December 7, 2016 • Volume 55, No. 49



Red Ridinghood, by Jennifer Butler (see page 3)

Turquoise Butterfly, Santa Fe

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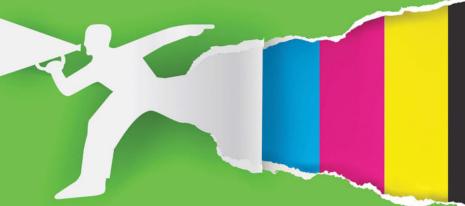
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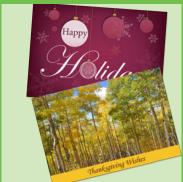
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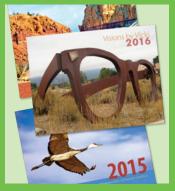
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Meetings

December

Business Law Section BOD

4 p.m., teleconference

Public Law Section BOD

Noon, Montgomery & Andrews, Santa Fe

Prosecutors Section Annual Meeting

6 p.m., State Bar Center

Young Lawyers Division BOD

10 a.m., State Bar Center

Appellate Practice Section BOD

Noon, teleconference

Animal Law Section BOD

Noon, State Bar Center

Children's Law Section BOD

Noon, Juvenile Justice Center, Albuquerque

14

Taxation Section BOD

11 a.m., teleconference

Workshops and Legal Clinics

December

Divorce Options Workshop

6-8 p.m., State Bar Center, Albuquerque, 505-797-6003

Civil Legal Clinic

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

Sandoval County Free Legal Clinic

10 a.m.-2 p.m., 13th Judicial District Court, Bernalillo, 505-867-2376

Valencia County Free Legal Clinic

10 a.m.-2 p.m., 13th Judicial District Court, Los Lunas, 505-865-4639

Consumer Debt/Bankruptcy Workshop

6-9 p.m., State Bar Center, Albuquerque, 505-797-6094

Cibola County Free Legal Clinic

10 a.m.-2 p.m., 13th Judicial District Court, Grants, 505-287-8831

Cover Artist: Jennifer Butler has been painting for more than six years. She uses acrylic paint on canvas or watercolor on watercolor paper. Nature is a major theme in most of her paintings, fantasy being the second. Much of her work features trees, owls, the moon and stars. Much inspiration is taken from the New Mexico sky, especially the sunsets. From her East Mountains studio she works steadily, primarily doing stained glass, which she has been doing for more than 20 years. Her work includes stained, fused, steel and glass panels, and commissioned work from sidelights to pet portraits. Her work has been in various galleries, she is currently showing at the Turquoise Butterfly in Santa Fe. For more of Butler's work, visit her online store, Etsy.com/shop/vistaglassonline or her Vista Glass Facebook page.

COURT NEWS

New Mexico Supreme Court Proposed Policy for Online Access to Court Records

Attorneys and their staff, the press and justice partners, including law enforcement and child welfare agencies, could be granted online access to electronic records in court case files under a proposal before the New Mexico Judiciary. If adopted by the New Mexico Supreme Court, the proposal would permit approved users to view public records from their computer terminals 24 hours a day, seven days a week through a restricted access system operated by the Judicial Information Division. The proposed online access policy, related application documents and proposed rule amendments that are the subject of the public hearing are available at supremecourt.nmcourts.gov/ open-for-comment.aspx. Interested parties are invited to comment on the proposal at a public hearing from 9 a.m.-noon on Dec. 8, at the Judicial Information Division in Santa Fe. Members of the public who cannot participate in the hearing at the Judicial Information Division office can comment through video conferencing available at a variety of locations.

New Mexico Court of Appeals Judicial Vacancy

A vacancy exists of Dec. 1 due to the retirement of Judge Roderick T. Kennedy. The deadline for application is 5 p.m., Dec. 8. The Appellant Nominating Commission will meet Dec. 22 in Santa Fe to interview applicants for this vacancy. Alfred Mathewson, chair of the Appellate Court Judicial Nominating Commission, invites applications for these positions from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications can be found at lawschool.unm.edu/judsel/application.php.

Second Judicial District Court Hours Change

Effective Nov. 21, the Second Judicial District Children's Court Clerk's Office, located at 5100 2nd Street, Albuquerque, hours will be 8 a.m. to 4 p.m. The office will remain open through the lunch hour.

Sixth Judicial District Court Notice of Right to Excuse Judge

Gov. Susana Martinez appointed Jarod K. Hofacket to fill the vacant judicial

Professionalism Tip

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

I will not adopt procedures that needlessly increase litigation expense.

position and to take office on Nov. 4 in Division IV of the Sixth Judicial District Court. Judge Hofacket will be assigned all pending and reopened cases previously assigned to Judge Daniel Viramontes, District Judge, Division IV. All pending and reopened cases involving Amy DeLaney-Hernandez shall be assigned to Judge Hofacket. All pending and reopened cases involving Tyler Benting shall be assigned to Judge Jennifer E. DeLaney, District Judge, Division II. Pursuant to Supreme Court Rule 1.088.1, parties who have not yet exercised a peremptory excusal will have 10 days to excuse Judge Hofacket.

13th Judicial District Court 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 though PQ-1333-2015-00003; SA-1333-2004-00003 through SA-1333-015-00008; SQ-1333-1987-00006 through SQ-1333-2015-00011.

Bernalillo County Metropolitan Court Court Closure

The Bernalillo County Metropolitan Court will be closed from 11 a.m.–2 p.m. on Dec. 9 for the Court's Annual Staff Appreciation Holiday Lunch.

U.S. District Court, District of New Mexico Announcement of Judicial Vacancy

The Judicial Conference of the U.S. has authorized the appointment of a full-time U.S. magistrate judge for the District of New Mexico at Albuquerque. The current annual salary of the position is \$186,852. The term of office is eight years. A full public notice and application forms for the U.S. magistrate judge position are posted in the Clerk's Office of the U.S. District Court at all federal courthouses in New Mexico, and on the Court's website at www.nmd.uscourts.gov. Application forms may also be obtained from the Intake Counter at all federal courthouses in New Mexico, or by calling 575-528-1439. Applications must be received by Dec. 23. All applications will be kept confidential unless the applicant consents to disclose.

U.S. Courts Library Holiday Open House

Join the staff of the U.S. Courts Library for an open house. Enjoy some cookies and punch from 10 a.m.–5 p.m., Dec. 14. Stop by and meet staff, peruse the collection and discover how the Library can become an integral part of your legal research team. The Library is located on the third floor of the Pete V. Domenici U.S. Courthouse at the northeast corner of Fourth St. and Lomas Blvd. in downtown Albuquerque. Normal hours of operation are 8 a.m.–noon and 1–5 p.m., Monday through Friday. For more information, call 505-348-2135.

STATE BAR NEWS

Attorney Support Groups• Dec. 12, 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#.
- Dec. 19, 7:30 a.m. First United Methodist Church, 4th and Lead SW, Albuquerque (group meets the third Monday of the month.)
- Jan. 2, 2017, 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.

2017 Licensing Notification Due by Dec. 31

2017 State Bar licensing fees and certifications are due Dec. 31, 2016, and must be completed by Feb. 1, 2017, to avoid non-compliance and related late fees. Complete annual licensing requirements at www.nmbar.org/licensing. Payment by credit card is available (payment by credit card will incur a service charge). For more information, call 505-797-6083 or email license@nmbar.org. For help logging in or other website troubleshooting, call 505-797-6084 or email aarmijo@nmbar.org. Those who have already completed their licensing requirements should disregard this notice.

Board of Bar Commissioners Commissioner Vacancies

Two vacancies exist on the Board of Bar Commissioners. Applicants should plan to attend the 2017 Board meetings scheduled for April 21, July 27 (Ruidoso, in conjunction with the annual meeting), Sept. 15 and Dec. 13, 2017 (Santa Fe). Members interested in serving on the Board should submit a letter of interest and résumé to Executive Director Joe Conte (jconte@ nmbar.org) by Jan. 16, 2017.

A vacancy was created in the First Bar Commissioner District, representing Bernalillo County, due to Julie Vargas' appointment to the bench. The Board will make the appointment at the Jan. 27, 2017, meeting to fill the vacancy until the next regular election of Commissioners. The term will run through Dec. 31, 2017.

A vacancy exists in the Third Bar Commissioner District, representing Los Alamos, Rio Arriba, Sandoval and Santa Fe counties. The Board will make the appointment at its Jan. 27, 2017, meeting to fill the vacancy until the next regular election of Commissioners, and the term will run through Dec. 31, 2017. Active status members with a principal place of practice located in the Third Bar Commissioner District are eligible to apply.

Board of Editors Open Position for Non-Lawyer

The State Bar Board of Editors has an open position for a non-lawyer beginning Jan. 1, 2017. This volunteer Board's primary responsibility is for the New Mexico Lawyer, a quarterly insert to the Bar Bulletin written by State Bar practice section. The Board reviews articles for the New Mexico Lawyer and stand-along articles for the Bar Bulletin for suitability, edits legal content and works with authors as needed to develop the topics or address other concerns. The Board of Editors should represent a diversity of backgrounds, ages, geographic regions of the state, ethnicity, gender, and areas of legal practice, and preferably have some experience in journalism or legal publications. Non-lawyers interested in being considered for a two-year term should send a letter of interest and résumé to Communications and Member Services Program Manager Evann Kleinschmidt at ekleinschmidt@nmbar.org.

UNM **Law Library**

Hours Through Dec. 18 Building & Circulation

Monday-Thursday	8 a.m8 p.m.
Friday	8 a.m6 p.m.
Saturday	10a.m6p.m
Sunday	noon-6 p.m.
Reference	
Monday-Friday	9 a.m6 p.m
Saturday-Sunday	Closed

Innocence and Justice Project Seeking Donations

Contributions to the New Mexico Innocence and Justice Project are taxdeductible and count toward the financial contribution aspect of the pro bono rules governing the State Bar. The Project at UNM School of Law is a resource for persons convicted in NM state courts who have a meritorious claim of factual innocence. See lawschool.unm.edu/ijp/ for more information or call 505-277-1457. To donate, visit www.unmfund.org/fund/ other and type in "UNM School of Law Barbara Bergman Fund - for IJP only" in the comment box at the bottom.

OTHER BARS **Albuquerque Lawyers Club December Luncheon and CLE**

Join the Albuquerque Lawyers Club for "Are There 13th Century Ethical Pointers for Dealing with 21st Century Problems?" (2.0 EP) at 11:30 a.m., Dec. 7, at Seasons Rotisserie and Grill in Albuquerque. Jack Clark Robinson, OFM, the Minister Provincial of Our Lady of Guadalupe Province

-Featured-Member Benefit

STATE BAR CENTER MEETING SPACE

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of the Franciscans, will present insights from his more than 30 years as a Franciscan friar and ministering across the Southwest. Judge James O. Browning of the U.S. District Court will introduce Father Robinson. For more information and to R.S.V.P., visit www.albuquerquelawyersclub.com.

First Judicial District Bar Association Holiday Party in Santa Fe

Join the First Judicial District Bar Association for beer, wine, salad, pizza and good cheer at a holiday party at 5:30 p.m., Dec. 15, at the Draft Station, 60 East San Francisco St, Suite 313, Santa Fe. R.S.V.P.s are unnecessary. FJDBA members may bring a guest.

New Mexico Criminal Defense Lawyers Association Fulfill Ethics Requirements

Get your end of year ethics credit and tips on trial skills at "Latest Techniques in Trial Skills & Sentencing" on Dec. 16 in Las Cruces. This CLE is open to criminal defense and civil attorneys, offers 2.0 ethics credits. Get a judge's perspective on ethical and effective arguments for sentencing. Visit the New Mexico Criminal Defense Lawyers Association website www.nmcdla. org to register for this seminar. Members can also renew for 2017.

New Mexico Defense Lawyers Association Basic Skills CLE

The New Mexico Defense Lawyers Association presents a half-day "Basic Skills

continued on page 8

Legal Education

December

7 13th Century Ethical Pointers for Dealing with 21st Century Problems

2.0 EP

Live Seminar, Albuquerque Albuquerque Lawyers Club 575-921-1597

7 Deposition Practice in Federal Cases

2.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

7 EEOC Update, Whistleblowers and Wages (2015 Employment and Labor Law Institute)

3.2 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

7 Gender and Justice (2016 Annual Meeting)

1.0 E

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

7 The Rise of 3-D Technology: What Happened to IP? (2016 Annual Meeting)

1.0 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

7 HR Legal Compliance: Advanced Practice

6.0 G

Live Seminar, Albuquerque NBI Inc.

www.nbi-sems.com

8 2016 Real Property Institute

4.5 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

8 Structuring Minority Interests in Businesses

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

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

9 Immigrant Youth in the System: The Intersection of Immigration, Family Law and Juvenile Justice

6.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

9 Government Procurement and Municipal Lawsuits

7.0 G

Live Seminar, Albuquerque City of Albuquerque Legal Department 505-768-4500

9 Water Rights in New Mexico

6.0 G

Live Seminar, Albuquerque NBI Inc. www.nbi-sems.com

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

9 Medical Marijuana Law in New Mexico

6.0 G

Live Seminar, Santa Fe NBI Inc. www.nbi-sems.com

9 Essentials of Employment Law

6.6 G

Live Seminar, Santa Fe Sterling Education Services www.sterlingeducation.com

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

12 Ethicspalooza: Ethically Managing Your Law Practice

1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

12 Ethicspalooza: The Disciplinary Process

2 0 FF

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

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

13 Collection Law from Start to Finish

6.0 G

Live Seminar, Albuquerque NBI Inc. www.nbi-sems.com

4 2016 Intellectual Property Law Institute—Copy That! Copyright Topics Across Diverse Fields

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

December

15 2016 Mock Meeting of the Ethics Advisory Committee

2.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

15 Professional Liability Insurance: What You Need to Know (2015)

3.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

15 2016 Employment and Labor Law Institute

6.5 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

15 Divorce Litigation from Start to Finish

6.0 G

Live Seminar, Albuquerque NBI Inc.

www.nbi-sems.com

15 Business Law Bootcamp

6.0 G

Live Seminar, Santa Fe NBI Inc.

www.nbi-sems.com

16 Living with Turmoil in the Oil Patch: What it Means to New Mexico

5.8 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

16 Lawyers and Email: Ethical Issues in Practice

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

16 Latest Techniques in Trial Skills and Sentencing

3.5 G, 2.0 EP Live Seminar, Las Cruces New Mexico Criminal De

New Mexico Criminal Defense Lawyers Association www.nmcdla.org

16 Half-Day Defense Practice—Basic Skills

3.0 G

Live Seminar, Albuquerque New Mexico Defense Lawyers Association www.nmdla.org

16 Half-Day Ethics and Professionalism

3.0 EP

Live Seminar, Albuquerque New Mexico Defense Lawyers Association www.nmdla.org

16 Las Chance: Best of The Best Seminar

3.6 G, 2.0 EP Live Seminar, Santa Fe New Mexcio Trial Lawyers Association www.nmtla.org

19 Attorneys vs. Judicial Discipline

3.0 G

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

19 2015 Mock Meeting of the Ethics Advisory Committee

2.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

19 Navigating the Amenability Process in Youthful Offender Cases (2016 Annual Meeting)

1.0 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

19 Business Law Boot Camp

6.0 G

Live Seminar, Albuquerque NBI, Inc. www.nmbi-sems.com

19 The Ultimate Guide to Probate

6.0 G

Live Seminar, Albuquerque NBI, Inc. www.nmbi-sems.com

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

2.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 Journalism, Law and Ethics (2016 Annual Meeting)

1.5 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 Effective Mentoring—Bridge the Gap (2015)

2.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 The Future of Cross-Commissioning (2015)

2.5 G 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 Escrow Agreements in Real Estate

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

20 The Ultimate Guide to Probate

6.0 G

Live Seminar, Roswell NBI, Inc. www.nmbi-sems.com

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

3.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

21 Mastering Microsoft Word in the Law Office (2016)

6.2 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org



Tips for a Less Stressful Holiday Season

'Tis the season to be jolly'

So why do I feel overwhelmed, depressed, anxious, lonely?

