.m.

4.0 G 2.0 EP



In this fast-paced investigative research seminar, attendees will learn a gold mine of information to create more effective internet searches to locate crucial information which might be otherwise missed. Hidden Google search features and shortcuts to speed up research will be revealed. Attendees will also learn to use free public record sites and sites with free publicly available information (including social media sites), for discovery, trial preparation, background checks and for locating missing persons. Discover if competent representation to a client includes the "duty to Google."

Live Programs



Human Trafficking

Wednesday, Dec. 28, 2016 • 1 p.m.–4:15 p.m.

This three hour program will include an overview of human trafficking, an introduction to the legal framework (international, national and state) regarding trafficking in persons, victim issues, investigatory and interviewing techniques, and prosecutorial theories and practices. Actual examples of human trafficking cases in New Mexico will be discussed.

3.0 G



Trial Know-How! (The Reboot)

Thursday, Dec. 29, 2016 • 9 a.m.–4:30 p.m.

Co-sponsor: Trial Practice Section

Attendees will learn how to apply successful trial skills in today's legal environment, how to employ effective settlement techniques during trial and how to make compelling court presentations using timeless storytelling and selling and showbiz techniques. Attendees will also gain an appreciation of how ethical and professionalism considerations arise in civil and criminal trials. Additionally, attendees will hear from a panel of prominent trial attorneys who will be sharing their courtroom skills with an opportunity for Q&A. This course is intended for new trial lawyers.

4.0 G 2.0 EP



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has been recompiled and amended as Rule 12-321 NMRA. The amendments clarify current preservation standards and are intended to provide practitioners with a more accurate description of the exceptions to the preservation requirement.

Closed Courtroom Proceedings

[New Rule 12-322 NMRA and Rule 23-107 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to adopt new courtroom closure rules for the district, magistrate, metropolitan, municipal, and appellate courts. See Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, and 12-322 NMRA. The rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the rules prohibit the court from closing a proceeding unless the closure is warranted under the four-factor “overriding interest” standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules require notice and a hearing and permit public participation prior to the issuance of an order closing a courtroom proceeding. The Supreme Court also approved minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA. The amendments to Rule 23-107 clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the new courtroom closure rules.

Rehearing and Issuance of Mandate

[Rules 12-402 and 12-404 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rules 12-402 and 12-404 NMRA. The amendments clarify the application of Rule 12402, regarding issuance and stay of mandate, in a situation where the Court makes changes to the opinion—without changing the result—but denies rehearing, as addressed in Rule 12-404. As amended, Rule 12402 states that the mandate shall not issue until fifteen days after any modification of the Court’s disposition, regardless of whether the Court modifies the disposition sua sponte or in response to a motion for rehearing. These revisions make Rule 12402 consistent with Rule 12404, which permits a party to file a motion for rehearing within fifteen days of the Court’s modification of its disposition.

Award of Costs and Attorney Fees

[Rule 12-403 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-403 NMRA. The amendments provide that costs and fees are awarded only on motion. Under Paragraph A, a “party may request costs in a motion filed within fifteen (15) days after entry of disposition.” Paragraph B explains that allowable costs may include court fees, the costs of preparing the record and transcript, attorney fees if permitted by law, damages under NMSA 1978, Section 39327 (1966), and other costs that the appellate court deems proper.

Form of Petition for Writ of Error

[Rule 12-503 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-503 NMRA. The amendments make the wordcount limit and response deadline for a petition for a writ of error consistent with the wordcount limit and response deadline for a petition for a writ of certiorari,

as set forth in Rule 12502 NMRA. Additionally, Paragraph B has been amended to explain more accurately the Court of Appeals’ authority to issue writs of error.

Court of Appeals Contempt Judgment

[Rule 12-602 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12602(B) NMRA. The amendments clarify that any appeal from a contempt judgment of the Court of Appeals will be heard by the Supreme Court and should be initiated by filing a notice of appeal in the Court of Appeals and a statement of the issues in the Supreme Court.

Certification and Transfer from the Court of Appeals to the Supreme Court

[Rule 12-606 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12606 NMRA. The amendments conform the rule to current practice and encompass the procedure for transferred cases, in addition to certified cases. Under current practice, the Court of Appeals issues an order seeking certification or transfer, and the Supreme Court decides whether to accept or reject the certification or transfer. Then, if the Supreme Court accepts the case, the Court of Appeals forwards the case file and record to the Supreme Court.

Briefing Schedule in Certified Cases

[Rule 12-607 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend the briefing deadlines in Paragraph E of Rule 12607 NMRA, which addresses certification to the Supreme Court “by a court of the United States, an appellate court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state.” The amendments make the briefing deadlines in Rule 12-607(E) consistent with the briefing deadlines in Rule 12210(B)(2) NMRA for other appeals, i.e., forty-five days for the brief in chief, forty-five days for the answer brief, and twenty days for the reply brief.

Rules of Civil Procedure for the District Courts

Time Limit for Filing Motion to Compel Arbitration

[New Rule 1-007.2 NMRA]

The Supreme Court has approved a new rule that sets forth a time limit for filing a motion to compel arbitration.

Consumer Debt Litigation in District Courts

[Rules 1-009, 1-017, 1-055, and 1-060 NMRA; and new Form 4-226 NMRA]

The Supreme Court has approved a recommendation from the Rules of Civil Procedure for the District Courts Committee to amend Rule 1-009 NMRA (pleading special matters), Rule 1-017 NMRA (parties plaintiff and defendant; capacity), Rule 1-055 NMRA (default), and Rule 1-060 NMRA (relief from judgment or order); and to adopt Form 4-226 NMRA (new civil complaint provisions to be used in debt collection cases) to provide additional protections to consumers in consumer debt collection

cases. The amendments are intended to address systemic issues that currently exist in the litigation of consumer debt cases, which includes pleadings and judgments based on insufficient or unreliable evidence, “robo-signing” of affidavits by those with no personal knowledge of the debt at issue, creditors suing and obtaining judgments on time-barred debts, and a high percentage of default judgments (often caused in part by a lack of sufficient detail in the complaint for a self-represented defendant to determine the nature of the claim and its validity). The Supreme Court has also approved separate rule amendments to govern consumer debt litigation in the magistrate and metropolitan courts. *See* Rules 2-702 and 3-702 NMRA; and Form 4-204 NMRA.

Class Action Certification Appeals

[Rule 1-023 NMRA]

The Supreme Court has approved a recommendation from the Rules of Civil Procedure for the District Courts Committee to change the ten-day appeal deadline in Rule 1-023(F) NMRA (appeals from orders granting or denying class action certification) to fifteen days. The Supreme Court has approved a corresponding revision to Rule 12-203A NMRA of the Rules of Appellate Procedure, which has been recompiled and amended as Rule 12-203.1 NMRA.

Judgments Dismissing Less Than All Parties

[Rule 1-054 NMRA]

The Supreme Court has approved a recommendation from the Rules of Civil Procedure for the District Courts Committee to revise Rule 1-054(B) NMRA to mirror the federal rule, by providing that a judgment dismissing less than all parties is not a final judgment unless the district court “expressly determines that there is no just reason for delay.”

