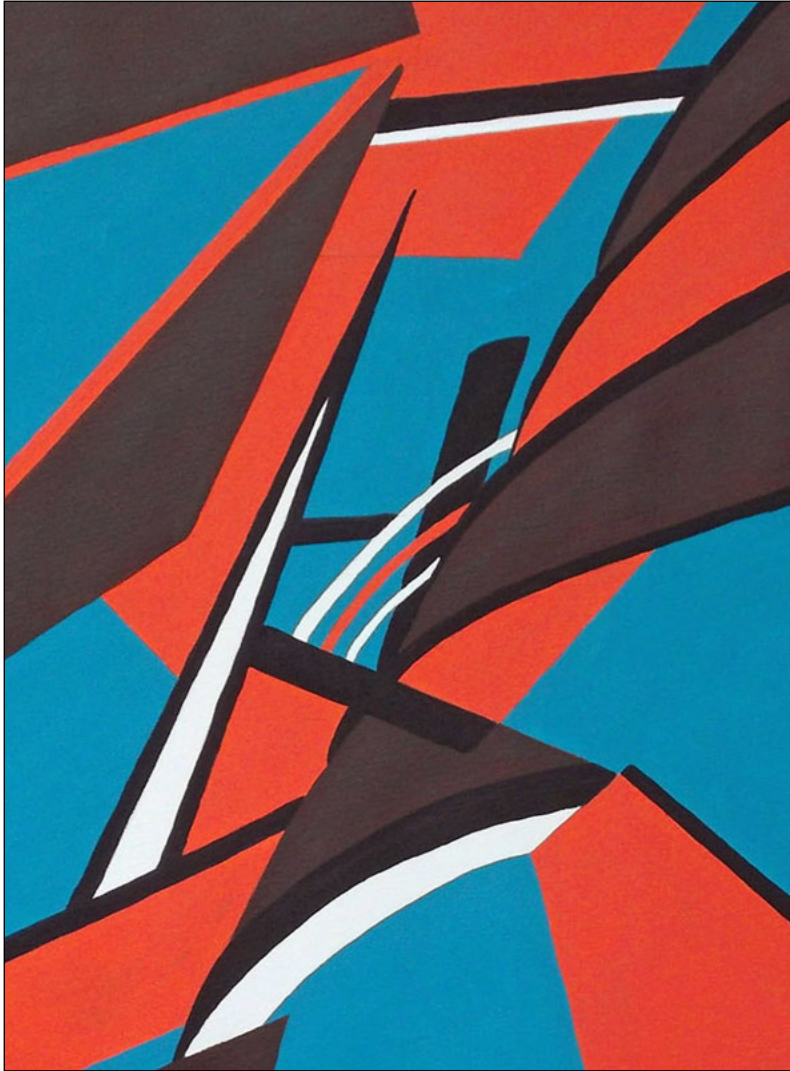


BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

February 22, 2017 • Volume 56, No. 8



Bandelier, by Janine Wilson (see page 3)

Inside This Issue

Notices	4
Paralegal Division: Meet and Greet Event	4
Public Law Section Opens Award for Nominations.....	4
Call for Nominations: 2017 State Bar of New Mexico Annual Awards.....	9
Clerk's Certificates	12
From the New Mexico Supreme Court	
2017-NMSC-001, No. S-1-SC-35395: State v. Bailey	20
From the New Mexico Court of Appeals	
2016-NMCA-102, No. 33,807: State v. Pitner	24

—SPECIAL INSERT—
**2017 Board of Bar
Commissioners**

CLE Planner

March 3



32nd Annual Bankruptcy Year in Review

6.0 G

1.0 EP



Friday, March 3, 2017 • 8:30 a.m.-5 p.m.
State Bar Center, Albuquerque

Co-sponsor: Bankruptcy Law Section

The seminar focuses on developments in case law on bankruptcy issues in 2016, both nationally and locally, with special emphasis on decisions by the U.S. Supreme Court, 10th Circuit Court of Appeals, 10th Circuit B.A.P. and U.S. Bankruptcy Court for the District of New Mexico. Also included are presentations by the Bankruptcy Judges for the District of New Mexico, the Assistant U.S. Trustee for the District of New Mexico, the Clerk of Court, and an ethics professionalism presentation.

March 10



Reforming the Criminal Justice System

6.0 G



Friday, March 10, 2017 • 8 a.m.-5 p.m.
State Bar Center, Albuquerque

Co-sponsor: Criminal Law Section

Speakers at this program will present their unique perspectives on the criminal justice system. Presenters include exoneree-turned attorney Jarret Adams, National Association of Community and Restorative Justice Board Member Joanne Katz and Council of State Governments Justice Center Policy Advisor Carl Reynolds. The program will also feature a wrongful conviction and exoneration panel.

March 20



Attorney vs. Judicial Discipline

Presented by Randall Roybal, New Mexico Judicial Standards Commission, and William Slease, Disciplinary Board of the New Mexico Supreme Court

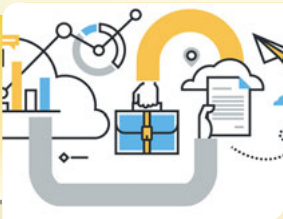
2.0 EP



Monday, March 20, 2017 • 9:30 a.m.-11:45 a.m.
State Bar Center, Albuquerque

Although sharing similarities, the Judicial Standards Commission and the Disciplinary Board of the New Mexico Supreme Court perform different functions. This program will discuss the two regulatory agencies, their rules and procedures and their similarities and differences. The discussion will include examples of conduct that constitutes a violation of the Judicial Code of Conduct, the Rules of Professional Conduct and best practices for avoiding violations, as well as tips for responding to allegations of violations.

March 23-24



Improving Client Relations in your Practice: Using Microsoft Word, Excel and PDF Files Efficiently

Presented by Barron K. Henley, Esq., partner Affinity Consulting Group

UP TO 12.3 G



Thursday-Friday, March 23-24, 2017
State Bar Center, Albuquerque

This hands-on, two-day course will teach you all you need to know about Microsoft Word, Excel and PDF files in the context of a legal practice. Bring your laptop to gain practical knowledge while learning to utilize basic and advanced techniques in your existing legal documents. Attend this program and learn to conquer Word formatting and styles, as well as mastering techniques in Excel and PDF's to save time, create better legal documents and streamline your legal process. Attend both days (Word, Excel and PDFs) or choose only the Excel morning or PDF afternoon session.

Register online at www.nmbar.org or call 505-797-6020.





Officers, Board of Bar Commissioners

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

Board of Editors

Taylor V. Bui	Gabrielle L. Dorian
Curtis G. Hayes	Bruce L. Herr
Jennifer R. James	Andrew Sefzik
Michael Sievers	Mark Standridge
Nancy L. Vincent	Carolyn A. Wolf

State Bar Staff

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

©2017, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmbar.org.

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

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

February 22, 2017, Vol. 56, No. 8

Table of Contents

Notices	4
Continuing Legal Education Calendar	6
Court of Appeals Opinions List	8
Call for Nominations: 2017 State Bar of New Mexico Annual Awards	9
Clerk's Certificates	12
Recent Rule-Making Activity	16
Opinions	
From the New Mexico Supreme Court	
2017-NMSC-001, No. S-1-SC-35395: State v. Bailey	20
From the New Mexico Court of Appeals	
2016-NMCA-102, No. 33,807: State v. Pitner	24
Advertising	27

Meetings

February

22

Animal Law Section Board

Noon, State Bar Center

22

Natural Resources, Energy and Environmental Law Section Board

Noon, teleconference

24

Immigration Law Section

Noon, teleconference

28

Intellectual Property Law Section

Noon, Lewis Roca Rothgerber Christie, Albuquerque

March

1

Employment and Labor Law

Section Board, noon, State Bar Center

2

Elder Law Section Board,

Noon, State Bar Center

7

Bankruptcy Law Section Board,

Noon, U.S. Bankruptcy Court

7

Health Law Section Board,

9 a.m., teleconference

8

Animal Law Section Board,

Noon, State Bar Center

Workshops and Legal Clinics

February

22

Consumer Debt/Bankruptcy Workshop

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

March

1

Civil Legal Clinic

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

1

Divorce Options Workshop

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

8

Common Legal Issues for Senior Citizens Workshop

10 a.m.–noon, Taos County Senior
Program, Taos, 1-800-876-6657

15

Family Law Clinic

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

22

Consumer Debt/Bankruptcy Workshop

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

About Cover Image and Artist: Janine Wilson is attracted to repeating shapes and patterns and how they interact with each other. Strong color and design are evident in her art, whether it is acrylic, watercolor or photography. She has studied with several nationally known painters and is a member of Rainbow Artists, the Yucca Branch of the National League of American Pen Women and is a signature member of the New Mexico Watercolor Society. For more information about Wilson's art, email janineabq@gmail.com

Notices

COURT NEWS Bernalillo County Metropolitan Court Change in Civil Summons

Effective Dec. 31, 2016, the general Civil Summons (Form 4-204) for the Metropolitan Court has changed. New forms can be found at: www.nmcourts.gov/forms.aspx or lawlibrary.nmcourts.gov/official-new-mexico-court-forms.aspx or at the Self-Help Office, 2nd Floor, Room 210.

STATE BAR NEWS Attorney Support Groups

- March 6, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- March 13, 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#.
- March 20, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)

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

Paralegal Division Spring Meet and Greet Event

The Paralegal Division invites current and prospective members for a meet and greet on March 16 at the State Bar Center in Albuquerque. The Board of the Division will provide snacks and camaraderie starting at 4:30 p.m. with a Board meeting to follow at 5:30 p.m. To attend, R.S.V.P. to Nicole@pegasuslaw.org by March 14.

Public Law Section Accepting Award Nominations

The Public Law Section is accepting nominations for the Public Lawyer of the Year Award, which will be presented at the state capitol on April 28. Visit www.nmbar.org/publiclaw to view previous recipients and award criteria. Nominations are due no later than 5 p.m. on March 17. Send nominations to Section Chair Cydney Beadles at Cydney.Beadles@state.nm.us. The selection

Professionalism Tip

With respect to my clients:

I will advise my client against tactics that will delay resolution or which harass or drain the financial resources of the opposing party.

committee will consider all nominated candidates and may nominate candidates on its own.

Young Lawyers Division

Volunteers Needed:

Wills for Heroes in Albuquerque

YLD is seeking volunteer attorneys for its Wills for Heroes event for APD officers from 9 a.m.-noon, Feb. 25, at the Albuquerque Police Academy, located at 5412 2nd St in Albuquerque. Attorneys will provide free wills, healthcare and financial powers of attorney and advanced medical directives for first responders. Volunteers need no prior experience with wills. Paralegal and law student volunteers are also needed to serve as witnesses. Volunteers should arrive at 8:30 a.m. for orientation and breakfast. Contact Allison Block-Chavez at ablockchavez@abqlawnm.com to volunteer.

UNM Law Library

Hours Through May 13

Building & Circulation

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

Reference

Monday–Friday	9 a.m.–6 p.m.
---------------	---------------

UNM Law Alumni Association Free Lunch for UNM Law Grads

The UNM Law Alumni Association will provide graduates of the UNM School of Law with lunch during the New Mexico Bar Exam (Feb. 21–22). To register, contact Melissa Lobato at lobato@law.unm.edu or 505-277-1457.

Albuquerque Happy Hour Event

Join the UNM Law Alumni Association for a happy hour event at 5:30 p.m. on Feb. 22 at Seasons Rotisserie & Grill in Albuquerque. Appetizers will be provided and a cash bar will be available. To register, visit <http://lawschool.unm.edu/alumni/events/happy-hour.php>.

UNM School of Law

The Ramah Case: A Moderated UNM School of Law Conversation

UNM School of Law professor, former dean and former Assistant Secretary of the Interior for Indian Affairs Kevin Washburn will moderate a discussion with Michael P. Gross and Bryant Rogers, who represented the Oglala Sioux Tribe and Ramah Navajo Chapter in New Mexico. Gross and Rogers were the lead attorneys of the 25-year legal dispute claiming that the U.S. contracted with tribes to run programs but did not pay the full amounts required by law. They navigated the case through obstacles and ultimately obtained success before the U.S. Supreme Court, finally winning one of the largest settlements against the government in U.S. history. The event will be at 5:30 p.m., Feb. 23, at the UNM School of Law and is approved for 1.0 G CLE credit. Register at gotounm.edu/ramah.

U.N. Special Rapporteur Visits New Mexico

The United Nations Special Rapporteur Victoria Tauli-Corpuz is currently visiting the U.S. attending a series of regional consultations to examine how indigenous peoples are experiencing energy development in their areas. The UNM School of Law will host Tauli-Corpuz' visit during a Regional Indigenous Consultation focusing on energy development from 8:30 a.m.–3 p.m., Feb. 25, in Room 2401 at the UNM School of Law. Tribes, indigenous peoples, and non-governmental organizations are encouraged to register for the event at <http://lawschool.unm.edu/news/2017/02/unm-school-of-law-hosts-regional-indigenous-consultation-with-un-special-rapporteur.php>.

OTHER BARS

Albuquerque Lawyers Club The Emerging Threat of Fentanyl and Carfentanil

The Albuquerque Lawyers Club invites members of the legal community to a special presentation on "The Emerging Threat of Fentanyl and Carfentanil" at noon, March 1, at Seasons Rotisserie & Grill. Retired DEA

Group Supervisor Richard Stark will be presenting, with an introduction by Judge James Browning. For more information, visit albuquerquelawyersclub.com/.

First Judicial District Bar Association

Discounted Tickets at Ski Santa Fe

Join the First Judicial District Bar Association at Ski Santa Fe and enjoy discounted full- and half-day lift tickets on Feb. 25. Families are welcome. For more information about Ski Santa Fe (including discounted ticket prices, events, directions and transportation) visit www.skisantafe.com. To purchase lift tickets contact Mark Cox at mcox@hatcherlawgroupnm.com. Discounted tickets may not be purchased through Ski Santa Fe. Ticket payments through the FJDBA are due by close-of-business on Feb. 23. Note that refunds cannot be issued once payment is made and all participants must provide their own ski equipment and/or lessons.

New Mexico Chapter of the Federal Bar Association An Amazing Time in the Supreme Court with Erwin Chemerinsky

The New Mexico Chapter of the Federal Bar Association is pleased to have Dean Erwin Chemerinsky return to Albuquerque. On March 31, Dean Chemerinsky will present his popular talk about the Supreme Court and its recent cases, "An Amazing Time in the Supreme Court." The talk will be presented at the Hotel Andaluz in downtown Albuquerque. The price is \$75 for

non-FBA members, \$50 for FBA members, and \$20 for law students. Check-in begins at 11:30 a.m., lunch begins at 11:45, and the CLE runs from 12:30 to 1:30. For more information, email nmfedbar@gmail.com.

New Mexico Criminal Defense Lawyers Association Federal Court Skills CLE

The New Mexico Criminal Defense Lawyers Association presents "Sharpening Your Skills for Federal Court" (5.7G) on March 10 featuring retired BOP Operations Manager Jeff Carson, an expert on classification and sentencing in the federal system. Other topics include: re-entry guidelines, getting the discovery you need and an update on the 10th Circuit. Visit www.nmcdla.org to register renew NMCDLA membership dues for 2017.

OTHER NEWS

Volunteer Attorney Program Ethical Issues in Pro Bono CLE

The Volunteer Attorney Program and Justice for Families Project are holding a CLE for volunteer attorneys, "Ethical Issues in Pro Bono" (2.0 EP) from 4–6 p.m., March 10, at New Mexico Legal Aid, 301 Gold Ave. SW, Albuquerque, NM 87102. The CLE is free for VAP volunteers and attorneys willing to sign up to take a VAP/JFP case or staff a legal clinic. Donations welcome from non-volunteers (\$50 or more per person suggested). For more information or to register, contact Jane Zhi at 505-814-5038 or janez@nmlegalaid.org.



**New Mexico Lawyers
and Judges
Assistance Program**

Help and support are only a phone call away.