The end of the year brings the holiday season and reflection. It also brings rushing, pressure and expectations that can be overwhelming, especially for lawyers who already live a pressured existence. The following tips from wellness and recovery experts are offered to help you slow the pace and take time to create a season of treasured memories and meaning.

Appreciate

Take a moment each day to consider and appreciate the good in your life. Joy flourishes when we feel and then express gratitude.

Let Go of Tiresome Traditions

If there are activities that have lost their meaning or are causing stress, seek to replace them with more satisfying activities. Imagine an ideal holiday moment—what does it look like? How can you make it happen?

Add Meditation to Your Routine

Before you rise in the morning, set a positive flow for the day by closing your eyes, taking several deep breaths, and meditating or simply relaxing. Imagine yourself in a beautiful place, reflect on a happy memory, or visualize yourself succeeding at an important goal. During the day, when you're feeling stressed or irritated, employ brief relaxation breaks of one to five minutes. Conscious, slow breathing will calm your nervous system and help you recharge.

Smile and Laugh

Take a moment to say something lighthearted. Every day, make it a point to share a smile with a colleague, friend or family member.

Declutter Your Life

Clutter at home and in the office not only includes duplicates and unnecessary items, but also negative emotions and meaningless people. Choose positive people over toxic individuals and focus on what brings positive meaning to your life.

Release Resentments

Resentment has been described as allowing a person you dislike to live in your head, rent-free. Holding on to resentments is harmful at any time and can be especially isolating during the holidays.

Get Moving

Research shows that regular physical exercise improves moods, increases energy and reduces stress. It can also help you avoid some holiday weight gain. Maintain your exercise regimen during the holidays, or add a daily walk to start a new routine.

Be Generous

One of the best ways to stay calm and cheerful this time of year is to be generous with others. This doesn't have to involve spending a lot of money. You can be generous with your compliments; you can generously offer to do a loved one's dreaded errand. You can generously write or share a fun, short poem. When you are creative with your gifts and thank you's, people will appreciate your heartfelt sentiments.

Prepare "To Do for Me" and "To Do for Others" Lists

Write down everything you need to do during the holidays while also staying realistic about these tasks and your time. Then start tackling one item from each list in turn. Alternating between the two lists will help you avoid feeling deprived, because you are paying attention to your needs.

¹ Marvin Seppala, MD, Connie Bennett, MSJ, Cheryl Richardson, MCC, Leota Embleton, MSW

continued from page 5

Academy" CLE for young lawyers (3.0 G) in the morning and a half-day CLE devoted to ethics/professionalism topics (3.0 EP) in the afternoon on Dec. 16, at the Greater Albuquerque Jewish Community Center. Morning topics include case intake, analysis and evaluation, depositions, and expert witnesses. Afternoon topics include lawyer incivility and enforcement, ethics jeopardy and JLAP. This is an excellent opportunity for all lawyers to top off their ethics professionalism CLE requirements by year-end. Registration and full program details for both seminars are available at www.nmdla. org or by calling 505-797-6021.

OTHER NEWS Santa Fe Neighborhood Law Center Annual CLE

Join the Santa Fe Neighborhood Law Center for it's annual CLE "Law and Policy for Neighborhoods" (10.0 G, 2.0 EP), Dec. 8–9 at the Santa Fe Convention Center. Featured speakers include Chief Justice Charles W. Daniels and recently retired Justice Richard C. Bosson. A free continental breakfast and box lunch will be provided both days on site for CLE attendees and faculty. For more information or to register, visit www.sfnlc.com/.

Workers' Compensation Administration Notice of Vacancy

The Director of the New Mexico Workers' Compensation Administration hereby announces a vacancy as an Administrative Law Judge effective April 1, 2017. The primary location of the position is in Albuquerque, New Mexico, with travel throughout the state. The agency is currently accepting applications and will begin the review process beginning Jan. 3, 2017. The application process will be ongoing until the vacancy is filled. For more information about this position, visit www.workerscomp.state.nm.us. The Workers' Compensation Administration is an Equal Opportunity Employer.





Thank you for your service!





Indian Law – James Burson Intellectual Property Law – Jeffrey Albright Natural Resources, Energy and Environmental Law – Sally Paez Prosecutors – **Kenneth Fladager** Public Law – Sean Cunniff Real Property Trust and Estate – **LeeAnn Werbelow** Real Property Division – **Suzannne Odom** Trust and Estate Division – Johanna Pickel Solo and Small Firm - Daniel Tallon Taxation – **Bobbie Collins**

Welcome new section leaders!

State Bar staff looks forward to working with you in 2017.

Animal Law - Brian Smith Appellate Practice – Timothy Atler Bankruptcy Law – **Manuel Lucero** Business Law - Charles Seibert Children's Law – Allison Pieroni Criminal Law – **Jon Hill** Elder Law- Patricia Galindo

Employment and Labor Law – Marshall Ray

Family Law - Martha Kaser Health Law - Brad Howard Immigration Law – **Horatio Moreno-Campos** Indian Law – **Delilah Tenorio** Intellectual Property Law – Talia Kosh Natural Resources, Energy and Environmental Law - Deana Bennett Prosecutors – John Sugg Public Law- Cydney Beadles Real Property Trust and Estate – Sara Traub Solo and Small Firm - Charles Gurd Taxation – **Jeanine Steffy**

For more information about practice sections visit www.nmbar.org/sections.



Denise M. Chanez was appointed as a council member of United Way's Hispano Philanthropic Society. Chanez is a director in the Rodey Law Firm practicing primarily in the areas of long term care and medical malpractice. She is immediate past president of the New Mexico Hispanic Bar Association. Chanez was recently honored as the 2016 Outstanding Young Lawyer of the Year by the State Bar of New Mexico.



Tiffany A. Owens has joined Allen, Shepherd, Lewis & Syra, PA. She practices in the areas of personal injury and construction defect. Owens attended Brigham Young University (B.A., Political Science, 2010) and the J. Reuben Clark Law School (2015, *magna cum laude*).



Gretchen Walther's dedication to collaborative law was instrumental in the New Mexico Supreme Court's recent enactment of the Uniform Collaborative Practice Act as rule of law. The act standardizes and regulates the most important features of the collaborative law process and provides consistency regarding the enforceability of collaborative law agreements. She owns Walther Family Law, PC, is a founding member and first president of the New

Mexico Collaborative Practice Group and past president of the Albuquerque Bar Association.

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U.S. News and World Report Best Law Firms

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U.S. News and World Report Best Law Firms: Albuquerque Office

Modrall, Sperling, Roehl, Harris & Sisk, PA

U.S. News and World Report Best Law Firms:

Benchmark Litigation 2017 Local Litigation Stars: Jennifer Anderson, Martha Brown, Timothy Fields, Timothy Holm, George McFall and Lynn Slade.

Benchmark Litigation 2017 Future Stars: Emil Kiehne, Megan Muirhead, Maria O'Brien, Tiffany Roach Martin and Alex Walker.

Rodey, Dickason, Sloan, Akin & Robb, PA

U.S. News and World Report Best Law Firms: Albuquerque Office and Santa Fe Office

Sutin, Thayer & Browne

U.S. News and World Report Best Law Firms: Albuquerque Office

In Memoriam

Jesse R. Cosby, age 61, of Roswell, died on July 13. Born May 24, 1955, Cosby dedicated his early life to academics and the outdoors. He amassed many academic honors throughout life, including a Bachelor of Arts, a Bachelor of Science in Civil Engineering, and a Juris Doctorate from the University of New Mexico. He was equally lauded in his profession, with the Driscoll Award for lifetime achievement in criminal defense, the Chief Public Defender Special Recognition Award and proudly practiced criminal defense for some of the most at-risk populations in the state of New Mexico. He ran a private practice for 26 years and accepted a position as the head of the serious violent crime unit for the Department of the Law Offices of the Public Defender for the State of New Mexico in December 2015. Cosby's many achievements were always overshadowed by his humor, his impeccable ethics and the love of his family and friends. He dedicated his life to helping and relieving every living creature he encountered. He was preceded in death by his brothers Dan and John, and his father Jack. He is survived by his mother Norma, his sister Mary, his wife Sharon, his sons RD and Alex, and their families.



Charles W. Durrett was born on Oct. 6, 1931, in Trinchera, Colo., and died in Alamogordo on Oct. 18. His parents were Walter and Lucia (Ward) Durrett and he was one of seven siblings. They moved to Melrose, N.M., and



then Portales in his early years. He spent the summers of junior high living in tent camps and building roads with his dad and brothers. In high school he worked as a truck driver for a construction company, as a service station attendant, and as an equipment operator. In eighth grade he met Sunnye Gene Lee, his future wife, and alsodecided that he wanted to be an attorney. They dated through high school and married after graduation on Sept. 4, 1950. From 1951–1954, he served in the U.S. Army in the Korean War

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

Hearsay_

and discharged as a First Lieutenant. Following discharge, Charlie and Gene lived in Florida, where he started college in the fall. In February 1955, after experiencing the heat and humidity and high tuition rates, Gene was flown home and Charlie packed up their belongings in a trailer and drove to Portales where Lisa was born. He transferred immediately to Eastern New Mexico University, and after obtaining the necessary prerequisites, the family moved to Albuquerque so that he could attend the University of New Mexico School of Law. In 1959, Charlie graduated from law school and the little family relocated to Alamogordo and Lori was born in 1960. Over the years he had many wonderful and professional law partners, some of whom include John Joe Wilkinson, Lorna Shipley, Jack Whorton, John Conway, Tom Sandenaw, Wayne Jordan, Sandra Grisham, Mel O'Reilley, Tom Cornish and his all-time favorite, his daughter Lisa Durrett. He and Lisa evaluated, tried and settled many lawsuits together over the years. Charlie always loved politics and was a pioneer Republican as the party developed in Otero County. He made two unsuccessful runs for office in the 60's, for D.A. when Otero, Lincoln and Dona Ana counties were one district, and then for State Representative. Charlie was a devoted husband, father, son, brother, uncle, granddad and great granddad. He was a good friend to many. He was always an avid sportsman and athlete, but his most enduring and favorite sport was fishing. He was a tournament bass fisherman, a competitive deep-sea fisherman, and enjoyed stream fishing and flyfishing. He had two deep-sea fishing boats over the years in San Carlos, Mexico, one of which was the Caruso owned with his good friend and colleague, Paul Butt, of Albuquerque. He jointly owned a cabin and bass fishing boat with a group of friends called Diez Amigos, at Lake Novillo in Sonora, Mexico, and he enjoyed lots and lots of fishing at Gene's and his cabin at Elephant Butte. He absolutely loved seeing the sun come up on the lake. He enjoyed many travels around the world and wherever he was, he always managed to find a fishing pole and sidetrip. He held positions in Alamogordo Bassmasters, and Sun Country Bass Association (which he helped found), and promoted and was the second president of the NM Bass Federation, and helped launch the Alamo Open, the largest annual open bass tournament in NM. Other activities he enjoyed were hunting (rifle, shotgun and bow and arrow), backpacking, extended traveling, gourmet cooking and grilling and pitting, several years of his Good Time Charlie's Chili Fiesta, and piloting his airplane. He built a clay potter's wheel and he and Gene enjoyed several

Marion Kay Mortensen, 72, died in Murray, Utah, on Nov. 24. Mortensen was the son of Cleah Brown and Marion K Mortensen. He was born in Safford, Ariz., on April 7, 1944. Mortensen grew up in Virden, N.M. He attended school there. Mortensen served a mission for The Church of Jesus Christ of Latter-day Saints in the Eastern States Mission. He attended College at Brigham Young University in Provo, Utah, where he met his wife Beverly. Mortensen married Beverly in the Mesa, AZ LDS Temple on June 7, 1968. He attended law school in Albuquerque. After graduation, he went to work for the Internal Revenue Service in Washington,

years of throwing pots. Besides being a full-time law practitioner, he was an entrepreneur in other businesses, including H.T.Coker Constr. Co., and Recovery Systems Research, which designed and produced parachutes for proposals to the U.S. government, one of which was selected to land a research vehicle on Mars, but which never came to pass because the air space program was halted. He also became a licensee in direct disposition services when Lisa and husband, Kent, built the local crematory and opened for direct cremation services. He was a man of many interests and talents. In 1992, Charlie lost Gene, his long love of 42 years of marriage. In 2000, he married Chris Watson, and they enjoyed a number of fun years fishing, golfing and traveling worldwide. He dearly loved and enjoyed her family, daughter Keri (Watson) and Tom Antram and their daughters Kali and Aubrey; daughter Jeni Watson; and "Mac" McArthur, Charlie's father-in-law, for whom he cared in their home for a few years. In 2009, Charlie retired from the practice of law, after 50 years. In September 2012, Charlie fell and sustained a traumatic brain injury, which ultimately resulted in his death, more than 4 years later. He moved in with Lisa and Kent and in spite of his injury, enjoyed several years of fun and activities, including an Alaskan cruise, family reunions and lots of good times cooking and celebrating holidays and birthdays. Survivors include his two daughters, Lisa Durrett (Kent) House and Lori Durrett of Alamogordo; grandchildren Taylor Durrett of Portland, Ore., Aubrey Durrett of Alamogordo; Micela (Diego) House Hurtado of Lexington, Ky., Mark House of Alamogordo, and Sydney Johnson of Alamogordo; great granddaughter, Larkenne Eve Hurtado of Lexington, Ky; two brothers, Tom (Charlene) Durrett of Portales, and Bob (Carolyn) Durrett of Ruidoso; sister-in-law Wilma Durrett, of Columbia, S.C.; brother-in-laws Clint Ramsey of Lubbock, and Bobby Wynne of Amarillo, and a passel of wonderful nieces, nephews and other family and many friends. Constantly at his side, for burgers or just checking in, were his best friends Clayton White (Las Cruces) and Jack Cox (Alamogordo), who were like brothers, and Lyn and Doug Essex. He was preceded in death by his wife, Sunnye Gene (Lee) Durrett; parents, Walter Edward and Lucia Belle Durrett; parents-in-law Millard and Lorene Lee; grandsons, Jeffrey Wayne Horton and William Myers III; brothers, Ed Durrett and Jerry Durrett (and sister-in-law Gayla Durrett); sisters, Dorothy Burdine (and brother-in-law Rudy Burdine) and Ruth Wynne; and sister-in-law Karen Ramsey (Gene's sister).

D.C. He got his Masters in Taxation from Georgetown. From there the family moved to California and finally settled in Sandy, Utah, where they currently resided. Mortensen acted as chief counsel for the IRS in the Salt Lake City Office until he retired in December 2011. Mortensen received the Silver Beaver Award for his work in scouts. Mortensen is survived by his brother, Richard (Gloria); sisters Sherrill, Deborah (Gary), Dorothy (Rick), Karin (Pepper), Sharin (Lawrence) and their families; children, M.K.,(Lara), Kim (Stuart), Marnee (Mark), Michaal Shannan (Kirk), and Brent (Trish); and 23 grandchildren.

