

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

March 1, 2017 • Volume 56, No. 9



Colorado River Oil, by Bhavna Misra (see page 3)

www.bhavnamisra.com

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—SPECIAL INSERT—
YLD In Brief

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

2017–2018

Bench & Bar Directory

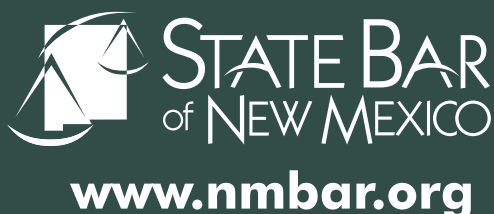
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courts administration and the public.

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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.

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Meetings

March

- 1**
Employment and Labor Law
Section Board, Noon, State Bar Center
- 2**
Elder Law Section Board,
Noon, State Bar Center
- 7**
Health Law Section Board,
9 a.m., teleconference
- 8**
Taxation Section Board,
11 a.m., teleconference
- 8**
Animal Law Section Board,
Noon, State Bar Center
- 8**
Children's Law Section Board
Noon, Juvenile Justice Center
- 9**
Business Law Section Board,
4 p.m., teleconference
- 9**
Public Law Section Board,
Noon, Montgomery and Andrews, Santa Fe
- 10**
Prosecutors Section Board,
Noon, State Bar Center
- 14**
Appellate Practice Section Board,
Noon, teleconference

Workshops and Legal Clinics

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

April

- 5**
Civil Legal Clinic
10 a.m.–1 p.m., Second Judicial District
Court, Albuquerque, 1-877-266-9861

About Cover Image and Artist: Bhavna Misra is a full-time painter. She works out of her Fremont, Calif., based art studio. Portraiture and wildlife are her preferred genres but she paints other things as well. She creates with love in her heart, respect towards the subject matter, and a complete dedication for a well-crafted artwork. She has participated in more than 17 exhibitions including five solo shows. She has won multiple awards for her work in juried fine arts shows and has been featured in newspapers including *Fremont Bulletin*, *Milpitas Post*, *Tri City Voice*, *Cupertino Courier*, *Ohlone Monitor* and *ArtAscent* art magazine. She lives in Fremont with her husband and two children. In spare time, she likes to take photos and spend time with her family. View more of her work at www.bhavamisra.com.

Notices

COURT NEWS

New Mexico Supreme Court Compilation Commission 2017 New Mexico Rules Annotated Now Available

The *Official 2017 New Mexico Rules Annotated* three-volume set is now available and may be purchased exclusively through the New Mexico Compilation Commission. The 2017 edition contains the complete library of annotated rules, forms and jury instructions governing the practice of law in the New Mexico courts, including the 667 new and amended rules effective through Dec. 31, 2016. Order a set now for \$90, plus shipping and tax, by calling the Commission at 505-827-4821 or Conway Greene at 1-866-240-6550.

Third Judicial District Court Applicants for Judicial Vacancy

Eight applications were received in the Judicial Selection Office as of 5 p.m., Feb. 16, for the Judicial Vacancy in the Third Judicial District Court due to the resignation of Hon. Darren M. Kugler effective Jan. 31. The Third Judicial District Judicial Nominating Commission met on Feb. 23 to evaluate the applicants for this position. The applicants are (in alphabetical order): **James Andrew Dickens, Richard M. Jacquez, Daniel Dixon James, Isabel Denise Jerbek, Keythan F. Park, Conrad Frederick Perea, AnneMarie Cherokee Peterson and Steven Gerard Sosa.**

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.

Professionalism Tip

With respect to my clients:

I will advise my client that civility and courtesy are not weaknesses.

Appellate Practice Section March Brown Bag Lunch with Judge French

Join the Appellate Practice Section and YLD for a brown bag lunch at noon, March 3, at the State Bar Center with guest Judge Stephen French of the New Mexico Court of Appeals. This lunch series is informal and is intended to create an opportunity for appellate judges and practitioners who appear before them to exchange ideas and get to know each other better. Those attending are encouraged to bring their own "brown bag" lunch. R.S.V.P. with Zach Ives at zach@ginlawfirm.com. Space is limited.

Board of Bar Commissioners Appointment to DNA-People's Legal Services, Inc.

The Board of Bar Commissioners will make two appointments to the DNA-People's Legal Services, Inc., Board for two-year terms. Members interested in serving on the Board should send a letter of interest and brief résumé by April 12 to Executive Director Joe Conte at jconte@nmbar.org or PO Box 92860, Albuquerque, NM 87199-2860.

Meeting Summary

The Board of Bar Commissioners met on Jan. 27 at the State Bar Center in Albuquerque. Action taken at the meeting was as follows:

- Approved the Dec. 14, 2016, meeting minutes as submitted;
- Accepted the 2016 year-end financials and executive summaries;
- Reviewed a five-year historical financial comparison;
- Tabled an intercompany reimbursement from the Bar Foundation to the State Bar; it will be discussed at a separate Finance Committee meeting;
- Denied a request to increase the amount of dues overpayment that will be refunded;
- Received an update on the refinance of the Bar Center and approved requesting the Bank to remove the Bar Foundation as an obligor on the note and making the Bar Foundation a pro forma obligor on the mortgage;

- Denied a request to sponsor a law clerk for the Arturo L. Jaramillo Summer Law Clerk Program and will reconsider for the 2018 budget;
- Received a dues update noting there were 1,934 active and 791 inactive members still outstanding as of Jan. 23;
- Received a report on the Dec. 22, 2016, and Jan. 18 Executive Committee meetings; the committee discussed correspondence from Chief Justice Charles Daniels regarding judges' membership in the State Bar and the Bar's draft response to the Court and also discussed the BBC agendas; the Board approved sending the response to Chief Justice Daniels;
- Discussed a request for assistance with funding for the judiciary and will discuss further with the Court;
- Received a report and recommendations from the Bylaws and Policies Committee as follows: a) approved the Taxation Section Bylaw amendments to Section 2.1 Enrollment, Section 6.2 Composition, Section 7.3 Eligibility for Office, and 7.4 Nominations and Voting with additional amendments requested by the committee; b) approved the Senior Lawyers Division Bylaw amendment to increase the size of its board with additional amendment by the committee; c) the committee reviewed the current delinquent accounts policy and didn't recommend any changes; and d) reviewed the Bar Foundation Bylaws regarding the elimination of the vice president position to match the State Bar Bylaws and the committee decided to review all of the bylaws and articles of incorporation and make recommendations for the Board's consideration;
- Appointed Raynard Struck to the vacancy in the First Bar Commissioner District through the remainder of the year;
- Appointed Elizabeth J. Travis to the vacancy in the Third Bar Commissioner District through the remainder of the year;
- Received a report from the Compensation Survey Committee and approved sending the survey to the membership

next month once it is finalized by the committee; an additional question will be added as to whether the individual or their employer pays their dues;

- Discussed the contract with Fastcase that expires at the end of July which contains a 180-day cancellation clause; decided to let it auto renew for an additional year and will continue to monitor online legal research software;
- Received annual reports from all committees and all but two practice sections and, pursuant to the State Bar Bylaws;
- Distributed the 2017 rosters for the Board's internal committees and the Supreme Court Board and Committee Liaisons and appointed commissioners to the board liaison vacancies;
- Received an update on the Bar Foundation's legal services programs, including ECL, LREP and general referral program;
- Held an election of officers for the Bar Foundation and the new officers are: Wesley Pool, president; Scotty Holloman, vice president; and Jerry Dixon, secretary-treasurer; and
- Held a reception at the Bar Center following the meeting in honor of the State Bar's 131st Birthday at which the 25 and 50-year practitioners were honored;

The minutes in their entirety will be available on the State Bar's website following approval by the Board at the April 21 meeting.

Paralegal Division

Spring Meet and Greet Event

The Paralegal Division invites current and prospective members for a meet and greet event 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 committee will consider all

nominated candidates and may nominate candidates on its own.

Solo and Small Firm Section

March Presentation Features

Former DA Kari Brandenburg

The next Solo and Small Firm Section luncheon presentation on unique law-related subjects will be from noon-1 p.m., March 22, at the State Bar Center. Kari Brandenburg, who recently completed four terms as Second Judicial District Attorney, will share impressions, experiences and prospects for criminal justice reforms. All are welcome and lunch will be provided. Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P.

Young Lawyers Division

Veterans Legal Clinic

The Veterans Legal Clinic seeks volunteer attorneys to provide brief legal advice (15-20 minutes) to Veterans in the areas of family law, consumer rights, bankruptcy, landlord/tenant, and employment during. The remaining clinic dates and times for 2017 are: March 14, June 13 and Sept. 12 from 8:30-11 a.m. For more information or to volunteer contact Keith Mier at KCM@sutinfirm.com.

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.
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Women's Law Caucus

Justice Mary Walters Award

Each year the Women's Law Caucus at the UNM School of Law chooses two outstanding women in the New Mexico legal community to honor in the name of former Justice Mary Walters, the first woman appointed to the New Mexico Supreme Court. In 2017 the WLC will honor Chief Judge Nan Nash of the Second Judicial District and First Assistant Federal Public Defender Margaret Katze at the Awards Dinner on March 22 at the Student Union Building on UNM's main campus. Individual tickets for the dinner can be purchased for \$50. Tables can be pur-



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announcements**
for publication in
the *Bar Bulletin* to
notices@nmbar.org
by noon Monday
the week prior
to publication.

chased for \$400 and seat approximately 10 people. Visit <http://goto.unm.edu/walters> to purchase tickets and receive additional information. R.S.V.P. by March 14. For more information, email WLC President, Lindsey Goodwin goodwili@law.unm.edu.

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/.

New Mexico Criminal Defense Lawyers Association

Federal Court Skills CLE

The New Mexico Criminal Defense Lawyers Association presents "Sharpening Your Skills for Federal Court" (5.7 G) 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.

Trial Skills College

The New Mexico Criminal Defense Lawyers Association's highly popular Trial Skills College is back this year with a new case file and an incredible faculty lineup. Hear lectures and demonstrations by some of the best trial attorneys in the state, then move into small groups for focused practice and feedback. Only 35 seats available at this two-day intensive workshop, with some seats available to civil attorneys as well. Visit www.nmcdla.org to register, or call 505-992-0050 for more information.

OTHER NEWS

Environmental Law Institute 13th Annual ELI Western Boot Camp on Environmental Law

The Environmental Law Institute's Annual Western Boot Camp will take place March 14-16 in San Francisco. Topics include sessions on the Clean Air Act,

the Clean Water Act, project development and NEPA, environmental liability in business, CERCLA, RCRA, criminal enforcement, environmental ethics, product regulation, and a discussion of recent developments in climate change. For more information and to register, visit <https://www.eli.org/events/13th-annual-eli-western-boot-camp-environmental-law%C2%AE-2017>.

Volunteer Attorney Program March and April CLE Programs

The Volunteer Attorney Program and Justice for Families Project are holding

two CLE programs for volunteer attorneys, "Ethical Issues in Pro Bono" (2.0 EP) from 4-6 p.m., March 10, and "Basics of Adoption Law (1.0 G) from 4-5 p.m., April 6. Both programs will be held at New Mexico Legal Aid, 301 Gold Ave. SW, Albuquerque, NM 87102. The CLEs are 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 (\$25 or more for the 1.0 G program and \$50 or more per person suggested for the 2.0 EP program). For more information or to register, contact Jane Zhi at 505-814-5038 or janez@nmlegalaid.org.

2017-2018 Bench & Bar Directory

Update Your Contact Information by March 24

To verify your current information: www.nmbar.org/FindAnAttorney

To submit changes (must be made in writing):

Online: Visit www.nmbar.org > for Members > Change of Address

Mail: Address Changes, PO Box 92860, Albuquerque, NM 87199-2860

Fax: 505-828-3765

Email: address@nmbar.org

Publication is not guaranteed for information submitted after March 24.