Criminal Contempt Proceedings in District Court

[Rules 1-093 NMRA and Form 9-612 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to amend the rules and forms addressing criminal contempt of court proceedings in the district, magistrate, metropolitan, and municipal courts. The amendments to Rule 1-093 NMRA for criminal contempt proceedings arising out of conduct occurring in a civil case in district court provide that a criminal contempt case shall be initiated with a criminal complaint, and not with an order to show cause. Form 9-612 NMRA (order on direct criminal contempt) has been amended for consistency with the rule amendments. Form 9-611 NMRA (order to show cause) has been withdrawn because criminal contempt cases should be initiated with a criminal complaint. Courts should use the general judgment and sentence forms when issuing a judgment and sentence for indirect criminal contempt, e.g., Forms 9--602 and 9-604 NMRA.

Challenges of Nominating Petitions

[Rule 1-096 NMRA]

The Supreme Court has approved amendments to Rule 1-096 NMRA of the Rules of Civil Procedure for the District Courts regarding nominating petition challenges. The amendments are intended to increase the likelihood of prompt actual notice to the candidate without placing on the challenger technical demands that may be unreasonably difficult in a particular case. First, instead of requiring the plaintiff to deliver a copy of the complaint

and *notice of hearing* to the candidate, the amended rule requires the plaintiff to deliver a copy of the complaint and *request for expedited hearing* to the candidate. This change eliminates the problem of the plaintiff being required to send a notice of hearing when no hearing has been set. Second, the amended rule broadens the manner of delivery by requiring delivery to be effected, “in a manner that is reasonably calculated to provide actual notice to the candidate of the filing of the complaint.” Finally, the amended commentary provides illustrative examples of delivery methods that may provide actual notice of the filing of the complaint and the evidentiary hearing.

Closed Courtroom Proceedings

[New Rule 1-104 NMRA; and Rule 23-107 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to adopt new courtroom closure rules for the district, magistrate, metropolitan, municipal, and appellate courts. *See* Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, and 12-322 NMRA. The rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the rules prohibit the court from closing a proceeding unless the closure is warranted under the four-factor “overriding interest” standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules require notice and a hearing and permit public participation prior to the issuance of an order closing a courtroom proceeding. The Supreme Court also approved minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA. The amendments to Rule 23-107 clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the new courtroom closure rules.

Rules of Civil Procedure for the

Limited Jurisdiction Courts and Civil Forms

Because the rules of procedure for the magistrate and metropolitan courts often overlap, amendments to the civil rules and forms for the magistrate and metropolitan courts are summarized together in this section. In some instances, the Court has amended similar rules in similar ways for both courts. In other instances, the Court has only approved amendments to only one set of rules.

Criminal Contempt Proceedings in Magistrate, Metropolitan, and Municipal Courts

[Rules 2-110 and 3-110 NMRA; Form 9-612 NMRA; and withdrawn Forms 9-611 and 9-613 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to amend the rules and forms addressing criminal contempt of court proceedings in the district, magistrate, metropolitan, and municipal courts. The amendments to the limited jurisdiction rules for criminal contempt proceedings arising out of conduct in civil cases in the magistrate and metropolitan courts, *see* Rules 2-110 and 3-110 NMRA, are modeled after the district court rules that were approved in 2015 with some modifications. Because the limited jurisdiction rules provide that a criminal contempt case must be initiated with a criminal complaint, corresponding revisions

have been made to the rules governing the commencement of a criminal action in the limited jurisdiction courts, *see* Rules 6-201, 7-201, and 8-201 NMRA, to clarify that a criminal action should not be commenced with an order to show cause. Regarding the forms, Form 9-612 NMRA (order on direct criminal contempt) has been amended for consistency with the rule amendments. Form 9-611 NMRA (order to show cause) has been withdrawn because criminal contempt cases should be initiated with a criminal complaint. Finally, Form 9-613 NMRA (judgment and sentence on indirect criminal contempt) has been withdrawn because courts should use the general judgment and sentence forms when issuing a judgment and sentence for indirect criminal contempt, e.g., Forms 9-601 and 9-603 NMRA.

Closed Courtroom Proceedings

[New Rules 2-114 and 3-114 NMRA; and Rule 23-107 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to adopt new courtroom closure rules for the district, magistrate, metropolitan, municipal, and appellate courts. *See* Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, and 12-322 NMRA. The rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the rules prohibit the court from closing a proceeding unless the closure is warranted under the four-factor “overriding interest” standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules require notice and a hearing and permit public participation prior to the issuance of an order closing a courtroom proceeding. The Supreme Court also approved minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA. The amendments to Rule 23-107 clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the new courtroom closure rules.

Dismissal of Magistrate Court Civil Case for

Failure to Prosecute

[Rule 2-305 NMRA; Form 4-306 NMRA; and new Forms 4-309 and 4-310 NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee to amend Rule 2-305(D) NMRA, which addresses the dismissal of a civil action without prejudice for failure to prosecute. The amendments require magistrate courts to issue a thirty-day notice prior to dismissal, a procedure that many courts already follow. The Supreme Court also has adopted new Forms 4-309 and 4-310 NMRA to implement the procedure set forth in the rule amendments.

Consumer Debt Litigation in Magistrate and Metropolitan Courts

[Rules 2-702 and 3-702 NMRA; and Form 4-204 NMRA]

The Supreme Court has approved a joint recommendation from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee to amend the default judgment rules for magistrate and metropolitan courts, Rules 2702 and 3702 NMRA, and the civil summons form used in magistrate and metropolitan courts, Form 4204 NMRA. The amendments to Rules 2-702 and 3-702 clarify the information that a civil plaintiff must provide to the court to obtain a default judgment. The

amendments to Form 4-204 include plain language encouraging the defendant to file an answer and to raise any defenses that the defendant may have. The committees intend for these amendments to curb abusive debt collection practices and to decrease the rate of default judgments in consumer debt cases without putting an undue burden on New Mexico’s small claims courts and the pro se litigants who rely on them. The Supreme Court has also approved separate rule amendments to govern consumer debt litigation in the district courts. *See* Rules 1-009, 1-017, 1-055, and 1-060 NMRA; and new Form 4-226 NMRA.

Form of Record in Magistrate Court Proceedings

[Rules 2-705 NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee to amend Rule 2705 NMRA. The amendments withdraw the provisions addressing the record of proceedings on the ground that the magistrate court is not a court of record. *See* NMSA 1978, § 39-3-1 (1955) (“All appeals from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law.”); *see also* Rule 22-101(B)(10) NMRA (stating that the Rules Governing the Recording of Judicial Proceedings do not apply to magistrate or municipal court proceedings).

Servicemembers Civil Relief Act

[Forms 4-702 and 4-703 NMRA; and new Form 4-702A NMRA]

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

Restitution Judgment Forms

[Form 4-909 NMRA; and new Form 4-909A NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee to adopt a new restitution judgment form, Form 4-909A NMRA, for use in the magistrate courts, and a recommendation from the Metropolitan Courts Rules Committee to retain the existing restitution judgment form, Form 4-909 NMRA, for use in the metropolitan courts. The new form approved for magistrate courts includes the following new provisions: (1) a place for the court to set forth the applicable interest rate, (2) a statement that a damages hearing will be held only upon request, (3) new information regarding the requirements for a stay pending appeal, and (4) a certificate of service.

Rules of Criminal Procedure for the District Courts

Criminal Contempt Proceedings in District Court

[Rule 5-112 NMRA and Form 9-612 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to amend the rules and forms addressing criminal contempt of court proceedings in the district, magistrate, metropolitan, and municipal courts. The amendments to Rule 5-112 NMRA provide that a criminal contempt case shall be initiated with a criminal complaint, and not with an order to show cause. Form 9-612 NMRA (order on direct criminal contempt) has been amended for consistency with the rule amendments. Form 9-611 NMRA (order to show cause) has been withdrawn because criminal contempt cases should be initiated with a criminal complaint. Courts should use the general judgment and sentence forms when issuing a judgment and sentence for indirect criminal contempt, e.g., Forms 9-602 and 9-604 NMRA.