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 November 25, 2016

PUBLISHED OPINIONS

No. 34581 No. 34918 No. 34226 No. 34461	5th Jud Dist Eddy CV-13-134, E OPERATING v ECHO PRODUCTION (reverse and remand) 5th Jud Dist Eddy CV-13-134, ENDURO OPERATING v ECHO PROD (reverse and remand) 7th Jud Dist Catron CV-11-21, D ALLRED v NMDOT (affirm) 7th Jud Dist Catron CV-11-21, D ALLRED v NMDOT (affirm)	11/21/2016 11/21/2016 11/22/2016 11/22/2016
Unpublis	HED OPINIONS	
No. 35230	13th Jud Dist Valencia CV-08-1332, VEGUITA SAND v A TORRES (affirm)	11/21/2016
No. 35604	3rd Jud Dist Dona Ana CR-14-1021, STATE v S ROMAN (affirm in part, reverse in part and remand)	11/21/2016
No. 35680	3rd Jud Dist Dona Ana CR-15-871, STATE v W LANGBEHN (affirm)	11/21/2016
No. 35750	2nd Jud Dist Bernalillo CR-16-615, STATE v A BUSTAMANTE (dismiss)	11/21/2016
No. 34437	1st Jud Dist Santa Fe CV-11-3524, PHH MORTGAGE v L WEBB (affirm)	11/21/2016
No. 34558	5th Jud Dist Eddy JR-14-133, STATE v JESUS B (reverse)	11/21/2016
No. 35170	2nd Jud Dist Bernalillo DM-15-1990, M TELLES v E TELLES (affirm in part, reverse in part and remand)	11/21/2016
No. 35415	2nd Jud Dist Bernalillo CV-11-7486, US BANK v R HAYNES (affirm)	11/21/2016
No. 35656	2nd Jud Dist Bernalillo CV-15-1740, S CLARK v CORGEOS LLC (affirm)	11/21/2016
No. 35132	2nd Jud Dist Bernalillo CR-11-2892, STATE v L CORDOVA (affirm)	11/22/2016
No. 35556	2nd Jud Dist Bernalillo JQ-11-86, CYFD v MEGHAN W (affirm)	11/22/2016
No. 35574	4th Jud Dist San Miguel CV-13-101, FEDERAL NATIONAL v T PADILLA (dismiss)	11/22/2016
No. 35697	2nd Jud Dist Bernalillo CV-12-06863, BOKF v R METZGAR (affirm)	11/22/2016

Slip Opinions for Published Opinions may be read on the Court's website: http://coa.nmcourts.gov/documents/index.htm

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From the Clerk of the New Mexico Supreme Court

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Dated Nov. 18, 2016

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Recent Rule-Making Activity As Updated by the Clerk of the New Mexico Supreme Court

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

Effective December 7, 2016

	OPEN FOR COMMENT:		Rules of Civil Procedure for the
Dula Na	Title Comment Deadline		MAGISTRATE COURTS
Rule No.	Title Comment Deadline		
1-079	Public inspection and sealing	2 110	Criminal contempt
	of court records 12/06/2016	2 114	Courtroom closure
	RECENTLY APPROVED RULE CHANGES	2 305	Dismissal of actions
•		2 702	Default
-	SINCE RELEASE OF 2016 NMRA:	2 705	Appeal
	Effective Date		Rules of Civil Procedure for the
	(except where noted differently: 12/31/2016)		METROPOLITAN COURTS
Rules	s of Civil Procedure for the District	3 110	Criminal contempt
	Courts	3 110	Criminal contempt
1 007 2	Time a limit for films motion to some all substantion		Courtroom closure
1 007.2	Time limit for filing motion to compel arbitration	3 204	Service and filing of pleadings and
1 009	Pleading special matters 07/01/2017	2 205	other papers by facsimile
1 017	Parties plaintiff and defendant;	3 205	Electronic service and filing of pleadings
1.022	capacity 07/01/2017	2.502	and other papers
1 023	Class actions	3 702	Default
1 054	Judgments; costs		Civil Forms
1 055	Default 07/01/2017		CIVIL FORMS
1 060	Relief from judgment or order 07/01/2017	4 20 4	C:-:1
1 079	Public inspection and sealing of	4 204	Civil summons
	court records 05/18/2016	4 226	Civil complaint provisions;
1 083	Local rules	4.00	consumer debt claims 07/01/2017
1 093	Criminal contempt	4 306	Order dismissing action for failure to prosecute
1 096	Challenge of nominating petition	4 309	Thirty (30) day notice of intent to dismiss
1 104	Courtroom closure		for failure to prosecute
1 120	Domestic relations actions; scope; mandatory	4 310	Order of dismissal for failure to prosecute
	use of court-approved forms by self-represented	4 702	Motion for default judgment
	litigants	4 702A	Affirmation in support of default judgment
1 128	Uniform collaborative law rules; short title;	4 703	Default judgment; judgment on the pleadings
	definitions; applicability	4 909	Judgment for restitution
1 131	Notice of federal restriction on right to possess	4 909A	Judgment for restitution
	or receive a firearm or ammunition 05/18/2016	4 940	Notice of federal restriction on right to
1 128.1	Collaborative law participation agreement; require-		possess or receive a 05/18/2016
	ments	4 982	Withdrawn
1 128.2	Initiation of collaborative law process; voluntary	4 986	Withdrawn
	participation; conclusion; termination; notice of	4 989	Withdrawn
	discharge or withdrawal of collaborative lawyer; continuation with successor collaborative lawyer	4 990	Withdrawn
1 128.3	Proceedings pending before tribunal; status report;	R	ules of Criminal Procedure for the
	dismissal		DISTRICT COURTS
1 128.4	Emergency order		
1 128.5	Adoption of agreement by tribunal	5 102	Rules and forms
1 128.6	Disqualification of collaborative lawyer and lawyers	5 104	Time
	in associated law firm	5 112	Criminal contempt
1 128.7	Disclosure of information	5 123	Public inspection and sealing of
1 128.8	Standards of professional responsibility and man-		court records 05/18/2016
	datory reporting not affected	5 124	Courtroom closure
1 128.9	Appropriateness of collaborative law process	5 304	Pleas
1 128.10	Coercive or violent relationship	5 511	Subpoena
1 128.11	Confidentiality of collaborative law communication	5 511.1	Service of subpoenas and notices of statement
1 128.12	Privilege against disclosure for collaborative law	5 614	Motion for new trial
	communication; admissibility; discovery		

5 615	Notice of federal restriction on right to receive or	10 413	Withdrawn
	possess a firearm or ammunition 05/18/2016	10 414	Withdrawn
5 801	Reduction of sentence	10 417	Withdrawn
Rt	JLES OF CRIMINAL PROCEDURE FOR THE	10 502	Summons ICWA notice 11/28/2016
ICC		10-521 10 560	ICWA notice 11/28/2016 Subpoena
	MAGISTRATE COURTS	10 500	Notice of child's advisement of right to attend hearing
6 102	Conduct of court proceedings	10 571	Motion to permit testimony by alternative method
6 109	Presence of the defendant	10-604	Withdrawn 05/18/2016
6 111	Criminal contempt	10 701	Statement of probable cause
6 116	Courtroom closure	10 702	Probable cause determination
6 201	Commencement of action	10 703	Petition
6 209	Service and filing of pleadings and other papers	10 704	Summons to child Delinquency Proceeding
6 506	Time of commencement of trial 05/24/2016	10 705	Summons to parent or custodian or guardian –
6 601	Conduct of trials	10.706	Delinquency Proceeding
Rt	JLES OF CRIMINAL PROCEDURE FOR THE	10 706	Order of appointment of attorney for child and notice and order to parent(s), guardian(s), or
100	Metropolitan Courts		custodian(s)
	METROPOLITAN COURTS	10 707	Eligibility determination for indigent defense ser-
7 109	Presence of the defendant		vices
7 111	Criminal contempt	10 711	Waiver of arraignment and denial of delinquent act
7 111	Courtroom closure	10 712	Plea and disposition agreement
7 201	Commencement of action	10 713	Advice of rights by judge
7 209	Service and filing of pleadings and other papers	10 714	Consent decree
7 304	Motions	10 715	Motion for extension of consent decree
7 506	Time of commencement of trial 05/24/2016	10 716	Judgment and Disposition
7 606	Subpoena	10 717	Petition to revoke probation
		10 718	Sealing order
RULES	OF PROCEDURE FOR THE MUNICIPAL COURTS	10 721	Subpoena
		10 722 10 723	Affidavit for arrest warrant Arrest warrant
8 102	Conduct of court proceedings	10 723	Affidavit for search warrant
8 108	Presence of the defendant	10 724	Search warrant
8 110	Criminal contempt	10 725	Bench warrant
8 114	Courtroom closure	10 720	Waiver of right to have a children's court judge
8 201	Commencement of action	10 / 2/	preside over hearing
8 208	Service and filing of pleadings and other papers	10 731	Waiver of arraignment in youthful offender pro-
8 506	Time of commencement of trial 05/24/2016 Conduct of trials	10,01	ceedings
8 601	Conduct of trials	10 732	Waiver of preliminary examination and grand jury
	CRIMINAL FORMS		proceeding
		10 741	Order for evaluation of competency to stand trial
9-515	Notice of federal restriction on right to possess or	10 742	Ex parte order for forensic evaluation
	receive a firearm or ammunition 05/18/2016	10 743	Order for diagnostic evaluation
9 611	Withdrawn	10 744	Order for pre dispositional diagnostic evaluation
9 612	Order on direct criminal contempt	10 745	Order for evaluation of amenability to treatment
9 613	Withdrawn		for youthful offender (requested by defense coun-
	CHILDREN'S COURT RULES AND FORMS	Rule Set	sel) 10 Table Table of Corresponding Forms
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10 103	Service of process		27, 2016, the Court issued Order No. 16-8300-003
10 163	Special masters		nally approving amendments to Rule 10-166 NMRA
10-166	Public inspection and sealing of		risionally approving new Rule 10-171 NMRA and new
10.170	court records 05/18/2016		-604 NMRA, effective retroactively to May 18, 2016.
10 168	Rules and forms		ember 28, 2016, the Court issued Order No. 16-8300-
10-171	Withdrawn 05/18/2016		ndrawing the provisionally-approved amendments to
10-315	Custody hearing 11/28/2016		166 NMRA and the provisionally-approved new Rule
10-318	Placement of Indian children 11/28/2016		MRA and new Form 10-604 NMRA, effective retro-
10 322	Defenses and objections; when and how presented;		to May 18, 2016. Accordingly, Rule 10-166 NMRA has
10 225	by pleading or motion Natice of child's advisement of right to attend hearing	010 and	tored to the version approved by Order No. 11-8300- Rule 10-171 and Form 10-604 have been withdrawn.
10 325 10 340	Notice of child's advisement of right to attend hearing	010, and	Mule 10-1/1 and 101111 10-004 have been withdrawn.
10 340	Testimony of a child in an abuse or neglect proceeding		Rules of Evidence
10 408A	Withdrawn		
10 100/1	**************************************		

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Conflict of interest; current clients; specific rules

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's Web Site at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Company of the New Mexico Compilation Compilation Company of the New Mexico Compilation Compila mission's website at http://www.nmcompcomm.us/nmrules/ NMRuleSets.aspx

From the New Mexico Supreme Court

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

Supreme Court No. S-1-SC-35936

Disciplinary No. 03-2016-741

In the Matter of **Jacqueline Bennett, Esq.**, an attorney licensed to practice law before the Courts of the State of New Mexico

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to the Amended Conditional Agreement Admitting the Allegations and Consent to Discipline which was approved by the New Mexico Supreme Court.

You were retained in March of 2012, to respond to a <u>Complaint for Quiet Title or Partition</u> that had been filed a month earlier. Your representation of your client began well as you timely filed an <u>Answer to Complaint for Quiet Title or Partition and Counterclaim for Partition</u>. After this initial filing, however, you failed to respond to either a <u>Motion for Summary Judgment</u> or a <u>Motion for Judgment on the Pleadings</u> despite the opposing counsel having alerted you to his filings via telephone in addition to filing with the Court. There is no question that you were aware of the filings. You e-mailed your client in December of 2012 providing her a copy of the <u>Motion for Judgment on the Pleadings</u> and stating you were "back on track" but you failed to respond to any of the dispositive pleadings filed by opposing counsel.

When questioned as to your lack of action you informed the Office of Disciplinary Counsel that your client, "suffered no detriment because of documents that were received late and I objected to the motion for motion for judgment on the pleadings." You further stated, "[My client] suffered no detriment because of [motions filed by opposing counsel], but I did make her aware of the situation and assured her that it had been handled."

A hearing was held in April of 2013, on the Motion for Judgment on the Pleadings and you attempted to have the Court accept a Memorandum, which you did not file or provide to opposing counsel prior to the hearing. The Memorandum failed to address your failure to respond to opposing counsel's dispositive pleadings and instead was simply in support of your Answer to Complaint for Quiet Title or Partition and Counterclaim for Partition. At the hearing the Honorable Judge William H. Brogan, state in pertinent part, "All right, Ms. Bennett. I'm trying to find some way to get you out of the situation you're in, but I can't find any way to do it. Court's going to grant the motion for summary judgment for failure to respond based on the facts presented to the Court in the ...motion for summary judgment." A <u>Judgment</u> was entered in May of 2013, finding against your client and awarding attorneys' fees to the opposing party. You did not inform your client that the reason for the judgment being entered against her was due to your failure to respond to dispositive pleadings. Rather, you told your client, "...her brother had made his case based on what had been filed in the case."

When your client reported your misconduct to the Office of Disciplinary Counsel you then compounded your misconduct by failing to properly respond to the complaint filed. It was only when you were faced with the prospect of formal charges being filed that you retained counsel who assisted you in meeting your obligations to cooperate with the Office of Disciplinary Counsel.

The Specification of Charges contain allegations which pursuant to the ABA Standards for Imposing Lawyer Sanctions would warrant the suspension from the practice of law or the issuance of a Formal Reprimand. See, Sections 4.42, 4.53(a), 4.62, 5.13 ABA Standards for Imposing Lawyer Sanctions. It was only due to the fact that you have been practicing law for twenty (20) years with no previous discipline and the efforts of your counsel that the determination was made to enter into a consent agreement which would allow you to continue to practice law. As the Supreme Court has stated in *In re Quintana*, 1985-NMSC-101, ¶8, "The public has the right to expect that any person licensed by this Court to engage in the practice of law is a person worthy of confidence in his performance of professional responsibilities and that this Court will withdraw its license to practice law from any lawyer who has demonstrated a lack of the required minimum skills." Your lack of competence in representing your client appears to have stemmed from the fact that you ventured into an unfamiliar area of law without the proper assistance from a more experienced lawyer or the proper preparation. While it is permissible to enter into a new field of practice New Mexico attorneys are expected to do so in a competent fashion.

Perhaps the most troubling aspect of this case is the fact that you were less than forthcoming with your client as to why her case was lost. The Supreme Court stated in In re Owen and Jackson, 2013-NMSC-035 ¶21 "Additionally, Owen's willingness to misrepresent the status of the case to Complainants is deeply disturbing. Lying to a client implicates the fundamental relationship between the lawyer and the client and an attorney's fitness to practice law. See Van Orman v. Nelson, 78 N.M. 11, 22-23, 427 P.2d 896, 907-08(1967)(explaining that the relationship between attorney and client is 'one of trust and confidence,' and the law requires that acts and conduct of attorney in transactions with his client 'be characterized by absolute fairness, good faith and honesty'). We have severely disciplined attorneys in the past for such conduct. (citation omitted)" Your lack of candor was a great concern and brought into question whether you should be permitted to continue to practice law. The fact that you have been allowed to do so is a privilege that should not be squandered.