24-Hour Helpline
Attorneys/Law Students
505-228-1948 • 800-860-4914
Judges 888-502-1289
www.nmbar.org/JLAP

ADDRESS CHANGES

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

Supreme Court

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

State Bar

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

Legal Education

February

- | | | |
|--|---|--|
| <p>23 Ethics in Negotiations
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 2016 Employment and Labor Law Institute
6.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 Lawyers' Duties of Fairness and Honesty (Fair or Foul: 2016)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>24 Justice with Compassion—Facility Dogs Improving the Legal System (2016)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 The Ethics of Managing and Operating an Attorney Trust Account (2016 Ethicspalooza)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Estate Planning for Retirement Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

March

- | | | |
|--|---|--|
| <p>1 Trusts and Distributions: All About Non-Pro-Rata Distributions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>10 Indian Law 2016: What Indian Law Practitioners Need to Know
1.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>14 Planning to Prevent Trust, Estate and Will Contests
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 Management and Information Control Issues in Closely Held Companies: Strategies, Conflicts and Drafting Consideration
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>10 Journalism, Law and Ethics (2016 Annual Meeting)
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Lawyer Ethics and Investigations for and of Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>3 32nd Annual Bankruptcy Year in Review Seminar
6.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>10 New Mexico DWI Cases: From the Initial Stop to Sentencing (2016)
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Attorney vs. Judicial Discipline
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Advanced Workers Compensation
5.6 G
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</p> | <p>10 Sharpening Your Skills for Federal Court
5.7 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> | <p>23 Drafting Demand Letters
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>10 Reforming the Criminal Justice System
6.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>10 Ethical Issues in Pro Bono
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038</p> | <p>23–24 Improving Client Relations in Your Practice: Using Microsoft Word, Excel and PDF Files
12.3
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

March

- | | | |
|--|--|--|
| <p>24 Microsoft Excel for Lawyers and Legal Staff
2.8 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Lawyers Duties of Fairness and Honesty (Fair or Foul 2016)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 BDITs: Beneficiary Defective Inheritor's Trusts—Reducing Taxes, Retaining Control
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>24 What a Lawyer Needs to Know About PDF Files
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 2016 Administrative Law Institute
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Family Law Investigative and Legal Research on a Budget
2.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>27 Wildlife/Endangered Species on Public and Private Lands (2016)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Environmental Regulations/Oil and Gas Industry (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 SALT: How State and Local Tax Impacts Major Business Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>27 Keynote Address with Justice Ruth Bader Ginsburg (2016 Annual Meeting)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>29 Fear Factor: How Good Lawyers Get Into Ethical Trouble (2016)
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 Ethics for Government Attorneys
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

April

- | | | |
|---|--|--|
| <p>4 Retail Leases: Drafting Tips and Negotiating Traps
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Estate Planning and Elder Law
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</p> | <p>26 Landlord Tenant Law
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</p> |
| <p>5 All About Basis Planning for Trust and Estate Planners
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Ethics of Representing the Elderly
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Settlement Agreements in Employment Disputes and Litigation
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>11 Add a Little Fiction to Your Legal Writing
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective February 10, 2017

PUBLISHED OPINIONS

No. 34385 2nd Jud Dist Bernalillo LR-13-26, STATE v R PERCIVAL (affirm) 2/6/2017

UNPUBLISHED OPINIONS

No. 35328 2nd Jud Dist Bernalillo CR-14-5562, STATE v L SALAS (affirm) 2/6/2017
No. 35740 3rd Jud Dist Dona Ana CR-14-42, STATE v M VALDEZ (affirm) 2/6/2017
No. 34567 1st Jud Dist Santa Fe CV-13-2049, BOA v J ROYBAL (affirm) 2/6/2017
No. 35813 1st Jud Dist Santa Fe CV-15-2270, US BANK v J GIFFIN (affirm) 2/6/2017
No. 35929 5th Jud Dist Chaves JQ-14-34, CYFD v JESSICA N (affirm) 2/7/2017
No. 35717 11th Jud Dist San Juan LR-15-82, CITY OF FARMINGTON v F DUNCAN (affirm) 2/7/2017
No. 33153 2nd Jud Dist Bernalillo CV-11-12493, T CASTILLO v R HOUVENER (affirm) 2/8/2017
No. 35784 2nd Jud Dist Bernalillo CV-15-4522, US BANK v R SCHAFFER (affirm) 2/8/2017
No. 33908 1st Jud Dist Santa Fe CR-13-59, STATE v J RIVERA (affirm) 2/8/2017
No. 35322 1st Jud Dist Santa Fe CV-12-2122, DISCOVER BANK v B LOPEZ (dismiss) 2/8/2017
No. 34850 1st Jud Dist Santa Fe CR-12-348, STATE v N COPAGE (affirm) 2/9/2017
No. 35649 WCA-14-384, C NIXON v HYDROTECH SERVICES (reverse) 2/9/2017
No. 34629 5th Jud Dist Chaves JQ-13-33, CYFD v TORI H (affirm) 2/10/2017

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

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



2017 | Annual Meeting— Bench & Bar Conference

Call for Nominations



State Bar of New Mexico 2017 Annual Awards

Nominations are being accepted for the 2017 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2016 or 2017. The awards will be presented July 28 during the 2017 Annual Meeting—Bench and Bar Conference at the Inn of the Mountains Gods in Mescalero. All awards are limited to one recipient per year, whether living or deceased. *Previous recipients for the past five years are listed below.*

— Distinguished Bar Service Award-Lawyer —

Recognizes attorneys who have provided valuable service and contributions to the legal profession and the State Bar of New Mexico over a significant period of time.

Previous recipients: Hannah B. Best, Jeffrey H. Albright, Carol Skiba, Ian Bezpalko, John D. Robb Jr.

— Distinguished Bar Service Award-Nonlawyer —

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

Previous recipients: Tina L. Kelbe, Kim Posich, Rear Admiral Jon Michael Barr (ret.), Hon. Buddy J. Hall, Sandra Bauman

— Justice Pamela B. Minzner* Professionalism Award —

Recognizes attorneys or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

Previous recipients: Arturo L. Jaramillo, S. Thomas Overstreet, Catherine T. Goldberg, Cas F. Tabor, Henry A. Kelly

*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

— Outstanding Legal Organization or Program Award —

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: Self Help Center at the Third Judicial District Court, Pegasus Legal Services for Children, Corinne Wolfe Children's Law Center, Divorce Options Workshop, United South Broadway Corp. Fair Lending Center

— Outstanding Young Lawyer of the Year Award —

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

Previous recipients: Denise M. Chanez, Tania S. Silva, Marshall J. Ray, Greg L. Gambill, Robert L. Lucero Jr.

— Robert H. LaFollette* Pro Bono Award —

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

Previous recipients: Billy K. Burgett, Robert M. Bristol, Erin A. Olson, Jared G. Kallunki, Alan Wainwright

*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

— Seth D. Montgomery* Distinguished Judicial Service Award —

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and bar; generally given to judges who have or soon will be retiring.

Previous recipients: Justice Richard C. Bosson (ret.), Hon. Cynthia A. Fry, Hon. Rozier E. Sanchez, Hon. Bruce D. Black, Justice Patricio M. Serna (ret.)

*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. **Please note that we will be preparing a video on the award recipients which will be presented at the awards reception, so please provide names and contact information for three or four individuals who would be willing to participate in the video project in the nomination letter.**

Deadline for Nominations: May 12

Opportunities for High School Students

Win up to \$1,000!

State Bar Essay Contest



Due Process Dilemma: To Camp or Not to Camp?

Students will discuss the constitutional guarantee of due process of law, found in the Fifth and Fourteen Amendments. The essay contest question will spark a debate regarding the legality of mandatory camps for high school drop outs that intend to educate youth and keep them out of trouble. Open to New Mexico high school juniors and seniors. Essays should be 1,000-1,500 words and are due on Feb. 27. Visit www.nmbar.org/EssayContest for the rules, the official prompt and legal writing tips.

Breaking Good Video Contest



Who needs legal services in our country and why are they important?

According the U.S. Census Bureau, 46.7 million Americans live in poverty. Civil legal services help the underprivileged members of our society obtain improved access to justice. New Mexico high school students (grades 9–12) will create a 60 second video advocating for the need for legal services. Videos are due by March 31. Visit www.nmbar.org/BreakingGood for the official rules packet and more information.



For more opportunities for students and educators visit www.nmbar.org > **For Public.**

Tear here and give to the high school student in your life.

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF ADMISSION

On February 7, 2017:
Brandee Bess Bower
Merlin Law Group, P.A.
999 18th Street, Suite 3000
Denver, CO 80202
303-357-2374
303-357-2377 (fax)
bbower@merlinlawgroup.com

On February 7, 2017:
Dustin Allen Davis
Evans & Davis, PLLC
211 N. Broadway
Edmond, OK 73034
405-286-2335
405-286-2770 (fax)
dustin@evansdavis.com

On February 7, 2017:
Joshua Granstrom-Howard
Coppler Law Firm, P.C.
645 Don Gaspar Avenue
Santa Fe, NM 87505
505-988-5656
505-988-5704 (fax)
jhoward@coppler.com

On February 7, 2017:
Michael John McKleroy Jr.
Akerman LLP
2001 Ross Avenue, Suite 2550
Dallas, TX 75201
214-720-4300
214-981-9339 (fax)
michael.mckleroy@akerman.com

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective February 3, 2017:
Mary Lou Cassidy
550 W. Texas, Suite 800
Midland, TX 79701

Effective February 3, 2017:
Leslie J. Cohen
3952 E. Cooper Street
Tucson, AZ 85711

Effective February 3, 2017:
Claude David Convisser
6223 Beachway Drive
Falls Church, VA 22041

Effective February 3, 2017:
Deborah Zamora Grout

Effective February 3, 2017:
Randolph L. Hamblin
2004 Redondo Peak Drive NW
Albuquerque, NM 87120

Effective February 7, 2017:
Martha E. Hileman
608 Autumnwood Place SE
Albuquerque, NM 87123

Effective February 3, 2017:
Glen A. Krahenbuhl
2672 North Park Drive,
Suite 200
Lafayette, CO 80026

Effective February 3, 2017:
Brian F. Lanter
PO Box 80652
Albuquerque, NM 87198

Effective February 7, 2017:
Janet G. Perelson
820 Los Arboles Lane
Santa Fe, NM 87501

Effective February 7, 2017:
Leslie Lynn Rakestraw
4351 San Bonito Street, Unit A
Santa Fe, NM 87507

Effective February 3, 2017:
Georgia Moore Viado
14290 Lakeview Lane
Broomfield, CO 80023

IN MEMORIAM

As of October 2, 2016:
Jeffrey Raymond McCombs
600 Six Flags Drive
Arlington, TX 76011

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

As of February 2, 2017:
Anna C. Swain
169 Ute Pass West Road
Durango, CO 81301
970-946-4605
annacswain@gmail.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective February 1, 2017:
Carol Skiba
2019 Somervell Street NE
Albuquerque, NM 87112
505-275-9009
jaccarol@comcast.net

Effective December 1, 2016:
Zane Justus Vaughn
7101 82nd Street
Lubbock, TX 79424

Effective December 30, 2016:
Helen Burke Bernard
PO Box 3004
Albuquerque, NM 87190

Effective December 31, 2016:
Amara L. Aaron
PO Box 92374
Albuquerque, NM 87199

Janetta B. Hicks
1603 S. Lea Avenue
Roswell, NM 88203

Effective January 1, 2017:
Margret Carde
2044 Otowi Road
Santa Fe, NM 87505

Steven J. Laurent
5276 Heather Lane
Park City, UT 84098

Robert Mead Siddoway
4945 E. Sunstone Drive
Sun Tan Valley, AZ 85143

Effective January 1, 2017, and
have new addresses:
Deborah B. DePalo
4009 Shenandoah Place NE
Albuquerque, NM 87111

J. Michael Kavanaugh
511 New Mexico Avenue
Las Vegas, NM 87701

Effective January 10, 2017:
Maria Elia Castro
2603 Campo Verde
Santa Fe, NM 87505

Effective January 15, 2017:
Sarah Joy-Simpson Parks
297 Blair Road
Ottawa, Ontario, Canada

Effective January 18, 2017:
Rebecca M. Salwin
828-A Omaha Street
Honolulu, HI 96816

Effective January 19, 2017:
Josh Ewing
101 S.W. Main Street, Suite
1700
Portland, OR 97204

Effective January 25, 2017:
Vanessa R. Chavez
100 N. Jefferson Street,
Room 200
Green Bay, WI 54301

Effective January 31, 2017:
Charles Spencer Aspinwall
PO Box 984
Los Lunas, NM 87031

Stevie Dion Nichols
900 N. Stuart Street, Apt. 913
Arlington, VA 22203

Effective February 1, 2017:
Rudolph Preston Arnold
4612 Croyden Avenue NW
Albuquerque, NM 87114

Dated Feb. 3, 2017

**CLERK'S CERTIFICATE
OF ADDRESS AND/OR
TELEPHONE CHANGES**

Rosemary L. Bauman
1522 Tijeras Avenue NE,
Apt. 1
Albuquerque, NM 87106
505-385-0443
rosemarylaurel@yahoo.com

Julia A. Belles
2838 Paseo de los Pueblos #12
Santa Fe, NM 87507
505-490-7142
julia_belles@yahoo.com

Diane S. Cabrera
Lower Elwha Klallam Tribe
341 Spokwes Drive
Port Angeles, WA 98363
360-912-2707
888-822-4365 (fax)
diane.cabrera@elwha.org

Cristina Chavez
Mary Ann Romero
& Associates
301 Edith Blvd. NE, Suite 100
Albuquerque, NM 87102
505-796-2024 Ext. 103
505-247-1502 (fax)
cc@marausa.net

Blakc J. Dugger
Law Office of Stefan Coleman
5 Penn Plaza, 23rd Floor
New York, NY 10001
480-359-3130
blake@stefancoleman.com

Holly Rene Harvey
Harvey & Koschtial, LLC
PO Box 91833
7801 Academy Road NE
Suite 1-200 (87109)
Albuquerque, NM 87199
505-217-2370
505-288-3152 (fax)
holly@hklawnm.com

Julie Ann Koschtial
Harvey & Koschtial, LLC
PO Box 91833
7801 Academy Road NE
Suite 1-200 (87109)
Albuquerque, NM 87199
505-217-2370
505-288-3152 (fax)
julie@hklawnm.com

Louise Pocock
Legal Services of Southern
Piedmont
1431 Elizabeth Avenue
Charlotte, NC 28204
980-256-7593
704-376-8627 (fax)
louise@lssp.org

June Stein
Alaska Department of Law
310 K Street, Suite 601
Anchorage, AK 99501
907-269-6250
907-269-7939 (fax)
june.stein@alaska.gov

Jordy Lior Stern
The Barnett Law Firm, PA
1905 Wyoming Blvd. NE
Albuquerque, NM 87112
505-275-3200
jordy@theblf.com

Mia J. Ulibarri
Office of the Second Judicial
District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102
505-222-1237
mulibarri@da2nd.state.nm.us

Susan S. Vance
Law Offices of Susan S. Vance
7601 Ridgestone Drive
Austin, TX 78731
512-947-6280
susan@svancelaw.com

Hon. Julie J. Vargas
New Mexico Court of Appeals
PO Box 25306
2211 Tucker Avenue NE (87106)
Albuquerque, NM 87125
505-841-4650
505-841-4614 (fax)

John Mark Burgett
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
202-719-4239
202-719-7049 (fax)
jburgett@wileyrein.com

Monnica Garcia
Law Office of Monnica L.
Garcia, LLC
PO Box 27158
Albuquerque, NM 87125
505-242-3919
monnicalgarcia@gmail.com

Michelle Henrie
Mhenrie Land Water Law
PO Box 7035
500 Fourth Street NW,
Suite 401 (87102)
505-842-1800
505-842-0033
michelle@mhenrie.com

Jay R. Hone
3106 Hogan Court
Rapid City, SD 57702
jayrhone@aol.com

Ashley D. Jeffers
9306 Canter Drive
Dallas, TX 75231
ashleydjeffers@gmail.com

Cynthia Nguyen
2705 Webster Street, PMB 5224
Berkeley, CA 94705
nguyencynthia@gmail.com

Lauren Ann Reed
4126 Clover Ridge Lane
Sugar Land, TX 77479
reed.laurena@gmail.com

Mary Stillinger
401 Boston Avenue
El Paso, TX 79902
915-775-0705
915-886-7178 (fax)
stillingerlaw@sbcglobal.net

Nancy Alma Taylor
730 Powers Street
Oshkosh, WI 54901
nancyalma@juno.com

Danielle N. Visuano
1051 W. Bloomington Drive S
St. George, UT 84790
d_visuano@yahoo.com

Byron Craig Williams Jr.
513 E Street NE, Apt. B
Washington, DC 20002
504-220-5958
cwilly12@gmail.com

Noelle Graney
Kutak Rock LLP
PO Box 4896
Albuquerque, NM 87196
505-350-1764
noelle.graney@kutakrock.com

Charles Philip Reynolds
718 Central Avenue SW
Albuquerque, NM 87102
505-842-8188
505-842-8180 (fax)
cpralb@gmail.com