Legal Education

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 Sharpening Your Skills for Federal Court
5.7 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers Association
www.nmcdla.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>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 Ethical Issues in Pro Bono
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038</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>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>14 Planning to Prevent Trust, Estate and Will Contests
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>9 Advanced Workers Compensation
5.6 G
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</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>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>10 Reforming the Criminal Justice System
6.0 G
Webcast/Live Seminar, 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>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>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>23 Drafting Demand Letters
1.0 G
Teleseminar
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>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>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> | <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>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>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>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> |

March

- | | | |
|--|--|---|
| <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>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>31 Ethics for Government Attorneys
2.0 EP
Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>30 Trial Skills College
14.7 G
Live Seminar, Albuquerque New Mexico Criminal Defense Lawyers Association
www.nmcdla.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>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> | <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>19 Estate Planning and Elder Law
5.6 G, 1.0 EP
Live Seminar, Albuquerque Sterling Education Services, Inc.
www.sterlingeducation.com</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>6 Basics of Adoption Law
1.0G
Live Seminar, Albuquerque Volunteer Attorney Program
505-814-5038</p> | <p>21 Ethics of Representing the Elderly
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

May

- | | | |
|---|---|---|
| <p>5 Lawyer Ethics and Client Development
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 Ethics of Co-Counsel and Referral Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Drafting Gun Wills and Trusts— and Preventing Executor Liability
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>9 Undue Influence and Duress in Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Ethics in Discovery Practice
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 Ethics and Artificial Intelligence in Law Practice Software and Tools
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |



Michael Golden joined David Walther Law to augment the law firm's capacity in Santa Fe for mediation, settlement facilitation and collaborative divorce in financially complex cases. As an of counsel participant, Golden will concentrate on alternative dispute resolution in Santa Fe.



Two attorneys from Giddens, Gatton & Jacobus, PC, received the AV ratings from Martindale Hubble's peer review system. **George "Dave" Giddens** (left), a managing partner, received the highest AV rating available. Giddens



practices primarily in the fields of bankruptcy and commercial real estate. **Jesse Jacobus** (right) is a shareholder and received a preeminent AV rating from Martindale Hubble's peer review system. Jacobus practices primarily in the fields of personal injury, employment law, worker's compensations and medical malpractice.



Brownstein Hyatt Ferber Schreck has welcomed **Veronica Gonzales-Zamora** (left) and **Courtney Schumacher** (right) as associates. Gonzales-Zamora brings in depth experience in complex litigation and research to her commercial litigation practice.



Schumacher provides strong commercial litigation experience, rich in skills honed through work as an assistant public defender and law clerk in the public sector.



Martha J. Kaser has joined Pregenzer, Baysinger, Wideman & Sale, PC. Kaser will represent clients in the areas of family law, divorce, mediation, settlement facilitation, adoption, co-parenting coordination and guardian ad litem appointments. Kaser received her Juris Doctorate and her master's degree in social work from the University of Michigan.



The New Mexico Board of Bar Examiners is pleased to welcome two new board members, appointed by the Supreme Court of the State of New Mexico. **Rosalyn D. Nguyen** (left) is associate university counsel in the Health Sciences

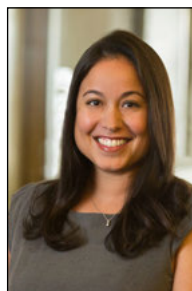


Center Office of University Counsel at the University of New Mexico where she practices in the fields of business, construction and health law and is the head attorney to UNM Sandoval Regional Medical Center, Inc. **Olga M. Serafimova** (right) serves as a staff attorney with the New Mexico Court of Appeals and is a former assistant attorney general with the New Mexico Office of the Attorney General, Criminal Appeals Division.



Ross Crown, a partner at the law firm of Lewis Roca Rothgerber Christie LLP, is the new president of the Great Southwest Council of the Boy Scouts of America. Crown, who received his law degree from the University of Michigan, will serve a two-year term as leader of the third largest council in the continental U.S.

The State Bar Senior Lawyers Division and Young Lawyers Division welcome newly-elected 2017 officers. The SLD has elected **Susan E. Page** as chair-elect, **Daniel J. Behles** as secretary-treasurer and **John P. Burton** as the Division's delegate to the Board of Bar Commissioners. The Young Lawyers Division has elected **Sean FitzPatrick** as chair-elect and **Sonia Raichur Russo** as vice chair.



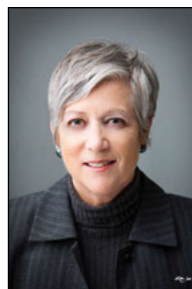
Denise M. Chanez has been named one of the Top Lawyers Under 40 by the Hispanic National Bar Association. Chanez is a director in the Rodey Law Firm practicing primarily in the areas of long term care and medical malpractice. She is a past president of the New Mexico Hispanic Bar Association and is the current co-chair of the State Bar of New Mexico Committee on Diversity in the Legal Profession.

Rodey, Dickason, Sloan, Akin & Robb, PA

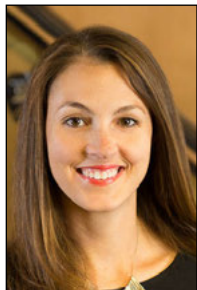
Benchmark Litigation: Top New Mexico Litigation Firm

Benchmark Litigation: Local Litigation Stars: **Jeff Croasdel, Jocelyn Drennan, Nelson Franse, Scott Gordon, Bruce Hall, Ed Ricco, Andy Schultz and Tom Stahl.**

Benchmark Litigation: Future Litigation Stars: **Cristina Adams, Jeff Lowry and Krystle Thomas.**



Montgomery & Andrews, PA, announces that **Shawn Mathis** has joined the firm. Mathis brings with her years of experience in private practice and healthcare legislation. She joins the firm as of counsel in healthcare and hospital Law at its Santa Fe location. Mathis received her J.D. from the University of Texas and an LL.M. in Health Law from Loyola University Chicago School of Law.



Cristina A. Adams (left), **Tyler M. Cuff** (center) and **Shannon M. Sherrell** (right) were elected to the Board of Directors of the Rodey Law Firm on Jan. 25. Adams is a member of Rodey's litigation department. Her practice focuses on medical malpractice defense. Cuff, who is a member of Rodey's litigation department, focuses his practice in the areas of products and general liability defense. Sherrell, also a member of Rodey's litigation department, focuses her practice in the areas of products and general liability litigation.



Debora E. Ramirez has joined the Rodey Law Firm. She brings more than 17 years of experience advising clients in connection with financing transactions, real estate transactions, mergers and acquisitions, securities law issues and general corporate matters. Ramirez is licensed to practice law in New Mexico and Texas. Before attending law school, Ramirez was a finance manager at a public energy company in Houston.



Bridget Mullins has joined Pregenzer, Baysinger, Wideman & Sale, PC. She will represent clients in the areas of guardianships, probate, wills, trusts and elder law and focus on Spanish-speaking clients. Mullins received her Juris Doctorate from the University of New Mexico as well as her master's degree in Latin American studies and received her bachelor's degree from Montana State University.



Sommer, Udall Hardwick & Jones PA (formerly, Sommer, Udall, Sutin, Hardwick, & Hyatt PA) and announces the retirement of **Michael Sutin** and **Kimball Udall** and announces its new shareholders: **Frank Kenneth Bateman** (left), **Jacqueline Berg** (center) and **Lisa Adelman** (right). Bateman's practice focuses on estate planning, probate and trust administration and special needs trusts. Berg's practice focuses on estate planning, probate and trust administration, health care law and guardian and conservatorship. Adelman's practice focuses on real estate, employment, environmental, administrative, commercial and civil law.

In Memoriam

Jeffrey Raymond McCombs, age 48, died on Oct. 2, 2016. Although he died young, he lived a full life, packed with experience and wisdom many only dream of attaining. McCombs graduated from Sam Houston High School in 1985, then entered the U.S. Army, where he served in the 51st Chemical Company. He was a self-taught, skilled guitarist who toured the state of Texas and beyond with loyal and caring band-mates. When McCombs decided a career in music was too grueling a life, he went to college at the University of Texas at Austin, receiving a partial baseball scholarship for his pitching ability. After graduating with a degree in philosophy, McCombs began his studies at Texas Tech University School of Law. He was admitted to the State Bar of Texas in May of 1998. He was a named partner and was with Henderson, Smith and McCombs until 2007, when he opened up his own law firm. McCombs was also admitted to the State Bar New Mexico, where he made the high score on the bar exam. In his personal life, McCombs traveled extensively, enjoying trips throughout the U.S., Europe and Australia. He was a trained gourmet chef who enjoyed displaying his talent for fusing different cuisines to his friends and family. To pair with his cooking, McCombs celebrated fine beer and wine from all regions of the world, but had a particular soft spot for French wines, earning him the nickname "Froggy." He was preceded in death by his parents Ronald McCombs and Linda Fields. He is survived by loving friends from all over the world who consider him a member of their families; his wife Eileen Grimm McCombs;

step-mother Bonnie Vick; step-father Jeff Fields; sisters Melinda Dieringer and Rhonda McCombs; and many loving nieces, nephews, and cousins.

John Reed Thompson died on July 10, 2016. Reed was born on May 30, 1961, to Joseph Bruce and Joann Alice Thompson in Albuquerque. He was preceded in death by his father, Joseph Bruce; aunts, Helen and Mary; uncles, Bill, Paul, and Yank; and cousins, Brock, David and Jenny. He is survived by his mother, Joann of S.C.; wife, Jeannie; step-children, Jessica Price of Florida, Charles and Felicia Town, their children Jacobly and Savannah, of California.; sisters, Mary and husband, Duncan Edwards, of North Carolina., and Marsha and her husband, Mason Gerety, of Arizona; nieces; Helen Gerety of Washington, Nora and her husband, Josh Jamilkowski, of Massachusetts; aunts, Elaine her husband, Harry, Maryann and Lorain; and several cousins and their families. Thompson began his career as an attorney in 1987. He worked as a prosecuting attorney for the 12th Judicial Court in Otero and Lincoln counties. He retired in 2014 and was employed as the attorney for Center of Protection Environment at the time of his passing. Thompson loved his careers, and most of all, helping other people. In the 1990s, he coached the Alamogordo High School Mock Trial Team and truly enjoyed this experience.

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

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 17, 2017

PUBLISHED OPINIONS

No. 34245	2nd Jud Dist Bernalillo CV-11-8965, J BARRAZA v TAX & REV (reverse and remand)	2/13/2017
No. 34375	3rd Jud Dist Dona Ana CR-12-285, STATE v N JIMENEZ (affirm in part, reverse in part and remand)	2/14/2017
No. 34277	2nd Jud Dist Bernalillo CR-10-6235, STATE v C IMPERIAL (affirm)	2/14/2017
No. 34845	2nd Jud Dist Bernalillo CV-06-4843, STATE UNINSURED v G GALLEGOS (affirm)	2/14/2017

UNPUBLISHED OPINIONS

No. 35765	13th Jud Dist Valencia JQ-15-26, CYFD v MATT M (affirm)	2/13/2017
No. 35737	2nd Jud Dist Bernalillo LR-15-22, STATE v I ISLAS (affirm)	2/13/2017
No. 34760	11th Jud Dist San Juan CR-13-835, STATE v D SMILEY (affirm)	2/14/2017
No. 35843	12th Jud Dist Otero PB-04-57, P TAYS v S TAYS (affirm)	2/14/2017
No. 34626	2nd Jud Dist Bernalillo CR-14-958, STATE v D GONZALES (affirm)	2/14/2017
No. 35936	3rd Jud Dist Dona Ana CR-15-51, STATE v C SCHMITT (affirm)	2/14/2017
No. 34846	1st Jud Dist Santa Fe CV-14-1301, M HEGARTY v SKILLED HEALTH (reverse and remand)	2/15/2017
No. 35690	8th Jud Dist Taos CV-15-264, L CLOCKMAN v B MARBURGER (affirm in part, dismiss in part and reverse in part)	2/15/2017
No. 35880	2nd Jud Dist Bernalillo CR-15-3331, STATE v J FREY (affirm)	2/15/2017
No. 34561	1st Jud Dist Santa Fe CV-13-2266, H JOHN v REHABILITATION CENTER (reverse and remand)	2/15/2017
No. 34730	13th Jud Dist Valencia JQ-11-7, CYFD v BRUCE V (affirm)	2/16/2017
No. 35078	2nd Jud Dist Bernalillo DV-10-1450, DM-10-2600, DV-13-11, S LOPEZ v A LOPEZ (affirm in part, dismiss in part)	2/16/2017

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

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

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 March 1, 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 (12/31/2016 unless specified otherwise)
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 manda- tory 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
- 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
6-207 Bench warrants 04/17/2017
6.207.1 Payment of fines, fees, and costs 04/17/2017
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
7-207 Bench warrants 04/17/2017
7-207.1 Payment of fines, fees, and costs 04/17/2017
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
8-206 Bench warrants 04/17/2017
8-206.1 Payment of fines, fees, and costs 04/17/2017
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
10-604 Withdrawn 05/18/2016*
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 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 12/31/2016