Your conduct was found to be in violation of the following Rules of Professional Conduct:

- a. 16-101, by failing to provide competent representation to a client;
- b. 16-103, by failing to act with reasonable diligence and promptness in representing a client;
- c. 16-104(A)(3), by failing to keep the client reasonably informed about the status of the matter;
- d. 16-801(B), by failing to timely respond to a lawful demand for information from a disciplinary authority;
- e. 16-803(D), by failing to give full cooperation and assistance to disciplinary counsel;
- f. 16-804(A), by violating the Rules of Professional Conduct;
 and

YLD...In Brief

The Official Newsletter of the State Bar of New Mexico Young Lawyers Division

December 2016

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YLD/UNM SOL Mock Interview Program,

Sean Fitzpatrick, Tomas Garcia

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Evan Cochnar

2016 Regional ABA Conference, **Tomas Garcia**Summer Fellowship Program, **Robert Lara** *YLD ... In Brief*, **Ken Stalter, Spencer Edelman**Annual Public Service Project in Outlying Areas,

Ken Stalter, Evan Cochnar Interview Program, Tomas Garcia YLD CLE, Spencer Edelman CLE at Annual Meeting, Robert Lara

Message from the YLD Chair...

By Spencer Edelman



As this year winds down, I can't help but reminisce about not just this year, but the seven years I have been involved with the Young Lawyers Division. It seems such a short time ago that I was being admitted as a member of the bar, listening to Martha Chicoski, then the chair of the YLD, discussing what the YLD did and why it is a valuable part of any New Mexican young lawyers' career. After having lived that advice I was proud to pass it along to those joining the bar in 2016. The YLD truly is the home

for young lawyers in New Mexico.

The work the YLD performed this year has been substantial and could not have happened without the commitment from our volunteers. Constitution Day, Wills for Heroes, Veterans Legal Clinics and the Law Day Call-in were enormous successes, providing public service to those who need it most. These programs are entirely volunteer driven and without your support of the YLD could not happen. Additionally, the Paralegal Division, the State Bar of New Mexico's substantive law sections and of course the Board of Bar Commissioners provided invaluable help to allow the YLD to perform its mission. If you haven't yet had the chance to participate in one of our programs there will be opportunities for years to come because the YLD's leadership is as strong as ever.

One of the unique things about the YLD is that it is always looking towards the future. As my time fades I am positive that the board led by incoming Chair Tomas Garcia, Chair-elect Sean Fitzpatrick and Vice Chair Sonia Russo will continue to build and improve on the work of those that have come before. The programs on tap for next year are exciting and I can't wait to see what else the next generation of leaders has in store. Thank you for allowing me to push the ball forward. It has been an honor to serve New Mexico's young lawyers and I am thrilled to practice with all of you for years to come.

American Bar Association Young Lawyers Division Update

By Billy J. Jimenez YLD District #23 Representative, New Mexico/Arizona

The American Bar Association Young Lawyers Division recently held its Fall Meeting in Detroit on Oct. 20-22. Sessions focused on Michigan's recent struggles with municipal insolvency and safe drinking water, but also highlighted the City of Detroit's resiliency and efforts to revitalize development and education programs. The State Bar of New Mexico Young Lawyers Division was one of three affiliates recognized nationally at the Fall Meeting as an Affiliate Star by the ABA YLD Council for its Constitution Day Program.

The next ABA meeting is the Mid-Year Meeting in Miami on Feb. 2-7, 2017. Consider attending the ABA Mountain States Regional Summit that will be held in Albuquerque in March 2017. The Summit will have sessions focused on leadership and region-specific issues, and law students will be invited to attend. Additional information on the Regional Summit will be available soon.

The ABA YLD encourages NM YLD members to join one of its 35 committees related to specific areas of law and specialty groups. Committee members have the opportunity to connect with attorneys across the nation that have similar interests and practice areas. If you are interested in joining a committee or have any questions about getting involved with the ABA YLD, please feel free to contact me at bjimenez@mstlaw.com.

American Bar Association House of Delegates Update

By Allison Block-Chavez
Director-at-Large, Position 1
ABA House of Delegates Representative

am your New Mexico young lawyer representative to the American Bar Association's House of Delegates. Recent ABA rule changes require that each state have a member of the House of Delegates who is a young lawyer (under the age of 36 or practicing for 5 years or less). The ABA House of Delegates is the policy making body of the association and meets twice a year to consider and vote on a broad range of issues related to the legal profession.

In August I attended the ABA Annual Meeting in San Francisco where the House of Delegates considered and passed a number of resolutions. The House of Delegates amended the ABA Model Rules of Professional Conduct to add an anti-discrimination and anti-harassment provision. The new rule, Rule 8.4(g), prohibits lawyers from engaging in conduct, related to the practice of law, that the lawyer knows or reasonably should know is bias or discriminatory. The House of Delegates adopted a resolution to urge federal, state, and local law-enforcement authorities to provide an accurate translation of the *Miranda* warning in Spanish. The House of Delegates also amended the ABA Standards

and Rules of Procedure for Approval of Law Schools that re-categorized student field placements to be in-line with externships and clinical courses. The amendment also allows students receiving credit for field placements to also receive compensation. While many were concerned that such a change would alter the nature of a field placement, the proponents prevailed arguing that the goal of this change is to expand the number of placements available and to aid in reducing student debt.

The next ABA meeting is the February mid-year meeting in Miami. The State Bar of New Mexico Young Lawyers Division prides itself on having an active and involved ABA YLD delegation and encourages all New Mexico young lawyers to join the ABA and get involved.

If you have any questions about the ABA or are interested in past or future resolutions that are before the ABA House of Delegates, please feel free to contact me at ABlockChavez@ ABQLawNM.com.

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ABA President Paulette Brown's New Mexico Visit

By Tomas Garcia Chair-elect Director-At-Larch, Position 2

A merican Bar Association Immediate Past President Paulette Brown, the first African American woman to lead the nation's largest lawyer professional association, visited New Mexico in April as part of her "Main Street ABA" initiative. President Brown addressed new State Bar of New Mexico admittees at the swearing-in ceremony in Santa Fe, visited with members of the UNM School of Law community during an afternoon reception and joined former ABA President Roberta Cooper Ramo (the first woman to lead the ABA) for a discussion about the American Bar Association and the role of the ABA within the legal profession. The discussion was moderated by YLD Chair Spencer Edelman. Finally, President Brown, joined by diverse members of the YLD, visited an Albuquerque branch of the Boys and Girls Club of New Mexico to talk to elementary and middle school-aged children about the legal profession.



Former ABA President Roberta Cooper Ramo, ABA Immediate Past President Paulette Brown, and YLD Chair Spencer Edelman



State Bar of New Mexico Committee on Diversity Co-chair Leon Howard, ABA Immediate Past President Brown, ABA Secretary Torres, and Committee on Diversity Co-chair Denise Chanez



YLD Chair Spencer Edelman, State Bar of New Mexico Executive Director Joe Conte, ABA Secretary Mary Torres, ABA Immediate Past President Brown, ABA Board of Governors member Orlando Lucero, and YLD Chair-elect Tomas Garcia

2016 Summer Fellowships

My name is Jazmin Irazoqui-Ruiz and I am third-year law student at the University of New Mexico School of Law. I am one of the two fortunate students who received the Young Lawyer's Division Public Interest Fellowship for the summer of 2016. The fellowship funding allowed me to intern fulltime with the New Mexico Center on Law and Poverty in June. I formed part of the Public Benefits Team where I was supervised by three amazing attorneys: Sovereign Hager, Louise Pockock and Maria Griego-Paiz. During my time at the NMCLP, I had the opportunity to assist public benefits clients with their Temporary Assistance for Needy Families cases. Under direct supervision of the Public Benefits Team Attorneys, I advocated for (1) clients' erroneous sanctions to be lifted, (2) for clients who were victims of domestic violence or who were in their last trimester of pregnancy to be rightfully assigned less work activity hours under the TANF program, and (3) assisted clients in obtaining interview accommodations with the Income Support Division. It was a rewarding and inspiring experience to have assisted clients who, despite living under the federal poverty level and facing adversity, continued to persevere. I truly felt like I was making a difference as an intern for the NMCLP and I was constantly reminded that I made the right choice by going to law school to pursue a career in public interest law. I am grateful for the YLD prioritizing and nurturing students' interest in public service through this fellowship and I hope many more students continue to take advantage of this opportunity in the future.

Jazmin Irazoqui-Ruiz

Juris Doctor Candidate, UNM School of Law Class of 2017



New Mexico Center on Law and Poverty summer clerks and interns from left to right: Sarah Hyde (Education Team), Lenaya Montoya (Healthcare Team), Adam Oakey (Education Team), Jazmin Irazoqui-Ruiz (Public Benefits Team), Sarai Torres (Education Team)

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This summer I was granted the opportunity to intern with Pegasus – Legal Service for Children thanks to the YLD Summer Fellowship for which without, I would not have been able to manage this position. Prior to starting law school, children's law was fascinating to me and being able to have this experience made it even more clear that children's law is where I need to be. Over the summer, I had the privilege of working primarily with the Kinship Guardianship program under Larry Kronen. From attending intakes to drafting petitions, I was able to gain both practical experience and a sense of accomplishment with each new case. While my main assignment was assisting within the Kinship Guardianship program, I was free to assist other attorneys in the office which led to exposure to Guardian Ad Litem arrangements as well as getting to attend hearings for an emancipation case. The experience I got while interning at Pegasus was not only practical for the type of work I hope to go into, but it was also an emotional experience. Every single day it was obvious how much the work means to these attorneys and being a part of that was very rewarding and humbling to know such an impact on a child's life can really be made. From day one, everyone in the office was kind and welcoming and I feel as though I was able to build relationships that I wouldn't have gotten the chance to build without the YLD's help. I am extremely grateful to have been able to spend my summer as part of the impact with such a brilliant and caring group of attorneys. Thank you, YLD, for this experience.

Jessica Perez

Juris Doctor Candidate, UNM School of Law Class of 2018



Pegasus – Legal Service for Children staff back row from left to right: Matthew Bernstein, Ella Brown, Jackie Sagastume, Larry Kronen; front row from left to right: Nicole Saunders, Miriam Rea, Liz McGrath, Jessica Perez

YLD...ln Brief

Constitution Day 2016

By Erin Atkins Region 4 Director

During the week of Sept. 11-17, attorneys from across the state participated in Constitution Day presentations for fifth grade classrooms in the YLD's Annual Constitution Day celebration. The Young Lawyers Division Board organized volunteer judges and attorneys and matched them with schools in their local areas. This year's Constitution Day participation was the largest to date—106 schools participated! Each of the 8,016 students received a free U.S. Constitution booklet provided by the YLD. The 101 attorney and judge volunteers led games, discussions and even passionate debates with the students. Ben Cross, senior court attorney at the Ninth Judicial District Court, coordinated presentations for 1,300 students and with help from other volunteers presented to these students in their district. He eloquently shared his experience with the following: "We want students to know American history and the tenets of the Constitution. But, most importantly, we want students to know that they are treasured and that they can aspire to be whatever they want in life; even President. Just read Article II of the Constitution..."

This event was a great success! The YLD wishes to thank all who participated and inspired the young students of New Mexico. To view more Constitution Day experiences, visit www.nmbar.org/yld > Constitution Day.



Ninth Judicial District Court Judge Fred T. Van Soelen



Attorney Mick Gutierrez



from left to right: Second Judicial District Public Defenders Noah Gelb, Darin McDougal and Sophie Asher





from left to right: Senior Court Attorney Ben Cross and Chief Judge Drew D. Tatum of the Ninth Judicial District Court

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YLD/UNM School of Law Mentorship Program Kickoff BBQ

By Tomas Garcia Chair-elect Director-AT-Large, Position 2

NM School of Law first-year students and YLD attorney mentors kicked off the 2016–2017 Mentorship Program with a BBQ at the UNM School of Law campus in September. Law students met and mingled with prospective mentors and engaged in a structured speed networking activity. At the conclusion of the event, law student participants completed surveys and, for the first time in the program's history, students were offered the chance to identify specific attorney mentors with whom they wished to be matched. Approximately two-thirds of the first-year law school class signed up to participate in the Mentorship Program this year and several dozen YLD attorneys volunteered to mentor law students.



Law students Taylor Bui, Derek Sanchez, Cruz Lopez, Jessica Perez, and David Jenkins



Attorney mentors and student mentees practice their speed networking on the UNM School of Law patio

YLD...ln Brief

Wills for Heroes

By Sean FitzPatrick Vice Chair Director-At-Large, Position 3



Many first responders around the country are without wills. There is an unmet need to help these individuals should tragedy strike. This is a reality that Anthony Hayes sought to address after the Sept. 11 attacks when it became clear there were very few first responders who had estate planning documents. The program was expanded beyond New York and has grown to become what it is today.



Santa Fe Wills for Heroes from left to right, (back row) Taylor Lieuwan, Eddy Gallegos, Sean FitzPatrick, Lyn Herbert, Melissa Martinez, Jennifer Van Wiel, Kay Homan, Shannon Bulman, Linda Murphy, Kait Alley, Yvonne Chicoine, Spencer Edelman; (front row) Jordan Kessler, Brian Parrish



Alamogordo Wills for Heroes from left to right, (back row) Judge James Waylon Counts, Kathy Sanchez, Deena Daniel, Khouloud Pearson, Forrest and Amelia Pearson, Jamshid Askar; (front row) Josie Techau, Dorothy Murphy, Terri Melendy. Not pictured: Petria Schreiber, Roxanne Esquibel, Michelle Haley, Canon Stevens, Thomas Overstreet, Irene Mirabal Counts, and Erin Atkins.

While this program is free to first responders, the YLD has been tracking how much time volunteers donate to the program. More than 400 attorney hours have been donated by attorneys in New Mexico. More than 200 wills and other estate planning documents were generated through the Wills for Heroes program. Based on average attorney fees per hour in New Mexico, that equates to just over \$95,000 in legal services provided! This number does not include the non-attorney volunteers and paralegals that are critical to the process of notarizing and witnessing the estate planning documents.

However, the benefit of this program can't just be measured by how much it would cost without volunteers. Arguably, its true benefit is allowing first responders to focus on their job and not worry about the affairs of their estate should the unthinkable happen.

Thank you to all who have made this program a success. To those who haven't volunteered yet, let me repeat the words of YLD Board member Spencer Edelman: one of the best things about this program is that lawyers with no experience in drafting wills or estate planning documents can guide first responders through a few simple questions, and the first responders can leave that day with a will in hand. It you are interested in helping the YLD host a clinic, keep an eye out for emails from the State Bar and announcements in the *Bar Bulletin*.

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Rules/Orders

g. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

You are also required to serve a one year period of probation during which time you must refund the attorney's fees paid by your former client (which you have already done), pay the costs of the disciplinary matter and refrain from practicing law except in matters limited to probates, estate planning, guardianships and conservatorships without the approval of the Office of Disciplinary Counsel.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent

records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

Dated November 18, 2016 The Disciplinary Board of the New Mexico Supreme Court

By

Curtis R. Gurley Board Chair

Advance Opinions.