Dated Feb. 8, 2017

**CLERK'S CERTIFICATE
OF ADDRESS AND/OR
TELEPHONE CHANGES**

Janice Marie Ahern
AhernLaw PC
150 Washington Avenue,
Suite 201
Santa Fe, NM 87501
505-395-4421
505-395-4501 (fax)
jma@ahernlawpc.co

Joni Lee Autrey
100 N. Church Street, Suite 560
Las Cruces, NM 88001
575-528-1640
joni.autrey@gmail.com

Carl J. Bettinger
Bettinger Law Firm
4335 Fifteenth Way
Palmetto, FL 34221
505-263-0570
carlbett@shapbett.com

Anthony R. Burchell
The Justice and Diversity
Center
301 Battery Street,
Third Floor
San Francisco, CA 94111
415-782-7878
aburchell@sfbarr.org

Ryan M. Golten
Consensus Building Institute
100 CambridgePark Drive,
Suite 302
Cambridge, MA 02140
303-880-9521
rgolten@cbuilding.org

Julie L. Hunt
Richard Lees, PA
1012 Marquez Place #402
Santa Fe, NM 87505
505-989-9090
juliehunt@leeslawfirm.com

Hon. Dustin K. Hunter
Fifth Judicial District Court
PO Box 1776
400 N. Virginia Avenue (88201)
Roswell, NM 88202
575-624-7518

Jennie Kay Martin
Stubbeman, McRae, Sealy,
Laughlin & Browder, Inc.
550 W. Texas Avenue, Suite 800
Midland, TX 79701
432-682-1616
432-682-4884 (fax)
jmartin@stubbeman.com

Ogden M. Reid
9 Evergreen Drive
Placitas, NM 87043
505-681-3112
ogden.m.reid@intel.com

Xochitl Liana Torres Small
Kemp Smith LLP
3800 E. Lohman Street, Suite C
Las Cruces, NM 88005
575-527-0023
xochitl.torressmall@kempsmith.com

Joanne Marie Brown
781 Ernest Drive
Sonoma, CA 95476
301-512-9427
jbrownconsulting@aol.com

Craig J. Dorsay
Dorsay & Easton LLP
1737 N.E. Alberta Street,
Suite 208
Portland, OR 97211
503-790-9060
craig@dorsayindianlaw.com

Robert Kymn Harp
Robbins, Salomon & Patt, Ltd.
180 N. LaSalle Street, Suite 3300
Chicago, IL 60601
312-456-0378
312-782-6690 (fax)
rkharp@rsplaw.com

Frederick M. Hart
1505 Cornell Drive NE
Albuquerque, NM 87106
505-277-4737
hart@law.unm.edu

V. Colleen Miller
disAbility Law Center of
Virginia
1512 Willow Lawn Drive
Richmond, VA 23230
804-225-2042
804-662-7057 (fax)
colleen.miller@dclv.org

Charles E. Moran
104 S. Fourth Street
Artesia, NM 88210
575-748-4349
575-748-4572 (fax)
charles_moran@eogresources.com

James P. Morgan
4050 W. Aerie Drive #68
Tucson, AZ 85741
505-681-7209
jpmorgan21@gmail.com

Andrew R. Potts
Kirby, Mathews & Walrath
815 Walker Street, Suite 240
Houston, TX 77002
713-489-4620
713-489-4619 (fax)
apotts@kmwenergyllaw.com

Filmore E. Rose
Rimon, PC
610 NE Vineyard Lane,
Unit A104
Bainbridge Island, WA 98110
206-538-2166 (phone and fax)
filmore.rose@rimonlaw.com

Paul Phillip Strange
2594 Lower Lando Lane
Park City, UT 84098
415-370-1100
strange@strangelaw.net

Ted J. Trujillo
Law Office of Ted J. Trujillo
PO Box 2113
Santa Cruz, NM 87567
505-351-1632 (phone and fax)
tedjtrujillo@gmail.com

Charles H. Van Gorder
5217 James Avenue South
Minneapolis, MN 55419
505-699-6849
chase@vglaw.com

Derek Louis Weems
Dorato & Weems LLC
118 Wellesley Drive SE
Albuquerque, NM 87106
505-314-8880
505-265-1319 (fax)
derek@doratoweems.com

Timothy L. White
Valdez & White Law Firm, LLC
PO Box 25646
124 Wellesley Drive SE (87106)
Albuquerque, NM 87125
505-345-0289
505-345-2573 (fax)
tim@valdezwhite.com

Jaime Wiesenfeld
619 N. Sleight Street
Naperville, IL 60563
505-660-6820
jaimewiesenfeld@gmail.com

Donn G. Williams
1794 Crystal Stream Avenue
Henderson, NV 89012
nmsbapolicy@cox.net

Stephen P. Eaton
4110 Wolcott Avenue NE,
Suite A
Albuquerque, NM 87109
505-837-9200
505-884-8344 (fax)
seaton2@swcp.com

John W. Lawit
John W. Lawit, LLC
PO Box 166098
5605 N. MacArthur Blvd.,
Suite 1000 (75038)
Irving, TX 75016
214-609-2242
214-614-4325 (fax)
jwl@lawitlaw.com

Sarah Jane Mease
201 Third Street NW, Suite 900
Albuquerque, NM 87102
505-346-7274
sarah.mease@usdoj.gov

Mark W. Romney
Romney Law Firm
900 Jackson Street, Suite 750
Dallas, TX 75202
214-329-4237
214-329-4257 (fax)
mark@romneylawfirm.com

William E. Zimsky
Abadie & Schill, P.C.
555 Rivergate Lane, Suite
B4-180
Durango, CO 81301
970-385-4401
970-385-4901 (fax)
bill@abadieschill.com

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective February 14, 2017:
Gretchen Lee Borst Aultman
PO Box 453
Grand Lake, CO 80447

Effective February 9, 2017:
Richard Becker
369 Montezuma Ave.,
PMB #587
Santa Fe, NM 87501

Effective February 9, 2017:
Delfido R. Conroy
712 Pheasant Lane SW
Los Lunas, NM 87031

Effective February 9, 2017:
Maria-Ester De Anda
961 Acequia de las Joyas
Santa Fe, NM 87505

Clerk's Certificates

<http://nmsupremecourt.nmcourts.gov>

Effective February 14, 2017:
Charles Alfred Pharris
662 Parkview Drive
Steamboat Springs, CO 80487

Effective February 9, 2017:
Ramon Vigil Jr.
4536 Agate Hills Road NW
Albuquerque, NM 87114

Effective February 9, 2017:
Kate Walsham
100 McAllister Street, Suite 300
San Francisco, CA 94102

Effective February 9, 2017:
Susan M. Williams
868 Rebecca Loop NE
Rio Rancho, NM 87144

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

As of February 14, 2017:
Lisa D. Brown
PO Box 544
Corrales, NM 87048
505-235-2558
lisadb@q.com

As of February 14, 2017:
Cameron Russell Graham
2839 Plaza Amarilla
Santa Fe, NM 87507
750-480-4133
crgraham65@gmail.com

As of February 9, 2017:
Erica Boutte Scott
2202 Chessman Drive NE
Rio Rancho, NM 87124
505-252-1008
ericabouttescott@gmail.com

As of February 9, 2017:
Melanie Pierce Walker
333 Swarthmore Avenue #5
Pacific Palisades, CA 90272
310-704-7064
melaniepwalker@gmail.com

As of February 14, 2017:
Martin W. Zogg
400 E. Marigold Street
Altadena, CA 91001
626-482-2098
martinzogg@gmail.com

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 February 22, 2017

PENDING PROPOSED RULE CHANGES

OPEN FOR COMMENT:

There are no proposed rule changes currently open for comment.

RECENTLY APPROVED RULE CHANGES

SINCE RELEASE OF 2016 NMRA:

Effective Date
(except where noted differently: 12/31/2016)

RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS

1-005.2	Electronic service and filing of pleadings and other papers	01/01/2017
1-007.2	Time limit for filing motion to compel arbitration	
1-009	Pleading special matters	07/01/2017
1-017	Parties plaintiff and defendant; capacity	07/01/2017
1-023	Class actions	
1-054	Judgments; costs	
1-055	Default	07/01/2017
1-060	Relief from judgment or order	07/01/2017
1-079	Public inspection and sealing of court records	05/18/2016
1-083	Local rules	
1-093	Criminal contempt	
1-096	Challenge of nominating petition	
1-104	Courtroom closure	
1-120	Domestic relations actions; scope; mandatory use of court-approved forms by self-represented litigants	
1-128	Uniform collaborative law rules; short title; definitions; applicability	
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/2016
1-128.1	Collaborative law participation agreement; requirements	
1-128.2	Initiation of collaborative law process; voluntary participation; conclusion; termination; notice of discharge or withdrawal of collaborative lawyer; continuation with successor collaborative lawyer	
1-128.3	Proceedings pending before tribunal; status report; dismissal	
1-128.4	Emergency order	
1-128.5	Adoption of agreement by tribunal	
1-128.6	Disqualification of collaborative lawyer and lawyers in associated law firm	
1-128.7	Disclosure of information	
1-128.8	Standards of professional responsibility and mandatory reporting not affected	
1-128.9	Appropriateness of collaborative law process	

1-128.10	Coercive or violent relationship
1-128.11	Confidentiality of collaborative law communication
1-128.12	Privilege against disclosure for collaborative law communication; admissibility; discovery
1-128.13	Authority of tribunal in case of noncompliance

RULES OF CIVIL PROCEDURE FOR THE MAGISTRATE COURTS

2-110	Criminal contempt
2-114	Courtroom closure
2-305	Dismissal of actions
2-702	Default
2-705	Appeal

RULES OF CIVIL PROCEDURE FOR THE METROPOLITAN COURTS

3-110	Criminal contempt
3-114	Courtroom closure
3-204	Service and filing of pleadings and other papers by facsimile
3-205	Electronic service and filing of pleadings and other papers
3-702	Default

CIVIL FORMS

4-204	Civil summons	
4-226	Civil complaint provisions; consumer debt claims	07/01/2017
4-306	Order dismissing action for failure to prosecute	
4-309	Thirty (30) day notice of intent to dismiss for failure to prosecute	
4-310	Order of dismissal for failure to prosecute	
4-702	Motion for default judgment	
4-702A	Affirmation in support of default judgment	
4-703	Default judgment; judgment on the pleadings	
4-909	Judgment for restitution	
4-909A	Judgment for restitution	
4-940	Notice of federal restriction on right to possess or receive a	05/18/2016
4-982	Withdrawn	
4-986	Withdrawn	
4-989	Withdrawn	
4-990	Withdrawn	

RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS

5-102	Rules and forms	
5-104	Time	
5-112	Criminal contempt	
5-123	Public inspection and sealing of court records	05/18/2016
5-124	Courtroom closure	

Rule-Making Activity

<http://nmsupremecourt.nmcourts.gov>

5-304	Pleas	
5-511	Subpoena	
5-511.1	Service of subpoenas and notices of statement	
5-614	Motion for new trial	
5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/2016
5-801	Reduction of sentence	

RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS

6-102	Conduct of court proceedings	
6-109	Presence of the defendant	
6-111	Criminal contempt	
6-116	Courtroom closure	
6-201	Commencement of action	
6-209	Service and filing of pleadings and other papers	
6-506	Time of commencement of trial	05/24/2016
6-601	Conduct of trials	

RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS

7-109	Presence of the defendant	
7-111	Criminal contempt	
7-115	Courtroom closure	
7-201	Commencement of action	
7-209	Service and filing of pleadings and other papers	
7-304	Motions	
7-506	Time of commencement of trial	05/24/2016
7-606	Subpoena	

RULES OF PROCEDURE FOR THE MUNICIPAL COURTS

8-102	Conduct of court proceedings	
8-108	Presence of the defendant	
8-110	Criminal contempt	
8-114	Courtroom closure	
8-201	Commencement of action	
8-208	Service and filing of pleadings and other papers	
8-506	Time of commencement of trial	05/24/2016
8-601	Conduct of trials	

CRIMINAL FORMS

9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/2016
9-611	Withdrawn	
9-612	Order on direct criminal contempt	
9-613	Withdrawn	

CHILDREN'S COURT RULES AND FORMS

10-103	Service of process	
10-163	Special masters	
10-166	Public inspection and sealing of court records	05/18/2016*
10-168	Rules and forms	
10-171	Withdrawn	05/18/2016*
10-315	Custody hearing	11/28/2016
10-318	Placement of Indian children	11/28/2016
10-322	Defenses and objections; when and how presented; by pleading or motion	

10-325	Notice of child's advisement of right to attend hearing	
10-340	Testimony of a child in an abuse or neglect proceeding	
10-408A	Withdrawn	
10-413	Withdrawn	
10-414	Withdrawn	
10-417	Withdrawn	
10-502	Summons	
10-521	ICWA notice	11/28/2016
10-560	Subpoena	
10-570	Notice of child's advisement of right to attend hearing	
10-571	Motion to permit testimony by alternative method	05/18/2016*
10-604	Withdrawn	
10-701	Statement of probable cause	
10-702	Probable cause determination	
10-703	Petition	
10-704	Summons to child Delinquency Proceeding	
10-705	Summons to parent or custodian or guardian – Delinquency Proceeding	
10-706	Order of appointment of attorney for child and notice and order to parent(s), guardian(s), or custodian(s)	
10-707	Eligibility determination for indigent defense services	
10-711	Waiver of arraignment and denial of delinquent act	
10-712	Plea and disposition agreement	
10-713	Advice of rights by judge	
10-714	Consent decree	
10-715	Motion for extension of consent decree	
10-716	Judgment and Disposition	
10-717	Petition to revoke probation	
10-718	Sealing order	
10-721	Subpoena	
10-722	Affidavit for arrest warrant	
10-723	Arrest warrant	
10-724	Affidavit for search warrant	
10-725	Search warrant	
10-726	Bench warrant	
10-727	Waiver of right to have a children's court judge preside over hearing	
10-731	Waiver of arraignment in youthful offender proceedings	
10-732	Waiver of preliminary examination and grand jury proceeding	
10-741	Order for evaluation of competency to stand trial	
10-742	Ex parte order for forensic evaluation	
10-743	Order for diagnostic evaluation	
10-744	Order for pre dispositional diagnostic evaluation	
10-745	Order for evaluation of amenability to treatment for youthful offender (requested by defense counsel)	

Rule Set 10 Table

Table of Corresponding Forms

*On June 27, 2016, the Court issued Order No. 16-8300-003 provisionally approving amendments to Rule 10-166 NMRA and provisionally approving new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. On November 28, 2016, the Court issued Order No. 16-8300-037, withdrawing the provisionally-approved amendments to Rule 10-166 NMRA and the provisionally-approved new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. Accordingly, Rule 10-166 NMRA has been restored to the version approved by

Order No. 11-8300-010, and Rule 10-171 and Form 10-604 have been withdrawn.

RULES OF EVIDENCE	
11-803	Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness
RULES OF APPELLATE PROCEDURE	
12-101	Scope and title of rules
12-201	Appeal as of right; when taken
12-202	Appeal as of right; how taken
12-203	Interlocutory appeals
12-203.1	Appeals to the Court of Appeals from orders granting or denying class action certification
12-204	Appeals from orders regarding release entered prior to a judgment of conviction
12-206	Stay pending appeal in children's court matters
12-206.1	Expedited appeals from children's court custody hearings
12-208	Docketing the appeal
12-209	The record proper (the court file)
12-302	Appearance, withdrawal, or substitution of attorneys; changes of address or telephone number
12-305	Form of papers prepared by parties.
12-309	Motions
12-310	Duties of clerks
12-317	Joint or consolidated appeals
12-318	Briefs
12-319	Oral argument
12-320	Amicus curiae
12-321	Scope of review; preservation
12-322	Courtroom closure
12-402	Issuance and stay of mandate
12-403	Costs and attorney fees
12-404	Rehearings
12-501	Certiorari from the Supreme Court to the district court regarding denial of habeas corpus
12-503	Writs of error
12-504	Other extraordinary writs from the Supreme Court
12-505	Certiorari from the Court of Appeals regarding district court review of administrative decisions
12-601	Direct appeals from administrative decisions where the right to appeal is provided by statute
12-602	Appeals from a judgment of criminal contempt of the Court of Appeals
12-604	Proceedings for removal of public officials within the jurisdiction of the Supreme Court
12-606	Certification and transfer from the Court of Appeals to the Supreme Court
12-607	Certification from other courts to the Supreme Court
12-608	Certification from the district court to the Court of Appeals

UNIFORM JURY INSTRUCTIONS – CIVIL	
13-1830	Measure of damages; wrongful death (including loss of consortium)

UNIFORM JURY INSTRUCTIONS – CRIMINAL	
14-301	Assault; attempted battery; essential elements
14-303	Assault; attempted battery; threat or menacing conduct; essential elements
14-304	Aggravated assault; attempted battery with a deadly weapon; essential elements
14-306	Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; essential elements
14-308	Aggravated assault; attempted battery with intent to commit a felony; essential elements
14-310	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements
14-311	Aggravated assault; attempted battery with intent to commit a violent felony; essential elements
14-313	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-351	Assault upon a [school employee] [health care worker]; attempted battery; essential elements
14-353	Assault on a [school employee] [sports official] [health care worker]; attempted battery; threat or menacing conduct; essential elements
14-354	Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery with a deadly weapon; essential elements
14-356	Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery; threat or menacing conduct with a deadly weapon; essential elements
14-358	Aggravated assault on a [school employee] [health care worker]; attempted battery with intent to commit a felony; essential elements
14-360	Aggravated assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements
14-361	Assault on a [school employee] [health care worker]; attempted battery with intent to commit a violent felony; essential elements
14-363	Assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-371	Assault; attempted battery; “household member”; essential elements
14-373	Assault; attempted battery; threat or menacing conduct; “household member”; essential elements
14-374	Aggravated assault; attempted battery with a deadly weapon; “household member”; essential elements
14-376	Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; “household member”; essential elements
14-378	Aggravated assault; attempted battery with intent to commit a felony; “household member”; essential elements
14-380	Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; “household member”; essential elements
14-381	Assault; attempted battery with intent to commit a



2017 Board of Bar Commissioners



President

Scotty A. Holloman

575-393-0505

sholloman@hobbsnmlaw.com

Scotty A. Holloman is a shareholder, director, and president of Maddox, Holloman & Moran PC in Hobbs. He attended Texas Tech University (B.B.A., Accounting, 1980) and Texas Tech University School of Law (J.D., 1983).