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

Rules/Orders

From the New Mexico Supreme Court

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

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

FEBRUARY 14, 2017

NO. 17-8300-001

IN THE MATTER OF THE AMENDMENT OF
RULE 6-207 NMRA OF THE RULES OF CRIMINAL
PROCEDURE FOR THE MAGISTRATE COURTS,
RULE 7-207 NMRA OF THE RULES OF CRIMINAL
PROCEDURE FOR THE METROPOLITAN COURTS,
AND RULE 8-206 NMRA OF THE RULES OF
PROCEDURE FOR THE MUNICIPAL COURTS, AND THE
ADOPTION OF NEW RULE 6-207.1 NMRA OF THE
RULES OF CRIMINAL PROCEDURE FOR THE
MAGISTRATE COURTS, NEW RULE 7-207.1 NMRA
OF THE RULES OF CRIMINAL PROCEDURE FOR THE
METROPOLITAN COURTS, AND NEW RULE 8-206.1
NMRA OF THE RULES OF PROCEDURE FOR THE
MUNICIPAL COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court to amend Rule 6-207 NMRA of the Rules of Criminal Procedure for the Magistrate Courts, Rule 7-207 NMRA of the Rules of Criminal Procedure for the Metropolitan Courts, and Rule 8-206

NMRA of the Rules of Procedure for the Municipal Courts, and to adopt new Rule 6-207.1 NMRA of the Rules of Criminal Procedure for the Magistrate Courts, Rule 7-207.1 NMRA of the Rules of Criminal Procedure for the Metropolitan Courts, and Rule 8-206.1 NMRA of the Rules of Procedure for the Municipal Courts, and the Court having considered the foregoing and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Petra Jimenez Maes, Justice Edward L. Chávez, Justice Barbara J. Vigil, and Justice Judith K. Nakamura concurring;

NOW, THEREFORE, IT IS ORDERED that the amendment of Rules 6-207, 7-207, and 8-206 NMRA is APPROVED;

IT IS FURTHER ORDERED that new Rules 6-207.1, 7-207.1, and 8-206.1 NMRA are ADOPTED;

IT IS FURTHER ORDERED that the above-referenced amendments and new rules shall be **effective for all cases pending or filed on or after April 17, 2017**; and

IT IS FURTHER ORDERED that the Clerk of the Court is authorized and directed to give notice of the above-referenced amendments by posting them on the New Mexico Compilation Commission web site and publishing them in the *Bar Bulletin* and *New Mexico Rules Annotated*.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels,
Chief Justice of the Supreme Court of the State of
New Mexico, and the seal of said Court this 14th day
of February, 2017.

Joey D. Moya, Chief Clerk of the Supreme Court of
the State of New Mexico

MAGISTRATE COURT CRIMINAL RULE 6-207. BENCH WARRANTS.

A. **Failure to appear or act.** If any person who has been ordered by the magistrate judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person, or by counsel when permitted by these rules, or fails to do the thing so ordered, the court may issue a warrant for the person's arrest. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the case file. Unless the judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause. The court shall not issue a bench warrant for failure to pay fines, fees, or costs unless the defendant has failed to timely respond to a summons issued in accordance with Rule 6-207.1 NMRA.

B. **Law enforcement information system.** If a bench warrant is issued in a felony, misdemeanor, or driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency.

C. **Execution and return.** A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

D. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

MAGISTRATE COURT CRIMINAL RULE 6-207.1. PAYMENT OF FINES, FEES, AND COSTS.

A. **Payment arrangements.** The court shall assess the defendant's ability to pay any fines, fees, or costs at the time of sentencing and shall consider the following types of payment arrangements in the order of priority set forth below.

(1) **Full payment at time of sentencing.** If the defendant is able to pay the full amount at the time of sentencing, the court shall require the defendant to do so.

(2) **Full payment within thirty (30) days of sentencing.** If the defendant cannot pay the full amount at the time of sentencing but will be able to pay within thirty (30) days, the court shall require the defendant to do so.

(3) **Agreement to pay.** If the defendant cannot pay the full amount within thirty (30) days after the date of sentencing, the court may permit the defendant to enter into an agreement to pay in installments. The court shall retain the authority to enforce an agreement to pay regardless of whether the defendant remains on probation or whether the defendant was placed on probation at all. An agreement to pay shall

- (a) be based on the defendant's individual circumstances;
- (b) require the largest possible payment amounts that the judge determines the defendant can make successfully;
- (c) require the first installment to be due no later than thirty (30) days after the date of sentencing;
- (d) schedule subsequent installments in intervals of thirty (30) days or less; and
- (e) schedule all payments to be made within the shortest practicable period of time.

(4) **Modification of the agreement to pay.** The court may, for good cause shown, modify the agreement to pay up to three (3) times, either by allowing the defendant additional time for payment or by reducing the amount of one or more installments. The court shall document the good cause shown with written findings in the case file.

B. Community service in lieu of payment. If the court finds at any time that the defendant is unable to pay all or part of the assessed fines, fees, or costs, the court shall permit the defendant to perform community service in lieu of payment of all or part of the assessed fines, fees, or costs owed to the court. The defendant shall receive credit toward the fines, fees, or costs at the rate of the prevailing federal hourly minimum wage or as otherwise required by law. If the defendant performs community service in lieu of payment, all hours must be completed by the deadline set by the court. If the defendant fails to perform community service as ordered by the court, the failure to perform community service shall be treated the same as a failure to pay, and the court shall follow the procedures set forth in Paragraphs C and D of this rule.

C. Failure to comply; issuance of summons or bench warrant.

(1) **Issuance and content of summons.** If the defendant fails to make a payment as ordered by the court, request a modification of an agreement to pay before the payment due date, or perform community service by the deadline set by the court, the court shall issue a summons within five (5) days of the deadline. The summons shall

- (a) instruct the defendant to either pay or appear at the court within fifteen (15) days after the date that the summons is issued;
- (b) if the summons does not set a specific hearing date and time, state that the defendant may request a hearing before the judge and that ability to pay will be addressed at any hearing; and
- (c) notify the defendant that a bench warrant shall be issued if the defendant fails to timely respond to the summons.

(2) **Service of summons.** The court may serve a summons under this paragraph using any method of service permitted by the Rules of Criminal Procedure for the Magistrate Courts.

(3) **Issuance of bench warrant.** If a defendant fails to comply with a summons issued under Subparagraph (C)(1) of this rule, the court shall issue a bench warrant for failure to pay or perform community service no later than five (5) days after the appearance date on the summons. Once the defendant has been arrested or

has surrendered on the warrant, the court shall hold a hearing under Paragraph D of this rule, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or by performing community service in lieu of payment.

(4) **Subsequent failure to comply.** The first time the defendant misses a payment under an agreement to pay or fails to perform community service by the deadline set by the court, the court shall follow the procedure set forth in Subparagraphs (C)(1) through (C)(3) of this rule. If the defendant subsequently fails to comply with an order to pay or to perform community service, the court may issue a bench warrant and is not required to issue a summons prior to issuing a bench warrant. Prior to issuing a bench warrant, the court may attempt to contact the defendant and make satisfactory arrangements to address the defendant's noncompliance. Once the court has issued a second bench warrant for failure to comply, the court shall not grant the defendant an extension or a renewed agreement to pay, except upon a written finding of exceptional circumstances.

D. Failure to comply hearing. The court shall hold a failure to comply hearing as set forth in a summons, at the defendant's request, or following the defendant's arrest or surrender on a bench warrant, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or performing community service in lieu of payment. If the defendant has been arrested and remains in custody, the court shall hold the hearing within three (3) days of the defendant's arrest. The defendant may appear at the hearing through an audio or audio-visual communication under Rule 8-109A NMRA. At the hearing the court shall determine the basis for the defendant's failure to pay or to perform community service as ordered by the court. If the court finds that the defendant is financially unable to pay, the court may modify the agreement to pay under Subparagraph (A)(4) of this rule; convert the unpaid fines, fees, or costs to community service; revoke any unpaid portion of a fine; or grant other appropriate relief. If the court finds that the defendant has willfully refused to pay or to perform community service, the court may order the defendant committed to jail under Section 33-3-11 NMSA 1978.

[Adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

Committee commentary. — If the defendant has failed to pay fines, fees, or costs owed to the court or to perform community service as ordered by the court, the court should issue a summons. The summons may set a specific hearing date and time. Alternatively, the summons may set a deadline by which the defendant must pay, request a modification to the agreement to pay, or request a hearing. In addition to issuing summonses for failure to pay, the court should develop and implement alternative methods for providing supplementary notice to the defendant through automated means, such as automated telephone calls, email messages, or text messages.

If the defendant requests a hearing prior to the issuance of bench warrant under Subparagraph (C)(3) of this rule, the court shall not issue a bench warrant prior to the hearing date.

Prior to assessing jail in lieu of payment, the court must afford the defendant adequate procedural due process protections and determine the defendant's ability to pay. The court must notify the defendant that ability to pay will be addressed at any hearing, provide the defendant with an opportunity to present and dispute information relevant to the defendant's ability to pay, and document any willful failure to pay with written findings in the court file. *See Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2520 (2011).

“It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that [the defendant] made a good faith effort to obtain the funds required for the payment.” NMSA 1978, § 31123(C) (1993); *see Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that imprisoning a person for failure to pay fines, without considering the reasons for the inability to pay, violates the constitutional guarantee of equal protection).

[Commentary adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

METROPOLITAN COURT CRIMINAL

RULE 7-207. BENCH WARRANTS.

A. Failure to appear or act. If any person who has been ordered by the metropolitan judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or fails to do the thing so ordered, the court may issue a warrant for the person's arrest. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the case file. Unless the judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause. The court shall not issue a bench warrant for failure to pay fines, fees, or costs unless the defendant has failed to timely respond to a summons issued in accordance with Rule 7-207.1 NMRA.

B. Law enforcement information system. If a bench warrant is issued in a felony, misdemeanor or driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency.

C. Execution and return. A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

D. Duty to remove warrant. If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order No. 158300015, effective for all cases filed on or after December 31, 2015; amended by Supreme Court Order No. 158300025, withdrawing amendments adopted by Supreme Court Order No. 158300015; as amended by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

METROPOLITAN COURT CRIMINAL

RULE 7-207.1. PAYMENT OF FINES, FEES, AND COSTS.

A. Payment arrangements. At sentencing, the court shall provide the defendant with a deadline by which the defendant shall be required to pay all fines, fees, or costs owed to the court. The defendant may make any size or number of payments or perform community service in lieu of payment as set forth in Paragraph

B of this rule, so long as the total amount is paid or community service performed by the deadline set by the court. If the court orders a defendant to make a contribution to crime stoppers or to participate in a program or activity that is owned or operated by a third party and not by the court, such as treatment, counseling, victims impact panel, certain drug testing, or certain schools, the defendant may not perform community service in lieu of payment of any fees owed to that third party.

B. Community service in lieu of payment. The court shall permit a defendant to perform community service in lieu of payment of all or any portion of the assessed fines, fees, or costs, except for contributions and fees owed to third parties. The court shall maintain a list of eligible community services agencies. The defendant shall receive credit toward the fines, fees, or costs owed to the court at the prevailing federal hourly minimum wage rate or as otherwise required by law. If the defendant performs community service in lieu of payment, all hours must be completed by the deadline for payment set by the court. If the defendant fails to perform community service, the failure to perform community service shall be treated the same as a failure to pay, and the court shall follow the procedures set forth in Paragraphs C and D of this rule.

C. Failure to comply; issuance of summons or bench warrant.

(1) **Issuance and content of summons.** If a defendant fails to pay or perform community service by the deadline set by the court, the court shall issue a summons within five (5) days of the deadline. The summons shall

(a) instruct the defendant to pay, complete hours of community service in lieu of payment, or appear at the court's customer service division within thirteen (13) days after the date that the summons is issued;

(b) state that the defendant may request a hearing before the judge and that the defendant's ability to pay or perform community service in lieu of payment will be addressed at any hearing; and

(c) notify the defendant that a bench warrant shall be issued if the defendant fails to timely respond to the summons.

(2) **Service of summons.** The court may serve a summons under this paragraph using any method of service permitted by the Rules of Criminal Procedure for the Metropolitan Courts.

(3) **Issuance of bench warrant.** If a defendant fails to comply with a summons issued under Subparagraph (C)(1) of this rule, the court shall issue a bench warrant for failure to pay or perform community service. Once the defendant has been arrested or has surrendered on the warrant, the court shall hold a hearing under Paragraph D of this rule, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or by performing community service in lieu of payment.

(4) **Subsequent failure to comply.** If the defendant misses a deadline to pay or perform community service, the court shall follow the procedure set forth in Subparagraphs (C)(1) through (C)(3) of this rule. If the court extends the deadline as set forth in Subparagraph D of this Rule, and the defendant fails to meet that deadline, the court may issue a bench warrant and is not required to issue a summons prior to issuing a bench warrant.