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-077

No. 33,165 (filed June 27, 2016)

STATE OF NEW MEXICO, Plaintiff-Appellant, MAYRA GUTIERREZ, Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY

JENNIFER E. DELANEY, District Judge

HECTOR H. BALDERAS Attorney General YVONNE M. CHICOINE Assistant Attorney General Santa Fe, New Mexico for Appellant

BENNETT J. BAUR Chief Public Defender NICOLE S. MURRAY Assistant Appellate Defender Santa Fe, New Mexico for Appellee

Opinion

Michael D. Bustamante, Judge

{1} Defendant, who is not a United States citizen, pled guilty to a drug offense. The district court then granted Defendant's motion to withdraw her guilty plea and vacated her conviction on grounds that defense counsel did not advise Defendant of the immigration consequences associated with the plea as required by our Supreme Court in State v. Paredez, 2004-NMSC-036, 136 N.M. 533, 103 P.3d 799. We affirm.

I. BACKGROUND

- {2} On November 7, 2010, Defendant was arrested after entering the United States through the Port of Entry at Columbus, New Mexico with nineteen bricks of marijuana weighing more than twenty-one pounds concealed in her vehicle. At the time of her arrest, Defendant was subjected to an immigration hold. Defendant is a citizen of Mexico, but her father is a United States citizen, and she has two children that are United States citizens as well. Defendant does not speak English and all communications in court took place through an interpreter. Defendant was released after posting bond in the magistrate court and the magistrate judge noted that the "parents will deal with immigration hold."
- {3} After waiving a preliminary hearing, a criminal information was filed in the Luna

County District Court charging Defendant with distribution of marijuana (100 pounds or less). The Honorable Gary Jeffreys presided over the proceedings from arraignment through sentencing. At her arraignment on January 27, 2011, Defendant told the district court through an interpreter that the United States Immigration and Customs Enforcement (ICE) was "holding her papers" and asked for assistance in getting her green card released. Defendant's attorney said he would "work with [Defendant] on that." The bond posted in the magistrate court was continued, and Defendant's conditions of release were amended to allow her to travel outside of Luna County to receive obstetrical care due to problems with her pregnancy.

- {4} Trial was set for May 26, 2011. However, the day before the scheduled trial, the parties entered into a plea and disposition agreement in which Defendant agreed to plead guilty to possession of eight ounces or more of marijuana, knowing that it was marijuana. In addition, the parties agreed to an eighteen-month suspended sentence to be served on supervised probation.
- {5} During the plea hearing, as the district court sought to ensure that the record indicated a knowing and voluntary plea, there was a discussion between the district court, counsel, and Defendant concerning Defendant's immigration status. When asked by Judge Jeffreys at the plea hearing about the "possibility [of] being deported," Defendant

(as translated) responded: "[Defense counsell advised me that with respect to this case there was a possibility that I might be deported but it is up to the Immigration and Naturalization Department if I am deported or not." Defense counsel added:

She understands there's a high likelihood that she will be deported. At least with these charges that she's pleading to, she will get a hearing before the court. Her other children are [United States] citizens and she has some—at least a remote chance—of staying. She understands it's not a great chance.

- **[6]** In response to the district court's question if there was an immigration hold on Defendant, the prosecutor reported that ICE was aware of the plea hearing, but it was not taking Defendant into custody at that time and would summon her to a hearing instead. Defendant was eight months pregnant and ICE was concerned about liability issues associated with a detainee having a baby while in custody. Defense counsel said that ICE technically had a hold on Defendant and that it was relying on the bond posted in the magistrate court to secure her appearance. The district court found that Defendant's guilty plea was freely and voluntarily made, but reserved approving the plea and disposition agreement. At Defendant's request, sentencing was postponed until July 11, 2011.
- {7} Defendant's July 11, 2011, sentencing date was continued to July 14, 2011, then to August 15, 2011. When the parties appeared for sentencing on August 15, 2011, Defendant asked for a further continuance because her immigration attorney needed more time "to get her citizenship straightened out." Defense counsel explained that Defendant was eligible for citizenship because her father was a United States citizen, but her citizenship had not yet been formalized. Defendant told the district court that her immigration attorney had told her the resolution of her immigration status might take "one day or a year." The State opposed a further continuance because the plea agreement specifically addressed Defendant's lack of citizenship and that Defendant would suffer adverse immigration consequences as a result of her crime.
- {8} The district court remarked that resolution of Defendant's citizenship status was material to approval of the plea and disposition agreement because if Defendant was not a United States citizen, it would remand Defendant to ICE for removal and not impose

the agreed-upon suspended sentence. The district court agreed to continue sentencing for an additional thirty days and made it clear that if Defendant's citizenship was not resolved by that time, or if Defendant was not a United States citizen, it would reject the plea and disposition agreement unless Defendant agreed to be remanded to ICE. **(9)** At the sentencing hearing on September 15, 2011, Defendant's attorney told the district court that Defendant's immigration attorney advised him that as long as Defendant was not sentenced to a term of incarceration, Defendant's conviction should not have a negative impact on her immigration case, but that Defendant needed to understand "there are no guarantees." When asked, Defendant told the district court that she understood what her attorney had said and that she understood there were no guarantees that she would not be deported. The district court thereupon imposed the suspended sentence agreed upon in the plea agreement, adding that if Defendant was deported, supervised probation would revert to unsupervised probation with the sole condition that Defendant not reenter the United States illegally. The judgment and sentence was filed on October 3, 2011.

{10} Almost nineteen months later, after Defendant had completely served her sentence of probation, she was detained by ICE in El Paso, Texas facing deportation as a result of her conviction. Defendant filed a "motion for relief from judgment and to withdraw plea and request for evidentiary hearing." Defendant asserted that her trial counsel was ineffective because counsel had not adequately advised her of the immigration consequences of her plea, and as a consequence, her guilty plea was not knowingly, intelligently, and voluntarily made. In pertinent part, Defendant alleged that (1) she only recalled being told that she could possibly be deported as a result of the plea; (2) when the district court asked her if she was aware of the consequences of her guilty plea, she responded that she was told she could possibly face deportation; (3) she did not recall any conversation in which she was informed "with exactitude" that if she entered into the plea agreement and was convicted, she would be removed from the United States and denied discretionary relief during the removal process; (4) her attorney did not recall specifically informing Defendant that she would surely be deported as a result of the guilty plea; and (5) had she known the immigration consequence of her plea agreement, "she would not have entered into the plea agreement."

{11} Judge Jeffreys having retired, the motion was heard and ruled upon by the Honorable Jennifer DeLaney. In addition, Defendant was represented by new counsel. Hereinafter, we refer to the lawyer who represented Defendant in connection with entry of the plea agreement as "trial counsel" and to Judge Delaney as the "district court." {12} At the hearing on Defendant's motion to withdraw the plea on July 15, 2013, trial counsel testified that he remembered that Defendant and her father were in the process of formalizing Defendant's citizenship status, and that he met with Defendant's immigration attorney but he could not remember when. In regard to advising a client about immigration consequences of a guilty plea, trial counsel testified that his practice was to try to be as thorough as possible, but he could not recall specifics of his conversation with Defendant. He could not "recall a specific conversation" in which he advised Defendant "with exactitude that she would be deported, lose her discretionary rights, ... not be able to bond out, [and] not be able to come back to the United States."

{13} Defendant testified she was being held by ICE at the detention center in El Paso and that an immigration judge told her she was being deported because of her conviction in this case. She remembered going before Judge Jeffreys to plead guilty and a few months later for sentencing. She also remembered speaking to her immigration attorney after pleading guilty because she was told she could become a United States citizen. Defendant testified that she did not recall talking with trial counsel about her immigration status before pleading guilty. However, when asked if trial counsel told her she was going to be deported if she pled guilty, Defendant answered, "absolutely not." {14} Defendant argued that case law reguires it must be shown on the record "that a defendant is aware, with exactitude, of all immigration consequences which [she will] face, prior to entering into a plea, or the plea is not knowing[ly], intelligently, and voluntarily given." The State argued that trial counsel's lack of memory of specifically what happened and when was not sufficient to establish ineffective assistance of counsel, and in any event, Defendant had not testified that, but for the advice given to her by trial counsel, she would not have pled guilty. The district court delayed its ruling on the motion to review the record of Defendant's plea and sentencing hearings and to review

{15} Four days later, the district court announced its decision at a hearing. Agreeing with defense counsel that the operative date to consider whether adequate advice was given was the date of the plea hearing, the district court ruled:

It is my finding that [trial counsel] through the statements made to the court on the May 25th 2013 plea date was effective . . . and adequately advised his client of the high probability of deportation. And the fact that she would be able to have a hearing before the immigration court to determine whether that was going to happen. And based on that, I find the motion asking for the plea to be withdrawn is denied.

{16} Defendant immediately asked the district court to reconsider, asserting that it could consider what transpired at the sentencing hearing as well as the plea hearing. In response, the district court stated, "I did have major concerns with the way in which the sentencing hearing took place[, b] ecause it was a complete reversal of what was indicated[,]" even though Judge Jeffreys had indicated "that there were no guarantees[.]" The district court then reversed its initial ruling and granted Defendant's motion. The State appeals.

II. DISCUSSION

A. Jurisdictional Issues

{17} We must determine at the outset whether we have jurisdiction over the State's appeal. See State v. Favela, 2013-NMCA-102, ¶ 6, 311 P.3d 1213, aff'd on other grounds by 2015-NMSC-005, ¶ 2, 343 P.3d 178. Our review of the jurisdictional question is de novo. *Id.* ¶ 6.

{18} We are faced with two jurisdictional questions. The first is whether Defendant's motion to withdraw her plea was timely. The State contends that, since Defendant's motion was not a timely motion to withdraw the guilty plea under NMSA 1978, Section 39-1-1 (1917) or Rule 5-304 NMRA, the district court did not have jurisdiction to hear it, and its order granting the motion is a nullity. Defendant counters that her motion was filed pursuant to Rule 1-060(B)(4) NMRA, not Section 39-1-1 or Rule 5-304, and therefore was timely.

{19} The second jurisdictional issue is whether the district court's order withdrawing the plea is a final, appealable order. Defendant argues that it is not because the district court order simply allowed Defendant to withdraw her plea and the case must still be tried. The State responds by asserting that it has a "constitutionally[] guaranteed and statutorily[]recognized right

to appeal from [an] order [granted under Rule 1-060(B)(4)]."

{20} We begin with the first issue. The district court ruled that it had jurisdiction over this matter pursuant to State v. Tran, 2009-NMCA-010, 145 N.M. 487, 200 P.3d 537, and Rule 1-060(B)(4), which provides for relief from a judgment when it is void. In Tran, the defendant, who had been discharged from his sentences, 2009-NMCA-010, ¶¶ 8, 10, sought to set aside his convictions on the ground that he was inadequately advised of the immigration consequences of his guilty pleas. Id. ¶¶ 11-12. His motion was denied and the defendant appealed. Id. Although the defendant styled his motion as a petition for a writ of coram nobis, this Court considered the defendant's motion as falling under Rule 1-060(B)(4). Tran, 2009-NMCA-010, ¶ 17. We also noted that "there is no limitation of time within which a motion must be filed under the provisions of Rule [1-060(B) (4)]." *Tran*, 2009-NMCA-010, ¶ 16 (internal quotation marks and citation omitted); In re Estate of Baca, 1980-NMSC-135, ¶ 10, 95 N.M. 294, 621 P.2d 511 ("A judgment which is void is subject to direct or collateral attack at any time."). Here, like in *Tran*, after completing her sentence, Defendant sought to set aside her conviction due to her attorney's failure to advise her of the immigration consequences of a guilty plea. We conclude that the district court properly considered Defendant's motion under Rule 1-060(B)(4), that the motion was timely, and that the district court's order is not a nullity. See State v. Lucero, 1977-NMCA-021, ¶ 4, 90 N.M. 342, 563 P.2d 605 ("Although Rule [1-0]60[(B)]) is a civil rule, State v. Romero, [1966-NMSC-126, 76 N.M. 449, 415 P.2d 837,] . . . held that where a prisoner had served his sentence and had been released, this civil rule could be utilized to seek relief from a criminal [judgment] claimed to be void.").

{21} We turn to the second issue: whether the district court's order granting the Rule 1-060(B)(4) motion to withdraw Defendant's plea is a final order from which the State may appeal. "As a general rule, an order or judgment is not considered final unless it resolves all of the factual and legal issues before the court and completely disposes of the case." State v. Heinsen, 2005-NMSC-035, ¶ 14, 138 N.M. 441, 121 P.3d 1040. The doctrine of "practical finality" is an exception to the general principle of finality that is applied sparingly to permit review in certain cases. For instance, the appellate courts "will review a court's decision when an order effectively disposes of the issues in a case, even though supplementary proceedings are necessary to enforce the order[, and] where . . . the issue raised on appeal will not be available for review if the state is deprived of an immediate appeal." *Id.* ¶ 15 (citation omitted).

{22} Because Rule 1-060 is silent as to who may appeal and how and when an appeal is taken, we must rely on other sources for our analysis. In a case similar to that here, this Court held that the district court's order permitting withdrawal of a plea "create[d] no finality in that the charges against [the d]efendant . . . [were] not . . . dismissed. If anything, all cases [were] reinstated and set for trial on the merits." State v. Griego, 2004-NMCA-107, ¶ 17, 136 N.M. 272, 96 P.3d 1192. We rejected the state's arguments for an exception to the finality rule based on practical finality because "[n]ot to limit the doctrine of practical finality would allow the exception to fast swallow the rule." Id. (internal quotation marks and citation omitted). We also rejected the state's argument that it was entitled to appeal under the New Mexico Constitution, which "guarantees the [s]tate's right to appeal a disposition that is contrary to law if the [s]tate is aggrieved by that disposition." Id. ¶ 21; see N.M. Const. art. VI, § 2. Based on the lack of factual support in the record, we stated that "the [s]tate's interest in enforcing plea agreements and the [s]tate's ability to proceed to trial after a significant lapse of time are not compelling enough to justify an exception to the final judgment rule." *Griego*, 2004-NMCA-107, ¶ 21.

{23} A different result was reached in Collado v. New Mexico Motor Vehicle Division. 2005-NMCA-056, 137 N.M. 442, 112 P.3d 303. In that case, two drivers signed uniform traffic citations pleading guilty to traffic offenses. Id. ¶¶ 2-3. Contending that they misunderstood the implications of signing the citations with the "guilty" box checked, the drivers filed petitions for a writ of mandamus in the district court asking that their pleas be withdrawn and for an order that the Motor Vehicle Division (MVD) return their citation to the metropolitan court for a trial on the merits. Id. The district court granted the relief sought in both cases, and the MVD appealed. Id. ¶¶ 1, 2, 4. The district court orders did not end the cases, but remanded them to the metropolitan court. Id. ¶ 6. Nevertheless, we concluded that the orders were sufficiently final to invoke our jurisdiction under the practical finality rule because the MVD would otherwise be unable to have the propriety of the remand orders heard. Id.

{24} Neither of these cases is entirely analogous to the present facts. In *Griego*, the

defendant had not completed his sentence. Here, in contrast, Defendant's motion was filed after she had completed a sentence imposed after entry of the plea. Thus, the underlying criminal case had terminated, and the motion initiated a collateral attack on the criminal judgment. In Collado, the state's issue on appeal challenged the district court's jurisdiction based on procedural inadequacies in the petitions for writ of mandamus. 2005-NMCA-056, § 8; see Heinsen, 2005-NMSC-035, ¶ 19 (discussing Collado). The issue did not pertain to the state's ability to appeal the district court's order to withdraw the pleas on the merits. Although instructive, we conclude that neither Griego nor Collado is dispositive here.