Holloman was admitted to practice law in Texas in 1983 and in New Mexico in 1984. He is a member of the State Bar Real Property, Trust and Estate Section and the State Bar Business Law Section. He served as president of the Lea County Bar Association. From 2009-2012 he served as the out-of-state liaison to the State Bar of Texas Board of Directors. Holloman and his wife, Terry, have three children: Aaron and wife Kelli; Emily; Jacob and wife Lacey; and three grandchildren: Simon, Owen and Annie of Roswell. Holloman also represents the Sixth Bar Commissioner District.



President-Elect

Wesley O. Pool

575-762-8300

wesley@poollawfirm.com

Wesley O. Pool is the principal and owner of Pool Law Firm PC in Clovis. He is licensed to practice in New Mexico and Texas. The firm focuses on commercial litigation in addition to real estate, bankruptcy, probate, wills and

estate planning, and domestic relations. Pool is a member of the Curry/Roosevelt Bar Association, the American Bar Association, and the American Trial Lawyers Association. He has served on the board of directors of the Business Law Section and as the BBC liaison to the Minimum Continuing Legal Education Board.



Secretary-Treasurer

Gerald G. Dixon

505-244-3890

jdixon@dsc-law.com

Jerry Dixon is a shareholder at Dixon Scholl Carrillo P.A. He practices in the areas of professional malpractice defense, commercial and construction litigation. He is a frequent speaker on professional liability and risk management

issues. Dixon was admitted to the Colorado Bar Association in 1981 and the State Bar of New Mexico in 1986. He is a member of the Albuquerque Bar Association (President, 1994). Dixon attended Texas Tech University (BBA 1977, J.D. 1981). He has participated in the New Mexico high school mock trial program as a coach or judge since 1988 and has served as a trustee for the Texas Tech School of Law Foundation since

2005. Dixon received the Distinguished Service Award from Texas Tech School of Law in 2015. He provides pro bono services through Christian Legal Aid. Dixon was recognized by Best Lawyers each year since 2009 and as 2014 and 2016 Lawyer of the Year in the area of professional malpractice. He was named Outstanding Attorney by the Albuquerque Bar Association in 2014. Dixon represents the First Bar Commissioner District. He serves on the Client Protection Fund Commission and as liaison to the Board of Bar Examiners.



Immediate Past President

J. Brent Moore

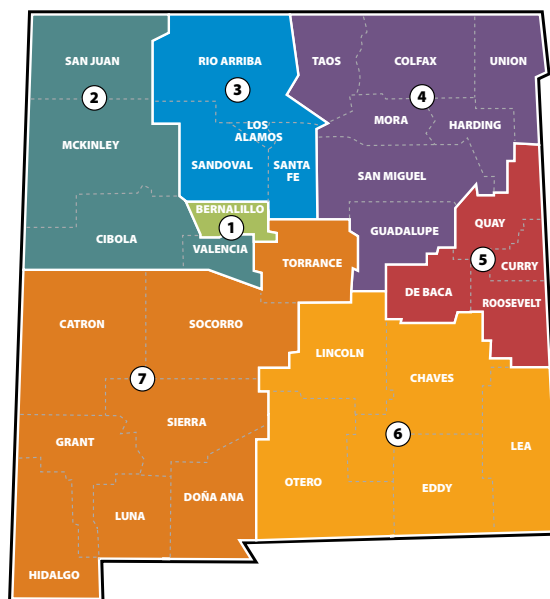
505-986-2648

bmoore@montand.com

J. Brent Moore is a shareholder with the law firm of Montgomery & Andrews and works in the firm's Santa Fe office. He graduated from the University of New Mexico School of Law. His current practice focuses primarily on the fields

of governmental relations, insurance regulation, and environmental law, and he assist clients with their lobbying efforts before the New Mexico Legislature and with their regulatory needs before New Mexico government agencies. Prior to going into private practice, he was the general counsel for the Insurance Division of the New Mexico Public Regulation Commission, where he worked on numerous issues for the Superintendent and the Division. In addition, he has served previously as agency counsel for the Navajo Nation Environmental Protection Agency and as an assistant general counsel for the New Mexico Environment Department. Moore also represents the Third Bar Commissioner District.

Board of Bar Commissioners District Map



■ First Bar Commissioner District



Joshua A. Allison

505-247-0411

jaa@sheehansheehan.com

Joshua A. Allison has been a shareholder and director at Sheehan & Sheehan, P.A. since 2013, where his practice is focused in legal malpractice defense, complex business disputes, and construction litigation. Allison graduated from the University of New Mexico School of

Law in 2008 and clerked for then-Chief Justice Edward L. Chávez for one year. After practicing in Southern California, he returned to New Mexico in 2010 with his wife and children to build his practice at Sheehan. Allison is also a member of the State Bar Lawyers Professional Liability and Insurance Committee and is a member of the steering committee of the developing legal incubator, Entrepreneurs in Community Lawyering. He is also a member of the Disciplinary Board. When he is not practicing law, he is spending time with his wife of 14 years, Michelle, and their four kids.



Aja Nicole Brooks

505-814-5033

ajab@nmlegalaid.org

Aja Nicole Brooks is a native New Mexican, born in Hobbs. She is a graduate of Wake Forest University in Winston-Salem, North Carolina, where she received her Bachelor of Arts in English and Spanish. She attended the University of New Mexico School of Law and graduated with her

juris doctorate in 2008. Thereafter, she worked as a criminal defense attorney in Albuquerque for the Law Office of the Public Defender in its metropolitan and felony divisions from 2008 until 2014. She is currently employed as the statewide Pro Bono Coordinator for New Mexico Legal Aid's Volunteer Attorney Program. Brooks is involved in many State Bar groups and activities, including the Young Lawyers Division, the Committee on Diversity in the Legal Profession and the Bridge the Gap Mentorship Program. She is the Secretary of the New Mexico Black Lawyers Association, is on the Board of Directors for Pegasus Legal Services for Children and the Women's Bar Association and is the New Mexico Connection Coordinator for the Iota Xi Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated. She was named one of the *Albuquerque Business First* "40 Under Forty" in 2016.

Gerald G. Dixon

See page 1.



Hon. Kevin L. Fitzwater (ret.)

kevin.fitzwater2@gmail.com

Hon. Kevin L. Fitzwater (ret.) is a retired Metropolitan Court judge. On the bench for 18 years hearing criminal and civil cases, he also served a term as Chief Judge. He founded the first Mental Health Court in the state of New Mexico. Previous to that, he served as a Deputy District Attorney in charge of the Metropolitan Court division,

having handled a broad range of cases from misdemeanors to violent crimes. Fitzwater came to the DA's office after leaving active military service. He served in the United States Marine Corps as a combat arms officer, having graduated from UNM in 1981, and was one of four selected to attend law school, coming home to attend UNM School of Law. He

returned to active duty as a criminal defense attorney, and worked in appellate law. He retired after a 30-year career as a colonel in the reserves.



Carla C. Martinez

505-222-1121

cmartinez@da2nd.state.nm.us

Carla C. Martinez is a native New Mexican and a 1998 graduate of the New Mexico School of Law. Martinez currently serves as the Chief Administrative Officer for the Second Judicial District Attorney's Office. Prior to joining the 2nd DA's Office, Martinez was Chief of Staff

for Operations for the New Mexico Office of the Attorney General. She served in this capacity for approximately two years. Immediately preceding, Martinez was the Deputy State Auditor for the New Mexico Office of the State Auditor for eight years. She also served for four years as a Board Member and Chair of the New Mexico Gaming Control Board. Previously, Martinez has worked for an insurance defense law firm and an international accounting firm. Martinez is also a Certified Public Accountant and a Certified Fraud Examiner.



Clara Moran

505-717-3504

cmoran@nmag.gov

Clara Moran is a 2005 graduate of the University of New Mexico School of Law. She is currently the division director of special prosecutions with the Office of the Attorney General. Moran has been a prosecutor her whole career, prosecuting

homicides, violent crimes, sex crimes, crimes against children and child exploitation cases, as well as DWI and domestic violence cases. She was named the 2014 Jurisprudence Prosecutor of the Year by the New Mexico District Attorneys Association, received the 2009 Outstanding Young Lawyer of the Year Award from the State Bar of New Mexico and the 2007 Spirit Award from the New Mexico Coalition Against Domestic Violence. Moran is past chair of the State Bar Prosecutors Section and a former board member of the Criminal Law and Trial Practice sections, the Supreme Court Uniform Jury Instruction Committee from 2010 to 2014 and the Young Lawyers Division.



Ben Sherman

505-750-7150

ben@benshermanlaw.com

Ben Sherman is the founder of Ben Sherman Law LLC, located in Albuquerque. His practice is focused on representing injured workers in workers' compensation cases. Prior to opening his own law firm, he enjoyed serving the public as a prosecutor with the 2nd Judicial District Attorney's Office and as an assistant city attorney with the City of Albuquerque's litigation department. Sherman is a proud 2008 graduate of the University of New Mexico School of Law and has been fortunate to practice law in New Mexico for the past eight years. A fluent Spanish-speaker, he enjoys representing people from all communities and appreciates New Mexico's unique diversity and rich traditions. Sherman is a past chair and board member of the State Bar of New Mexico Young Lawyers Division and currently sits on the University of New Mexico School of Law Alumni Board. In his free time, he enjoys volunteering, playing soccer, kayaking, hiking, music, reading, and spending time with family and friends.



Raynard Struck

505-217-2200

struck@medranostrucklaw.com

Raynard Struck is a shareholder in the law firm of Medrano Struck PC (MS Law). Struck practices in the areas of personal injury law, wrongful death cases, uninsured/underinsured motorist insurance cases, insurance bad faith cases and other civil matters. More recently, he has an active mediation and arbitration practice coupled with a civil guardian ad litem practice. He received his J.D. degree from the UNM School of Law in 1999. Struck recently completed Pepperdine's Straus Mediated Litigating week seminar focusing on ADR. Struck is a member of the New Mexico Trial Lawyers Association and the Hispanic Bar Association. He received his B.A. from Pitzer College (Claremont Colleges, Calif.) in organizational management with minors in economics and sociology. He has served as general counsel for the Albuquerque Isotopes and the New Mexico Scorpions. Struck and MS Law are current members of the Gildan New Mexico Bowl Executive Board.



Carolyn A. Wolf

cawolf2955@gmail.com

Carolyn A. Wolf is an attorney in Santa Fe. In more than 20 years in state government, she was in-house counsel for the Human Services Department, Health and Environment Department, and Taxation and Revenue Department, and was counsel for other agencies, boards and commissions as an attorney in the Civil Division of the Attorney General's office. Wolf served as general counsel for the Department of Finance and Administration and Taxation and Revenue Department. Wolf was a shareholder and of counsel with Montgomery & Andrews, P.A. She is the Board of Bar Commissioners representative on the Appellate Rules Committee and the State Bar Board of Editors. She is also a member of the Compilation Commission Advisory Committee. She is a graduate of Rice University and the University of New Mexico School of Law. Her husband, Aaron, and daughter, Rebekah, are attorneys in Santa Fe. Her daughter, Sarah Weissman, is a rabbi in Los Altos Hills, California.

■ Second Bar Commissioner District



Joseph F. Sawyer

505-334-4297

jsawyer@sjcounty.net

Joseph F. Sawyer is Deputy County Attorney for San Juan County. A Farmington native, he attended the University of New Mexico (B.A., 1995) and Notre Dame Law School (J.D., 1999). Prior to working for San Juan County, Sawyer spent several years in private practice and worked for the 11th Judicial District Attorney's Office in Farmington. He served as president of the San Juan County Bar Association in 2011 and was on the State Bar of New Mexico Young Lawyers Division Board of Directors from 2006 to 2007. Sawyer and his wife Ana enjoy backpacking, mountain biking, traveling and spending time with their two daughters.

■ Fourth Bar Commissioner District



Ernestina R. Cruz

575-758-7958

tina.cruz@cruzlaw-nm.com

Ernestina R. Cruz is a solo practitioner and the owner of Cruz Law Office in Taos. Her practice is primarily focused in the areas of civil rights, employment law, and personal injury. She is a graduate of the University of New Mexico (B.A. 1996 and J.D. 2001) and the University of Notre Dame (M.A. 1998). In addition to her law practice, she is currently attending the Straus Institute for Dispute Resolution at Pepperdine University School of Law where she is completing coursework to obtain a LL.M. in Dispute Resolution with a concentration in Mediation. In 2008, she was named the Young Lawyer of the Year by the New Mexico Hispanic Bar Association. She was also recognized by the Hispanic National Bar Association as a Top Lawyer under 40 in 2010. She is a past chair of the State Bar Young Lawyers Division and Employment and Labor Law Section.

■ Third Bar Commissioner District

J. Brent Moore

See page 1.



Elizabeth J. Travis

505-827-5431

elizabeth.travis@state.nm.us

Elizabeth J. Travis is a deputy general counsel with the New Mexico Department of Transportation, serving as counsel for the Department's construction, operations and finance organizations, a practice which includes construction, environmental, procurement and contract law. Prior to working for the State, Travis served as an assistant county attorney for Santa Fe County. As a private practice attorney her clients included a privately held ski area, a local public entity hospital, various non-profit organizations, and small businesses. In addition to her new role on the BBC representing District 3, Travis also serves on the State Bar Ethics Advisory Committee. She is also an active member of the ABA, participating in the public contract law section and the construction industry forum. Travis is licensed to practice in state and federal court in New Mexico and California.

■ Fifth Bar Commissioner District

Wesley O. Pool

See page 1.

■ Sixth Bar Commissioner District



Erinna M. "Erin" Atkins

575-437-3042

atkinser@gmail.com

Erinna Atkins is an attorney in Alamogordo, where she practices law with her father, S. Bert Atkins. Specializing in criminal defense and children's law, she works in public defender and indigent defense cases in Otero County. She proudly serves as the Guardian ad Litem in abuse and neglect cases and mental health guardianships. Atkins is active in her local community and currently serves as the vice-chair of the Legal Education Committee for NMSU-Alamogordo, a commissioner for the NM Commission for Community Volunteerism, as a board member for the

Young Lawyers Division, the Children's Law Section, the Twelfth Judicial District Pro Bono Committee, and a state-wide non-profit service organization, as well as the substitute Adult Drug Court judge. Atkins was awarded the 2016 Young Lawyer of the Year Award for the Twelfth Judicial District and is a 2009 graduate of the University of New Mexico School of Law.

Scotty A. Holloman

See page 1.



Jared G. Kallunki

575-208-4469

jared.kallunkilaw@gmail.com

Jared G. Kallunki is a Roswell attorney practicing criminal defense, domestic relations, and civil litigation. He attended the University of Alabama (B.A. 2001 and M.A. 2004) and Thomas Jefferson (J.D. 2007). Previously, he was the Managing Attorney of the Roswell office of New Mexico Legal Aid and served on the board of the Young Lawyers Division of the State Bar of New Mexico. Kallunki is a past recipient of the Robert H. LaFollette Pro Bono Award for his work with the less fortunate. He lives in Roswell with his wife, Tiesha, and his three children, Detroit, Joaquin and Cedric.