Closed Courtroom Proceedings

[New Rule 5-124 NMRA; and Rule 23-107 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to adopt new courtroom closure rules for the district, magistrate, metropolitan, municipal, and appellate courts. See Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, and 12-322 NMRA. The rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the rules prohibit the court from closing a proceeding unless the closure is warranted under the four-factor “overriding interest” standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules require notice and a hearing and permit public participation prior to the issuance of an order closing a courtroom proceeding. The Supreme Court also approved minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA. The amendments to Rule 23-107 clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the new courtroom closure rules.

ABA Standards Relating to the Withdrawal of Guilty Pleas

[Rule 5-304 NMRA]

The Supreme Court has amended the committee commentary of Rule 5-304 NMRA. The amendment removes the reference to the American Bar Association Standards for Criminal Justice which indicates support for separate standards for evaluating a motion to withdraw a plea filed before sentencing versus after sentencing. This commentary is inconsistent with New Mexico case law. See *State v. Hunter*, 2006-NMSC-043, ¶ 11, 140 N.M. 406, 143 P.3d 168 (holding an abuse of discretion standard “has been applied on appeal to all motions to withdraw a plea, whether prior to or following sentencing”).

Service of Subpoenas

[Rule 5-511 NMRA; and new Rule 5-511.1 NMRA]

The Supreme Court has approved a recommendation from the Rules of Criminal Procedure for the District Courts Committee to amend Rule 5-511 NMRA and adopt a new Rule 5-511.1 NMRA. The amendment and new rule consolidate the notice and service requirements for subpoenas and notices of statement into one rule.

Motions That Toll the Time to Appeal in Criminal Cases

[Rules 5-614 and 5-801 NMRA]

The Supreme Court has approved a recommendation from the Rules of Criminal Procedure for the District Courts Committee to add new committee commentary to Rules 5-614 and 5-801 NMRA. The new commentary references the recently approved amendments to Rule 12-201(D)(1) NMRA of the Rules of Appellate Procedure which clarify that in a criminal case, a timely filed motion that has the potential to affect the finality of the underlying judgment renders the judgment non-final and tolls the time to appeal until the motion has been disposed of, automatically denied, or withdrawn. The amendments to Rule 12-201(D)(1) effectuate rulings in *State v. Suskiewich*, 2014-NMSC-040, 339 P.3d 614, and *State v. Romero*, 2014-NMCA-063, 327 P.3d 525.

Rules of Criminal Procedure for the Limited

Jurisdiction Courts and Criminal Forms

Because the rules of procedure for the magistrate, metropolitan, and municipal courts often overlap, amendments to the criminal rules and forms for the magistrate, metropolitan, and municipal courts are summarized together in this section. In some instances, the Court has amended similar rules in similar ways for all courts. In other instances, the Court has approved amendments to only one or two particular sets of rules.

Form of Record in Magistrate and Municipal Court Proceedings

[Rules 6-102, 6-601, 8-102, and 8-601 NMRA]

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

Presence of the Defendant in Criminal Proceedings

[Rules 6-109, 7-109, and 8-108 NMRA]

The Supreme Court has approved a joint recommendation from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee to amend the rules addressing the presence of the defendant in a criminal proceeding, Rules 6-109, 7-109, and 8-108 NMRA. The amendments clarify that if an attorney has entered the case on the defendant’s behalf, the defendant does not need to be present for a conference or hearing on a question of law.

Criminal Contempt Proceedings in Magistrate, Metropolitan, and Municipal Courts

[Rules 6-111, 6-201, 7-111, 7-201, 8-110, and 8-201 NMRA; Form 9-612 NMRA; and withdrawn Forms 9-611 and 9-613 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to amend the rules and forms addressing criminal

contempt of court proceedings in the district, magistrate, metropolitan, and municipal courts. The amendments to the limited jurisdiction rules for criminal contempt proceedings arising out of conduct in a criminal case in the magistrate, metropolitan, or municipal court, *see* Rules 6-111, 7-111, and 8-110 NMRA, are modeled after the district court rules that were approved in 2015 with some modifications. Because the limited jurisdiction rules provide that a criminal contempt case must be initiated with a criminal complaint, corresponding revisions have been made to the rules governing the commencement of an action in the limited jurisdiction courts, *see* Rules 6-201, 7-201, and 8-201 NMRA, to clarify that a criminal action should not be commenced with an order to show cause. Regarding the forms, Form 9-612 NMRA (order on direct criminal contempt) has been amended for consistency with the rule amendments. Form 9-611 NMRA (order to show cause) has been withdrawn because criminal contempt cases should be initiated with a criminal complaint. Finally, Form 9-613 NMRA (judgment and sentence on indirect criminal contempt) has been withdrawn because courts should use the general judgment and sentence forms when issuing a judgment and sentence for indirect criminal contempt, e.g., Forms 9-601 and 9-603 NMRA.

Closed Courtroom Proceedings

[New Rules 6-116, 7-115, and 8-114 NMRA; and Rule 23-107 NMRA]

The Supreme Court has approved a recommendation from the Joint Committee on Rules of Procedure for New Mexico State Courts to adopt new courtroom closure rules for the district, magistrate, metropolitan, municipal, and appellate courts. *See* Rules 1-104, 2-114, 3-114, 5-124, 6-116, 7-115, 8-114, and 12-322 NMRA. The rules reflect the presumption that courtroom proceedings should be open to the public unless otherwise provided by law. Subject to limited statutory exceptions, the rules prohibit the court from closing a proceeding unless the closure is warranted under the four-factor “overriding interest” standard that the Supreme Court adopted in *State v. Turrietta*, 2013-NMSC-036, 308 P.3d 964. The rules require notice and a hearing and permit public participation prior to the issuance of an order closing a courtroom proceeding. The Supreme Court also approved minor amendments to the existing Supreme Court General Rule that governs cameras in the courtroom, Rule 23-107 NMRA. The amendments to Rule 23-107 clarify that any motion objecting to the presence of cameras in the courtroom should be filed in accordance with the new courtroom closure rules.

Signing of Complaints and Citations Prior to Filing

[Rules 6-201, 6-209, 7-201, 7-209, 8-201, and 8-208 NMRA]

The Supreme Court has approved amendments to Rules 6-201, 6-209, 7-201, 7-209, 8-201, and 8-208 NMRA. The amendments state that all complaints and citations must be signed and that the court clerk shall not accept an unsigned complaint or citation for filing. In the event that an unsigned complaint or citation commences an action, the amendments provide that the case shall be dismissed without prejudice.

Timing of Motions to Suppress Evidence in Metropolitan Courts

[Rule 7-304 NMRA]

The Supreme Court has approved a recommendation from the Metropolitan Courts Rules Committee to amend the provisions in Rule 7-304 NMRA addressing motions to suppress evidence. First, the suppression provisions have been moved from Paragraph B to

Paragraph F of the rule. Second, the amendments clarify that the suppression provisions apply to any motion to exclude evidence obtained through allegedly unconstitutional means. Third, the amendments require a suppression motion to be filed twenty days before trial or the time specified for a motion hearing, whichever is earlier. Fourth, the amendments require the prosecution to file a written response within fifteen days after service of a motion to suppress. Fifth, the amendments permit the court to rule on a motion to suppress without a hearing if the prosecution fails to file a timely written response. And finally, new committee commentary has been adopted.