{25} Having determined that Griego and Collado do not resolve the issue, we examine the nature of Defendant's motion itself. Cf. State v. Roybal, 2006-NMCA-043, ¶ 17, 139 N.M. 341, 132 P.3d 598 ("[I]t is the substance of the motion, and not its form or label, that controls."). The Court in Tran noted that a motion to withdraw a plea based on a deficiency in counsel that rendered the judgment void was essentially a petition for a writ of coram nobis. 2009-NMCA-010, ¶ 15. The writ of coram nobis was a common law procedure utilized in criminal cases by "one who, though convicted, is no longer in custody, to provide relief from collateral consequences of an unconstitutional conviction due to errors of . . . such a fundamental character that the proceeding itself [was] rendered invalid, permitting the court to vacate the judgment." Id. ¶¶ 14-15; see also State v. Barraza, 2011-NMCA-111, ¶ 4, 267 P.3d 815 (describing in general terms the development and use of the writ of coram nobis). However, with the adoption of Rule 1-060, "[w]rits of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, [were] abolished[.]" Rule 1-060(B)(6). Even so, "it was the intent to retain all the substantive rights protected by [these] old common law writs. . ., but to eliminate the niceties of form of these writs." Romero, 1966-NMSC-126, ¶ 15. "The purpose of the rule was to substitute in place of these writs a simplified procedure whereby the same questions of right could now be raised by motion." Id.

{26} At common law, the state's right to appeal the grant of a writ of coram nobis depended on whether the proceedings were independent of the underlying action. *See* 18 Am. Jur. *Trials* 1 § 45 (originally published in 1971) ("The right to appeal a judgment or order denying coram nobis relief depends to a great extent on whether the coram nobis

proceeding is considered to be a separate proceeding or whether it is viewed as part of the original criminal proceeding."). This is because the order entered in a separate civil proceeding is considered to finally dispose of that proceeding and therefore is a final order subject to appeal, even though it may not completely resolve the underlying case. Cf. NMSA 1978, § 39-3-2 (1966) (permitting appeal by an aggrieved party from "any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action, or any final order after entry of judgment which affects substantial rights[.]"). Although it appears that many courts consider a coram nobis proceeding to be an independent proceeding, others have held that it is part of the original criminal matter. See 24 C.J.S. Criminal Law § 2264 (2016) ("Authorities differ as to whether a proceeding for the writ is a new and independent one or is part of the original criminal proceeding."); Ruby v. State, 724 A.2d 673, 677 (Md. 1999) (recognizing disparate holdings). For instance, the Court of Appeals for the First Circuit held that "coram nobis proceedings are appealable as civil matters. Thus, the government, like any other party, may appeal the grant or denial of the writ as a final order." Trenkler v. United States, 536 F.3d 85, 95 (1st Cir. 2008). Similarly, the Maryland Court of Appeals, concluding that the state failed to appeal the grant of the writ, held that "[a]t common law, a proceeding on a writ of error coram nobis was a civil matter procedurally independent of the underlying judgment being contested." Ruby, 724 A.2d at 677, 679 (emphasis omitted); see also State v. Tejeda-Acosta, 2013 Ark. 217, at 3-4, 427 S.W.3d 673, 675 (noting that the state's appeal from an order granting a writ of error coram nobis was proper because the case was not required to satisfy criteria for appeals in criminal cases). In contrast, the Oregon Supreme Court held that "a motion in the nature of coram nobis is not, like habeas corpus, a new case, civil in nature, but simply a part of the original criminal proceeding." State v. Endsley, 331 P.2d 338, 340 (Or. 1958) (en banc); see also State v. Bibby, 252 So. 2d 662, 665 (Ala. Crim. App. 1971) (stating that "absent an express authorization by the [l] egislature of some specific officer, an appeal on behalf of the [s]tate cannot be entertained where the judgment below grants a convict relief from a judgment of conviction by way of the writ of error, coram nobis").

{27} Romero seems to indicate that coram nobis proceedings, if they still exist, are separate proceedings. 1966-NMSC-126, ¶ 13 ("At common law such writs . . . were and still are generally considered to be civil in nature, even though used to question a judgment and sentence in a criminal case."). The Court cited to People v. Kemnetz, 15 N.E.2d 883 (Ill. App. Ct. 1938), which expressly stated:

It has been repeatedly held that a motion or petition filed in the nature of a writ of error coram nobis stands as a declaration or complaint in a new suit, and it is only because the proceeding so instituted is civil in character that the right of the state to appeal from the judgment entered in such proceeding has been generally recognized by the authorities.

Id. at 886. The Kemnetz court also referred to and quoted from People ex rel. Courtney v. Green, 189 N.E. 500 (Ill. 1934). In Green, the Illinois Supreme Court noted that while its procedural rules had abolished the common law writ of coram nobis, those rules also provided that errors which might have been corrected by that writ could still be reached by motion and that "[s]uch motion or petition is the commencement of a new suit." Id. at 501-02. Kemnetz relied on the ruling in *Green* to hold that, in a proceeding brought by such a motion,

[t]he issue made and the judgment sought concern only the setting aside of the original judgment entered. The order made on such motion is a final order and directly reviewable as a final judgment. . . . Since the judgment entered upon such proceeding is final and the proceeding is civil in its nature, either the state or the defendant is entitled to a review of the judgment of the court entered on such motion or petition.

Kemnetz, 15 N.E.2d at 886 (internal quotation marks omitted) (quoting Green, 189 N.E. at 502).

{28} In spite of these citations, Romero only explicitly addressed whether the district court properly considered the defendant's petition for a writ of coram nobis under Rule 1-060(B)(4). It did not address whether the proceeding was a separate, independent proceeding or whether the state would have had a right to appeal the grant of the writ. See Sangre de Cristo Dev. Corp. v. City of Santa Fe, 1972-NMSC-076, ¶ 23, 84 N.M. 343, 503 P.2d 323 ("The general rule is that cases are not authority for propositions not considered."). Hence, we conclude that Romero, as well as the out-of-state cases addressing appeal of the grant of a coram nobis writ, are at best persuasive authority for allowing the State's appeal, although they are hardly definitive on the matter.

{29} We therefore approach the question a third way: by review of a similar rule. As a collateral attack on a judgment, a petition for writ of coram nobis, even when filed under the auspices of Rule 1-060(B)(4), is similar to a petition for a writ of habeas corpus. See Rule 5-802 NMRA (governing petitions for a writ of habeas corpus); Tran, 2009-NMCA-010, ¶ 18 (referring to a motion to set aside a judgment based on an attorney's failure to advise of immigration consequences as a collateral attack). Since both habeas corpus and coram nobis writs may be used to challenge a judgment on the ground of ineffective assistance of counsel, the main distinction between a writ of coram nobis and a writ of habeas corpus lies in whether the defendant is in custody. Barraza, 2011-NMCA-111, ¶ 10. Habeas corpus applies if the defendant is in custody, whereas coram nobis applies when the defendant is no longer in custody. Id. (holding that coram nobis relief under Rule 1-060(B) is not available unless a defendant demonstrates that habeas corpus relief under Rule 5-802 is not available or is otherwise inadequate). The habeas corpus rule provides that "if the writ [of habeas corpus] is granted, the state may appeal as of right pursuant to the Rules of Appellate Procedure[.]" Rule 5-802(L) (1). The similarities between the two writs suggest that they should function similarly, i.e., the State should enjoy the same right to appeal in coram nobis proceedings as in habeas proceedings. On the other hand, Rule 5-802 expressly provides for the state's appeal, whereas Rule 1-060(B) does not.

{30} The final piece of the puzzle is found in a recent rule promulgated by our Supreme Court. In December 2014, the Supreme Court adopted Rule 5-803 NMRA to govern petitions for post-sentence relief. Rule 5-803 is "effective for all cases filed on or after December 31, 2014." N.M. S. Ct. Order No. 14-8300-014. Rule 5-803(I)(1), like the habeas corpus rule, expressly provides for state appeal of the grant of a petition: "if the petition [for post-conviction relief] is granted, the state may appeal as of right to the Court of Appeals under the Rules of Appellate Procedure." Moreover, the Committee Commentary to Rule 5-803 states that "[Rule 5-803] is deemed to have superseded former Rule 1-060(B) . . . for post-sentence matters involving criminal convictions, including the writ of coram nobis." (Emphasis added.) Thus, Rule 5-803 clarifies post-sentence petitions in criminal matters significantly.

In addition, it is consistent with the rules for habeas corpus petitions. We recognize that Rule 5-803 was not in effect at the time of Defendant's motion. Nevertheless, it is an indication of the Supreme Court's intent to permit appeals in cases similar to the one at hand of such motions and to resolve the confusion engendered by use of Rule 1-060(B)(4) in criminal matters.

{31} Although each of the foregoing analyses, standing alone, fails to completely settle the question, taken together in light of the Supreme Court's recent rule change, they militate in favor of allowing the State's appeal. We conclude that the State has a right to appeal the grant of Defendant's motion.

B. Validity of the Plea Standard of Review

{32} This case comes to us in a rather unusual procedural posture. It is rare to see the State appeal from an order allowing a defendant to withdraw from a plea agreement. It is rarer still to see the State appeal from the grant of such a motion filed pursuant to Rule 1-060(B). This posture affects our standard of review. We review Rule 1-060(B) orders under the abuse of discretion standard. Desjardin v. Albuquerque Nat'l Bank, 1979-NMSC-052, ¶ 12, 93 N.M. 89, 596 P.2d 858 ("The setting aside of a final judgment under Rule [1-060(B)] is within the discretion of the district court."). "Where the court's discretion is fact-based, we must look at the facts relied on by the trial court as a basis for the exercise of its discretion, to determine if these facts are supported by substantial evidence." Apodaca v. AAA Gas Co., 2003-NMCA-085, ¶ 60, 134 N.M. 77, 73 P.3d 215 (internal quotation marks and citation omitted). Under that standard, we review the factual record in the light most favorable to the district court's decision. *State v. Barrera*, 2001-NMSC-014, ¶ 12, 130 N.M. 227, 22 P.3d 1177 ("[Appellate Courts] resolve[] all disputed facts and draw[] all reasonable inferences in favor of the successful party and disregard[] all evidence and inferences to the contrary, viewing the evidence in the light most favorable to the trial court's decision.").

{33} In addition, Defendant's motion below was premised on her prior counsel's asserted failure to adequately advise her concerning the immigration consequences flowing from her plea. Based on our Supreme Court's decision in *Paredez*, Defendant's motion of necessity asserted that her prior counsel provided her ineffective assistance. We review claims of ineffective assistance under a mixed standard of review, viewing the factual record in the light most favor-

able to the court's ruling but deciding de novo whether counsel was ineffective as a matter of law. *State v. Crocco*, 2014-NMSC-016, ¶ 11, 327 P.3d 1068. Thus, under both standards of review, we defer to the district court's findings of fact when they are supported by the record.

Analysis

{34} Where "a defendant is represented by an attorney during the plea process and enters a plea upon the advice of that attorney, the voluntariness and intelligence of the defendant's plea generally depends on whether the attorney rendered ineffective assistance [of counsel]." State v. Barnett, 1998-NMCA-105, ¶ 12, 125 N.M. 739, 965 P.2d 323, quoted in State v. Tejeiro, 2015-NMCA-029, ¶ 5, 345 P.3d 1074. New Mexico follows Strickland v. Washington, 466 U.S. 668 (1984), in evaluating claims of ineffective assistance of counsel. Favela, 2015-NMSC-005, ¶ 10. Under Strickland, to prove a claim of ineffective assistance of counsel, a defendant must show: "(1) that counsel's performance fell below that of a reasonably competent attorney[,] and (2) that [the d]efendant was prejudiced by the deficient performance." State v. Martinez, 2007-NMCA-160, ¶ 19, 143 N.M. 96, 173 P.3d 18. A failure to comply with *Paredez* renders the attorney's performance deficient—which satisfies the first prong of Strickland. 466 U.S. at 687; Paredez, 2004-NMSC-036, ¶ 19.

{35} We therefore begin our analysis with *Paredez*, in which our Supreme Court held:

[C]riminal defense attorneys are obligated to determine the immigration status of their clients. If a client is a non-citizen, the attorney must advise that client of the specific immigration consequences of pleading guilty, including whether deportation would be virtually certain. Proper advice will allow the defendant to make a knowing and voluntary decision to plead guilty. ... An attorney's failure to provide the required advice regarding immigration consequences will be ineffective assistance of counsel if the defendant suffers prejudice by the attorney's omission.

2004-NMSC-036, § 19. Our Supreme Court has subsequently reaffirmed on two separate occasions that *Paredez* requires defense counsel to determine the immigration status of a client and advise a client, who is not a United States citizen, of the specific immigration consequences of a guilty plea, including whether the guilty plea is virtually certain to result in the client's deportation.

See Favela, 2015-NMSC-005, ¶ 10; Ramirez v. State, 2014-NMSC-023, ¶ 7, 333 P.3d 240. {36} In State v. Carlos, 2006-NMCA-141, ¶¶ 15-16, 140 N.M. 688, 147 P.3d 897, this Court concluded that merely advising a client in general about the possible immigration consequences of pleading guilty and of the range of different things that can happen at a deportation hearing fails to satisfy Paredez. Because Paredez requires an attorney to provide "a definite prediction as to the likelihood of deportation based on the crimes to which a defendant intends to plead and the crimes listed in federal law for which a defendant can be deported[,]" Carlos, 2006-NMCA-141, ¶ 14, we interpreted Paredez "to require at a minimum that the attorney advise the defendant of the specific federal statutes which apply to the specific charges contained in the proposed plea agreement and of consequences, as shown in the statutes, that will flow from a plea of guilty." Carlos, 2006-NMCA-141, ¶ 15.

{37} In *Tejeiro*, this Court listed examples of inadequate advice of counsel. If an attorney (1) fails to provide any advice of the consequences, (2) provides incorrect advice, (3) misrepresents the consequences, (4) fails to provide a definite prediction as to the likelihood of deportation based on the crime(s) to which the defendant intends to plead, (5) fails to inform the defendant of the consequences short of deportation, or (6) fails to provide guidance even in cases in which implications for immigration are not truly clear, then the obligation imposed by Paredez is not satisfied. Tejeiro, 2015-NMCA-029, ¶ 7. We therefore held that it was incumbent upon counsel to be well informed and to advise the defendant that he could face deportation irrespective of whether the defendant successfully completed a conditional discharge after pleading guilty to a single count of drug trafficking. *Id.* ¶ 12.

{38} Defendant pled guilty to possession of eight ounces or more of marijuana, knowing it was marijuana, a fourth degree felony, in violation of NMSA 1978, Section 30-31-23(B)(3) (2011). As such, Defendant was convicted of a deportable offense under 8 U.S.C. § 1227(a)(2)(B)(i) (2014) (providing that a non-citizen's conviction for violating the law of a state relating to a controlled substance, other than a single offense of possession for personal use, thirty grams or less of marijuana, is a deportable offense); 8 U.S.C. § 1101(48)(A)(i) (2014) (stating that a plea of guilty constitutes a conviction). However, because Defendant was not convicted of an "aggravated felony" as defined in 8 U.S.C. § 1101(a)(43) (2014), it appears she may have been eligible for cancellation of removal at the discretion of the attorney general under 8 U.S.C. § 1229b(a)(3) (2014). See State v. Shata, 2015 WI 74, ¶¶ 59-60, 868 N.W.2d 93 (stating that although a controlled substance conviction makes a noncitizen deportable, such a conviction will not necessarily result in deportation due to the government's prosecutorial discretion and immigration policies that provide avenues for aliens to avoid deportation); Cun-Lara v. State, 273 P.3d 1227, 1237-39 (Haw. Ct. App. 2012) (stating that notwithstanding that conviction of a drug offense is deportable, cancellation of removal is available under 8 U.S.C. § 1229b(a)).