He lives in Roswell with his wife, Tiesha, and his three children, Detroit, Joaquin and Cedric.

Seventh Bar Commissioner District



Mick I. R. Gutierrez

575-386-2171

mickgutierrez@gmail.com

Mick graduated from the UCLA School of Law in 1980. He was awarded a post-doctorate community lawyer fellowship from Howard University, 1980-82. Gutierrez began his legal career at Southern NM Legal Services in Las Cruces which lasted four years. He then

moved on to become a Special Assistant AG for two years, an ADA for four years at the Third Judicial DA's office, spent about four years with Miller, Stratvert, Torgerson and Schlenker, and twenty-one years with the Department of Justice (DOJ). Through the DOJ Gutierrez had two overseas assignments: West Africa and the Caribbean. He was a Bar Commissioner in the 90s and has served on numerous professional committees and community boards. Gutierrez is married to Lizabeth, they have three adult daughters, and five grandkids.



David P. Lutz

575-526-2449

dplutz@qwestoffice.net

David P. Lutz is a Las Cruces attorney at Martin & Lutz, P.C. He practices law with his father and focuses primarily on civil and domestic relations matters. He has been with the firm since 2004. He was born in Las Cruces, New Mexico and graduated from Onate High School. He attended Claremont McKenna College (B.A. 1997) and Cornell Law School (J.D. 2000). He has appeared and practices regularly in the Third, Sixth, and Seventh Judicial Districts. He served on the Young Lawyers Division Board as a Regional Director from 2007 through 2011. When he is not working, he enjoys playing soccer and going with his family to cultural and/or sporting events at New Mexico State University.

He attended Claremont McKenna College (B.A. 1997) and Cornell Law School (J.D. 2000). He has appeared and practices regularly in the Third, Sixth, and Seventh Judicial Districts. He served on the Young Lawyers Division Board as a Regional Director from 2007 through 2011. When he is not working, he enjoys playing soccer and going with his family to cultural and/or sporting events at New Mexico State University.



Senior Lawyers Division Delegate

John P. "Jack" Burton

505-954-3906

jburton@rodey.com

John P. "Jack" Burton is a full-time director and shareholder of the Rodey Law Firm, which he joined upon graduation from law school. His practice includes transactions and dispute resolution (mediation, arbitration and litigation) in all types of business, finance, and real-property matters. Burton has been active in the Senior Lawyers Division and several sections of the State Bar, including the Business Law Section and the Commercial Litigation Section, serving as chair. He was named Business Lawyer of the Year in 2004 by the State Bar Business Law Section. He is listed in Best Lawyers America in ten categories of law, and has been named Santa Fe Lawyer of the Year in three of them: Real Estate in 2011, Mediation in 2013, and Arbitration in 2016. Burton graduated from Louisiana Tech University (B.S. in Bus. Admin., accounting major, magna cum laude) and Harvard Law School (LL.B.). He and his wife Anne live in Santa Fe.

He and his wife Anne live in Santa Fe.



Young Lawyers Division Chair

Tomas J. Garcia

505-848-1800

tomas.garcia@modrall.com

Tomas J. Garcia is the chair of the Young Lawyers Division. He is a litigation associate at Modrall Sperling in Albuquerque, where he practices in the areas of commercial, health-

care, torts/personal injury, and transportation law. Garcia was named "Young Lawyer of the Year" by the New Mexico Defense Lawyers' Association in 2015. Before joining Modrall Sperling, Garcia clerked for Justice Charles W. Daniels of the New Mexico Supreme Court. Garcia is a fellow of the American Bar Association Business Law Section and, as a participant in the American Bar Association Litigation Section's Diverse Leaders Academy, he is also a member of the Litigation Section's Diversity and Inclusion Committee. An Albuquerque native, Garcia received his law degree from Georgetown University Law Center, his master's degree from the Kennedy School of Government at Harvard University, and his bachelor's degree from Yale University.



Paralegal Division Liaison

Barbara C. Lucero

barbaral@modrall.com

Barbara Lucero is a certified paralegal with Modrall Sperling. She is licensed in the Navajo Nation as a Navajo Advocate. As she assumes her duties as Chair of the Paralegal Division, she becomes the only person to have served as

both Chair of the Paralegal Division as well as President of the Navajo Nation Bar Association, which she headed from 2006-2008. She has been a member of the Division for 15 years and served on the Board for the last four. Lucero earned her B.A. in Communications in 2011 and an A.A. in Legal Assistant in 1999 from the University of New Mexico, and an A.A. in Business from Diné College in 1996. Lucero assists with matters in the areas of water, commercial, resource and energy litigation, and employment law. She has 16 years of paralegal experience in litigation, natural resource and Indian law matters.

	violent felony; “household member”; essential elements
14-383	Assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; “household member”; essential elements
14-990	Chart
14-991	Failure to register as a sex offender; 1999 and 2000 versions of SORNA; essential elements
14-992	Failure to register as a sex offender; 2005, 2007, and 2013 versions of SORNA; essential elements
14-993	Providing false information when registering as a sex offender; essential elements
14-994	Failure to notify county sheriff of intent to move from New Mexico to another state, essential elements
14-2200	Assault on a peace officer; attempted battery; essential elements
14-2200A	Assault on a peace officer; threat or menacing conduct; essential elements
14-2200B	Assault on a peace officer; attempted battery; threat or menacing conduct; essential elements
14-2201	Aggravated assault on a peace officer; attempted battery with a deadly weapon; essential elements
14-2203	Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with a deadly weapon; essential elements
14-2204	Aggravated assault on a peace officer; attempted battery with intent to commit a felony; essential elements
14-2206	Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with intent to commit a felony; essential elements
14-2207	Aggravated assault on a peace officer; attempted battery with intent to commit a violent felony; essential elements
14-2209	Aggravated assault on a peace officer; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements
14-3106	Possession of a dangerous drug
14-4503	Driving with a blood or breath alcohol concentration of eight one hundredths (.08) or more; essential elements
14-4506	Aggravated driving with alcohol concentration of (.16) or more; essential elements
14-5120	Ignorance or mistake of fact

RULES GOVERNING ADMISSION TO THE BAR

15-104	Application
15-205	Grading and Scoring
15-302	Admission to practice

RULES OF PROFESSIONAL CONDUCT

16-108	Conflict of interest; current clients; specific rules
--------	---

RULES GOVERNING DISCIPLINE

17-202	Registration of attorneys
17-204	Trust accounting
17-208	Incompetency or incapacity
17-214	Reinstatement

RULES GOVERNING THE CLIENT PROTECTION FUND

17A-005	Composition and officers of the commission
---------	--

RULES GOVERNING THE UNAUTHORIZED PRACTICE OF LAW

17B 005	Civil injunction proceedings
17B 006	Determination by the Supreme Court

RULES GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS

22-101	Scope; definitions; title
22-204.1	Temporary Certification for Court Reporters

SUPREME COURT GENERAL RULES

23-107	Broadcasting, televising, photographing, and recording of court proceedings; guidelines
--------	---

RULES GOVERNING THE NEW MEXICO BAR

24-101	Board of Bar Commissioners
24-102	Annual license fee
24-110	“Bridge the Gap: Transitioning into the Profession” program
24-111	Emeritus attorney

RECOMPILED AND AMENDED LOCAL RULES FOR THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH, TWELFTH, AND THIRTEENTH JUDICIAL DISTRICT COURTS

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 Commission’s website at <http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx>

Advance Opinions

<http://www.nmcompcomm.us/>

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-001

No. S-1-SC-35395 (filed October 13, 2016)

STATE OF NEW MEXICO,
Plaintiff-Respondent,
v.
JASON BAILEY,
Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI
DENISE BARELA-SHEPHERD, District Judge

BENNETT J. BAUR
Chief Public Defender
C. DAVID HENDERSON
Assistant Appellate Defender
Santa Fe, New Mexico
for Petitioner

HECTOR H. BALDERAS
Attorney General
MARIS VEIDEMANIS
Assistant Attorney General
Santa Fe, New Mexico
for Respondent

Opinion

Barbara J. Vigil, Justice

I. INTRODUCTION

{1} Defendant Jason Bailey appeals his conviction for second-degree criminal sexual contact of a minor pursuant to NMSA 1978, Section 30-9-13(B) (2004). Defendant argues that admission of evidence of his uncharged conduct was improper under Rule 11-404(B)(1) NMRA and Rule 11-403 NMRA. Because the other-act evidence that Defendant objects to was properly admitted for the purpose of demonstrating Defendant's intent under Rule 11-404(B)(2), and the evidence was not unduly prejudicial under Rule 11-403, we affirm the conviction. And, by this opinion, we further explicate the proper application of Rule 11-404(B) in our district courts as it pertains to admission of other-act evidence bearing on an accused's intent.

II. BACKGROUND

{2} Victim came to live with her father, Defendant, upon removal from her mother's home by the Children, Youth, and Families Department (CYFD) following sexual abuse perpetrated upon Victim by the mother's boyfriend and Victim's older half-sister. At the time, Defendant was living in Albuquerque with his wife and two young daughters. Victim was removed

from Defendant's home on April 10, 2008, when police responding to an unrelated disturbance, decided that Victim and the other children needed to be placed into CYFD custody. Victim then reported in a S.A.F.E. House interview that she had been sexually abused by Defendant on three different occasions while in his custody. The family had moved several times before Victim's removal, with the alleged abuse occurring chronologically at apartments in Albuquerque, Rio Rancho, and Albuquerque again. The location of the abuse is relevant because Defendant was charged in Bernalillo County, and the Second Judicial District Court has no jurisdiction over the conduct that occurred in Sandoval County. {3} Defendant was indicted on nine felony counts in light of the allegations of sexual abuse. Victim's testimony and statements to third parties formed the basis for the charges. There were two trials, the first ending with a directed verdict in favor of Defendant on five of the counts and a hung jury with respect to the remaining four. Defendant was retried on those four counts and ultimately found guilty of criminal sexual contact of a minor.

{4} The first incident of Albuquerque abuse (the masturbation incident), occurred after Victim exited the shower and walked into her room where she saw her younger sister "doing something and [she] did that same thing." Defendant then

came into the sisters' room, where Victim describes him as saying they were masturbating, and instructed Victim to stop before he briefly left the room to retrieve some ointment. Then, using his finger, Defendant put the ointment around the outside of Victim's genitals, making Victim uncomfortable and causing her to ask him to stop and to let her do it herself. Defendant complied, and she continued. When asked at trial whether Defendant had told her not to masturbate, Victim testified that "[h]e told me not to do it at first, but then he came in and basically showed me how to do it."

{5} The second incident of abuse, occurring in Rio Rancho (the uncharged Sandoval County incident), happened one night when Victim was roused from her sleep by Defendant to watch a movie in the living room. After joining Defendant on the living room couch, Defendant lay down and "put [Victim] on top of him and then he stuck his hands down" the front of her pants. In doing so, Defendant was alleged to have put ointment on his finger, rubbed the outside of Victim's genitals, and digitally penetrated Victim with his finger. Victim testified that this made her feel "uncomfortable," "like [she] was forced to let those things happen." With respect to the digital penetration, Victim's pretrial statement was inconsistent with both her initial S.A.F.E. House statement and trial testimony—she told defense counsel pretrial that she really did not think it had actually occurred.

{6} The third incident of abuse (the shower incident), occurred in Albuquerque. Some of the abuse that occurred while Victim lived with her mother had occurred in the shower with her half-sister. Victim testified that while living with Defendant she disliked showering, so she would often just turn on the water and pretend as though she had bathed. One day, when Victim untruthfully told Defendant that she had showered, he inspected the bar of soap to see if it was dry—and it was, making Defendant mad. Determined to make her bathe, Defendant brought Victim into the shower with him. He instructed her not to turn and look at his body, but Victim testified that she was unable to avoid doing so. Defendant scrubbed Victim's body with the washcloth and soap, causing her genital discomfort. It is these facts that underlie Defendant's conviction for criminal sexual contact.

{7} Before the first trial the State moved to admit, amongst other things, evidence of the uncharged Sandoval County incident pursuant to Rule 11-404(B)(2). The district court declined to admit the evidence, emphasizing that it did not have jurisdiction over conduct occurring in Sandoval County. The State did not object to the Court's decision to preclude admission of the evidence during the first pretrial hearings. As the first trial progressed though, the State realized that the issue of intent was Defendant's main argument—i.e., he lacked an unlawful intent because the contact in the charged incidents was merely parental conduct that Victim was misinterpreting—and thus, the State determined that the uncharged Sandoval County incident would indeed be quite relevant. Therefore, before the second trial, the State renewed its motion to admit the evidence under Rule 11-404(B)(2) in order to demonstrate Defendant's unlawful intent, arguing that the evidence was necessary to rebut Defendant's presentations at the first trial that the contact during both the masturbation incident and shower incident occurred for hygienic, medical, or "parental" reasons. The State claimed that the evidence of the uncharged Sandoval County incident would put "into issue that the witness is misinterpreting [the conduct]" as being sexual instead of hygienic or medical, and that Defendant had opened himself up to admission of the evidence by arguing that he committed the acts but lacked an unlawful sexual intent during their commission.

{8} The district court once again denied the State's motion to admit the evidence under Rule 11-404(B)(2) because this evidence was "only being offered to prove the witness' understanding," and not one of the Rule 11-404(B)(2) exceptions, and because it was "more prejudicial than probative." Yet, the district court provided the caveat that "should the defense open the door, you'll always have the opportunity to ask the Court for reconsideration or maybe even bring it in as rebuttal."

{9} At the second trial, Defendant conceded that "intent is always an issue . . . [i]t's an issue here," and that the defense strategy hinged on a psychologist's testimony that would support Defendant's assertion that "the child has a tendency to misinterpret what's going on, and I think that goes to the heart of our defense." As well, two days into trial, during Defendant's cross-examination of Victim, Victim gave

testimony suggesting that she was confused and had an intermingled recollection of the Sandoval and Bernalillo County incidents. In essence, defense counsel told Victim that she had said in her S.A.F.E. House interview that Defendant, during the masturbation incident, "had taken [her] pants off;" and "had actually pulled [her] pants down and then applied the ointment," to which Victim replied, "I think that was a different incident. . . . I don't think that happened."

{10} In response to this line of questioning, the State understandably raised concerns. Ultimately, by eliciting testimony wherein Victim confused the two scenarios—the Sandoval County incident, where she was dressed, and the masturbation incident, where she had just exited the shower unclothed—the narrative presented to the jury contained an unexplained inconsistency. Without knowing that there was a similar incident where Victim had been wearing pants, the jury could have been confused. As a result of those concerns, the State renewed its motion to present evidence of the uncharged Sandoval County incident; and, following Victim's voir dire testimony about the incident, the district court granted the motion. Reasoning that the two incidents were "similar in kind and not overly remote in time and the potential prejudice does not substantially outweigh the [probative] effect," the district court admitted the evidence under Rule 11-404(B)(2) for the purpose of establishing Defendant's sexual intent during commission of the charged incidents.

{11} Defendant was found guilty of criminal sexual contact of a minor in the second degree, as a lesser included offense of the original charge of criminal sexual penetration, contrary to Section 30-9-13(B), as charged in Count Two, but not guilty on Counts One, Three, and Four. The Court of Appeals affirmed Defendant's conviction in a split opinion. *See Bailey*, 2015-NMCA-102. We granted certiorari to the Court of Appeals pursuant to Rule 12-502 to review whether the admission of evidence of an uncharged incident was correct and in accordance with Rule 11-403 and Rule 11-404(B)(2). In doing so, we endeavor to provide guidance in striking the right balance under Rule 11-404(B) between the proper use of such evidence to prove intent and the prohibited use to show one's propensity to commit a crime—a realm that courts have struggled with for decades.

III. STANDARD OF REVIEW

{12} This Court reviews a district court's decision to admit evidence under Rule 11-404(B) and Rule 11-403 for an abuse of discretion. *State v. Otto*, 2007-NMSC-012, ¶¶ 9, 14, 141 N.M. 443, 157 P.3d 8. "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the trial court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason." *State v. Apodaca*, 1994-NMSC-121, ¶ 23, 118 N.M. 762, 887 P.2d 756 (citations omitted).

IV. DISCUSSION

A. Applicable Law

{13} "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Rule 11-404(B)(1). The other-act evidence may, however, be admissible for other purposes, such as "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule 11-404(B)(2).