Subpoena Service in Criminal Cases in Metropolitan Court

[Rule 7-606 NMRA]

The Supreme Court has approved a recommendation from the Metropolitan Courts Rules Committee to amend the rule governing subpoenas in criminal cases, Rule 7606 NMRA. The amendments emphasize that notice of any subpoena must be timely served on all parties and counsel in the case.

Rules of Evidence

Notice-and-Demand Procedure for Hearsay Exception

[Rule 11-803 NMRA]

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

Rules of Professional Conduct

Lawyer-Client Sexual Relations

[Rule 16-108 NMRA]

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

Uniform Jury Instructions - Civil

Measure of Damages in Wrongful Death Cases

[UJI 13-1830]

The Supreme Court has approved a recommendation from the UJI-Civil Committee to amend UJI 13-1830 NMRA. The amendments

to UJI 13-1830 NMRA make it consistent with recent amendments to other civil jury instructions on damages. In 2013, the Court amended UJI 13-1807 NMRA (pain and suffering) to remove language referring to the “enlightened conscience of impartial jurors” and “fairness to all parties,” instead directing jurors to “use your judgment to decide a reasonable amount to compensate the plaintiff . . .” In 2013, the Court also adopted a new UJI 13-1807A NMRA (loss of enjoyment of life), which contains language similar to UJI 13-1807 as amended.

Uniform Jury Instructions - Criminal

Attempted Battery Assault Instructions

[UJIs 14-301, 14-303, 14-304, 14-306, 14-308, 14-310, 14-311, 14-313, 14-351, 14-353, 14-354, 14-356, 14-358, 14-360, 14-361, 14-363, 14-371, 14-373, 14-374, 14-376, 14-378, 14-380, 14-381, 14-383, 14-2201, 14-2203, 14-2204, 14-2206, 14-2207, and 14-2209 NMRA; and new UJIs 14-2200, 14-2200A, and 14-2200B NMRA]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to amend UJI 14-301 NMRA (Assault; attempted battery) as well as subsequent instructions that incorporate the elements of an attempted battery assault, UJI 14-303, -304, -306, -308, -310, -311, -313, -351, -353, -354, -356, -358, -360, -361, -363, -371, -373, -374, -376, -378, -380, -381, -383, -2201, -2203, -2204, -2206, -2207, and -2209 NMRA. The amendments aim to more accurately reflect the legal definition of the word “attempt” as defined in the attempt statute, NMSA 1978, Section 30-28-1, and corresponding UJI 14-208 NMRA. The Court has also approved a recommendation from the UJI-Criminal Committee to adopt new UJIs 14-2200, 14-2200A, and 14-2200B NMRA. The new instructions address simple assault against a peace officer under NMSA 1978, Section 30-22-21.

Sex Offender Registration and Notification Act Offenses

[New UJIs 14-990 to -994 NMRA]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to adopt new UJIs 14-990 to -994 NMRA. The new instructions address offenses under the Sex Offender Registration and Notification Act (SORNA), NMSA 1978, Sections 2911A1 to -10, including failure to register (UJIs 14-991 and -992 NMRA), providing false information when registering

(UJI 14-993 NMRA), and failure to notify the sheriff of the intent to move away from New Mexico (UJI 14-994 NMRA).

Possession of a Dangerous Drug

[New UJI 14-3106 NMRA]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to adopt new UJI 14-3106 NMRA. The new instruction pertains to the offense of possession of a dangerous drug under the New Mexico Drug, Device and Cosmetic Act, NMSA 1978, Sections 26-1-1 to -26.

DWI with a Blood or Breath Alcohol Concentration of

.08 or More

[UJI 14-4503 NMRA]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to amend UJI 14-4503 NMRA. The amendment removes the brackets from the phrase “and the alcohol concentration resulted from alcohol consumed before or while driving the vehicle.” Under NMSA 1978, Section 66-8-102(C)(1), this phrase is neither an alternative nor an optional element of the offense to be instructed only if in issue.

Aggravated DWI with a Blood or Breath Alcohol

Concentration of .16 or More

[UJI 14-4506 NMRA]

The Supreme Court has amended UJI 14-4506 NMRA. The amendment mirrors the amendment made to UJI 14-4503 NMRA.

Ignorance or Mistake of Fact

[UJI 14-5120]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to amend UJI 14-5120 NMRA. The amendments remove the phrase “evidence has been presented” as an improper comment by the court on the evidence. Furthermore, the amendments update the commentary including providing a more complete discussion of *State v. Bunce*, 1993-NMSC-057, 116 N.M. 284, 861 P.2d 965.

The full text of the new rule amendments summarized above can be viewed on the New Mexico Compilation Commission's website at www.nmcompcomm.us/nmrules/NMRuleSets.aspx

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From the New Mexico Supreme Court and Court of Appeals

Certiorari Denied, August 8, 2016, No. S-1-SC-35940

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-070

No. 34,488 (filed May 19, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

TOMMY SIMPSON,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

WILLIAM C. BIRDSALL, District Judge

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Opinion

Linda M. Vanzi, Judge

{1} In this driving while intoxicated (DWI) case, Defendant Tommy Simpson appeals from the denial of his motion to suppress. We understand Defendant's argument to be that the district court erred in denying his motion to suppress because the arresting officer violated his constitutional rights by detaining and seizing him without reasonable suspicion and by opening the door to the car he occupied without first obtaining a warrant. We affirm.

BACKGROUND

{2} Defendant was charged with a single felony count of aggravated DWI (0.16 or above). NMSA 1978, § 66-8-102(D)(1) (2010). He subsequently filed a motion to suppress, claiming that evidence was obtained in violation of the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The district court denied the motion after a hearing, and Defendant entered a conditional plea of guilty to felony DWI, reserving the right to appeal the denial of his motion. Farmington Police Department Officer Jonathan Jensen, who

arrested Defendant, was the sole witness at the hearing. The following facts derive from his testimony.

{3} Officer Jensen was on duty during the late afternoon of March 1, 2014, when he was dispatched to a Church's Chicken restaurant on Main Street in Farmington, New Mexico. Dispatch told Officer Jensen that a caller had reported a "parked DWI in the parking lot" and described the subject vehicle as a "dark blue Plymouth" with a partial New Mexico license plate of "Y820." Dispatch also told Officer Jensen that the caller reported the following: a male subject had entered the restaurant, he was passed out in the bathroom, and he smelled of an alcoholic beverage. The male got up, left the restaurant, got into the dark blue Plymouth, and moved the car from one parking space to another a few spots away, almost striking several other vehicles in the parking lot.

{4} Officer Jensen arrived at Church's Chicken within minutes of receiving the dispatch call and saw a dark blue vehicle with "very dark tinted windows" backed into a parking spot. He walked around the car and confirmed that the partial license plate number given to him by dispatch matched the vehicle's license plate—"LKY 820." Because of the dark tinted windows,

Officer Jensen was initially unable to see inside the car and whether it was occupied. After verifying that this was the correct vehicle, he walked around to the driver's side door, where the window was cracked "a couple of inches," and saw a female in the passenger seat and a man later identified as Defendant in the back seat. There was nobody in the driver's seat, so there was no one to open the driver's side window, and because of the dark tinted windows, Officer Jensen could not see inside the vehicle to determine what the occupants were doing. Under the circumstances, Officer Jensen felt that the safest way to make contact with the occupants was to open the driver's side door. That way, he could remain outside of the vehicle but able to see both occupants while he was conducting his investigation.