{39} Given the district court's grant of Defendant's motion to withdraw the plea, we infer that the district court found that Defendant did not clearly or properly appreciate the actual immigration consequences of her plea. Viewed in the light most favorable to this ruling, the record supports this finding. For example, when asked by Judge Jeffreys at the plea hearing about the "possibility [of] being deported," Defendant (as translated) responded: "[trial counsel] advised me that with respect to this case there was a possibility that I might be deported but it is up to the Immigration and Naturalization Department if I am deported or not." This response indicates clearly that Defendant was under the impression that deportation was a "possibility" rather than a "probability" or "virtual certainty." Given the provisions of the applicable federal provisions, Defendant's deportation was a "virtual certain[ty]" given the crime to which she was pleading. Paredez, 2004-NMSC-036, ¶ 19; 8 U.S.C. § 1227(a)(2)(B)(i) (2014).

{40} In addition, Defendant's counsel spoke to the district court after Defendant's response, asserting that "[Defendant] understands there is a high likelihood that she will be deported. At least with this charge that she is pleading to . . . she has some, at least a remote chance, she understands it's not a great chance." Defendant's expression of her understanding of the potential effect of the plea stands in high contrast with counsel's statements. Despite the contrast, the district court did not pursue the matter further.

{41} Finally, Defendant's trial counsel provided an affidavit in support of the motion for relief from judgment. Trial counsel asserted in the affidavit that in his discussions with Defendant about the case and the plea bargain, he did "not recall a conversation wherein I, with specificity, explained to [Defendant | that she would without a doubt [be] removed from the United States of America." **{42}** From Defendant's statements during the plea hearing and trial counsel's shifting statements about the advice he gave her, the district court could reasonably have concluded that Defendant did not understand that her plea made deportation a "virtual certainty." The district court could also have reasonably concluded that Defendant's lack of understanding was due to her counsel's failure to explain the consequences to her well or clearly enough.

{43} This view of the record is bolstered by the colloquy between the court, Defendant, and trial counsel at the sentencing hearing. Judge Jeffreys inquired about the status of the effort to acquire citizenship for Defendant. In response, trial counsel explained that the matter was still in process but that the immigration attorney handling the matter for Defendant had stated that if Defendant was not actually imprisoned, the plea should have no negative effect on the effort. This statement likely further misled Defendant as to the consequences of the plea.

{44} During argument on the motion for relief from judgment, the district court noted that she was concerned about certain statements made at the sentencing hearing. The exchange described above could reasonably be seen as further evidence that Defendant had not been properly and clearly advised about the effect of her plea—before the plea and thereafter. That is, read in the light most favorable to permitting withdrawal of the plea, the record supports the view that Defendant was not advised that deportation was a virtual certainty given the charges to which she was pleading. Rather, the district court could have reasonably concluded that Defendant was left with the impression that deportation was only a "possibility" or perhaps at worst a "good" possibility.

[45] As for the second prong of the *Strick*land test, the district court also could have reasonably concluded that "[d]efendant was prejudiced by the deficient performance." Martinez, 2007-NMCA-160, ¶ 19. Defense counsel made clear to the district court early on that Defendant's father was a United States citizen and that two of her children are United States citizens. See Carlos, 2006-NMCA-141, ¶ 21 (considering the defendant's ties to this country in the analysis of prejudice). Throughout the months leading up to the entry of the plea, it was also clear that Defendant was seeking United States citizenship. As early as the arraignment, Defendant sought the district court's assistance in getting ICE to release her green card. Roughly seven months later, in August 2011, the issue was still unresolved, and Defendant requested a continuance of the sentencing hearing in order "to get her citizenship straightened out." Recognizing that her immigration status was uncertain, the district court noted that resolution of Defendant's citizenship status was material to approval of the plea and disposition agreement and agreed to continue sentencing. "[This] record indicates that there is a distinct possibility that . . . if Defendant had been properly advised, [s]he would not have pleaded guilty" and supports the district court's conclusion that the second prong was satisfied. Paredez, 2004-NMSC-036, ¶ 22.

{46} Given the facts in the record supporting the district court's implicit findings of fact, affirmance is required. In this area of law, we are fortunate to have a clear expression of the standard to which competent counsel are held. Paredez makes clear that "when a defendant's guilty plea almost certainly will result in deportation, an attorney's advice to the client that he or she 'could' or 'might' be deported would be misleading and thus deficient." Id. ¶ 15. Our Supreme Court in Paredez also made clear that "criminal defense attorneys are obligated to determine the immigration status of their clients. If a client is a non-citizen, the attorney must advise that client of the specific immigration consequences of pleading guilty, including whether deportation would be virtually certain." *Id.* ¶ 19. Under the applicable federal statute, Defendant's deportation was "virtually certain" after her plea. Any advice that did not convey that message was deficient. The district court having apparently—and reasonably—concluded that the appropriate message was not conveyed to Defendant clearly, the order must be affirmed.

III. CONCLUSION

{47} The order of the district court is affirmed.

IT IS SO ORDERED. MICHAEL D. BUSTAMANTE, Judge

WE CONCUR: MICHAEL E. VIGIL, Chief Judge JONATHAN B. SUTIN, Judge

Certiorari Denied, August 18, 2016, No. S-1-SC-36012

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-078

No. 34,478 (filed June 28, 2016)

STATE OF NEW MEXICO, Plaintiff-Appellant,

V.

JENNIFER LASSITER, a/k/a JENNIFER RUSSELL, Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

JOHN A. DEAN JR., District Judge

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Opinion

M. Monica Zamora, Judge

{1} Defendant Jennifer Lassiter entered a plea of no contest to drug trafficking, contrary to NMSA 1978, Section 30-31-20 (2006), and she was sentenced by the district court. The State appeals, arguing that the district court erred in sentencing Defendant for second degree drug trafficking instead of first degree drug trafficking for a second or subsequent offense. For the following reasons, we affirm.

BACKGROUND

- {2} In 2009 Defendant was charged with trafficking methamphetamine. Defendant entered a guilty plea to a first-offense drug trafficking charge and received a conditional discharge order, pursuant to NMSA 1978, Section 31-20-13(A) (1994). Without entering an adjudication of guilt, the district court ordered that Defendant be placed on probation for a period of three years. In 2010, Defendant was granted early release from probation. The district court entered an order of conditional discharge dismissing the drug trafficking charge.
- {3} In 2013 Defendant was arrested and charged with trafficking methamphetamine and tampering with evidence. Defendant entered a plea of no contest to the

drug trafficking charge. The State argued that the conviction was a second offense punishable as a first degree felony under Section 30-31-20(B)(2). Defendant argued that she should be sentenced as a first time offender since the previous charge was dismissed after she completed the terms of the conditional discharge. The district court did not consider the prior conditional discharge as a prior drug trafficking offense and sentenced Defendant for a first offense under Section 30-31-20(B)(2). This appeal followed.

DISCUSSION

Standard of Review

{4} Whether the conduct underlying Defendant's conditional discharge in the 2009 drug trafficking case constitutes an "offense" under the enhancement provision of the trafficking statute, Section 30-31-20(B), is a question of statutory interpretation we review de novo. See State v. Holt, 2016-NMSC-011, ¶ 9, 368 P.3d 409. In interpreting statutory language, "our main goal . . . is to give effect to the Legislature's intent." State v. Hall, 2013-NMSC-001, ¶ 9, 294 P.3d 1235. "To discern the Legislature's intent, [this] Court looks first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." State v. Almanzar, 2014-NMSC-001, ¶ 14, 316 P.3d 183 (alteration, internal quotation marks, and citation omitted). However, "[i]f the language of the statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *State v. Chavez*, 2016-NMCA-016, ¶ 7, 365 P.3d 61 (internal quotation marks and citation omitted), *cert. granted*, 2016-NMCERT-001, ___ P.3d ___. Where "the relevant statutory language is unclear, ambiguous, or reasonably subject to multiple interpretations, then [this] Court should proceed with further statutory analysis." *Almanzar*, 2014-NMSC-001, ¶ 15.

Defendant's Conditional Discharge

{5} In 2009 Defendant entered a guilty plea to a drug trafficking charge and received a conditional discharge pursuant to Section 31-20-13. Section 31-20-13(A) provides that:

When a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is authorized, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation on terms and conditions authorized by [NMSA 1978,] Section[] 31-20-5 [(2003)] and [NMSA 1978, Section] 31-20-6 [(2007)]. A conditional discharge order may only be made available once with respect to any person.

{6} Under Section 31-20-13(A), a court entering an order of conditional discharge must also place the defendant on probation. Upon successful completion of probation, the charges against the defendant must be dismissed without an adjudication of guilt. See, e.g., State v. C.L., 2010-NMCA-050, ¶ 8, 148 N.M. 837, 242 P.3d 404 (holding that after successfully completing probation pursuant to a Section 31-20-13 conditional discharge order, the defendant received the benefit of having the case against her dismissed without an adjudication of guilt). A conditional discharge entered without an adjudication of guilt is not considered a conviction. See State v. Harris, 2013-NMCA-031, ¶ 3, 297 P.3d 374 (stating that a defendant granted a conditional discharge pursuant to Section 31-20-13 is not considered a convicted felon or prohibited from possessing a firearm under NMSA 1978, Section 30-7-16(C)(2) (2001)); see also State v. Herbstman, 1999-NMCA-014, ¶ 20, 126 N.M. 683, 974 P.2d

177 (holding that a defendant granted a conditional discharge pursuant to Section 31-20-13, who is neither adjudicated guilty nor convicted, is not required to register as a convicted sex offender).

The Term "Offense"

{7} The State acknowledges that a conditional discharge is not considered a conviction under New Mexico law. However, the drug trafficking statute does not prescribe an enhanced sentence after a defendant's first conviction, but rather after the first offense. See § 30-31-20(B) ("A person who violates this subsection is: (1) for the first offense, guilty of a second degree felony. ..; and (2) for the second and subsequent offenses, guilty of a first degree felony[.]"). Therefore, the State argues that the conditional discharge entered in Defendant's 2009 drug trafficking case should be considered a first offense for the purpose of enhancing her current drug trafficking sentence.

{8} Section 30-31-20 does not define the term "offense" as it is used in that section. The State asserts that an offense is simply an illegal act, whereas a conviction is a legal judgment that a person is guilty of a crime. This view is oversimplified. In its most basic form, an "offense" is defined as "[a] violation of the law[or] a crime." Black's Law Dictionary 1250 (10th ed. 2014). However, the term "offense" carries many connotations. See id. (" 'The terms 'crime,' 'offense,' and 'criminal offense' are all said to be synonymous, and ordinarily used interchangeably. 'Offense' may comprehend every crime and misdemeanor, or may be used in a specific sense as synonymous with 'felony' or with 'misdemeanor,' as the case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by the forfeiture of a penalty." (quoting 22 C.J.S. Criminal Law § 3, at 4 (1989)). The State's blurred distinctions between an illegal act and a criminal offense and these broad connotations do not provide much guidance in determining whether the conduct underlying the conditional discharge constitutes an offense.

{9} As the State noted, a conditional discharge has legal and practical consequences. The language of Section 31-20-13 indicates that a conditional discharge is a punishment for underlying criminal conduct. A conditional discharge may not be entered unless there is an initial finding of guilt on the underlying conduct. Id. Upon a finding of guilt on the underlying criminal conduct, the defendant is placed

on probation, which New Mexico courts have long recognized as a form of punishment. See State v. Villalobos, 1998-NMSC-036, ¶ 12, 126 N.M. 255, 968 P.2d 766 ("[I] t has been judicial policy to use probation as an acute form of punishment and a rehabilitation tool."); State v. Baca, 2004-NMCA-049, ¶ 17, 135 N.M. 490, 90 P.3d 509 ("Probation is a form of criminal sanction; it is one point on a continuum of possible punishments." (alteration, internal quotation marks, and citation omitted)); State v. Donaldson, 1983-NMCA-064, ¶ 33, 100 N.M. 111, 666 P.2d 1258 ("A judge, in fashioning the terms of probation, may impose conditions reasonably related to the probationer's rehabilitation, which are designed to protect the public against the commission of other offenses during the term, and which have as their objective the deterrence of future misconduct." (citation omitted)). Accordingly, New Mexico courts have consistently recognized a conditional discharge under Section 31-20-13 as punishment for criminal conduct. See In re Treinen, 2006-NMSC-013, ¶ 3, 139 N.M. 318, 131 P.3d 1282 ("A sentence of conditional discharge may be imposed under Section 31-20-13(A)[.]" (emphasis added)); Harris, 2013-NMCA-031, ¶ 7 (stating that "the conditional discharge statute contemplates that a defendant will be subject to probation during his sentence" (emphasis added)); Vives v. Verzino, 2009-NMCA-083, ¶ 15, 146 N.M. 673, 213 P.3d 823 (referring to a conditional discharge as a type of "punishment"); Herbstman, 1999-NMCA-014, ¶ 11 (recognizing that "a conditional discharge is a permissible reduction of *sentence* under Rule 5-801(B) [NMRA]" (emphasis added)).

{10} Moreover, a defendant who receives a conditional discharge will face some long-term consequences. The entry of a conditional discharge order precludes the defendant from receiving a conditional discharge for subsequent charges. See § 31-20-13. The criminal charges and conditional discharge order will remain part of the defendant's criminal record, even after the completion of probation. See C.L., 2010-NMCA-050, ¶¶ 7, 15 (explaining that the conditional discharge statute does not implicitly grant the district court the authority to order the expungement of the defendant's criminal records upon the successful completion of the terms of probation); Toth v. Albuquerque Police *Dep't*, 1997-NMCA-079, ¶ 8, 123 N.M. 637, 944 P.2d 285 ("Courts which recognize an inherent power to expunge arrest records have tempered this power by requiring that it be exercised sparingly and only in extraordinary circumstances."). As we discuss in greater detail below, a defendant who has received a conditional discharge under Section 31-20-13 can be classified as a habitual offender. See NMSA 1978, § 31-18-17 (2003). The State argues that the various consequences stemming from a conditional discharge support the inference that an "offense" includes the conduct underlying a conditional discharge, because if the underlying conduct was not found to be a criminal offense the imposition of criminal penalties would be unconstitutional. See N.M. Const. art. II, § 18 ("No person shall be deprived of life, liberty[,] or property without due process of law[.]"). We are not the least persuaded by the State's argument. Section 31-20-13 effectively renders the "offense" unavailable for purposes of guilt adjudication if the conditional discharge is successful, ultimately resulting in no adjudication of guilt. We can see no rational interpretative basis on which to permit enhancement of penalties received in a conviction of a separate crime using an "offense" as to which Defendant was never adjudicated

{11} The fact that the conduct underlying a conditional discharge may fit within the broad dictionary definition of the term "offense," does not clearly indicate to us that the Legislature intended for that conduct to be the basis for enhanced sentences under Section 30-31-20. See State v. Martinez, 2006-NMCA-068, § 5, 139 N.M. 741, 137 P.3d 1195 (cautioning appellate courts to be careful in the application of the plain meaning rule as "its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate . . . differences of opinion concerning the statute's meaning" (alteration, internal quotation marks, and citation omitted)). In 1993, when the Legislature enacted the conditional discharge statute, it also amended the habitual offender statute to "specifically include conditional discharge orders as usable for habitual offender sentence enhancement purposes, as well as prior convictions." Herbstman, 1999-NMCA-014, ¶ 20 (internal quotation marks omitted); see § 31-18-17(B) (defining a "habitual offender" as an individual that has incurred "prior felony convictions that were parts of separate transactions or occurrences[,] or conditional discharge under Section 31-20-13"

(emphasis added)). By contrast, the drug trafficking statute, which existed in 1993, was not similarly amended to expressly authorize an enhanced sentence based on a prior conditional discharge. See § 30-31-20. We presume that the Legislature was aware of Section 30-31-20 when it enacted the conditional discharge statute. State v. Maestas, 2007-NMSC-001, ¶ 21, 140 N.M. 836, 149 P.3d 933 ("We presume that the [L]egislature is well informed as to existing statutory and common law[.]" (internal quotation marks and citation omitted)). If the Legislature wanted to authorize sentence enhancement for a drug trafficking offense based on a prior conditional discharge, as it did in the habitual offender statute, it could have amended Section 30-31-20 accordingly. Cf. § 31-18-17(B) (authorizing sentence enhancements for individuals that have incurred "prior felony convictions that were parts of separate transactions or occurrences[,] or conditional discharge under Section 31-20-13" (emphasis added)); see *Harris*, 2013-NMCA-031, ¶ 3 (noting that the enactment of the conditional discharge statute set forth "that a conditional discharge order could not serve as a conviction unless a particular statute expressly so stated" (internal quotation marks omitted)).