D. Failure to comply hearing. If the defendant is not able to either pay or perform community service, then on or before the deadline set by the court, the defendant may request a hearing for an extension of the deadline or for other relief. The court shall hold a failure to comply hearing at the defendant's request or following the defendant's arrest or surrender on a bench warrant, unless the

YLD BOARD

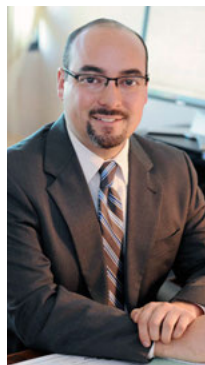
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2017 PROGRAM CHAIRS

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CLE at Annual Meeting—Bench & Bar Conference, **Robert Lara**
Constitution Day, **Kaitlyn Luck and Anna Rains**
Diversity Collaboration, **Allison Block-Chavez**
Homeless Legal Clinics, **Kaitlyn Luck**
Interview Program, **Erin Atkins**
Lunch with Judges Program, **Tomas Garcia and Billy Jimenez**
Law Camp, **Billy Jimenez and Sonia Russo**
Law Day Call-in, **Erin Atkins and Anna Rains**
Seniors Estate Planning, **Allison Block-Chavez**
State Bar Student Essay Contest,
Darin McDougall and Evan Cochnar
Summer Fellowship Program, **Robert Lara**
Veteran's Clinic, **Sean FitzPatrick and Spencer Edelman**
Wills for Heroes, **Sonia Russo and Evan Cochnar**
YLD CLE, **Tomas Garcia and Spencer Edelman**
YLD/UNM School of Law Mentorship Program, Mock Interviews
and Open House, **Sean FitzPatrick and Darin McDougall**
YLD In Brief, **Spencer Edelman**



Message from the YLD Chair

It's my honor to serve as the 2017 chair of the State Bar of New Mexico Young Lawyers Division. As the public service arm of the State Bar, the YLD provides valuable legal services to our community. Moreover, the YLD provides opportunities for our members to network, gain professional development and foster camaraderie and collegiality. 2017 promises to be an exciting year for the YLD, and I want to personally invite you to participate in a YLD program this year—whether as a volunteer at one of our public service projects, as a mentor for a student at the University of New Mexico School of Law, as a student in a CLE course or as an attendee at one of our many networking events.

All members of the State Bar who are 36 years old or younger or who have been practicing for five years or less are members of the YLD. The YLD offers members numerous ways to engage with the community. We provide services to emergency first responders statewide through our ever-growing Wills for Heroes program. For the last three years, we have provided free legal advice to veterans through the Veterans' Civil Justice Initiative, a partnership between the YLD, the Veterans' Administration, the City of Albuquerque, the New Mexico Veteran's Memorial and the Paralegal Division of the State Bar. We promote civics education in elementary, middle and high schools across New Mexico through our Constitution Day program and the State Bar Student Essay Contest. And, in conjunction with the University of New Mexico School of Law, we provide guidance and professional development opportunities to today's law students—and tomorrow's young lawyers—through our Mentorship and Mock Interview programs. We will continue to offer and expand these services in 2017 thanks to the hard work and commitment of your elected board members from across the state and your volunteer efforts.

I look forward to offering new services to our members in 2017. Among them, the YLD will offer a Lunch with Judges Program to provide young lawyers with the opportunity to meet and interact with members of the New Mexico judiciary. Additionally, March 30–April 1, we will host the third-annual American Bar Association YLD Mountain West States Regional Summit at Hotel Albuquerque with the young lawyer entities of our neighboring states. The regional summit will provide educational programming focused on issues of relevance to law practice—particularly for new lawyers—in the mountain west region (Colorado, Texas, Utah and Wyoming). Stay tuned for announcements about upcoming YLD programs in the *Bar Bulletin* and by email.

My participation in the YLD has enriched my experience as a New Mexico lawyer. I encourage your involvement in the State Bar and the YLD as a way to serve the community, provide pro bono legal services, enhance your network and have fun! You will find the rewards of your participation to be well worth your time. I look forward to a great year serving as YLD chair. If you have any questions about the YLD, our programs or simply want to know how to get involved, please don't hesitate to reach out to me by email (tomas.garcia@modrall.com) or telephone (505-848-1892).

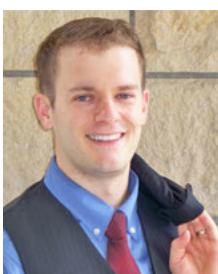
Sincerely,
Tomas Garcia

Meet the Board



Tomas J. Garcia
Chair
Director-at-Large, Position 2

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, healthcare, torts/personal injury and transportation law. Garcia was named “Young Lawyer of the Year” by the New Mexico Defense Lawyers Association in 2015 and he was chosen as one of the “40 Under Forty” top business professionals by *Albuquerque Business First* in 2016. Before joining Modrall Sperling, Garcia clerked for Justice Charles W. Daniels of the New Mexico Supreme Court. Garcia is a fellow of the ABA Business Law Section and, as a participant in the ABA’s Diverse Leaders Academy, he serves on the ABA 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.



Sean FitzPatrick
Chair-elect
Director-at-Large, Position 3

Sean FitzPatrick, a graduate of the University of New Mexico School of Law, practices primarily civil plaintiff litigation in Albuquerque. FitzPatrick previously worked as a prosecutor in Farmington, litigating a variety of felony and misdemeanor cases. FitzPatrick continues to serve in many of the Young Lawyer Division programs as either a member or as co-chair of the program and is the current YLD chair-elect. Outside of work, FitzPatrick can be found running, biking or participating in other Type 2 Fun activities.



Sonia Raichur Russo
Vice Chair
Director-at-Large, Position 4

Sonia Raichur Russo is an assistant district attorney in the Second Judicial District Attorney’s Office in Albuquerque prosecuting felony violent crimes. She currently serves as a vice chair of the American Bar Association Young Lawyers Division Criminal Justice Committee and is on the ABA YLD’s Disaster Legal Services team. ABA President Linda Klein appointed Russo to serve on the Standing Committee on Gun Violence from 2016 to 2018. In New Mexico, Russo co-chairs the Wills for Heroes project, which provides wills to law enforcement officers and first responders, and looks forward to planning more networking events for the YLD and focusing on the YLD’s membership services. Russo earned her Bachelor of Arts in Political Science from Brown University and her law degree from Boston College Law School. At her law school commencement ceremony, Russo was awarded the Susan Grant Demarais Award for Excellence in Clinical Work for her work as a student attorney in the BC Law Prosecution Clinic. Her interests include travel, tennis and myriad visual and performing arts.



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

Allison Block-Chavez, is an associate attorney at Aldridge, Hammar, Wexler & Bradley, PA, where her law practice focuses on real estate, business transactions, creditors’ rights, adult guardianships and conservatorships, estate planning and probate matters. Block-Chavez graduated from the University of New Mexico School of Law and served as the judicial law clerk for Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. She currently serves on the board for the Elder Law Section, is the co-chair of the ABA YLD Real Property, Trust and Estate Committee and is a delegate to the ABA House of Delegates.

Meet the Board



Robert Lara Jr.

Director-at-Large, Position 5

Robert Lara is an associate attorney for Roybal-Mack & Cordova, PC. His practice focuses on family law, civil litigation, election law and property law throughout southern New Mexico. Along with his service on the YLD board, Lara is an officer for the New Mexico Statewide Alumni Chapter of Phi Alpha Delta Law Fraternity International and the Treasurer for the Democratic Party of New Mexico. Lara is a 2007 graduate of the University of New Mexico School of Law. When not in the office, he can be found advocating for the New Mexico Dachshund Rescue Association, peddling his bike in a triathlon or on the nearest dance floor.



Evan Cochnar

Region 1 Director
11th Judicial District

Evan Cochnar is originally from California. He earned his Bachelor of Arts in political science and history from the University of New Mexico and his law degree from Syracuse University College of Law. He is an assistant district attorney in the 11th Judicial District Attorney's Office prosecuting general adult felonies, including homicide and serious sexual offense cases. While attending law school, he interned at the Albuquerque City Attorney's Office as well as the U.S. Attorney's Office, District of New Mexico. As a YLD board member, he co-chairs the Wills for Heroes Program and the State Bar Student Essay Contest. His interests include travel, theater, film criticism and reading.



Kaitlyn A. Luck

Region 2 Director
First, Fourth, Eighth and 10th
judicial districts

Kaitlyn Luck is a Texas native who is now an assistant district attorney with the Eighth Judicial District Attorney in Taos where she prosecutes a variety of misdemeanor and felony crimes. She earned her Bachelor's degree from Texas State University and her law degree from Texas Tech University School of Law where she was published in and served as a comment editor on the *Texas Tech Administrative Law Journal*. Following graduation, Luck was admitted to the State Bar of New Mexico in September 2013 and began her practice with Martinez, Hart & Thompson, PC, in Albuquerque, as an associate in the area of personal injury and insurance litigation. She currently serves on the board of the State Bar Prosecutors Section and as a commissioner of the New Mexico Commission on Access to Justice. In her free time, she enjoys teaching snowboarding at Taos Ski Valley.



Anna C. Rains

Region 3 Director
Fifth and Ninth judicial districts

Anna Rains is a Hobbs native. She earned her Bachelor in Business Administration degree from New Mexico State University, her Masters of Science in Personal Financial Planning from Texas Tech University and her law degree from Texas Tech University School of Law. She is an associate at Sanders, Bruin, Coll & Worley PA in Roswell. Rains is a civil litigation attorney who primarily focuses her practice on family law and estate planning. She is also a small business owner in her local community. Rains is an active member of the Chaves County Bar Association, was the 2015 Chaves County Law Day Chair, participates in Big Brothers Big Sisters and is a 2014 Roswell Leadership graduate.

Meet the Board



Erinna "Erin" Marie Atkins

Region 4 Director
Third, Sixth and 12th judicial districts
and Sierra County

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 Lawyer's 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.



Darin Kyle McDougall

Region 5 Director
Second and 13th judicial districts and
Catron, Socorro and Torrance counties

Darin Kyle McDougall graduated from the University of New Mexico School of Law in 2015. He has worked at the Law Offices of the Public Defender in the Metro Division since August 2015. He started representing indigent clients while interning with the Felony Division of LOPD in Spring 2015 and continues to fight for clients every day. McDougall's passion is bringing legal services to underserved populations. He has been involved with the YLD since he was a law student working on the YLD Mentorship Program and attending board meetings as a temporary student liaison. McDougall is from the green Pacific Northwest, but became a permanent New Mexican because of its glorious sunshine.



Billy J. Jimenez

ABA YLD District #23 Representative
Arizona/New Mexico

Billy J. Jimenez is an associate at the Miller Stratvert law firm, where he practices in the areas of civil litigation, environmental law, OSHA, and contracts. He formally served as Director of Policy and Assistant General Counsel for the New Mexico Department. As the ABA YLD District #23 Representative, he is a board member with the State Bar of New Mexico YLD and attends the board meetings of the State Bar of Arizona YLD, Maricopa County Bar Association YLD and the Pima County Bar Association YLD. He organizes ABA-sponsored regional conferences and participates in the Wills for Heroes, Law Day Call-In, UNM Mentorship and UNM Mock Interview programs. Jimenez is also a board member with the Albuquerque Center for Hope and Recovery. He received his undergraduate and law degrees from UNM, and was recipient of the MALSA 3L of the Year Award and Clinical Legal Education Association Outstanding Student Award.



Spencer L. Edelman

Past Chair

Spencer Edelman is a Shareholder at the Modrall Sperling law firm, where his practice deals with creditors' rights and litigation with a focus on bankruptcy and real estate. Edelman's efforts with YLD include organizing Wills for Heroes events for first responders, assisting with the Veterans Civil Justice Initiative, organizing volunteers for the Law Day Call-in Program, and assisting with the NMHBAs Law Camp. In 2013-2014 he served as a law clerk for U.S. Bankruptcy Judge David Thuma. He is a graduate of the James E. Rogers College of Law at the University of Arizona and Macalester College in St. Paul, Minn. He plays tennis regularly and attends as many Isotopes games as possible.

defendant has satisfied all outstanding obligations to the court by making payment in full or by performing community service in lieu of payment. If the defendant has been arrested and remains in custody, the court shall hold the hearing within three (3) days of the defendant's arrest. At the hearing, the court shall determine the basis for the defendant's failure to pay or to perform community service as ordered by the court. If the court finds that the defendant is financially unable to pay and is unable to perform community service, the court may waive the bench warrant fee, revoke any unpaid portion of a fine, or grant other appropriate relief. If the court finds that the defendant has willfully refused to pay or to perform community service, the court may order the defendant committed to jail under Section 33-3-11 NMSA 1978.

[Adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

Committee commentary. — If the defendant has failed to pay fines, fees, or costs owed to the court or to perform community service as ordered by the court, the court should issue a summons instructing the defendant to pay, request a time extension, or request a hearing prior to the issuance of a bench warrant. If the defendant requests a hearing prior to the issuance of bench warrant under Subparagraph (C)(3) of this rule, the court shall not issue a bench warrant prior to the hearing date. In addition to issuing summonses for failure to pay, the court should develop and implement alternative methods for providing supplementary notice to the defendant through automated means, such as automated telephone calls, email messages, or text messages.

A defendant may perform community service in lieu of payment of fines, fees, or costs owed to the court. If the court orders a defendant to make a contribution to a local crime stoppers program, domestic violence prevention or treatment program, or drug abuse resistance education program, *see* NMSA 1978, Section 31-20-6(E); or to participate in a program or service that is owned or operated by a third party, the court cannot convert the contribution or fee for such program or service to community service because the contribution or fee is owed to the third party, not the court. Examples of the types of programs or services that may be ordered by the court but are operated by third parties include, but are not limited to, treatment, counseling, victims impact panel, drug testing by thirdparty providers and not by the court's probation officers, and schools other than the court's own DWI School, Driver Improvement School, and Aggressive Driving School.

Prior to assessing jail in lieu of payment, the court must afford the defendant adequate procedural due process protections and determine the defendant's ability to pay. The court must notify the defendant that ability to pay will be addressed at any hearing, provide the defendant with an opportunity to present and dispute information relevant to the defendant's ability to pay, and document any willful failure to pay with written findings in the court file. *See Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2520 (2011). "It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that [the defendant] made a good faith effort to obtain the funds required for the payment." NMSA 1978, § 31123(C) (1993); *see Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that imprisoning a person for failure to pay fines, without considering the reasons for the inability to pay, violates the constitutional guarantee of equal protection).

[Commentary adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

MUNICIPAL COURTS

RULE 8-206. BENCH WARRANTS.

A. Failure to appear or act. If any person who has been ordered by the municipal judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or to do the thing so ordered, the court may issue a warrant for the person's arrest. Unless the municipal judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause. The court shall not issue a bench warrant for failure to pay fines, fees, or costs unless the defendant has failed to timely respond to a summons issued in accordance with Rule 8-206.1 NMRA.

B. Law enforcement information system. If a bench warrant is issued in a driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency. A copy of the warrant shall be docketed in the case file.

C. Execution and return. A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

D. Duty to remove warrant. If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

MUNICIPAL COURTS

RULE 8-206.1. PAYMENT OF FINES, FEES, AND COSTS.

A. Payment arrangements. The court shall assess the defendant's ability to pay any fines, fees, or costs at the time of sentencing and shall consider the following types of payment arrangements in the order of priority set forth below.

(1) **Full payment at time of sentencing.** If the defendant is able to pay the full amount at the time of sentencing, the court shall require the defendant to do so.

(2) **Full payment within thirty (30) days of sentencing.** If the defendant cannot pay the full amount at the time of sentencing but will be able to pay within thirty (30) days, the court shall require the defendant to do so.

(3) **Agreement to pay.** If the defendant cannot pay the full amount within thirty (30) days after the date of sentencing, the court may permit the defendant to enter into an agreement to pay in installments. The court shall retain the authority to enforce an agreement to pay regardless of whether the defendant remains on probation or whether the defendant was placed on probation at all. An agreement to pay shall

(a) be based on the defendant's individual circumstances;

(b) require the largest possible payment amounts that the judge determines the defendant can make successfully;

(c) require the first installment to be due no later than thirty (30) days after the date of sentencing;

(d) schedule subsequent installments in intervals of thirty (30) days or less; and

(e) schedule all payments to be made within the shortest practicable period of time.

(4) **Modification of the agreement to pay.** The court may, for good cause shown, modify the agreement to pay up to three (3) times, either by allowing the defendant additional time for payment or by reducing the amount of one or more installments. The court shall document the good cause shown with written findings in the case file.

B. Community service in lieu of payment. If the court finds at any time that the defendant is unable to pay all or part of the assessed fines, fees, or costs, the court shall permit the defendant to perform community service in lieu of payment of all or part of the assessed fines, fees, or costs owed to the court. The defendant shall receive credit toward the fines, fees, or costs at the rate of the prevailing federal hourly minimum wage or as otherwise required by law. If the defendant performs community service in lieu of payment, all hours must be completed by the deadline set by the court. If the defendant fails to perform community service as ordered by the court, the failure to perform community service shall be treated the same as a failure to pay, and the court shall follow the procedures set forth in Paragraphs C and D of this rule.

C. Failure to comply; issuance of summons or bench warrant.

(1) **Issuance and content of summons.** If the defendant fails to make a payment as ordered by the court, request a modification of an agreement to pay before the payment due date, or perform community service by the deadline set by the court, the court shall issue a summons within five (5) days of the deadline. The summons shall

(a) instruct the defendant to either pay or appear at the court within fifteen (15) days after the date that the summons is issued;

(b) if the summons does not set a specific hearing date and time, state that the defendant may request a hearing before the judge and that ability to pay will be addressed at any hearing; and

(c) notify the defendant that a bench warrant shall be issued if the defendant fails to timely respond to the summons.

(2) **Service of summons.** The court may serve a summons under this paragraph using any method of service permitted by the Rules of Procedure for the Municipal Courts.

(3) **Issuance of bench warrant.** If a defendant fails to comply with a summons issued under Subparagraph (C)(1) of this rule, the court shall issue a bench warrant for failure to pay or perform community service no later than five (5) days after the appearance date on the summons. Once the defendant has been arrested or has surrendered on the warrant, the court shall hold a hearing under Paragraph D of this rule, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or by performing community service in lieu of payment.

(4) **Subsequent failure to comply.** The first time the defendant misses a payment under an agreement to pay or fails to perform community service by the deadline set by the court, the court shall follow the procedure set forth in Subparagraphs (C)(1) through (C)(3) of this rule. If the defendant subsequently fails to comply with an order to pay or to perform community service, the court may

issue a bench warrant and is not required to issue a summons prior to issuing a bench warrant. Prior to issuing a bench warrant, the court may attempt to contact the defendant and make satisfactory arrangements to address the defendant's noncompliance. Once the court has issued a second bench warrant for failure to comply, the court shall not grant the defendant an extension or a renewed agreement to pay, except upon a written finding of exceptional circumstances.

D. Failure to comply hearing. The court shall hold a failure to comply hearing as set forth in a summons, at the defendant's request, or following the defendant's arrest or surrender on a bench warrant, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or performing community service in lieu of payment. If the defendant has been arrested and remains in custody, the court shall hold the hearing within three (3) days of the defendant's arrest. The defendant may appear at the hearing through an audio or audio-visual communication under Rule 8-109A NMRA. At the hearing the court shall determine the basis for the defendant's failure to pay or to perform community service as ordered by the court. If the court finds that the defendant is financially unable to pay, the court may modify the agreement to pay under Subparagraph (A)(4) of this rule; convert the unpaid fines, fees, or costs to community service; revoke any unpaid portion of a fine; or grant other appropriate relief. If the court finds that the defendant has willfully refused to pay or to perform community service, the court may order the defendant committed to jail under Section 33-3-11 NMSA 1978.

[Adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

Committee commentary. — If the defendant has failed to pay fines, fees, or costs owed to the court or to perform community service as ordered by the court, the court should issue a summons. The summons may set a specific hearing date and time. Alternatively, the summons may set a deadline by which the defendant must pay, request a modification to the agreement to pay, or request a hearing. In addition to issuing summonses for failure to pay, the court should develop and implement alternative methods for providing supplementary notice to the defendant through automated means, such as automated telephone calls, email messages, or text messages.

If the defendant requests a hearing prior to the issuance of bench warrant under Subparagraph (C)(3) of this rule, the court shall not issue a bench warrant prior to the hearing date.

Prior to assessing jail in lieu of payment, the court must afford the defendant adequate procedural due process protections and determine the defendant's ability to pay. The court must notify the defendant that ability to pay will be addressed at any hearing, provide the defendant with an opportunity to present and dispute information relevant to the defendant's ability to pay, and document any willful failure to pay with written findings in the court file. *See Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2520 (2011). "It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that [the defendant] made a good faith effort to obtain the funds required for the payment." NMSA 1978, § 31123(C) (1993); *see Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that imprisoning a person for failure to pay fines, without considering the reasons for the inability to pay, violates the constitutional guarantee of equal protection).

[Commentary adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017.]

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

Certiorari Denied, August 8, 2016, S-1-SC-35993

From the New Mexico Court of Appeals

Opinion Number: 2017-NMCA-001

No. 33,514 (filed May 11, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,

v.

SHARON DUTTLE,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Douglas R. Driggers, District Judge

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for Appellee

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J.K. THEODOSIA JOHNSON
Assistant Appellate Defender
Santa Fe, NM
for Appellant

Opinion

M. Monica Zamora, Judge

{1} Defendant Sharon Duttie was convicted of one count of dogfighting contrary to NMSA 1978, § 30-18-9 (2007); one count of conspiracy to commit dogfighting, contrary to NMSA 1978, § 30-28-2 (1979) and Section 30-18-9; ten counts of cruelty to animals, contrary to NMSA 1978, § 30-18-1(B) (2007); eight counts of extreme cruelty to animals, contrary to Section 30-18-1(E); and one count of owning or maintaining more than six dogs and/or cats without a multiple animal site permit contrary to Doña Ana County, N.M., Doña Ana County Animal Controls Ordinance ch. 134, 203-2002 § 4.2 (2002), *repealed by* Doña Ana County, N.M., Doña Ana Animal Controls Ordinance ch. 134, 266-2013 (2013). On appeal, Defendant does not challenge her convictions for dogfighting, conspiracy to commit dogfighting, or her violation of the Doña Ana County Animal Controls Ordinance.

{2} Defendant challenges her convictions for cruelty to animals and extreme cruelty to animals by raising ten issues.

Three of the issues are addressed in this formal opinion, and the remaining seven issues have been addressed in a separate memorandum opinion. *State v. Duttie*, No. 33,524, mem. op. (N.M. Ct. App. ____ __, 20__) (non-precedential).

{3} Defendant argues that (1) the animal cruelty statute is unconstitutionally vague; (2) her conduct is insufficient to support her convictions for extreme cruelty to animals; and (3) her convictions for cruelty to animals and extreme cruelty to animals are not supported by sufficient evidence.

{4} We hold that the animal cruelty statute is not unconstitutionally vague and that Defendant's behavior falls within the conduct the Legislature intended to punish as cruelty and extreme cruelty to animals under Section 30-18-1(B) and (E). We further hold that there was sufficient evidence to support her convictions for cruelty to animals and extreme cruelty to animals. As a result, we affirm Defendant's convictions.

I. BACKGROUND

{5} Doña Ana County Animal Control was contacted about numerous dogs kept on Defendant's property in a manner consistent with preparations for staged

dogfighting. Doña Ana County Sheriff's Department Investigator Robyn Gojkovich, an animal cruelty specialized investigator, went to Defendant's property to conduct a welfare check on the dogs.

{6} Because of the outside conditions in which the dogs were kept, that numerous dogs were chained to stakes, the unknown number of dogs, and the lack of vaccination records, among other things, Investigator Gojkovich obtained a search warrant to check on the health and welfare of the dogs.

{7} The initial search of Defendant's property revealed seven dogs being kept inside Defendant's residence. The dogs were either gravely ill or had fresh wounds consistent with staged dogfighting. Investigator Gojkovich also found the presence of several other items in Defendant's residence that suggested Defendant was involved in organized dogfighting. Subsequently, a second search warrant was obtained broadening the search to include evidence of organized dogfighting.

{8} The dogs located outdoors were found in deplorable conditions, and many of them were also in poor physical condition. Animal Control officers assigned each dog a number and photographed them in the area where the dog was found. Before the dogs were removed from the property, the officers also photographed each dog's access to food, water, shade, shelter, body condition, and injuries.

{9} After their removal, the dogs were taken to the animal shelter where they were assessed by Animal Control officers and examined by the animal shelter veterinarian. Dr. Patricia Norris, a veterinarian with the Doña Ana County Sheriff's Department, examined and photographed twenty-seven of those dogs. Of the thirty-eight dogs initially removed from Defendant's property, thirty-one had to be euthanized, and two died in the animal shelter as a result of severe heart worm disease and related complications.