{5} After he opened the door, Officer Jensen noted a strong odor of alcohol coming from the car. He observed that the man in the back seat did not appear to be comfortable and that the driver's seat was "pretty far back," suggesting that he had moved the front seat deliberately in order to slide into the back of the car.

{6} After counsel completed direct and cross examination, the district court reviewed with Officer Jensen the information Jensen had received from dispatch. In addition, a video of the encounter was admitted into evidence without objection. Although stating "this seems righteous to me," the judge said he would look at the video before issuing a ruling. The district court rejected Defendant's argument that he had been subjected to a warrantless search or seizure that was presumed to be unreasonable and denied Defendant's motion to suppress the evidence obtained after Officer Jensen "opened the vehicle door and seized" him. In a letter decision explaining its order, the court reasoned:

This is not a stop case. The officer approached a stopped vehicle containing [D]efendant. The vehicle was not blocked. The police unit did not have siren or lights engaged. The officer knocked on the car window, waited for a response (to no avail) and peered through the slightly opened window before opening the door. At the time the officer opened the door, he had reasonable suspicion to pursue the investigation.

Due to the dark tint on the car windows, it was appropriate for him to open the door. At the time he asked [D]efendant to exit the vehicle, he had probable cause to arrest based on the earlier dispatch, what he observed, and statements made by [D]efendant.

{7} Defendant subsequently entered a conditional plea of guilty to a DWI 5th offense, a fourth degree felony, Section 66-8-102(D)(1), (H), reserving the right to appeal the suppression issue and to withdraw his guilty plea, if successful.

STANDARD OF REVIEW

{8} On appeal from the denial of a motion to suppress, we determine under de novo review whether the district court correctly applied the law to the facts, *State v. Garcia*, 2009-NMSC-046, ¶ 9, 147 N.M. 134, 217 P.3d 1032, viewing the facts “in a manner most favorable to the prevailing party” and deferring to the district court’s “findings of historical fact so long as they are supported by substantial evidence.” *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856 (internal quotation marks and citation omitted). Where there are no findings of fact, we “indulge in all reasonable presumptions in support of the district court’s ruling.” *Id.* ¶ 11 (internal quotation marks and citation omitted). Absent a contrary indication in the record, “we presume the court believed all uncontradicted evidence.” *Id.*

{9} Although Defendant mentions Article II, Section 10 of the New Mexico Constitution, he does not explain how that provision affords more protection than the Fourth Amendment to the United States Constitution in the context of this appeal. We therefore assume without deciding that both constitutions afford equal protection in this context and analyze the constitutionality of the challenged conduct under one uniform standard. *State v. Gomez*, 1997-NMSC-006, ¶ 22, 122 N.M. 777, 932 P.2d 1.

DISCUSSION

{10} Defendant states the question presented as “whether opening the car door was a detention of the occupants and/or a search of the vehicle and, if so[,] whether the officer required a warrant to do either.” He contends that Officer’s Jensen’s conduct in opening the door “was both a seizure of the occupants and a search of the vehicle” requiring a warrant or at least “reasonable suspicion to believe that a crime had been committed.” The State does not disagree that there was an investigatory detention

and seizure but argues that the challenged conduct was supported by a reasonable suspicion that, minutes before Officer Jensen arrived, Defendant had driven the car while intoxicated and that no warrant was required “[b]ecause of the exigent circumstances inherent to the crime of DWI, including both preservation of evidence and public safety[.]” As in all cases in the search and seizure context, the ultimate question is whether Officer Jensen’s conduct was objectively reasonable under the totality of the circumstances confronting him. See *State v. Funderberg*, 2008-NMSC-026, ¶ 10, 144 N.M. 37, 183 P.3d 922. Applying the governing standards to the record before us, viewed in the light most favorable to the State as the prevailing party, we hold that it was.

{11} A police officer may approach and detain a person to investigate possible criminal behavior, even if there is no probable cause to make an arrest, “if the officer is aware of specific articulable facts, together with rational inferences from those facts, that, when judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” *State v. Lope*, 2015-NMCA-011, ¶ 18, 343 P.3d 186 (internal quotation marks and citation omitted), *cert. denied*, 2014-NMCERT-010, 339 P.3d 425; see *Funderberg*, 2008-NMSC-026, ¶ 14 (“Reasonable suspicion develops when the officer becomes aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring.” (internal quotation marks and citation omitted)). Whether an investigatory detention is justified by reasonable suspicion depends on the totality of the circumstances, *Jason L.*, 2000-NMSC-018, ¶ 20, including “the content of information possessed by the police and its degree of reliability.” *State v. Contreras*, 2003-NMCA-129, ¶ 5, 134 N.M. 503, 79 P.3d 1111; see *Lope*, 2015-NMCA-011, ¶ 18 (stating this standard). “Determinations of reasonable suspicion are reviewed de novo.” *Garcia*, 2009-NMSC-046, ¶ 9; see *Funderberg*, 2008-NMSC-026, ¶ 10 (“To determine whether the detention was justified, we review the totality of the circumstances as a matter of law.” (internal quotation marks and citation omitted)).

{12} An investigatory detention is a seizure subject to the Fourth Amendment’s reasonableness requirement. *Contreras*, 2003-NMCA-129, ¶ 5; see U.S. Const. amend IV (stating the right to be secure “against unreasonable searches and sei-

zures”). “‘Reasonableness . . . depends on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.’” *State v. Leyva*, 2011-NMSC-009, ¶ 9, 149 N.M. 435, 250 P.3d 861 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (per curiam)); see *State v. Paananen*, 2015-NMSC-031, ¶ 13, 357 P.3d 958 (“To determine the constitutionality of a seizure we must balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” (internal quotation marks and citation omitted)). The reasonableness of an investigatory detention is determined under an objective standard: “Would the facts available to the officer warrant the officer, as a person of reasonable caution, to believe the action taken was appropriate[?]” *State v. Cobbs*, 1985-NMCA-105, ¶ 13, 103 N.M. 623, 711 P.2d 900 (internal quotation marks and citation omitted). In determining reasonableness, we “avoid bright-line, per se rules” and “consider the facts of each case.” *State v. Granville*, 2006-NMCA-098, ¶ 18, 140 N.M. 345, 142 P.3d 933; see *State v. Ochoa*, 2009-NMCA-002, ¶ 24, 146 N.M. 32, 206 P.3d 143 (“The myriad rules, exceptions, and exceptions to exceptions that flourish in the jurisprudence of search and seizure are often no more than factual manifestations of the constitutional requirement that searches and seizures be reasonable.” (internal quotation marks and citation omitted)).

{13} Defendant contends that the “report of a ‘parked DWI in the parking lot’” provided “no articulable facts to support a reasonable suspicion that Defendant had driven or was planning to drive while intoxicated.” The State counters that the information provided by the caller, which Officer Jensen was sent to investigate, was not limited to a “parked DWI” but included facts that not only identified the subject parked car but also indicated that a man who had been found passed out in the Church’s Chicken bathroom and who smelled of alcohol had driven that car after getting up and leaving the restaurant, almost hitting several other vehicles in the process, and that the man was still in the car. We agree with the State that the information upon which Officer Jensen relied was sufficient to support a reasonable suspicion of a possible DWI involving the parked car and its occupants, and therefore the investigatory detention (seizure) of Defendant.