{12} The State also argues that the Legislature's use of the term "offense" rather than the term "conviction" suggests that the Legislature intended to allow enhancement based on something other than a conviction. See § 30-31-20(B); cf. NMSA 1978, \$ 66-8-102(E), (F) (2010) (prescribing enhanced sentencing for second and third convictions for driving while under the influence of drugs and alcohol). However, the Legislature's decision not to amend the trafficking statute to include enhancement based on a prior conditional discharge, as it did the habitual defender statute, suggests that the Legislature may have intended not to authorize such an enhancement. We are mindful that statutes, such as Section 30-31-20, that authorize more severe punishment are considered highly penal and should be strictly construed. See State v. Moya, 2007-NMSC-027, ¶ 6, 141 N.M. 817, 161 P.3d

862. We will not read into a statute words that are not there. See State v. Trujillo, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. It is the Legislature's exclusive responsibility to define crimes, not the judiciary's. See Martinez, 2006-NMCA-068, ¶ 9 (noting that "by the constitution of the [s] tate the Legislature is invested with plenary legislative power, and the defining of crime and prescribing punishment therefor are legislative functions" (alterations, internal quotation marks, and citation omitted)); see also N.M. Const. art. III, § 1 (providing for division of powers of government between legislative, judicial, and executive branches); State v. Fifth Judicial Dist. Ct., 1932-NMSC-023, ¶¶ 8-9, 36 N.M. 151, 9 P.2d 691 (noting that the Legislature makes the laws, the executive branch executes the laws, and the judiciary construes the laws). {13} We have considered the language of Section 30-31-20, along with the statute's history and background, overall structure, and function within our criminal statutes. *See State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939. In our considerations, it seems that more questions have arisen than answers in determining what constitutes an offense within the context of this statutory provision. While the practical application would be that this is the second time Defendant has been charged with the crime of trafficking, the legal effect of the conditional discharge dismisses the first trafficking charge without an adjudication of guilt. The Legislature is best suited with the task of clarifying what should be considered as an offense for sentence enhancement purposes.

{14} We conclude that Section 30-31-20 is ambiguous because it neither defines the term "offense" as it is used in the statute, nor states whether a drug trafficking offense can be enhanced based on a prior conditional discharge. We also conclude that Section 30-31-20 does not clearly and unequivocally alert a person in Defendant's position to the possibility of enhancing her subsequent drug trafficking sentence as a result of her prior conditional discharge. "The rule of lenity constrains us to narrowly construe a penal statute to give clear and unequivocal warning in language that people generally would understand

concerning actions that would expose them to penalties." State v. Maldonado, 2005-NMCA-072, ¶ 13, 137 N.M. 699, 114 P.3d 379 (internal quotation marks and citation omitted). Here, we are confronted with "an insurmountable ambiguity regarding the intended scope" of Section 30-31-20. Maldonado, 2005-NMCA-072, ¶ 13 (omission, internal quotation marks, and citation omitted). "[T]he rule of lenity should be applied after other principles of statutory construction fail to eliminate a reasonable doubt as to legislative intent." Id. Accordingly, we hold that the term "offense," as used in Section 30-31-20, is ambiguous and, therefore, Defendant's conditional discharge cannot be used for the purpose of enhancing Defendant's drug trafficking sentence. As a result, we need not address Defendant's remaining arguments.

Disparate Treatment

{15} The State argues that our holding could result in disparate treatment for similarly situated defendants. The State suggests that two defendants convicted for drug trafficking could be sentenced differently if one defendant previously received a conditional discharge for trafficking and the other defendant did not. The defendant with the conditional discharge would be sentenced as a first time offender and the other defendant would not. The State presents this scenario as a purely hypothetical situation predicting that fundamental unfairness will arise. Because the State points to no disparate treatment or fundamental unfairness relevant to this case, we do not address this issue. Any attempt to do so would be purely advisory. See State v. *Trujillo*, 1994-NMSC-066, ¶ 12, 117 N.M. 769, 877 P.2d 575 (noting that appellate courts do not give advisory opinions on purely hypothetical issues).

CONCLUSION

{16} For the foregoing reasons, we affirm Defendant's sentence for drug trafficking as a second degree felony.

{17} IT IS SO ORDERED. M. MONICA ZAMORA, Judge

WE CONCUR: MICHAEL E. VIGIL, Chief Judge JONATHAN B. SUTIN, Judge





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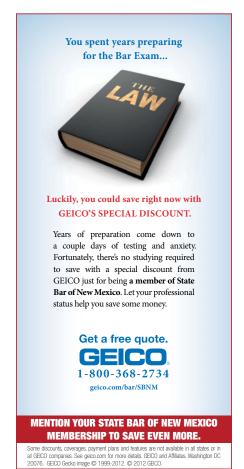
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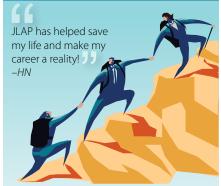
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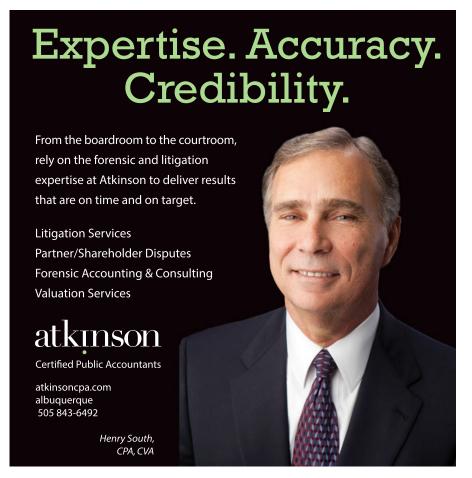


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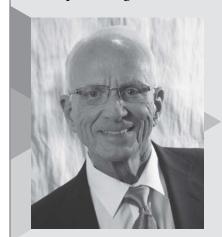
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The Public Defender Commission of New Mexico is seeking an innovative, dynamic and experienced leader for the position of Chief Public Defender. The Public Defender Department was established as an independent state agency by constitutional amendment in 2012 making it independent of the Governor. The Commission provides oversight of the Public Defender Department and appoints the Chief. The Commission seeks a leader who will work with the Commission to improve the provision of legal services for indigent clients accused of crimes in New Mexico state courts. The Law Offices of the Public Defender (LOPD) provides legal representation to indigent persons pursuant to the Public Defender Act. The LOPD has 361 full-time employees, including 184 attorneys and 177 support staff. In addition, the Department also contracts with approximately 150 private attorneys to provide legal representation in conflict of interest cases and in areas of New Mexico that do not have a regional office. The headquarters of the Department is located in Santa Fe, the state capital of New Mexico, and the LOPD has regional offices in 11 cities in New Mexico. In addition to regional offices, the LOPD has four specialized units: capital crimes, mental health, habeas corpus, and appeals. District Public Defenders and Managing Attorneys manage the regional offices and the specialized units, and they report to the Chief Public Defender. The Chief Public Defender is responsible to the Public Defender Commission for the operation of the Department. It is the Chief's duty to (1) administer and carry out the provisions of the Public Defender Act, (2) exercise authority over and provide general supervision of employees of the Department, and (3) represent and advocate for the Department and its clients. The Chief interacts with members of the legislature, the legal profession, and the judiciary. The salary will be commensurate with experience and qualifications. The successful candidate must be willing to begin work on July 1, 2017. MIN-IMUM (STATUTORY) QUALIFICATIONS: An attorney licensed to practice law in New Mexico or who will be so licensed within one year of appointment; An attorney whose practice of law has been active for at least five years immediately preceding the date of appointment; An attorney whose practice of law has included a minimum of five years' experience in defense of persons accused of crime; An attorney who has clearly demonstrated management or executive experience. DESIRED QUALIFICATIONS: Passion and enthusiasm for representation of adults and juveniles in the criminal justice system. Experience in defending indigent criminal defendants. Capacity to inspire and lead attorneys and staff to work together in representation of indigent clients. Record of proven fiscal and managerial skills in successfully managing budgets and personnel; Demonstrated capacity for leadership and vision; Knowledge and experience with the legislative process, including the budget process; Demonstrated capacity to work effectively with the judiciary, the bar, legislators and government officials; Demonstrated understanding of the complex cultural makeup of the New Mexico indigent population, including sensitivity to its needs and ability to work with it; Experience in successfully developing innovative and creative solutions to problems; Experience and sensitivity to criminal justice issues related to the mentally ill; Knowledge of and experience and sensitivity to justice issues related to juvenile justice; Experience and sensitivity to justice issues related to substance abuse. A complete application consists of (1) a letter that expresses interest in and qualifications for the position, (2) a curriculum vitae, and (3) the names, addresses and contact information of five professional references. The New Mexico Public Defender Commission actively encourages applications from members of under-represented groups. For information regarding the confidentiality of inquiries and applications, call or write to the address listed below. Applications should be submitted by email attachment on or before January 11, 2017, to: The Public Defender Commission of New Mexico; c/o Cheryl Burbank; UNM School of Law MSC11-6070; 1 University of New Mexico; Albuquerque, NM 87131-0001; Phone: 505-277-0609; Email: burbank@law.unm.edu

Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office is currently seeking immediate resumes for one (1) Senior Trial Attorney. Persons who are in good standing with another state bar or those with New Mexico criminal law experience in excess of 5 years are welcome to apply. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Enjoy the spectacular outdoors in the adventure capital of New Mexico. Salaries are negotiable based on experience. Submit letter of interest and resume to Kerry Comiskey, Chief Deputy District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to Kcomiskey@da.state. nm.us by 5:00 p.m. December 28, 2016.

Paralegal

Busy personal injury firm seeks paralegal with experience in personal injury litigation. Ideal candidate must possess excellent communication, grammar and organizational skills. Must be professional, self-motivated and a team player who can multi-task. Salary depends on experience. Firm offers benefits. Fax resumes to (505) 242-3322 or email to: nichole@whitenerlawfirm.com

Paralegal, Albuquerque Full time Job Reference # 00030137

The New Mexico Office of the Attorney General, Medicaid Fraud and Elder Abuse Division, an Equal Employment Opportunity (EEO) employer is seeking applicants for an "At Will" (not classified) Paralegal position. An "At Will" position means any state office job or position of employment which is exempt from the service and the Personnel Act," Section 10-9-4 NMSA 1978, the employee serves at the pleasure of the New Mexico Attorney General. You will need to submit your resume using the specifically identified Job Reference ID number on the OAG website. Legal research, document preparation and correspondence; Experience with electronic filing in state and federal court for civil cases and with non-electronic filing for criminal cases; Practical knowledge of court rules and procedures in criminal and civil court with the ability to apply the same when filing legal documents; Experience with organizing voluminous documents and preparing discovery; Excellent grammar and writing skills; Ability to communicate and correspond with courts, outside legal counsel, and the public in a professional manner; Ability to multitask and prioritize assignments while complying with specific court mandated and internal deadlines; Knowledge and experience with calendaring legal deadlines. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Attorney General by 5:00 p.m. on December 21, 2016. Applicants selected for an interview must notify the Attorney General's Office of the need for a reasonable accommodation due to a Disability. Please send resumes to: The

Legal Secretary/Assistant

Albuquerque, NM 87102

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

Office of the Attorney General; Attn: Patricia

Padrino Tucker; E-mail: ptucker@nmag.gov – 505-222-9079; 111 Lomas Blvd. NW, Suite 300,

Paralegal

Walther Family Law PC is seeking an experienced paralegal for their busy family law practice. Family law experience preferred. We are looking for a highly organized professional who can work independently. Exceptional people skills are needed due to substantial client interaction. Must be able to multi-task in a fast paced environment. Excellent work environment, benefits and salary. Please provide resume to ninap@waltherfamilylaw.com.

Miscellaneous

Copier for Sublease

Xerox 5855A runs as copier, fax, printer, scanner and is completely programmable with accounting use tracking. Lease expires Feb 2019. In excellent condition – available immediately! Contact aporr@branchlawfirm.com or 505-243-3500 ext. 4173 for details.

Office Space

814 Marquette, NW, Albuquerque, New Mexico

Three large offices for rent with two secretarial areas in recently renovated downtown house with adjacent parking and refrigerated air. Call 243-4541 for appointment.

For Rent

1,400 sq. ft., 3 offices. North Valley near Paseo Del Norte. Energy Efficient Construction. \$1,160/month. (505) 345-5115.



Holiday Advertising Schedule

Due to holiday closures, the following advertising submissions for the *Bar Bulletin* will apply:

Dec. 28, 2016:

Advertising submissions due Dec. 12, 2016

Jan. 4, 2017 issue:

Advertising submissions due Dec. 16, 2016

For more advertising information, contact:

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

Did you know that in the last five years the State Bar Foundation provided the following services to our community and members?

for Our Community

- Provided direct legal assistance to approximately 22,500 seniors statewide.
- Sponsored 250 workshops statewide on debt relief/ bankruptcy, divorce, wills, probate, long term care Medicaid and veteran's issues.
- Helped more than 10,000 New Mexicans statewide find an attorney.
- Distributed \$1.716 million for civil legal service programs throughout New Mexico.
- Introduced more than 800 high school students to the law through the Student Essay Contest.
- Provided more than 25,000 pocket Constitutions and instruction by volunteer attorneys to New Mexico students statewide.

for Our Members

- Lawyer referral programs helped members meet new clients and accumulate pro bono hours with more than 10,000 referrals to the private bar, 1,600 prescreened by staff attorneys.
- Provided more than 100,000 credit hours of affordable continuing legal education.
- In 2016, the Foundation will launch Entrepreneurs in Community Lawyering, a solo and small firm legal incubator.

The State Bar Foundation Relies on the Passion of Lawyers!



For more information, contact Stephanie Wagner at 505-797-6007 • swagner@nmbar.org

The **State Bar Foundation** is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the Foundation are to:

- Enhance access to legal services for underserved populations
- Promok innovation in the delivery of legal services
- *Provide* legal education to members and the public





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