{14} In *Otto*, this Court held that the list of permissible reasons to admit other-act evidence is not exhaustive, providing "evidence of other wrongs may be admissible on alternative relevant bases so long as it is not admitted to prove conformity with character." 2007-NMSC-012, ¶ 10; *see also State v. Jones*, 1995-NMCA-073, ¶ 8, 120 N.M. 185, 899 P.2d 1139 ("New Mexico allows use of other bad acts for many reasons, including those not specifically listed in [Rule] 11-404(B)."). Importantly, then, "Rule 11-404(B) is a rule of inclusion, not exclusion, providing for the admission of all evidence of other acts that [are] relevant to an issue in trial, other than the general propensity to commit the crime charged." *State v. Phillips*, 2000-NMCA-028, ¶ 21, 128 N.M. 777, 999 P.2d 421, *cert. denied*, 128 N.M. 689, 997 P.2d 821 (internal quotation marks and citation omitted).

{15} Nevertheless, the district court must still consider whether "the probative value of the evidence outweighs the risk of unfair prejudice, pursuant to Rule 11-403." *Otto*, 2007-NMSC-012, ¶ 10 (discussing *State v. Gaitan*, 2002-NMSC-007, ¶ 26, 131 N.M. 758, 42 P.3d 1207). *See State v. Gallegos*, 2007-NMSC-007, ¶ 22, 141 N.M. 185, 152 P.3d 828 ("[E]ven if other-acts evidence is relevant to something besides propensity, such evidence will not be admitted if the probative value related to its permissible

purpose is substantially outweighed by the factors enumerated in Rule 11-403.” (citations omitted)).

{16} Rule 11-403 provides that “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Unfair prejudice, in the context of Rule 11-403, “means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Stanley*, 2001-NMSC-037, ¶ 17, 131 N.M. 368, 37 P.3d 85 (internal quotation marks and citation omitted). Evidence is unfairly prejudicial “if it is best characterized as sensational or shocking, provoking anger, inflaming passions, or arousing overwhelmingly sympathetic reactions, or provoking hostility or revulsion or punitive impulses, or appealing entirely to emotion against reason.” *Id.* (internal quotation marks and citation omitted). The determination of unfair prejudice is “fact sensitive,” and, accordingly, “much leeway is given trial judges who must fairly weigh probative value against probable dangers.” *Otto*, 2007-NMSC-012, ¶ 14 (internal quotation marks and citation omitted). Rule 11-403 does not guard against any prejudice whatsoever, but only against unfair prejudice. *Id.* However, we will “not . . . simply rubber stamp the trial court’s determination.” *State v. Torrez*, 2009-NMSC-029, ¶ 9, 146 N.M. 331, 210 P.3d 228 (internal quotation marks and citation omitted).

B. Admission of the Uncharged Sandoval County Incident

Evidence Under Rule 11-404(B)(2)

{17} Section 30-9-13(A), under which Defendant was convicted, makes criminal “the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one’s intimate parts.” The jury was appropriately instructed that the State needed to prove that Defendant touched Victim in an unlawful manner—that is, “with [an] intent to arouse or gratify sexual desire or to intrude upon the bodily integrity or personal safety of [Victim].”

{18} The State points to the uncharged Sandoval County incident—where Victim alleged that Defendant sat her on his lap, reached down her pants, and applied ointment to her genitals while digitally penetrating her—as proof that Defendant

was less likely to have lawfully touched Victim during the charged masturbation incident because what unfolded in Sandoval County could not reasonably be interpreted as normal parenting. Defendant responds that the Sandoval County incident is probative of Defendant’s unlawful intent in the masturbation incident only by way of an improper inference premised on propensity. Defendant argues that the evidence relating to the Sandoval County incident is only probative because it demonstrates a propensity to behave with the intent of a child molester.

{19} The circumstances of the Sandoval County incident alter the probability that Defendant acted with lawful intent during commission of the masturbation incident involving this same victim. As our case law has recognized, however, Rule 404 imposes restrictions on the use of a particular kind of relevant evidence, criminal character or propensity, “not because the evidence lack[s] logical relevance, but because of its substantial prejudicial effect.” *State v. Martinez*, 2008-NMSC-060, ¶ 23, 145 N.M. 220, 195 P.3d 1232 (explaining the policy considerations for Rule 404 character rules excluding otherwise probative evidence to protect against substantial prejudice). As a result, evidence of a person’s propensity to commit a particular kind of intentional criminal conduct is not admissible merely to show that he intended to commit the charged conduct, even though it would satisfy Rule 404’s definition of logical relevance. But while a propensity inference can arguably be drawn in this case from the uncharged Sandoval County incident, the law does not ban admission of potential propensity evidence that also goes to proving something other than Defendant’s propensity to act in a certain way. *See Old Chief v. United States*, 519 U.S. 172, 184 (1997) (stating that when certain evidence “has the dual nature of legitimate evidence of an element [of a charge] and illegitimate evidence of character” the evidence satisfies federal Rule 404(b) and admissibility is determined under federal Rule 403); *Gallegos*, 2007-NMSC-007, ¶ 22 (stating that evidence is inadmissible under Rule 11-404(B) only if “its sole purpose or effect is to prove criminal propensity”). That something was Defendant’s unlawful intent in his behavior toward this particular victim.

{20} In applying Rule 11-404(B)(2)’s propensity evidence bar, this Court has taken care to distinguish between a defendant’s propensity to engage in particular kinds

of unlawful conduct and the defendant’s intent directed toward the victim in the charged offense. Two cases provide especially useful guidance. First, *Sena* involved other-act evidence of the defendant’s “grooming” of a child victim to support the state’s theory that the defendant had not applied ointment to the child victim’s genitals with a strictly medical intent. 2008-NMSC-053, ¶ 14. In reversing the Court of Appeals and holding that the evidence was properly admitted as proof of the defendant’s intent, we stated that “[a]s evidence of [d]efendant’s sexually fraught conduct with the [c]hild, the grooming evidence was properly admitted to refute[] the evidence that [d]efendant touched the [c]hild strictly for medical reasons.” *Id.* (alteration in original) (internal quotation marks and citation omitted). Accordingly, admission of the other-act evidence relating to the same victim was proper for demonstrating the defendant’s specific, unlawful intent during commission of the charged conduct. *Id.* ¶¶ 14-15.

{21} Then, in *Otto* we analyzed whether evidence of a defendant’s uncharged sexual acts with a child victim in Colorado could be properly admitted under Rule 11-404(B)(2) in a trial for charges relating to sexual abuse against the same child victim in Alamogordo. 2007-NMSC-012, ¶ 7. The defendant in *Otto* claimed that he was asleep and unconsciously molested the child victim—i.e., he lacked an unlawful intent and had merely committed an innocent mistake. *Id.* ¶ 11. We concluded that the other-act evidence of similar sexual acts perpetrated upon the child victim by that defendant was “properly admitted to show intent and absence of mistake or accident” during defendant’s commission of the charged crimes. *Id.* ¶ 12 (footnote omitted).

{22} Here, as in *Otto* and *Sena*, Defendant specifically disputed the intent element of the crime for which he was standing trial. In fact, it was the only element of the crime that Defendant disputed. Given New Mexico’s inclusionary view of Rule 11-404(B)(2), and particularly where a defendant refutes allegations of sexual contact with a minor victim by claiming that the sexual contact was parental or medical, we conclude that evidence of other acts directed to that victim that bear on a defendant’s specific, unlawful intent to commit the charged offense are admissible under Rule 11-404(B)(2). *See Sena*, 2008-NMSC-053, ¶ 14; *Otto*, 2007-NMSC-012 ¶¶ 11-12; *see also Kerby*, 2007-NMSC-014, ¶ 26. Accordingly, we hold that the

uncharged Sandoval County incident was properly admitted.

C. There Was No Undue Prejudice Requiring Exclusion of Evidence of the Sandoval County Incident Under Rule 11-403

{23} The next step in the analysis is to ensure that a defendant is not unduly prejudiced by admission of other-act evidence. *See* Rule 11-403. Here, there are two sources of potential prejudice to be weighed against the evidence's probative effect: 1) the inherently prejudicial nature of the evidence of the uncharged Sandoval County incident and 2) the alleged "surprise" Defendant faced by the evidence's mid-trial admission. We turn first to the inherently prejudicial nature of other-act evidence involving child molestation, and conclude that under Rule 11-403, the district court did not abuse its discretion by deciding that admission of the evidence of the uncharged Sandoval County incident was not unduly prejudicial.

1. Inherently Prejudicial Nature of the Evidence

{24} Defendant's intent was the only contested issue at trial, and the only evidence available to the State for proving intent came by Victim's testimony regarding her perception of the charged incidents. And, Defendant's case relied on convincing the jury that Victim's account was misguided because the perceived molestation was actually harmless parenting. Thus, admission of evidence of the uncharged Sandoval County incident—an occasion where Defendant's conduct could not be viewed as harmless parenting—was highly probative of the State's argument that Defendant was less likely to have been acting lawfully when committing the charged incidents. *See Otto*, 2007-NMSC-012, ¶ 15 ("Without the evidence of the uncharged acts, the jury was much more likely to believe that what happened in Alamogordo was a mistake or accident . . . There was no other evidence available to rebut this potential inference.").

{25} The uncharged Sandoval County incident is also uniquely similar to one of the charged incidents in that on two occasions some type of ointment was used when Defendant made contact with Victim's genitals. Whereas the circumstances of the charged masturbation incident could reasonably be viewed as parental care in the abstract, the uncharged Sandoval County incident could not. The uncharged

other-act evidence is highly probative of Defendant's intent during the charged masturbation incident. *Cf. United States v. Beechum*, 582 F.2d 898, 915 (5th Cir. 1978) ("In measuring the probative value of the evidence, the judge should consider the overall similarity of the extrinsic and charged offenses.").

{26} Despite the other-act evidence's probative value, the prejudicial nature of the uncharged Sandoval County incident was not diminutive. Evidence of sexual contact with a minor is uniquely and inherently prejudicial. Admission of such evidence must be treated with caution in order to not unduly influence a jury's verdict. Yet, the task under Rule 11-403 is not to exclude all uniquely prejudicial evidence—just that evidence having an unduly prejudicial impact on a defendant that far outweighs the evidence's probative effect in proving an element of the State's case. In this case, where the sole defense presented by Defendant to the charged crimes was a lack of specific, unlawful intent, we conclude that the inherently prejudicial nature of the uncharged Sandoval County incident was not enough to outweigh its probative value. Thus, the district court's decision to admit the evidence was not an abuse of its discretion.

2. Mid-trial Surprise

{27} Defendant further argues that he suffered prejudice because he was surprised by the district court's mid-trial admission of the evidence of the uncharged Sandoval County incident. But, this is not a case where Defendant did not have knowledge of the incident, rather, Defendant merely thought the incident would not make its way into the trial. To claim surprise at its admission, particularly in light of the theory under which Defendant chose to proceed, being that he lacked an unlawful intent—ignores the district court's decision before the trial to exclude the other-act evidence because it believed "[t]his evidence is only being offered to prove the witness' understanding," as opposed to one of the Rule 11-404(B) permissible reasons. The district court read into the record the language of Rule 11-404(B), and told the parties that it would be open to reconsideration of the issue as the trial progressed. As such, Defendant was well aware that the Sandoval County incident loomed large, and was not in any way misled by the district court or opposing counsel. *Cf. Lewis ex rel. Lewis v. Samson*,

2001-NMSC-035, ¶ 15, 131 N.M. 317, 35 P.3d 972 (discussing discovery rules, but considering the similar context of unfair surprise by unanticipated testimony and rebuttal witnesses, and confining the concept of surprise to an instance where the identity of a witness was not disclosed at all).

{28} Plus, Defendant alluded to the uncharged Sandoval County incident at trial by confusing Victim and inadvertently eliciting cross-examination testimony about the incident. This fact discounts both Defendant's claim that he was unprepared and surprised by the admission of the other-act evidence, since his counsel referenced it. Moreover, cross-examination resulted in a potentially inconsistent statement by Victim, which the State could not rebut without reference to the uncharged Sandoval County incident. Defendant, having referred to the uncharged incident, greatly increased the evidence's probative nature. And, without deciding whether by this reference Defendant opened the door to admission of the other-act evidence, we conclude that the nature of the exchange at least indicates Defendant's knowledge that the uncharged Sandoval County incident was probative and relevant, and thus, might be admitted at some point during trial, despite the pretrial exclusion. As such, we conclude there was no unfair surprise influencing our prejudice analysis under Rule 11-403.

V. CONCLUSION

{29} The evidence of the uncharged Sandoval County incident is relevant to establishing Defendant's specific, unlawful intent during his commission of the charged incidents and was correctly admitted by the district court under Rule 11-404(B)(2). Likewise, the other-act evidence was more probative than prejudicial under Rule 11-403. We conclude, therefore, that the district court did not abuse its discretion by admitting the uncharged Sandoval County incident under both Rule 11-404(B)(2) and Rule 11-403. Accordingly, we affirm Defendant's conviction.

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

BARBARA J. VIGIL, Justice

WE CONCUR:

CHARLES W. DANIELS, Chief Justice

PETRA JIMENEZ MAES, Justice

EDWARD L. CHÁVEZ, Justice

JUDITH K. NAKAMURA, Justice

Certiorari Denied, October 27, 2016, S-1-SC-36109

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-102

No. 33,807 (filed September 8, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.KEVIN PITNER,
Defendant-Appellant.**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

ROSS C. SANCHEZ, District Judge

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
JACQUELINE R. MEDINA
Assistant Attorney General
Albuquerque, New Mexico
for AppelleeBENNETT J. BAUR
Chief Public Defender
KARL ERICH MARTELL
Assistant Public Defender
Santa Fe, New Mexico
for Appellant**Opinion****Timothy L. Garcia, Judge**

{1} Defendant appeals his conviction for criminal sexual contact of a minor (CSCM), in violation of NMSA 1978, Section 30-9-13(A) (2003). On appeal, Defendant argues that: (1) the State failed to present sufficient evidence to sustain the verdict; (2) the jury was improperly instructed; and (3) Defendant received ineffective assistance of counsel at trial. We affirm Defendant's conviction.

I. BACKGROUND

{2} A jury found Defendant guilty of one count of second degree CSCM after Victim, the nine-year-old cousin of Defendant's girlfriend, accused him of unzipping her "footie" pajamas and using his fingers to rub the skin below her underwear and "a little above [her] privates." Victim testified that on the night of the incident, she was staying overnight at her aunt's house, where Defendant was also staying. She stated that she and her nine-year-old, male cousin were watching a movie in the top bunk of a bunk bed when they fell asleep. She described that she was wearing "footie" pajamas that covered her "feet[] to [her] neck."

{3} Victim testified that in the middle of the night, due to a bad dream, she moved

from the top bunk to the lower bunk to sleep with her female cousin, Defendant's girlfriend. At the time Victim moved to the lower bunk, Defendant was not sleeping in the lower bunk with her cousin. But when Victim awoke in the morning, her "pajamas were unzipped and [Defendant's] hand was in [her] pants." Victim stated that when she went to bed, she zipped her pajamas "[a]ll the way to [her] neck" and she did not unzip them during the night; however, when she awoke, her pajamas were unzipped to "about [her] waist[]" line." She stated that Defendant, who was laying on the other side of Victim's female cousin, positioned his hand "[i]n [her] underwear[,] and when she looked at him, "he pulled his hand away . . . and he acted like he was asleep[,] closing his eyes "right away." She described that while Defendant's hand was "[n]ot very far" into her underwear, Defendant "was . . . touching [the] skin . . . [u]nderneath [her] underwear" in a "rubbing" motion. On cross-examination, Victim clarified that Defendant's hand did not touch her "privates," but that "[i]t was above—a little above [her] privates."

{4} Victim testified that she then "got up and [she] went to go and tell [her] aunt." While she told her aunt that Defendant was unzipping her pajamas, she chose not to tell her aunt that Defendant put his hand

in her underwear as she was embarrassed and scared. Soon thereafter, her aunt called her mother, and her mother "rushed over to the house" to pick her up. It was not until later, when she arrived at her own home that she told her mom Defendant put his hand in her underwear.

{5} Following the trial, the jury was provided, in relevant part, with the instruction containing the elements of CSCM and the definitions of "mons veneris," "vulva," and "vagina." The jury was not provided with an instruction defining "groin." During closing arguments, the State informed the jury that "[t]here is no legal definition for the groin area." The State posed to the jury: "[i]s there a way for a 21-year old man to have his hands in [her] underpants without touching the groin area? What do you consider the groin? . . . [D]oes the groin area extend past the underpants? If it does, we have ourselves an element[] that is met." Defendant did not object to the State's comments in closing arguments or to the absence of a definition for "groin" in the jury instructions. The jury convicted Defendant of CSCM. Defendant appeals this conviction.