{14} When Officer Jensen arrived in the Church's Chicken parking lot minutes after receiving the dispatch call, he found a vehicle matching the caller's description. Officer Jensen reasonably could infer that the car was the subject of the dispatch, and reasonably could suspect that the man described by the caller might be in the car and that he might have engaged in the criminal activity of driving while intoxicated minutes before. See *Cobbs*, 1985-NMCA-105, ¶ 15. An investigatory detention and seizure of the car and its occupants was justified because the information provided by dispatch and Officer Jensen's own corroborating observation identifying the subject car would lead a person of reasonable caution to suspect criminal activity involving the car and its occupants. See *id.* ¶¶ 16-17; see also *Contreras*, 2003-NMCA-129, ¶¶ 2, 9 (holding that information provided by anonymous "concerned motorist" and passed on to deputies that identified vehicle involved in possible DWI was sufficient to justify investigatory stop).

{15} Defendant's argument that the requisite reasonable suspicion was lacking erroneously assumes, contrary to the record evidence just discussed, that the only fact available to Officer Jensen was the "report of a 'parked DWI in the parking lot.'" Defendant also errs in relying on *State v. Murry*, 2014-NMCA-021, 318 P.3d 180, which held that evidence found after police officers approached a parked car and instructed the driver to open the door must be suppressed because the encounter was not consensual but a seizure, *id.* ¶¶ 11, 28, and the seizure was not supported by reasonable suspicion. *Id.* ¶ 32. In *Murry*, there had been no reports or dispatches concerning criminal activity, and the officers observed only that the car was parked and occupied and two of the occupants had made abrupt movements, and the officers approached the car and instructed the driver to open the door. *Id.* ¶¶ 28, 30-31. In contrast, Officer Jensen acted upon information that (among other things) indicated that a man who had been passed out in a restaurant bathroom and who smelled of alcohol had, after getting up and leaving the restaurant, driven a car identified by make, color, and partial license plate, almost hitting several other vehicles in the process, and that the car was parked in the restaurant parking lot with the man still inside.

{16} Although the totality of the circumstances considered in evaluating the

reasonableness of an investigatory detention includes the reliability of the information available to the officer as well as its content, *Contreras*, 2003-NMCA-129, ¶ 5, Defendant's brief in chief makes no reliability challenge. And while his reply brief asserts a hearsay-based reliability argument, it concedes that hearsay is admissible in suppression hearings. The argument comes too late. See Rule 12-213(C) NMRA; *Mitchell-Carr v. McLendon*, 1999-NMSC-025, ¶ 29, 127 N.M. 282, 980 P.2d 65 (stating that appellate courts ordinarily do not consider arguments made for the first time in a reply brief). In any event, the argument is not well taken on the facts of this case. Although the caller was anonymous, New Mexico law regards citizen informants as "more reliable than a police informant or a crime-stoppers informant[.]" and there was no reason for Officer Jensen to "presume that the informant was not reliable or that the description given was not credible." See *Contreras*, 2003-NMCA-129, ¶¶ 10, 12. Moreover, it appears that the caller was an eyewitness to the events described to dispatch, a factor that courts treat as indicative of reliability. See *id.*

{17} Defendant appears to read *Contreras* to hold that an investigative detention based on an anonymous tip is justified only if there is an imminent threat of danger to the public and that an investigatory detention of a possible DWI is unreasonable unless the suspect is still driving. This reading is incorrect. As an initial matter, it contravenes the well-settled principle that, in determining reasonableness, we "avoid bright-line, per se rules" and "consider the facts of each case." *Granville*, 2006-NMCA-098, ¶ 18. It also is not supported by the principles set forth in *Contreras*, 2003-NMCA-129, ¶¶ 13-21.

{18} In *Contreras* we "balance[d] the possible threat of drunk driving to the safety of the public with [the d]efendant's right to be free from unreasonable seizure[.]" 2003-NMCA-129, ¶ 13, consistent with the law stating that, in determining the constitutionality of a seizure, we "balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Paananen*, 2015-NMSC-031, ¶ 13 (internal quotation marks and citation omitted). In so doing, we stated that, "[i]n New Mexico, the elimination of [DWI] and its related offenses is a matter of grave concern to society in general, and

to our courts and Legislature in particular[.]" and that "a moving car on a public roadway presents an exigent circumstance that a possessory crime does not." *Contreras*, 2003-NMCA-129, ¶¶ 14, 15 (internal quotation marks and citation omitted). But we did so in the context of explaining that the minimal intrusion posed by an investigatory detention was justified by the need to protect the public from the threat posed by possible drunk driving and that an officer should not have to "expose the suspect and the public to the danger of a drunk driver[.]" as would result from a requirement that the officer first observe the drunk driving before initiating a detention to investigate a possible DWI. *Id.* ¶¶ 15-21; cf. *State v. Sims*, 2010-NMSC-027, ¶ 3, 148 N.M. 330, 236 P.3d 642 ("Had the police officer or other witnesses observed [the d]efendant behind the steering wheel of a moving vehicle at or near the time of his apprehension, the [s]tate would not have to rely on 'actual physical control' to prove that [the d]efendant was DWI. It is only when there are no witnesses to the vehicle's motion that actual physical control is essential to prove DWI at the time an accused is apprehended."). As our Supreme Court stated in *City of Santa Fe v. Martinez*, 2010-NMSC-033, ¶ 15, 148 N.M. 708, 242 P.3d 275,

If an officer was prohibited from making a warrantless arrest of a suspected drunk driver based on the fact that the officer did not actually observe the incident, the officer would be posed with two options—releasing the suspected drunk driver or obtaining a warrant. If the officer chose to pursue the investigation and obtain a warrant, the evidence needed for the subsequent prosecution could be diluted or lost entirely. In addition to the effect on the evidence, there is also a risk that during the time period in which the officer is obtaining a warrant, a suspect may get into his or her car and drive away, endangering both himself or herself and the public at large. Such a risk is untenable given the strong public interest in deterring the crime of DWI.

{19} The investigatory detention in *Contreras* was reasonable under the totality of the circumstances because, in addition to the content and reliability of the facts provided by the anonymous concerned motorist, "the exigency of the possible

threat to public safety that a drunk driver poses, New Mexico's grave concern about the dangers of drunk drivers, and the minimal intrusion of a brief investigatory stop tip the balance in favor of the stop." 2003-NMCA-129, ¶ 21. In this case, the balance of private and public interests tips in favor of the reasonableness of Officer Jensen's investigatory detention, just as it did in *Contreras*. The record contains evidence that a man later identified as Defendant had been passed out in the Church's Chicken bathroom and smelled of alcohol; that he had gotten up, left the restaurant, and driven the car identified by the caller (and confirmed by Officer Jensen) just minutes before Officer Jensen arrived; and that the man was still in the car, as Officer Jensen also subsequently confirmed. No evidence in the record supports Defendant's assertion that the keys were neither in the ignition, nor in sight, and that Defendant was lying down. A person of reasonable caution could reasonably suspect from the information available to Officer Jensen that a man in the parked car had driven the car while intoxicated and might do so again.