{10} Defendant was indicted on one count of dogfighting, one count of conspiracy to commit dogfighting, ten counts of cruelty to animals, nine counts of extreme cruelty to animals, one count of owning or maintaining more than six animals without a multiple animal site permit, and forty counts of maintaining an unsterilized dog or cat without a permit. The latter forty counts were dismissed prior to trial. A jury convicted Defendant

of one count of dogfighting, one count of conspiracy to commit dogfighting, ten counts of cruelty to animals, eight counts of extreme cruelty to animals, and one count of owning more than six animals without a multiple animal site permit. This appeal followed.

II. DISCUSSION

A. The Animal Cruelty Statute Is Not Unconstitutionally Vague

{11} Defendant contends that the extreme cruelty and cruelty to animals statute, as applied, is void for vagueness. She argues that Section 30-18-1(B) and (E) failed to provide her notice that her conduct was prohibited, and that the statutory provisions are overbroad, thereby allowing for subjective, ad hoc applications. Specifically, Defendant argues that the terms “necessary sustenance” and “torture” are unconstitutionally vague.

{12} “[T]he vagueness doctrine is based on the principle of fair notice in that no one may be held criminally responsible and subject to criminal sanctions for conduct without fair warning as to the nature of the proscribed activity.” *State v. Lovato*, 2011-NMCA-065, ¶ 14, 150 N.M. 39, 256 P.3d 982 (internal quotation marks and citation omitted). “[A] statute denies constitutional due process if it is so vague that persons of common intelligence must necessarily guess at its meaning.” *Id.* (internal quotation marks and citation omitted).

{13} “We review a vagueness challenge de novo in light of the facts of the case and the conduct[,] which is prohibited by the statute.” *State v. Smile*, 2009-NMCA-064, ¶ 17, 146 N.M. 525, 212 P.3d 413 (internal quotation marks and citation omitted). “A strong presumption of constitutionality underlies each legislative enactment, and the party challenging constitutionality has the burden of proving a statute is unconstitutional beyond all reasonable doubt.” *State v. Laguna*, 1999-NMCA-152, ¶ 24, 128 N.M. 345, 992 P.2d 896. Appellate courts “have a duty to construe a statute in such a manner that it is not void for vagueness if a reasonable and practical construction can be given to its language.” *State v. Segotta*, 1983-NMSC-092, ¶ 5, 100 N.M. 498, 672 P.2d 1129. When analyzing a vagueness challenge to the constitutionality of a statute, this Court applies a two-part test. *State v. Tsoie*, 2011-NMCA-115, ¶ 31, 150 N.M. 754, 266 P.3d 34. We consider whether the statute “(1) fails to provide persons of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their

conduct is prohibited, or (2) fails to create minimum guidelines for . . . enforcement . . . and thus encourages subjective and ad hoc application of the law.” *Id.* (omissions in original) (alterations, internal quotation marks, and citation omitted); *State ex rel. Children, Youth & Families Dep’t v. Shawna C.*, 2005-NMCA-066, ¶ 32, 137 N.M. 687, 114 P.3d 367 (noting that due process also requires that the statute not encourage arbitrary or discriminatory enforcement). A vagueness claim “cannot succeed if the statute clearly applied to [the defendant’s] conduct.” *Smile*, 2009-NMCA-064, ¶ 17 (alteration, internal quotation marks, and citation omitted).

{14} In determining the prohibited conduct, we review questions of statutory interpretation de novo. *See State v. Trujillo*, 2012-NMCA-112, ¶ 7, 289 P.3d 238, *cert. quashed*, 2015-NMCERT-003, 346 P.3d 1163. “[The appellate courts’] ultimate goal in statutory construction is to ascertain and give effect to the intent of the Legislature.” *State v. Smith*, 2004-NMSC-032, ¶ 8, 136 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted). We begin “by looking first to the words chosen by the Legislature and the plain meaning of the Legislature’s language.” *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064 (internal quotation marks and citation omitted). “When a statute contains language which is clear and unambiguous, [the appellate courts] must give effect to that language and refrain from further statutory interpretation.” *State v. Johnson*, 2001-NMSC-001, ¶ 6, 130 N.M. 6, 15 P.3d 1233 (internal quotation marks and citation omitted). Because of the factual complexity of this case, we address Defendant’s constitutional arguments concerning Section 30-18-1(B) and (E), in turn.

1. Section 30-18-1(B)—Cruelty to Animals

{15} Defendant challenges Section 30-18-1(B) as unconstitutionally vague as applied to her conduct in this case. Section 30-18-1(B) defines “cruelty to animals” as “(1) negligently mistreating, injuring, killing without lawful justification[,] or tormenting an animal; or (2) abandoning or failing to provide necessary sustenance to an animal under that person’s custody or control.” Defendant argues that the statutory language failed to provide her notice that her conduct was prohibited and is overbroad thereby allowing for subjective, ad hoc application of this subsection. Specifically, Defendant contends

that under Section 30-18-1(B), she would not comprehend that her failure to provide adequate shelter and medical care to her dogs constitutes a failure to provide “necessary sustenance” under the statute. In so arguing, Defendant assumes that her convictions for animal cruelty are based on a finding that she failed to provide necessary sustenance to her dogs. However, the record does not support this assumption. Defendant fails to consider the alternative theories of animal cruelty enumerated by the subsection. The elements of Section 30-18-1(B) were set forth in the jury instructions. The jury was instructed:

For you to find [Defendant] guilty of cruelty to animals, as charged in [Counts 4, 8, 9, 14, 15, 16, 18, 21, and 22], the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [D]efendant negligently mistreated, injured, or tormented an animal [or] abandoned or failed to provide necessary sustenance to an animal under her custody or control;
2. This happened in New Mexico on or about the 15th day of September, 2008.

The jury returned general verdicts of guilty of cruelty to animals but did not indicate which theory the jury relied upon in convicting Defendant. Accordingly, we cannot say that Section 30-18-1(B) was applied to Defendant’s conduct in the way that she suggests. Nor does Defendant provide us with any evidence to show that the jury in fact relied solely on the element of sustenance. “It is not our practice to rely on assertions of counsel unaccompanied by support in the record. The mere assertions and arguments of counsel are not evidence.” *Chan v. Montoya*, 2011-NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 (internal quotation marks and citation omitted). For this Court to rule on an inadequately briefed constitutional issue would essentially require it to do the work on behalf of Defendant. *See State v. Clifford*, 1994-NMSC-048, ¶ 19, 117 N.M. 508, 873 P.2d 254 (reminding counsel that the appellate courts are not required to do their research). A general verdict does not identify which theory the jury relied upon in returning the guilty verdict. “[W]here alternative theories of guilt are put forth under a single charge, jury unanimity is required only as to the verdict, not to any particular theory of guilt.” *State v. Godoy*,

2012-NMCA-084, ¶ 6, 284 P.3d 410. New Mexico's uniform jury instructions "either refer generally to a requirement of jury unanimity or require only that the jury agree on a verdict. No provision explicitly or implicitly requires jury unanimity on an underlying theory." *Id.* (alteration, internal quotation marks, and citation omitted); see *State v. Salazar*, 1997-NMSC-044, ¶ 32, 123 N.M. 778, 945 P.2d 996 (stating that the Supreme Court has held that "a jury's general verdict will not be disturbed in such a case where substantial evidence exists in the record supporting at least one of the theories of the crime presented to the jury"); *Bustos v. Hyundai Motor Co.*, 2010-NMCA-090, ¶ 48, 149 N.M. 1, 243 P.3d 440 ("A general verdict may be affirmed under any theory supported by evidence unless an erroneous jury instruction was given.").

a. Sufficient Evidence Supports Convictions for Animal Cruelty

{16} Defendant claims that the State presented insufficient evidence to support her ten convictions for cruelty to animals, contrary to Section 30-18-1(B). "When reviewing a challenge to the sufficiency of the evidence, we must 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. Cordova*, 2016-NMCA-019, ¶ 16, 366 P.3d 270 (internal quotation marks and citation omitted), *cert. granted*, 2015-NMCERT-008, ___ P.3d ___. "Substantial evidence is evidence acceptable to a reasonable mind as adequate to support a conclusion." *State v. Arrendondo*, 2012-NMSC-013, ¶ 10, 278 P.3d 517. The appellate courts "must view the evidence in the light most favorable to the [s]tate, resolving all conflicts and indulging all permissible inferences in favor of the verdict." *State v. Reed*, 2005-NMSC-031, ¶ 14, 138 N.M. 365, 120 P.3d 447.

{17} As noted earlier, in order to convict Defendant of cruelty to animals as charged in Counts 4, 6, 7, 12, 13, 14, 16, 19, 20, and 21, the State was required to show beyond a reasonable doubt that Defendant "negligently mistreated, injured[,] or tormented an animal [or] abandoned or failed to provide necessary sustenance to an animal under her custody or control." The jury was also instructed on general criminal intent: "In addition to the other elements of . . . cruelty to animals . . . the [S]tate must prove to your satisfaction, beyond a reasonable doubt[,] that [D]efendant

acted intentionally when she committed the crime."

{18} Based on our review of the record, it does not appear that the jury was instructed on the definition of "criminal negligence." Nonetheless, the jury instructions are the law of the case against which the sufficiency of the evidence supporting the jury's verdict is to be measured. See *State v. Smith*, 1986-NMCA-089, ¶ 7, 104 N.M. 729, 726 P.2d 883 ("Jury instructions become the law of the case against which the sufficiency of the evidence is to be measured."). Accordingly, we review the evidence to determine whether sufficient evidence was presented to support, beyond a reasonable doubt, that Defendant intentionally "mistreated, injured, or tormented" or "abandoned or failed to provide necessary sustenance to" Two-Pac, Prince, Precious, Samson, Kangadoo, Mamba, Patches, Moe, Curley, and Roxie. See § 30-18-1(B).

Two-Pac—Count 4

{19} We conclude that there was sufficient evidence in the record to support Defendant's conviction on Count 4 relating to Two-Pac. Photographs taken at the time of the search show that Two-Pac was chained outside. He was emaciated to the degree that his ribs and his hip bones were visibly protruding. He had old injuries on his face and open sores on his head and ear, and his skin was in poor condition. He also had an eye condition that caused his eyelid to roll inward.

Prince—Count 6

{20} In reviewing Defendant's sufficiency challenge, we conclude that there was sufficient evidence in the record to support Defendant's conviction on Count 6 relating to Prince. Photographs taken at the time of the search show that Prince was chained outside. His water bucket was lined with green algae. He was infested with ticks, his skin condition was poor, and he had hair loss on his face and back end. His ears were clipped, and he had scarring on his face. He also had a harsh cough. Prince appeared to be at a normal weight, however, the girth of his body was not muscle or fat but accumulated fluid. Dr. Norris testified that this type of fluid accumulation is typically caused by heart failure associated with heart worm disease or liver problems. On September 25, 2008, Prince tested positive for heart worm disease at the animal shelter.

Precious—Count 7

{21} We conclude that there was sufficient evidence to support Defendant's

conviction on Count 7 relating to Precious, based on our review of the evidence. Photographs taken at the time of the search show that Precious was chained outside with no water. She was very thin and her ribs and pelvic bones were visible. Her skin condition was poor, and she had healing puncture wounds and scarring on her face, which were consistent with staged dogfighting.

{22} Precious had a large open sore behind her ear. When Precious was discovered, flies were present on and around the sore. Dr. Norris testified that flies are often attracted to open wounds and will feed off of the tissue causing the injury to worsen and expand. The presence of the flies also irritates and aggravates the area, causing the dog to rub and scratch at it, which also worsens the wound. According to Dr. Norris, this type of open sore is very painful.

Samson—Count 12

{23} We conclude that there was sufficient evidence in the record to support Defendant's conviction on Count 12 relating to Samson. Photographs taken at the time of the search show that Samson was chained outside without water. There was a piece of plywood propped up on some logs, which provided some shade for him. There was also a rusted-out barrel that he may have used for shelter. Samson was underweight and had scars from old injuries on his ears and back end.

Kangadoo—Count 13

{24} Based on our review of the evidence, we conclude that there was sufficient evidence to support Defendant's conviction on Count 13 relating to Kangadoo. Photographs taken at the time of the search show that Kangadoo was chained outside. Her water bucket was filled with muddy water and algae. There was an empty barrel with a hole in the bottom that she may have used for shelter. Kangadoo was underweight, she had hair loss on her back end, and her skin was in poor condition. She had old injuries and an open cut on her face. She had a large open sore on her ear.

{25} Kangadoo had a small tumor on her inner thigh, a small mass on her lower abdomen, and a large vaginal tumor that distorted her anatomy and made it difficult for her to urinate. Kangadoo was diagnosed with both heart worm disease and cancer. She was euthanized at the animal shelter on September 26, 2008.