II. DISCUSSION**a. There Was Sufficient Evidence Presented to Sustain Defendant's Conviction**

{6} Defendant contends that there was insufficient evidence presented at trial to sustain his conviction for CSCM. The standard of review for a sufficiency of the evidence claim requires the appellate court to evaluate whether substantial evidence exists to support the verdict. *See State v. Rudolfo*, 2008-NMSC-036, ¶ 29, 144 N.M. 305, 187 P.3d 170. This standard requires that "[w]e review the evidence introduced at trial to determine whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Gipson*, 2009-NMCA-053, ¶ 4, 146 N.M. 202, 207 P.3d 1179 (internal quotation marks and citation omitted). "This Court evaluates the sufficiency of the evidence in a criminal case by viewing the evidence in the light most favorable to the verdict, resolving all conflicts and indulging all permissible inferences in favor of upholding the conviction, and disregarding all evidence and inferences to the contrary." *State v. Trujillo*, 2012-NMCA-092, ¶ 5, 287 P.3d 344. "We do not reweigh the evidence or substitute our judgment for that of the fact finder

as long as there is sufficient evidence to support the verdict.” *Gipson*, 2009-NMCA-053, ¶ 4.

{7} CSCM consists of “the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one’s intimate parts.” Section 30-9-13(A). The statute defines “‘intimate parts’” as “the primary genital area, groin, buttocks, anus or breast.” *Id.* In order for the State to prove CSCM in this case, it was required to show, in relevant part, beyond a reasonable doubt that Defendant “touched or applied force to the unclothed [vagina, vulva, and/or groin area] of” Victim. UJI 14-925 NMRA. The jury here was instructed accordingly. Both parties recognize, and this Court has previously acknowledged that the CSCM statute does not provide a definition of “groin.” See *State v. Benny E.*, 1990-NMCA-052, ¶ 18, 110 N.M. 237, 794 P.2d 380 (recognizing that the Legislature has not “specifically defined” the term “groin” as it pertains to CSCM).

{8} Defendant contends that the State failed to prove that Defendant unlawfully touched Victim’s “unclothed vagina, vulva and/or groin” as Victim was “small for her age” and her underwear were “granny panties, . . . such that the waist band of the underwear when worn was near the belly button of [a] small girl.” Furthermore, Defendant argues that because Victim explicitly stated that Defendant did not touch “her privates, . . . there is no way the jury could have found that [Defendant] touched [Victim’s] vagina, vulva, mons veneris[,] or groin area.” We disagree.

{9} Victim testified that while Defendant’s hand was “[n]ot very far” underneath her underwear, it was “a little above [her] privates.” It would be reasonable for a jury to assume that when Victim, a young child, was testifying regarding her “privates,” she was referring to what is technically termed to be her “vulva” or her “vagina.” Thus, Victim made clear that Defendant did not “touch[] or appl[y] force to [her] unclothed [vagina or vulva.]” UJI 14-925. Accordingly, we must determine whether there was sufficient evidence presented at trial for a jury to conclude beyond a reasonable doubt that Defendant “touched or applied force to [Victim’s] unclothed [groin area.]” *Id.* (alteration omitted).

{10} As we have stated, the Legislature has not promulgated a definition for the terms “groin or groin area.” Therefore, we

must turn to this Court’s previously identified “common meaning of the word—the fold or depression marking the line between the lower part of the abdomen and the thigh, as well as the region of that line.” *Benny E.*, 1990-NMCA-052, ¶ 18. The best way to clearly describe and explain the area encompassed by this “common meaning” is to imagine an individual sitting in a chair. When a person is sitting, a fold naturally appears delineating “the lower part of the abdomen and the thigh[.]” *Id.* As the common meaning encompasses the “region of that line,” *id.*, if we were to place a straight-edge across the fold that is created, the line of the straight-edge would fall slightly above the mons veneris. The mons veneris is identified as “the rounded eminence or protuberance at the lowest point of the abdomen of a woman that is ordinarily covered with pubic hair on an adult.” UJI 14-981 NMRA (“The upper border of the hair on the mons veneris forms a horizontal line.”). Accordingly, when Victim stated that Defendant put his hand beneath her underwear and was rubbing the skin “a little above [her] privates[,]” a jury could have reasonably determined that Defendant “touched or applied force to [Victim’s] unclothed [groin area.]” UJI 14-925; *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (stating that an appellate court does “not weigh the evidence and may not substitute its judgment for that of the fact finder so long as there is sufficient evidence to support the verdict”).

{11} Insofar as Defendant argues that Victim’s underwear may have been too large, such that the waistband was near her bellybutton, and she testified that Defendant’s hand was “[n]ot very far” beneath the waistband of her underwear we first note that Defendant points us to nothing in the record showing how the underwear fit Victim at the time of the assault. See Rule 12-213(A)(4) NMRA (stating that the appellant is responsible for providing citations to the record relevant to his or her argument). Furthermore, Victim testified that Defendant was rubbing “a little above [her] privates[,]” and “[i]t is the exclusive province of the jury to resolve factual inconsistencies in [that] testimony.” *State v. Ortiz-Burciaga*, 1999-NMCA-146, ¶ 22, 128 N.M. 382, 993 P.2d 96 (internal quotation marks and citation omitted). Accordingly, we conclude there was sufficient evidence presented at trial to sustain Defendant’s conviction of CSCM.

b. The Jury Was Not Improperly Instructed

{12} Defendant alleges that the State “created an issue when [it] offered a conjectural definition for ‘groin’ that does not match the commonly accepted definition[.]” As Defendant acknowledges, in the district court below, he neglected to object to the jury instructions or the State’s comments during closing argument that he now disputes. Thus, he asks that we review this issue for fundamental error. “The doctrine of fundamental error applies only under exceptional circumstances and only to prevent a miscarriage of justice.” *State v. Barber*, 2004-NMSC-019, ¶ 8, 135 N.M. 621, 92 P.3d 633. One basis for “establishing fundamental error occurs when a mistake in the process makes a conviction fundamentally unfair notwithstanding the apparent guilt of the accused.” *State v. Nevarez*, 2010-NMCA-049, ¶ 24, 148 N.M. 820, 242 P.3d 387 (internal quotation marks and citation omitted). In such a context, we must first make “a determination as to whether a reasonable juror would have been confused or misdirected by the jury instruction.” *Id.* ¶ 25. However, we have stated that “[t]here is no miscarriage of justice where, despite any misunderstanding by the jury, the circumstances of the case demonstrate that all the necessary elements of the offense were satisfied beyond a reasonable doubt.” *Id.* ¶ 26.

{13} We note that aside from citing case-law for the fundamental error standard of review and the “common meaning” for the definition of “groin,” Defendant fails to present a comprehensive and developed argument explaining how the jury instructions or the State’s descriptive statements during closing arguments constituted fundamental error. Defendant does not argue that UJI 14-925 was not the proper instruction in this case. Defendant merely asserts that “the prosecutor created an issue[,]” but does not elaborate or develop the issue any further. If the State created an issue of fundamental error during closing arguments, it is the Defendant’s responsibility to establish this error. See *State v. Sosa*, 2009-NMSC-056, ¶ 26, 147 N.M. 351, 223 P.3d 348 (recognizing the three factors that influence an appellate court’s decision for determining whether an error meets the threshold to reverse a conviction are “(1) whether the statement invades some distinct constitutional protection; (2) whether the statement is isolated and brief, or repeated and persuasive; and (3) whether

the statement is invited by the defense”). Defendant has failed to establish or develop any error in this case. *Id.* ¶ 25 (“Only in the most exceptional circumstances should [the appellate court], with the limited perspective of a written record, determine that all the safeguards at trial level have failed [to address improper statements by counsel during closing argument and] should we reverse the verdict of a jury[.]”). “[T]his Court’s policy is to refrain from reviewing unclear or undeveloped arguments [that] require us to guess at what [a party’s] arguments might be[.]” thus, we decline to review this undeveloped argument any further. *State v. Urioste*, 2011-NMCA-121, ¶ 29, 267 P.3d 820 (internal quotation marks and citation omitted).

c. Defendant Failed to Show He Received Ineffective Assistance of Counsel

{14} Finally, pursuant to *State v. Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-

029, ¶¶ 17-24, 103 N.M. 655, 712 P.2d 1, Defendant argues that his trial counsel was ineffective as counsel did not object to the jury instructions or the State’s reference to the term “groin” in closing arguments. “We review claims of ineffective assistance of counsel de novo.” *State v. Dylan J.*, 2009-NMCA-027, ¶ 33, 145 N.M. 719, 204 P.3d 44.

{15} We note that while Defendant contends he was subjected to ineffective assistance of counsel, he does little more than cite to relevant caselaw. Additionally, he fails to provide a developed argument or analysis that would assist this Court in determining whether a prima facie case for ineffective assistance of counsel was established. As we have stated, we will not review unclear or undeveloped arguments that would require us to speculate as to the party’s intended argument. See *Urioste*, 2011-NMCA-121, ¶ 29. Accordingly, the Court is unable to properly analyze Defendant’s ineffective assistance

of counsel argument, and we must further conclude that Defendant has not established a prima facie case for ineffective assistance of counsel. Defendant can still pursue habeas corpus proceedings regarding this claim. See *State v. Hobbs*, 2016-NMCA-006, ¶¶ 19, 23, 363 P.3d 1259 (stating that there is a preference for habeas corpus proceedings as the avenue for adjudicating ineffective assistance of counsel claims, especially when the record fails to establish a prima facie case and further development is necessary), *cert. denied*, 2015-NMCI-012, 370 P.3d 472.

III. CONCLUSION

{16} For the foregoing reasons, we affirm Defendant’s conviction.

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

TIMOTHY L. GARCIA, Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

M. MONICA ZAMORA, Judge



CUDDY & MCCARTHY, LLP
Attorneys at Law

Cuddy & McCarthy, LLP is honored to announce it has been selected by U.S. News & World Report and Best Lawyers to be included in the 2017 Edition of "Best Law Firms" rankings.

We would also like to congratulate the following attorneys in being selected to the 2017 Best Lawyers in America:

Patricia Salazar Ives	Administrative/Regulatory Law
Arturo L. Jaramillo	Commercial Litigation
Julie A. Wittenberger	Family Law
James S. Rubin	Land Use & Zoning Law Litigation – Land Use & Zoning Real Estate Law

SANTA FE OFFICE

1701 Old Pecos Trail, Santa Fe, NM 87505
Tel: 505-988-4476 • Fax: 505-954-7373

ALBUQUERQUE OFFICE

7770 Jefferson NE, Suite 102, Albuquerque, NM 87109
Tel: 505-888-1335 • Fax: 505-888-1369

www.cuddymccarthy.com



save the date



**2017 Annual Meeting—
Bench & Bar Conference**

July 27-29

Inn of the Mountain Gods

287 Carrizo Canyon Road
Mescalero, NM

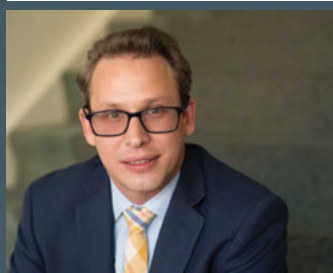
575-464-7012 or 800-545-9011

Rates starting at \$139.99

for a standard room plus room tax

Deadline: June 26, 2017

Parnall & Adams Law



Giving and accepting referrals.

(505) 600-1417

Personal Injury - Consumer Protection - Indian Law

www.ParnallAdams.com

610 Gold Ave, SW, STE 102, Albuquerque, NM 87102



MEDRANOSTRUCK, PC

Representing Injured People
Around New Mexico

505-217-2200

MedranoStruckLaw.com

500 Tijeras Ave. NW
Albuquerque, NM 87102

Aquí, los abogados hablan Español



MARIO M. MEDRANO

We are accepting cases involving:

- Wrongful Death Actions
- Auto Accidents
- Trucking Accidents
- Dog Bites
- Slip and Fall
- Trip and Fall
- Uninsured Motorist
- Underinsured Motorist
- Insurance Bad Faith
- Unfair Claims Handling



RAYNARD STRUCK

Raynard is also available for:

- Mediations
- Arbitrations (Panel or Single)
- Settlement Conferences
- Personal Representative (PI)
- Guardian ad litem (PI)
- Pepperdine University Law – Straus Institute “Mediating the Litigated Case” seminar participant (2016)



Specializing in Serving Attorneys and Law Firms

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

**9 Convenient Locations
Throughout the State**

useaglefcu.org
888-342-8766



Bridge the Gap Mentorship Program



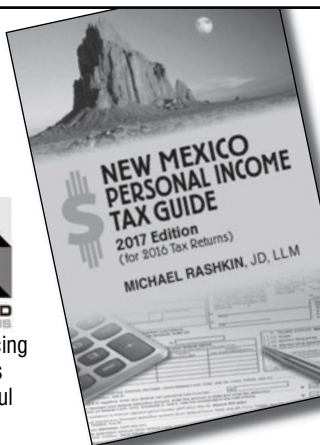
For more information and to apply,
go to www.nmbar.org

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





TAX TREND
PUBLICATIONS
is introducing
450 pages
of insightful
analysis



This book comprehensively explains and analyzes the **New Mexico personal income tax** law in an understandable manner, making it easy for professionals and taxpayers to plan for and comply with. Every important topic is described and analyzed, including the following:

- Refundable credits and rebates
- Film production incentives
- Business-related credits
- Audits and disputes
- Interest and penalties
- Residency ■ Community property
- Apportionment and allocation
- Military and Native American issues
- Collection and enforcement
- Filing requirements and estimated taxes
- Taxable income, net income and base income

Learn more and order at:

www.taxtrendpublications.com



Brian Letherer

Representing 24 Insurance Companies

*We solve Professional
Liability Insurance Problems*

**We Shop, You Save.
New programs for
small firms.**

1540 Juan Tabo NE, Suite H, Albuquerque, NM 87112
bletherer@licnm.com • 505.433.4266

www.licnm.com

Bill Chesnut, MD

Orthopedic Surgeon, Retired



Expert Medical Witness
Medical Record Review
and IMEs

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

Never tried a case? Need help preparing for trial? Difficult witness? Can't settle your case?

NOW ACCEPTING REFERRALS

Trial Collaboration Case Analysis Witness Preparation



mjkeefe@theabqlawfirm.com
505-262-0000

Keefe & Associates LLC

WILLIAM A. SANCHEZ
Retired District Judge



**Mediation, Arbitration
and Settlement Facilitation**



Over 21 years experience on the District Court Bench
as Trial Judge. Special Master Services also available.

Offices in Albuquerque and Los Lunas

SANCHEZ SETTLEMENT & LEGAL SERVICES LLC
(505) 720-1904 • sanchezsettled@gmail.com • www.sanchezsettled.com

ETHICAL ISSUES IN PRO BONO

**The Volunteer Attorney Program and
Justice for Families Project**
are holding a CLE for Volunteer Attorneys
(2.0 E/P Credits)
on Friday, March 10, 2017
from 4:00 pm – 6:00 pm
at New Mexico Legal Aid,
301 Gold Ave. SW, Albuquerque, NM 87102.

Free for VAP volunteers and attorneys willing to sign up to take a
VAP/JFP case or staff a legal clinic. Donations welcome from
non-volunteers (\$50 or more per person suggested).

If you have questions or would like to attend this CLE, please contact
Jane Zhi at 505-814-5038 or janez@nmlegalaid.org



Volunteer Attorney Program

A Program of New Mexico Legal Aid

Justice for Families Project

Caren I. Friedman
APPELLATE SPECIALIST

505/466-6418
cf@appellatecounsel.info

Evan Spain Hobbs, J.D., LL.M.

Advising trustees and litigators on:
the construction, modification and
termination of trusts; fiduciary duties;
breach of trust; remedies; limits on
liability; and unjust enrichment.