{20} In our view, Officer Jensen's conduct in opening the door did not transform his lawful investigative detention into a search that required a warrant, as Defendant appears to contend. Our decision in *State v. Lovato*, 1991-NMCA-083, 112 N.M. 517, 817 P.2d 251, is instructive on the point. In *Lovato*, this Court concluded that police officers were justified in making an investigatory stop of a car to determine whether it was involved in a drive-by shooting reported minutes earlier. *Id.* ¶ 14. We rejected the defendants' alternative argument that the investigatory stop was so intrusive as to constitute an arrest and that the police lacked probable cause to support the arrest, holding that "the intrusive nature of the encounter did not, as a matter of law, turn the investigative stop . . . into an arrest[.]" *id.* ¶ 23, and that the officers' actions in calling for assistance and taking precautionary measures to determine whether the car's occupants were armed were "not inappropriate in view of the level of danger the officers reasonably could assume to exist." *Id.* ¶ 27. "[T]he court's true concern in any Fourth Amendment case [is] whether the police conduct, in light of all the circumstances, was reasonable." *Id.* ¶ 31 (quoting *United States v. Merritt*, 695 F.2d 1263, 1274 (10th Cir. 1982)). And "[e]ven in routine traffic stops, police may adopt precautionary measures addressed to reasonable fears." *Id.* ¶ 26.

{21} We also rejected the *Lovato* defendants' argument that "the officers exceeded the proper bounds of investigation by opening the car door and that this action effectively amounted to a search of the car." *Id.* ¶ 33. One of the officers testified that, after the five occupants were out of the car, he and another officer approached with guns drawn because they were not sure if another occupant might be on the floor of the car. *Id.* The officers' concerns were not unreasonable, we concluded, given testimony that three people were in the car's front seat and five people got out of the car, and the facts that it was late at night and the officers' visibility was limited. We further determined that the officers had a reasonable basis to believe a firearm had been discharged earlier and that either the car's occupants were armed or weapons were in the car. *Id.* The defendants also argued that the officers should not have opened the car door because the windows were not tinted and the police could have looked in a window to determine whether someone might still be in the car. *Id.* ¶ 34. This argument, we explained, "overlooks the expressed concern of the officers that an armed person might have been hiding in the vehicle." *Id.* We held that police in such circumstances "were not required to forego reasonably prudent steps necessary for their own safety" and that "[u]nder the facts . . . the officers were entitled to take reasonable precautions to insure their safety, including the opening of the car door[.]" *Id.*

{22} Similar reasoning applies here, notwithstanding that this case involves a detention to investigate a suspected DWI and not a drive-by shooting. Officer Jensen testified that the car had "very dark tinted windows" and that, as a result, he could not see inside to determine what the occupants were doing. He believed that the safest way to make contact with the car's occupants was to open the door, enabling him to see both occupants and remain outside while conducting his investigation. Under all the circumstances confronting Officer Jensen, this safety precaution was reasonable and permissible under the governing law. *See id.* ¶¶ 26-34. In sum, under *Lovato*, Officer Jensen's conduct in opening the door did not transform a lawful investigatory detention into a search requiring a warrant. The record contains no other evidence of a more intrusive search that might require a warrant.

{23} Defendant also appears to suggest that Officer Jensen was required to talk to

Defendant through the window that was open "a couple of inches." But officers may take reasonable safety precautions while conducting investigatory detentions, as discussed above. *Id.* ¶ 34. And the law does not require that an officer ask questions before doing so in all circumstances. *Cobbs*, 1985-NMCA-105, ¶¶ 21-25. As we said in *Cobbs*, even "when an officer is merely investigating a traffic offense, he faces an inordinate risk when he approaches a subject seated in an automobile." *Id.* ¶ 25. We agree with the district court that, at the time he opened the door, Officer Jensen had reasonable suspicion to pursue the investigation and that "[d]ue to the dark tint on the car windows, it was appropriate for him to open the door."

{24} Although our application of the governing law to the record before us leads us to conclude that Officer Jensen's conduct in opening the door required no more justification than the reasonable suspicion we have held was established by the facts available to him, we note the following additional points. First, although exigent circumstances are not required to establish reasonable suspicion for an investigatory detention, New Mexico courts have recognized the evanescent nature of alcohol and the need to preserve evidence as exigent circumstances justifying warrantless searches and seizures in the DWI context, *see Martinez*, 2010-NMSC-033, ¶ 15, and that where "sufficient exigent circumstances make it not reasonably practicable to get a warrant, one is not required." *Paananen*, 2015-NMSC-031, ¶ 27. Second, Defendant's assertion that Officer Jensen did not knock before opening the door is contradicted by the district court's statement, presumably gleaned from his review of the video entered into evidence without objection (but not designated as part of the record on appeal) that "[t]he officer knocked on the car window, waited for a response (to no avail) and peered through the slightly opened window before opening the door." *Cf. State v. Nance*, 2011-NMCA-048, ¶ 26, 149 N.M. 644, 253 P.3d 934 (concluding that intrusion was de minimis and well-tailored to the exigency that evidence material to the DWI case police were investigating was dissipating after balancing the "compelling public interest in eradicating DWI occurrences and their potentially deadly consequences" against the defendant's interest, where police did not enter the defendant's house, did not draw weapons, and did not search the premises incident

to the arrest but merely waited outside for fifteen minutes (alteration, internal quotation marks, and citation omitted)). Finally, none of the cases cited by Defendant support his position. For example, in *Mundy v. Commonwealth of Kentucky*, 342 S.W.3d 878, 885-86 (Ky. Ct. App. 2011), unlike this case, the Kentucky court of appeals concluded that the officer's opening of the car door was unreasonable because the car was legally parked on the side of the road and there was no reasonable belief that the driver needed assistance.

CONCLUSION

{25} The district court's decision denying Defendant's motion to suppress and the judgment of conviction are affirmed.

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

LINDA M. VANZI, Judge

I CONCUR:

MICHAEL E. VIGIL, Chief Judge

TIMOTHY L. GARCIA, Judge

(specially concurring)

GARCIA, Judge (specially concurring).

{27} I write to specially concur with the result reached by the majority but disagree with the determination that a constitutionally protected search was not initiated by Officer Jensen when he opened the driver's side door to further his DWI investigation. See Majority Opinion ¶¶ 4, 10, 20-24. Because a search was initiated when Officer Jensen opened the driver's side door of the vehicle to further his DWI investigation, this Court cannot rely solely upon the reasonable suspicion that justified Officer Jensen's initial investigation and seizure of the vehicle. We must also address the search that occurred when the driver's side door was opened by Officer Jensen. In doing so, the facts must also support a determination that probable cause existed for Officer Jensen to continue his search for the male driver of the vehicle that was reported to be very intoxicated and driving erratically in the restaurant parking lot minutes before he arrived. Exigent circumstances must also have existed to open the driver's side door and determine whether the only male occupant, located in the back seat, was in fact the suspected DWI driver that had been reported to Officer Jensen by dispatch.