Mamba—Count 14

{26} In reviewing Defendant's sufficiency argument, we conclude that there was

sufficient evidence in the record to support Defendant's conviction on Count 14 relating to Mamba. Photographs taken at the time of the search show that Mamba was chained outside. Her water bucket was tipped over and she had no shelter. She was infested with ticks, and her eye was oozing with pus. She was extremely thin and had scarring on her head, back, and back end. Her ears had sores from being bitten by flies. She also had open sores on her legs and a blood blister on her mammary teat. Mamba's K-9 teeth, incisors, and molars were filed down. She was euthanized at the animal shelter on September 16, 2008.

Patches—Count 16

{27} Based on our review of the evidence, we conclude that there was sufficient evidence to support Defendant's conviction on Count 16 relating to Patches. Photographs taken at the time of the search show that Patches was chained outside. His area was overgrown with weeds, and he did not have any water. Patches was missing hair all around his neck, on the insides of his legs, and on his hindquarters. He had dermatitis on his legs, his collar had chunks of dirt and hair, and a scar around his neck appeared to be from an embedded collar. Patches had a large open sore behind his ear and fly bites on top of his ears. Patches also suffered from an umbilical hernia and had pustules on his scrotum. He was euthanized the same day he was removed from Defendant's property.

Moe—Count 19

{28} We also conclude that there was sufficient evidence in the record to support Defendant's conviction on Count 19 relating to Moe. Photographs taken at the time of the search show that Moe was chained outside without water. He showed "major neurological signs"; he was star gazing, or swinging his head back and forth, snapping at the air, shaking, and having trouble getting oriented to his surroundings. His mouth was bleeding, and he had fluid filled nodules on his elbows and hind legs. Moe was very aggressive and was euthanized the same day he was removed from Defendant's property.

Curly—Count 20

{29} Based upon our review of the evidence, we conclude that there was sufficient evidence to support Defendant's conviction on Count 20 relating to Curly. Photographs taken at the time of the search show that Curly was chained outside without water. He was very thin, his ribs and hip bones protruded, he had pus-like drainage from his nose, and his ear was

torn. He had open sores on his head, back, and shoulders, and fluid-filled nodules on his elbows and hind legs. Curly was also very aggressive and was euthanized the same day he was removed from Defendant's property.

Roxie—Count 21

{30} After a review of the evidence, we conclude that there was sufficient evidence to support Defendant's conviction on Count 21 relating to Roxie. Photographs taken at the time of the search show that Roxie was found in a crate inside Defendant's residence. The crate was caked in some sort of brown substance inside and out. Trash was piled up all around and on top of the crate. Inside the crate, the place where Roxie was lying was also covered in trash, including old newspapers and empty soda cans. She did not appear to have access to water. Roxie was underweight, she had hair loss on her back leg, and she also had fleas. Roxie had swollen puncture wounds on her face and foot. There were teeth marks on her leg, and the underside of her neck was scraped and bruised. The puncture wounds under her legs, on her neck, and back appeared to be healing, indicating she had sustained multiple injuries on separate occasions. All of Roxie's injuries were consistent with staged dog-fighting. Accordingly, we further conclude that there is sufficient evidence in the record to support any of the theories set forth in the jury instruction on cruelty to animals.

2. Section 30-18-1(E)—

Extreme Cruelty to Animals

{31} Defendant argues that her charges for extreme cruelty to animals for failure to treat an animal's terminal illness are void for vagueness. Specifically, Defendant claims that a person of ordinary intelligence would not equate torture or mutilation with not treating a seriously ill dog. Section 30-18-1(E) defines "extreme cruelty to animals" as consisting "of a person (1) intentionally or maliciously torturing, mutilating, injuring[,] or poisoning an animal; or (2) maliciously killing an animal." Defendant also argues that her behavior did not fall within the conduct the Legislature intended to punish as extreme cruelty to animals under the subsection.

{32} At trial, one of the State's theories of the case was that Defendant intentionally tortured, mutilated, or injured the dogs in her care, custody, and control. Defendant argues that under Section 32-18-1(E), the failure to seek or provide veterinary care to these seriously ill or injured dogs does

not constitute torture as contemplated by this subsection. In so arguing, Defendant assumes that her convictions for extreme cruelty to animals are based on a finding that she tortured her dogs. However, the record does not support this assumption. Again, Defendant fails to consider the alternative theories of extreme cruelty to animals enumerated by this subsection. The elements of Section 30-18-1(E) were set forth in the jury instructions. The jury was instructed as follows:

For you to find [Defendant] guilty of extreme cruelty to animals, as charge[d] in [Counts 3, 5, 8, 10, 11, 15, 17, and 18], the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [D]efendant intentionally or maliciously tortured, mutilated or injured an animal;
2. This happened in New Mexico on or about the 15th day of September, 2008.

{33} The jury returned general verdicts of guilty of extreme cruelty to animals but did not indicate which theory it relied upon in convicting Defendant. Accordingly, we cannot say how Section 30-18-1(E) was applied by the jury to Defendant's conduct. The general verdict did not identify which theory the jury relied upon, nor did it require unanimity on an underlying theory in returning the guilty verdict, only that there be unanimity as to the verdict. *See Godoy*, 2012-NMCA-084, ¶ 6. The general verdict will not be disturbed if there is substantial evidence in the record to support at least one of the theories of the crime presented to the jury. *See Salazar*, 1997-NMSC-044, ¶ 32; *Bustos*, 2010-NMCA-090, ¶ 48 ("A general verdict may be affirmed under any theory supported by evidence unless an erroneous jury instruction was given.").

{34} Defendant does not direct us to any evidence to show that the jury in fact relied solely on the element of torture. Again, appellate courts simply cannot rely on the assertions of counsel without support in the record. *Chan*, 2011-NMCA-072, ¶ 9. For this Court to rule on an inadequately briefed constitutional issue would essentially require us to do the work on behalf of Defendant, which we will not do. *See Clifford*, 1994-NMSC-048, ¶ 19 (reminding counsel that the appellate courts are not required to do their research).

a. Defendant's Behavior Falls Within the Confines of Section 30-18-1 (E) and Sufficient Evidence Supports Defendant's Convictions for Extreme Cruelty to Animals

{35} Defendant argues, within the confines of torture, that her inactions do not fall within Section 30-18-1(E). She also claims that the State presented insufficient evidence to support her eight convictions for extreme cruelty to animals, contrary to the subsection. The overlapping analysis of whether Defendant's conduct falls within the confines of this subsection and whether there was sufficient evidence to support Defendant's convictions for extreme cruelty to animals necessitates the discussion of these issues together. Defendant was convicted of eight counts of extreme cruelty to animals concerning the following dogs: Jade, Jack, Deuce, Desiree, Itty-Bitty, Cleo, Hannibal, and Bobby. Of the eight dogs that Defendant was convicted of subjecting to extreme cruelty, all eight were without clean water; seven were underweight; one was emaciated; five were severely emaciated; six had obvious scarring consistent with staged dogfighting; six had open wounds and untreated sores; one had a severe eye injury; two had advanced heart worm disease; one was infested with ticks; three had large painful tumors or masses; two exhibited obvious signs of serious illness; and four had teeth that were cut or filed to the gum line, making it extremely painful to eat or drink.

1. Itty-Bitty (Count 3), Cleo (Count 8), Hannibal (Count 10), and Bobby (Count 17)

Itty-Bitty—Count 3

{36} Based on the evidence in the record, we conclude that Defendant's conduct is punishable under Section 30-18-1(E), and there was sufficient evidence to convict Defendant of extreme cruelty relative to Itty-Bitty. Photographs taken at the time of the search show that Itty-Bitty was found in a bedroom inside Defendant's residence, lying in urine and feces. She was crying out and thrashing her front paws. Itty-Bitty was completely emaciated and was unable to get up. Her breathing was labored, and she was unable to close her mouth. Itty-Bitty's condition was so grave that she was immediately taken to the animal shelter and had to be euthanized that night. Her body was taken to the New

Mexico State Diagnostic Lab, where Dr. Norbert Takacs, a veterinary pathologist, performed a necropsy.

{37} Records from the animal shelter note that Itty-Bitty had scars all over her face and front legs. Several of her teeth were missing or broken off. She had multiple chronic pressure ulcers on her skin. The necropsy report indicates that Itty-Bitty suffered from advanced pneumonia. However, the most serious conditions underlying Itty-Bitty's death were extreme emaciation and severe heart worm disease. With regard to Itty-Bitty's body, Dr. Takacs described her emaciated condition as "the skin is kind of drying on [the] bone or skeleton." Dr. Takacs also described Itty-Bitty's heart worm disease as "very severe." Heart worm disease is a parasitic infection typically spread by mosquitos. The heart worm parasites affect the heart and the pulmonary arteries causing heart failure if left untreated.

{38} Dr. Norris testified that heart worm disease in its early stages may be treatable; however, if the disease is allowed to progress to heart failure, treatment is no longer effective to save the dog's life. Dr. Norris also testified to the various heart worm preventions, such as minimizing mosquito populations by clearing away excess brush, eliminating standing water, keeping water fresh and changed out, applying insect repellent to animals housed outdoors, and giving dogs preventive medication. Dr. Norris also recommended testing dogs for heart worm and treating any in the early stages of the disease so that mosquitos do not spread the disease from dog to dog. In Itty-Bitty's case the disease was so advanced, her heart and associated arteries were full of heart worms that were approximately seven to eight inches long.¹

Cleo—Count 8

{39} Based on the evidence in the record, we conclude that Defendant's conduct is punishable under Section 30-18-1(E), and that there was sufficient evidence to support Defendant's conviction on Count 8 relating to Cleo. Photographs taken at the time of the search show that Cleo was kept outside in a small fenced area. Her make-shift shelter had collapsed and was nearly covered by the tall weeds. Her water bucket was dirty and nearly covered with the overgrowth. She had sores around her ear, her skin condition was poor, and she

was infested with ticks and fleas. Cleo also had a large mammary tumor approximately the size of a grapefruit. The tumor was very painful to Cleo upon examination and was so advanced that it was not treatable. Cleo was euthanized at the animal shelter on September 26, 2008.

Hannibal—Count 10

{40} Hannibal was chained outside among a large overgrowth of weeds without water or shelter. He had injuries to his head, face, ears, and legs. He also had a skin condition called seborrhea, which caused his skin to be irritated and crusted over. Hannibal had hair loss on his back end and was severely emaciated, his hip bones were sticking out, and his ribs were very prominent. Dr. Norris testified that the muscle tissue around Hannibal's rib cage was so atrophied that she could put her fingers between his ribs.

{41} Despite his emaciated condition, Hannibal's abdomen was large and filled with fluid. According to Dr. Norris, the tremendous amount of fluid accumulated in Hannibal's abdomen "was actually stretching his muscles out about as far as they could go." Fluid was also accumulating in Hannibal's lungs, making it very difficult for him to breathe. Hannibal had trouble walking because he would be out of breath. He could not get comfortable, and he would not sit down because doing so made breathing even more difficult for him. During her examination, Dr. Norris took care not to move him or have him walk because he was having a great deal of difficulty breathing just standing there; he was in distress. Hannibal also had a tumor on his underside that was bleeding and oozing.

{42} Dr. Norris testified that a pet owner would easily be able to recognize that a dog in Hannibal's condition was in severe distress; there was no doubt that he was suffering. Given the severity of the condition that Hannibal was allowed to progress, treatment options were limited; Dr. Norris' recommendation was euthanasia. Hannibal was euthanized at the animal shelter on September 26, 2008.

Bobby—Count 17

{43} Bobby was chained outside without any water. Bobby's skin condition was poor. He had old injuries on his face and legs, and open sores on his head and his shoulders. Bobby's eye was injured and infected, and it was nearly swollen shut and

¹Dr. Takacs's testimony was that the heart worms were 18 to 22 centimeters long. For the purposes of this opinion centimeters were converted to inches for a more common frame of reference. See Metric Conversions, <http://www.metric-conversions.org/length/centimeters-to-inches-table.htm> (last visited May 10, 2016).

oozing with pus. Bobby had an umbilical hernia. He was severely emaciated, with no palpable fat, obvious loss of muscle mass, and his ilium and scapula bones were protruding. Bobby was euthanized the same day he was removed from Defendant's property.

2. Jade (Count 5), Jack (Count 11), Deuce (Count 15), and Desiree (Count 18)

Jade—Count 5

{44} Based on the evidence in the record, we conclude that there was sufficient evidence to support Defendant's conviction on Count 5 relating to Jade. Photographs taken at the time of the search show that Jade was chained outside with no water. Her only shade or shelter was a piece of plywood propped up against two fence posts. She was infested with ticks, she was emaciated, and her ribs and hip bones visibly protruded. She had old injuries on her ear. Her skin condition was poor, she had hair loss on her back end, and she had a tumor on her neck. Jade's uterus was enlarged and firm, indicating that she was pregnant. Her teeth had been cut or filed down.