(505) 433-4518
ehobbs.law@gmail.com
www.abqtrust.com



Legal Support Services, LLC

Dana L. Kranz

**Medical Record Reviews/Summaries
Deposition Summaries
Demand Preparation**

505-382-1572

email: danakranz1@gmail.com
info@summitlegalsupportsvc.com
www.summitlegalsupportsvc.com

NEW YORK LIFE
The Company You Keep®
www.newyorklife.com

Anthony Gallegos, J.D. LUTCF
Financial Services Professional

Agent
New York Life Insurance Company
6565 Americas Parkway NE, Suite 500
Albuquerque, NM 87110
880-2082

Registered Representative
for NYLIFE Securities LLC (Member
FINRA/SIPC), a Licensed Insurance Agency
6565 Americas Parkway NE,
Ste 500 • Albuquerque, NM 87110
505 888-2000



JANE YOHALEM
Appeals Specialist

(505) 988-2826 • jbyohalem@gmail.com

**A Civilized Approach to Civil
Mediation**

Karen S. Mendenhall
The Mendenhall Firm, P.C.
(505) 243-3357
KarenM@Mendenhallfirm.com

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

Shona L. Zimmerman, Esq.
Legal Research & Writing
Civil & Domestic Matters
Quality, Timely & Affordable
Shona@esqlimited.com
(505) 449-8141



Join a State Bar Practice Section
Practice area-targeted resources
Networking • Discounts on CLE Programs
www.nmbar.org > About Us > Sections

Positions

Legal Notice

Request for Proposal Number: 17-0002

Title: Impartial Hearing Officers on-behalf of NMDVR. Issued by: State of New Mexico, Division of Vocational Rehabilitation (NMDVR). Purpose: The purpose of this Request for Proposals (RFP) is to procure one or more Offerors to provide Impartial Hearing Officer (IHO) services for New Mexico Division of Vocational Rehabilitation (NMDVR) and the New Mexico Commission for the Blind (NMCFTB) in administrative proceedings involving vocational rehabilitation or independent living services. One of the major goals NMDVR and NMCFTB is to put individuals with disabilities to work through its vocational rehabilitation services programs. Another goal is to assist individuals with disabilities in becoming and remaining as independent as possible through the NMDVR and NMCFTB's independent living programs. An NMDVR or NMCFTB applicant or eligible individual may request an administrative hearing if the individual is dissatisfied with a determination made by NMDVR or NMCFTB personnel pertaining to issues such as eligibility, service provision or case closure. The IHO determines whether the NMDVR or NMCFTB's position will be upheld or whether the individual's position should be adopted by the NMDVR or NMCFTB. The IHO makes decisions applying applicable State plans, Federal vocational rehabilitation and independent living laws and regulations, and State rules and policies that are consistent with Federal requirements. General information: NMDVR has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below: Maureena Williams; New Mexico Division of Vocational Rehabilitation, 435 St. Michael's Dr. Building D, Santa Fe, NM 87505; Telephone Number (505) 954-8532; Email: MaureenaR.Williams@state.nm.us. Issuance: The Request for Proposals will be issued on Wednesday February 1, 2017. Interested persons may access and download the document copy of the RFP from the NMDVR website at: <http://www.dvrgetsjobs.com> or by contacting Maureena Williams, Procurement Manager, and requesting a copy of RFP#17-0002 Impartial Hearing Officers on-behalf of NMDVR. Any questions or inquiries concerning this request including obtaining referenced documents, should be directed to the NMDVR Procurement Manager. Pre-Proposal Conference: A pre-proposal conference will be held on Friday February 10, 2017, beginning at 10:00 am Mountain Standard Time/Daylight for the purpose of reviewing the Request for Proposal as indicated in the sequence of events. Proposal Due Date and Time: Proposals must be received by

13th Judicial District Attorney Senior Trial Attorney, Trial Attorney, Assistant Trial Attorney Cibola, Sandoval, Valencia Counties

Senior Trial Attorney - This position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence, as well as the ability to handle a full-time complex felony caseload. Admission to the New Mexico State Bar and a minimum of five years as a practicing attorney are also required. Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for an entry to mid-level attorney to fill the positions of Assistant Trial Attorney. This position requires misdemeanor and felony caseload experience. Assistant Trial Attorney - an entry level position for Cibola (Grants), Sandoval (Bernalillo) or Valencia (Belen) County Offices. The position requires misdemeanor, juvenile and possible felony cases. Upon request, be prepared to provide a summary of cases tried. Salary for each position is commensurate with experience. Send resumes to Reyna Aragon, District Office Manager, PO Box 1750, Bernalillo, NM 87004, or via E-Mail to: RAragon@da.state.nm.us. Deadline for submission of resumes: Open until positions are filled.

Real Estate Attorney

Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for an attorney with 5-8 years experience in real estate matters for our Albuquerque office. Experience in land use, natural resources, water law, environmental law and/or other real estate related practice areas a plus. Prefer New Mexico practitioner with strong academic credentials and broad real estate background. Firm offers excellent benefit package. Salary commensurate with experience. Please send indication of interest and resume to Cathy Lopez, P.O. Box 1888, Albuquerque, NM 87103 or via e-mail to hr@rodey.com. All inquiries kept confidential.

Attorney

WILLIAM F. DAVIS & ASSOC., P.C. a law firm located in North East Albuquerque, is accepting applications for an Attorney with 0 to 3 years experience with motivation to learn and grow in a dynamic law firm concentrating in the area of business reorganizations. Candidate should be willing to work hard and learn the bankruptcy practice. Law school courses/experience in Bankruptcy, Secured Transactions and UCC preferred. Our practice consists primarily of Chapter 11 bankruptcy proceedings and general commercial litigation. Our firm offers competitive salary, excellent benefits and a positive work environment. The position is available immediately. Please send resume via email to: diane@nmbankruptcy.com

Associate Attorney

Ray McChristian & Jeans, P.C., an insurance defense firm, is seeking a hard-working associate attorney with 2-5 years of experience in medical malpractice, insurance defense, insurance law, and/or civil litigation. Excellent writing and communication skills required. Competitive salary, benefits, and a positive working environment provided. Please submit resume, writing sample and transcripts to palvarez@rmjfirm.com.

Associate Attorney

The Jones Firm in Santa Fe is seeking an associate attorney with one to five years' experience to join our practice. The associate will assist with our regulatory practice before administrative agencies and provide support to the Firm's litigation team. We are looking for attorneys with excellent trial, research, and writing skills and consider clerkship experience beneficial. The Jones Firm offers competitive compensation and benefits. Please provide a resume, references, recent writing sample, and university and law school grade transcripts to terri@thejonesfirm.com by February 28, 2017.

Associate Attorney

Holt Mynatt Martinez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking an associate attorney with 3-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Prefer attorney licensed in New Mexico and Texas but will consider applicants only licensed in Texas. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to bb@hmm-law.com.

Attorney

McGinn, Carpenter, Montoya & Love, P.A. is seeking a full time New Mexico licensed attorney with 0-3 years of legal experience. Candidates must have excellent written communication skills. Please send a resume with cover letter and a writing sample to Jenn@mcginnlaw.com. All replies will be kept confidential.

Attorney

Krehbiel & Barnett, P.C., a medical malpractice defense firm, seeks an attorney with at least two years of experience. We are a small law firm looking to expand. We seek an attorney who is willing to grow with the practice. Candidate should have strong writing and analytical skills. Please send letter of interest and resume to Leah Chapa at lechapa@lady-justice.us.

Associate Attorney

Fast-paced, personal injury firm located in Albuquerque seeks a litigation attorney. Ideal applicant candidate will have 2 to 7 years of experience. Primary responsibilities will include managing a busy caseload, handling cases through all stages of suit and working with support staff to resolve or try cases. Experience in personal injury law, for either plaintiffs or defendants is required. If interested, please send a resume and letter of interest to stacyw@abogadoelias.com. Inquiries will be kept confidential.

Trial Attorney

Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Sierra County (Truth or Consequences). Must be admitted to the New Mexico State Bar and be willing to relocate within 6 months of hire. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Entry-Level Associate Trial Attorney

Position available for an entry-level Associate Trial Attorney in Las Vegas, New Mexico. Requirements include J.D. and current license to practice law in New Mexico. Please forward your letter of interest and resumé to Richard D. Flores, District Attorney, P.O. Box 2025, Las Vegas, New Mexico 87701; or via e-mail: rflores@da.state.nm.us Salary will be based on experience, and in compliance with the District Attorney's Personnel and Compensation Plan.

Litigation Associates

Atwood, Malone, Turner & Sabin, PA, is a defense litigation firm specializing in medical malpractice, worker's compensation, and general insurance defense throughout the State of New Mexico. The firm is seeking a 0-2 year and a 2-4 year associate to join its Roswell office. Candidates should be eligible for admission to the New Mexico bar. The lateral candidate should have litigation experience in one or more of the following practice areas: General Liability including employment and municipality defense; Professional liability; or Medical malpractice defense. The ideal candidates will have solid academic credentials, the ability to write persuasively and articulate a position clearly, the ability to work effectively within a team, and a desire to travel within the state of New Mexico. We offer competitive compensation and superb mentorship and training to help associates build their careers toward partnership. This is an excellent opportunity to join a sophisticated law practice located in a community with nearby outdoor recreational activities, great public schools, and a low cost of living. Salary and benefits are competitive. Please send resumes, references, and writing sample to qperales@atwoodmalone.com.

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

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

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

Assistant Attorney General I Albuquerque Full time

Job Reference # 10105573

The New Mexico Office of the Attorney General, Consumer and Environmental Protection Division, an Equal Employment Opportunity (EEO) employer, is seeking applicants for an "At Will" (not classified) Assistant Attorney General I position. An "At Will" position is one which is exempt from the Personnel Act, Section 10-9-4 NMSA 1978, and the employee serves at the pleasure of the New Mexico Attorney General. Job Responsibilities include: Investigating consumer complaints to determine the need for and viability of action, up to and including litigation; Negotiating informal and formal settlement agreements with targets; Meeting with and interviewing consumers; Drafting agreements, pleadings, memoranda, correspondence, and opinions; Appearing in Court. Job Requirements include: Licensed to practice law in New Mexico; 1-3 years' experience with all aspects of civil litigation, including motions practice and discovery; Ability and desire to work as part of a team; Well-developed oral and written communication skills; Bilingual preferred. Salary is commensurate with experience. Letter of interest, resume, writing sample and three professional references should be sent to the Office of the Attorney General. The position will remain open until filled. 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 Office of the Attorney General, Attn: Cholla Khoury; E-mail: ckhoury@nmag.gov; (505) 490-4052; P.O. Drawer 1508, Santa Fe, NM 87504-1508.

Paralegal

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

Position Announcement Legal Assistant 2017-03

The Federal Public Defender office for the District of New Mexico is accepting applications for a Legal Assistant position to be stationed in Albuquerque. Federal salary and benefits apply. Minimum qualifications are high school graduate or equivalent and at least three years legal secretary experience, federal criminal experience preferred. Starting salary ranges from a JSP-6 to JSP-8, currently yielding \$36,706 to \$45,174 annually depending on experience. This position provides secretarial and clerical support to the attorneys and staff utilizing advanced knowledge of legal terminology, word and information processing software. Legal Assistants must understand district and circuit court rules and protocols; edit and proof-read legal documents, correspondence, and memoranda; transcribe dictation; perform cite checking and assemble copies with attachments for filing and mailing. Duties also include screening and referring telephone calls and visitors; screening incoming mail; reviewing outgoing mail for accuracy; handling routine matters as authorized; assembling and attaching supplemental material to letters or pleadings as required; maintaining calendars; setting appointments as instructed; organizing and photocopying legal documents and case materials; and case file management. The ideal candidate will have a general understanding of office confidentiality issues, such as attorney/client privilege; the ability to analyze and apply relevant policies and procedures to office operations; exercise good judgment; have a general knowledge of office protocols and secretarial processes; analyze and recommend practical solutions; be proficient in WordPerfect, Microsoft Word and Adobe Acrobat; have the ability to communicate effectively with assigned attorneys, other staff, clients, court agency personnel, and the public; and have an interest in indigent criminal defense. Must possess excellent communication and interpersonal skills, and be self-motivated while also excelling in a fast paced team environment. Spanish fluency a plus. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. Position subject to the availability of funds. In one PDF document, please e-mail your resumé with cover letter and 3 references to: Melissa Dearing, Administrative Officer, FDNM-HR@fd.org. Must be received no later than 3/3/2017. Only those selected for an interview will be contacted. No phone calls.

File Clerk/Receptionist

File clerk/receptionist needed in small Santa Fe law office twenty-four hours per week. Must have legal experience, be proficient in Microsoft Word and Outlook. Non-smoker. Send resume to 1975lawoffice@gmail.com

Paralegal

Small firm with a focus on personal injury, consumer protection, and tribal law, seeking a full or part-time paralegal that has experience handling plaintiffs work. We are an easy duo to work for, we keep things light, and we both have a passion for helping people. Please be skilled in case management and good with people. Send resume to: david@parnalladams.com

Account Executive

Ready for a positive change, to utilize your unique skills, and take your career in a new direction? Aon is looking for an attorney with 2-5 years of experience in contract law or areas of litigation that lend itself to success in our risk management firm. As part of an industry-leading team, you will help empower results for our clients by delivering innovative and effective solutions as part of our Property & Casualty (P&C) business group within Aon Risk Solutions in Albuquerque, NM. The position will be responsible for the day to day account management of P&C business. This person would identify and meet client needs, as well as retain and grow a book of business. After a successful mentoring period, we would look for this individual to assume a leadership role in the P&C practice, with the capability to identify talent, and create a positive team culture. Please apply online: <http://bit.ly/2jzr2vL>. To learn more about Aon: www.aon.com

Visit the
State Bar of
New Mexico's
website

www.nmbar.org

Services

Freelance Paralegal

Experienced freelance paralegal available for civil litigation cases. Excellent references. civilparanm@gmail.com. If you can use the credit card number you have on file, please do so. If not, please let me know and I'll call with the number.

Office Space

Two Offices For Rent

Two offices for rent, one block from courthouses, all amenities: copier, fax, printer, telephone system, conference room, high speed internet, and receptionist, office rent \$400 and \$700, call Ramona @ 243-7170.

In the Historic Rio Grande Corridor

Executive Office for Rent. Short distance from Courthouses and downtown, all amenities, copier, telephone service, conference room, high speed internet and receptionist. Free parking in private lot. Office rent \$2,000.00 p/mo. including workstation for secy./admin. asst. Call Rich/Pat at (505) 243-3500.

Miscellaneous

Searching for a Will

Searching for a Will for Amelia Dimas Lesperance. Deceased. Please call Robert Archibeque @ 505 850-2117.

NEW MEXICO LAWYERS AND JUDGES ASSISTANCE PROGRAM (JLAP)



Through JLAP, I've been given the freedom to become the person that I've always wanted to be. This program saved my life and my family.

—SM



Thanks to JLAP, I am happier, healthier and stronger than I have ever been in my entire life!

—KA

Free, confidential assistance to help identify and address problems with alcohol, drugs, depression, and other mental health issues.



Help and support are only a phone call away.

Confidential assistance – 24 hours every day.



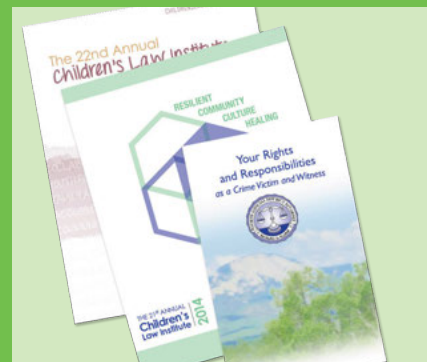
Judges call 888-502-1289

Lawyers and law students call 505-228-1948 or 800-860-4914

www.nmbar.org

Digital Print Center

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



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

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



STATE BAR
of NEW MEXICO
DIGITAL PRINT CENTER

Ask about
YOUR member
discount!

**Currently accepting advertising space reservations
for the upcoming Bench & Bar Directory!**

2017–2018

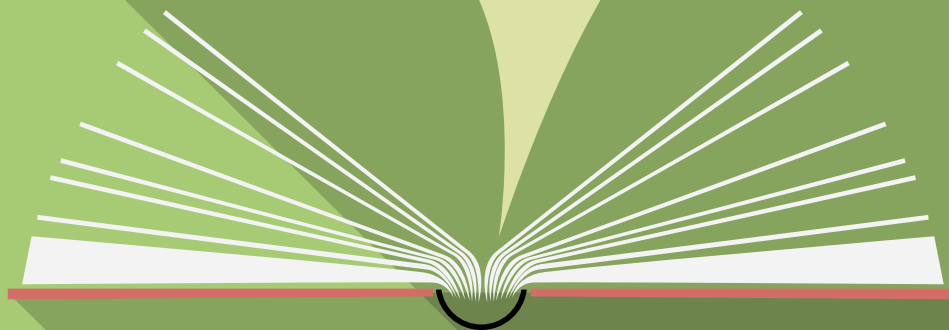
Bench & Bar Directory

Be visible to New Mexico attorneys, Judges,
courts administration and the public.

- Attorney Firm Listings
- Court Reporter Listings
- Section Dividers
- Full, half, and third page ads available

Advertising space reservation deadline: March 24, 2017

Directory starts to deliver the first week of June.



For more information, contact Marcia Ulibarri
505-797-6058 • mulibarri@nmbar.org