{28} At the suppression hearing, Officer Jensen did not describe any aggressive actions by the occupants of the parked vehicle that might trigger serious officer safety concerns as he approached it and noticed the dark tinted windows, lack of an

occupant in the driver's seat, one male and one female occupant located elsewhere inside the vehicle, and the driver's side window cracked open "a couple of inches." Majority Opinion ¶ 4; See *State v. Ketelson*, 2011-NMSC-023, ¶¶ 20-27, 150 N.M. 137, 257 P.3d 957 (analyzing Article II, Section 10 and addressing the officer safety concerns involved in the temporary removal of a visible gun from a vehicle during a routine traffic stop and the reasonableness of such an action when the occupants are not otherwise acting aggressively to establish the type of officer safety concerns that create exigent circumstances to conduct an immediate search or seizure). Because there was nobody in the driver's seat to open the window any further, Officer Jensen simply decided to open the driver's side door to continue his investigation and search for the driver. Majority Opinion ¶ 4. No evidence was presented to establish that the two occupants were unable to open the driver's side window further or, alternatively, open any of the other windows or doors in the vehicle to talk to Officer Jensen if he had instructed them to do so. We recognize that the owner of a vehicle has a reasonable expectation of privacy to challenge whether a reasonable search or seizure of the vehicle has occurred. See *Gomez*, 1997-NMSC-006, ¶¶ 36-40 (requiring the state to establish both probable cause and exigent circumstances to initiate the search of a vehicle that has been seized by law enforcement). We must now address Defendant's constitutional challenge that was raised because Officer Jensen did initiate a warrantless search within the suspect vehicle when he affirmatively acted to open the driver's side door to continue his DWI investigation. See *State v. Leticia T.*, 2014-NMSC-020, ¶ 12, 329 P.3d 636 ("A warrantless entry into a vehicle under the exigent circumstances exception requires probable cause plus exigent circumstances."); *State v. Rowell*, 2008-NMSC-041, ¶¶ 26, 31, 144 N.M. 371, 188 P.3d 95 (recognizing that warrants are favored and a warrant is required to enter the vehicle unless a recognized exception to the warrant requirement can be proven); *State v. Garcia*, 2005-NMSC-017, ¶ 29, 138 N.M. 1, 116 P.3d 72 ("However, even with an object in plain view, an officer may not enter the car and seize the object, without either consent, a warrant, or exigent circumstances.").

{29} Before initiating a search inside Defendant's vehicle, probable cause must be established and a search warrant must

be issued, unless sufficient exigent circumstances also exist to justify an immediate search without a warrant. See *Martinez*, 2010-NMSC-033, ¶ 14 (clarifying that "law enforcement officers conducting DWI investigations . . . [would] be subjected to the constitutional probable cause inquiry of felony warrantless arrests"); *Rowell*, 2008-NMSC-041, ¶¶ 26, 31; *Gomez*, 1997-NMSC-006, ¶¶ 36-40. Ultimately, the legality of a search turns on the question of reasonableness and we review this determination de novo. *State v. Ryon*, 2005-NMSC-005, ¶ 11, 137 N.M. 174, 108 P.3d 1032. Here, the facts known to Officer Jensen were sufficiently reasonable to provide him with probable cause to continue his search. See *State v. Snedeker*, 1982-NMSC-085, ¶ 21, 99 N.M. 286, 657 P.2d 613 ("Probable cause . . . exists where the facts and circumstances within the knowledge of the officers, based on reasonably trustworthy information, is sufficient to warrant a man of reasonable caution to believe that an offense has been or is being committed." (internal quotation marks and citation omitted)). The investigation centered around a male drunk driver who had been reported to be erratically driving this particular vehicle in the restaurant parking lot only minutes before the officer arrived, and only one male was located as an occupant inside the vehicle when he looked through the opening in the driver side window. Majority Opinion ¶¶ 3-4. After confirming that only one male occupant was located inside the vehicle and seeing that nobody was seated in the driver's seat to open the door or respond to questioning, I agree with the majority that it was objectively reasonable for Officer Jensen to continue his search for the male driver by opening the driver's side door to speak with the occupants. See *Leticia T.*, 2014-NMSC-020, ¶¶ 13, 15-19 (recognizing that probable cause was established by the facts known to the officers and their reasonable belief "that someone in the vehicle was armed and had just assaulted individuals with a rifle"); see also *Snedeker*, 1982-NMSC-085, ¶ 22 (recognizing that when the court is determining whether probable cause exists, "(1) only a probability of criminal conduct need be shown; (2) there need be less vigorous proof than the rules of evidence require to determine guilt of an offense; (3) common sense should control; [and] (4) great deference should be shown by [the] courts[.]" (internal quotation marks and citations omitted)). Under this

standard of reasonableness and common sense, Officer Jensen had probable cause to open the driver's side door and investigate whether the one male occupant seated in the back seat was in fact the person who was reported driving this particular vehicle under the influence of alcohol minutes before he arrived.

{30} Here, exigent circumstances also existed to justify a continuation of the search for the driver among the occupants inside without first obtaining a search warrant. *See Leticia T.*, 2014-NMSC-020, ¶ 22 (cautioning lower courts in a warrantless vehicle search case to address the range of constitutional choices that an on-scene officer must make and be mindful that, “[f]irst, if reasonable people might differ about whether exigent circumstances existed, we defer to the officer’s good judgment . . . [and s]econd, we should not let our preference for warrants result in overriding an officer’s on-the-scene decision to act immediately where immediate action is one of the lawful options” (alteration, internal quotation marks, and citation omitted));

see also Martinez, 2010-NMSC-033, ¶ 15 (recognizing that an officer is not “prohibited from making a warrantless arrest of a suspected drunk driver based on the fact that the officer did not actually observe the incident [because i]f the officer chose to pursue the investigation and obtain a warrant, the evidence needed for the subsequent prosecution could be diluted or lost entirely . . . [and] there is also a risk that during the time period in which the officer is obtaining a warrant, a suspect may get into his or her car and drive away, endangering both himself or herself and the public at large”); *Ryon*, 2005-NMSC-005, ¶ 26 (recognizing that “[s]ince there is a lesser privacy expectation in a vehicle[,] . . . an involuntary search or seizure there is judged by a lower standard of reasonableness”). When analyzing the facts to determine whether exigent circumstances exist, “[t]he inquiry is an objective test, not a subjective one, into whether a reasonable, well-trained officer would have made the judgment this officer made.” *Gomez*, 1997-NMSC-006, ¶ 40.

{31} Again, after confirming that only one male occupant was located inside the vehicle and seeing that nobody was seated in the driver’s seat to open the door or respond to questioning, an objectively reasonable exigency existed in this DWI investigation to justify Officer Jensen’s continuation of his search for the intoxicated male driver by opening the driver’s side door to speak with the male occupant in the back seat. Because Officer Jensen had sufficient facts to provide probable cause to continue his search for the driver of the suspect vehicle and exigent circumstances also existed to open the driver’s side door and contact the only male occupant that was seated in the back seat, his search was in compliance with both the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution.

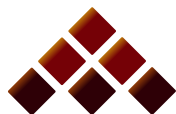
{32} For the reasons stated herein, I specially concur with the majority’s decision to deny Defendant’s motion to suppress and affirm his DWI conviction.

TIMOTHY L. GARCIA, Judge

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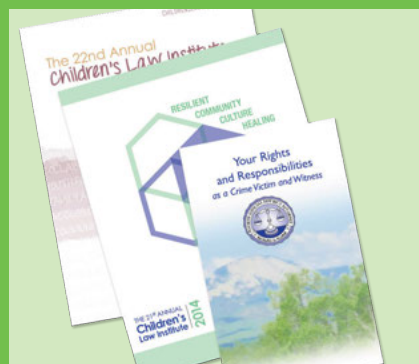
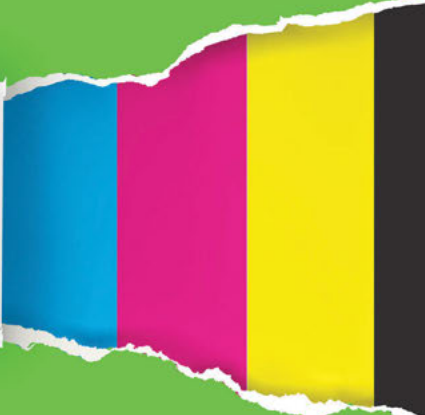
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