{45} Dr. Norris testified that blunting dogs' teeth is a practice used in some dogfighting rings. She explained that older dogs, or dogs who may no longer be able to fight competitively are sometimes used as "trainer dogs" in practice against younger inexperienced fighting dogs. The trainers' teeth are blunted to minimize damage to the trainee dogs. When a dog's teeth are filed or cut it is very painful for the dog, especially if the root cavity or canal is exposed. The dogs are reluctant to eat or drink because biting down and taking water with the root exposed is excruciating. Exposing the root in that way also exposes the dog to infection of the bone. In Jade's case, her teeth were filed all the way down to the gum line, and the roots were completely exposed. She was in an incredible amount of pain and would not let Dr. Norris touch her mouth long enough to photograph her teeth.

Jack—Count 11

{46} Based on the evidence in the record, we conclude that there was sufficient evidence to support Defendant's conviction on Count 11 relating to Jack. Photographs taken at the time of the search show that Jack was chained outside. His water bucket was filled with muddy water and algae. Jack was thin; his ribs and hip bones were visible. Jack had old injuries on his face and hair loss in patches throughout his entire body. Jack had superficial wounds on the top of his head that were consistent with scrapes or fly bites or "fly strike." Jack had similar wounds behind his ear and on his side.

{47} There were deeper wounds over his entire muzzle that could have been consistent with staged dogfighting. However, Dr. Norris testified that the wounds on Jack's muzzle, along with some scabbing on his legs, were likely solar dermatitis, an infection in the skin caused by allergies, or by sensitivity and exposure to the sun. According to Dr. Norris, solar dermatitis is very painful for a dog because the wounds on the muzzle are raw and oozing, and if the dog is not protected from the sun, and the wounds are not treated, the same skin is injured by the sun repeatedly. Jack's canine teeth and incisors were cut or filed down, and the roots of the canine teeth were exposed. Jack died in the animal shelter as a result of severe heart worm disease and related complications.

Deuce—Count 15

{48} Based on the evidence in the record, we conclude that there was sufficient evidence to support Defendant's conviction on Count 15 relating to Deuce. Photographs taken at the time of the search show that Deuce was chained outside. There was a piece of plywood propped up on some cinder blocks that provided some shade and shelter. He did not have any water. His skin condition was poor, and he had old injuries and scars on his face, ears, and legs. Deuce also had a puncture wound on his face, a healing laceration on his leg, and an open wound on his ear. He was severely emaci-

ated. He had extreme muscle wasting over his entire body. His backbone appeared to be raised because all of the muscles connecting his ribs to his backbone were gone. His hip bones stuck out tremendously, and the muscle on his head was significantly wasted. Deuce's teeth had all been cut or filed down to the gum line. The roots and nerves were exposed, which Dr. Norris testified, would have been extremely painful. Deuce was euthanized the same day he was removed from Defendant's property.

Desiree—Count 18

{49} Based on the evidence in the record, we conclude that there was sufficient evidence to support Defendant's conviction on Count 18 relating to Desiree. Photographs taken at the time of the search show that Desiree was chained outside without water. Her chain was tangled to her post so that she could not move around. Her skin condition was poor and she had sores on her face, ears, legs, and back end. Desiree was very emaciated; her backbone and ribs protruded. Dr. Norris testified that she could put her fingers between Desiree's ribs. Desiree's teeth were filed down with the pulp exposed. In the shelter, Desiree was able to eat but was exhibiting multiple symptoms of illness including diarrhea, nasal discharge, and a cough. Desiree tested positive for heart worm disease and was euthanized approximately one month after being removed from Defendant's property in 2008. Accordingly, we also conclude that there is sufficient evidence in the record to support any of the theories set forth in the jury instruction on extreme cruelty to animals.

III. CONCLUSION

{50} For the foregoing reasons, we uphold the constitutionality of the animal cruelty statute and affirm Defendant's convictions for cruelty to animals and extreme cruelty to animals.

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

M. MONICA ZAMORA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge
LINDA M. VANZI, Judge





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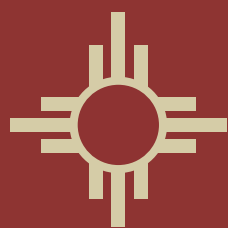
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Agenda

Sign-in		7:45 – 8:15 a.m.
Introductory Comments		8:15 – 8:30 a.m.
Federal and State Estate and Gift Tax Update 2017	Vickie R. Wilcox, J.D., LL.M.	8:30 – 9:45 a.m.
What Fiduciaries, Estate Planners, and Other Advisors Should Know About Oil and Gas Interests	Sealy Cavin, Jr., J.D., LL.M. Scott S. Morgan, J.D.	9:45 – 10:45 a.m.
Break		10:45 – 11:00 a.m.
State of the State from the Judiciary’s Perspective	Chief Judge Nan Nash, J.D.	11:00 – 12:00 p.m.
Lunch		12:00 – 1:30 p.m.
Advising the Small Business Owner on Insurance Coverage: From Property to D & O (and in Between)	Betsy Carlson, RPLU, ASIL, CIC Vickie R. Wilcox, J.D., LL.M.	1:30 – 2:30 p.m.
Advising the Small Business Owner on Intellectual Property: From Trademarks to Non-Competes (and in Between)	Jeffrey D. Myers, J.D.	2:30 – 3:30 p.m.
Break		3:30 – 3:45 p.m.
A Gaze Into the Crystal Ball: The Future of Estate Planning Services and the Ethical Issues Raised	William D. Sleese, J.D.	3:45 – 4:45 p.m.

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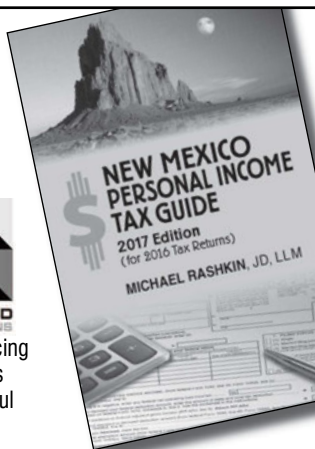
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Legal Notice

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 the Procurement manager no later than 3:00 PM Mountain Standard Time/Daylight on Wednesday March 22, 2017. Sealed proposals must be sent to the attention of Maureena Williams Procurement Manager, Division of Vocational Rehabilitation, 435 St. Michael's Drive, Building D, and Santa Fe, New Mexico 87505. Proposals received after this deadline will not be accepted.

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Health Care Operations Attorney (Staff Attorney I) (Job ID 6706)

URL <http://tinyurl.com/hzcj8tg>

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Job URL <http://tinyurl.com/h36u48j>

Do you want to be part of a collegial legal team that supports an innovative and integrated health care delivery system? Presbyterian Healthcare Services, based in Albuquerque, New Mexico, is seeking an energetic, team player to join its in-house legal team as a health care regulatory/transactional attorney. The ideal candidate will have over five years of experience in regulatory and transactional matters for health care clients, including advising clients on federal and state regulatory matters; fraud and abuse (including, in particular, the Stark Law); physician arrangements; mergers and acquisitions; joint ventures and affiliations; reimbursement issues; compliance reviews and investigations; privacy and security; and exempt organization issues. This position will provide legal support to Presbyterian's enterprise, which includes multiple hospitals, a large physician group, an ambulance service, post-acute service lines, a health plan, and a health plan management services organization. This position will report to, and work closely with, Presbyterian's General Counsel and will include providing legal advice and counsel regarding a full range of health law issues, including the following: Assist business leaders with the review and structure of legally compliant contracts and business arrangements to address strategic business needs or objectives; Provide legal support and direction for physician and referral source contracting and support other counsel and our physician employment team in physician contracting; Understand physician compensation issues, methodologies, and legal issues implicating fair market value and commercial reasonableness in healthcare transactions; Provide legal support and direction for the enterprise-wide contracting process by assisting in reviewing, drafting and negotiating a variety of contracts, providing regulatory review and support of contracts, providing education and training on the contracts management process, and

providing legal support and guidance to the contracts management team; Develop and continually update library of form contracts, clauses and provisions in order to leverage and strengthen Presbyterian's interests through compliant structuring of business relationships and increased use of standard terms and contract templates; Provide legal advice to business stakeholders in order to identify and mitigate legal, regulatory, and business risk in proposed business transactions; Draft, revise and negotiate agreements in a timely manner in order for Presbyterian to meet its strategic and business objectives; Manage assigned projects, develop strategies and implementation plans and take an active role in driving projects to final result; Develop strong relationships with business partners and stakeholders; Provide education, training, and guidance in formal and informal settings on a regular basis in order to identify and mitigate legal risk across the enterprise; Provide back-up coverage for other Presbyterian attorneys and participate in the call rotation for after-hours legal emergencies; Provide legal support to the compliance department; Develop educational materials and tools to educate and assist Presbyterian's business and operations teams with maintaining compliance with healthcare laws and regulations; and Work in conjunction with hospital departments and team members in order to properly operationalize educational and business objectives. Qualified candidates must have a Juris Doctor degree from an accredited law school and an active license to practice law in one or more states and be a member in good standing of the applicable state bar. A New Mexico license to practice law is preferred and must be acquired as soon as practicable following employment. Presbyterian Healthcare Services is an integrated system of 8 hospitals, 36 clinics, a physician medical group and a health plan. As New Mexico's only private, not-for-profit healthcare system we exist to improve the health of the patients, members and communities we serve. Presbyterian is in an exciting period of innovation, and we are actively strengthening our integrated system to create high quality, efficient and affordable care for the New Mexicans we serve. We are proud of our 106-year legacy of providing healthcare that began before New Mexico was even a state, and we know how important it is to ensure that we're here for New Mexicans today and in the future. Interested candidates please apply directly online to www.phs.org/careers. For questions, contact Nancy Whitson, nwhitson@phs.org. 505-923-7779. We are an equal opportunity employer and all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, national origin, sexual orientation, gender identity, disability status, protected veteran status, or any other characteristic protected by law. PHS is committed to ensuring a drug-free workplace.

Santa Fe County Request For Proposals Legal Services

Santa Fe County is requesting proposals from licensed, qualified Offerors to provide Professional Legal Services in a wide range of practice areas, including the following: Environmental law; Water law, including water rights acquisition and disposition; Labor law; Employment law; Appellate practice; Condemnation, both inverse and direct; quiet title actions, and actions to have prescriptive easements declared; Land use and land use planning; Adult and juvenile detention facility operations and procedures; Health care, including health information privacy; Insurance coverage and the procurement of insurance coverage, including an analysis of competing policies and gap analysis to determine additional coverage needed; Defense of tort claims; Issues arising under the Rules of Professional Conduct; Transactions; Federal and state taxation; Civil and criminal litigation and appeals; Procurement and governmental contracting; Public water and wastewater utilities; Bankruptcy; and Non-Bond Financing and Special Districts. Offerors do not have to have experience in all of these practice areas to submit a proposal, as this is a multiple source award solicitation. Services may include general advice as well as transactional and litigation work. All proposals must be received by 2:00 PM (MDT) on Tuesday, March 14, 2017, at the Santa Fe County Purchasing Division (Second Floor), 142 W. Palace, Santa Fe, New Mexico 87501. The request for proposals is available by contacting Maricela Martinez, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico 87501, by telephone at (505) 992-9864 or by email at mcmartinez@santafecountynm.gov or on our website at http://www.santafecountynm.gov/asd/current_bid_solicitations. Reference RFP No. 2017-0223-LG/MM. PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.

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.

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.

Experienced Attorney

Cordell & Cordell, P.C., a domestic litigation firm with 110 offices across 30 states, is currently seeking an experienced attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and firm paid retreats. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

Associate Attorney

Law Offices of Lynda Latta, LLC seeks associate attorney for fast paced law firm specializing in family law and criminal misdemeanor defense. Excellent computer and communication skills, ability to multitask and being a good team player are all required. Pay DOE. Send resume via mail: Attn. Holly @ 715 Tijeras Ave. NW, 87102 or email: holly@lyndalatta.com

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SUBMISSION DEADLINES

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

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

NMLA Seeks Staff Attorney for Justice for Families Project

New Mexico Legal Aid is seeking a staff attorney to be based in Albuquerque or Santa Fe to work with the Volunteer Attorney Program's Justice for Families Project. The staff attorney will recruit, train and support volunteer attorneys, law students and paralegals located in urban areas to use videoconferencing and other technology to help low-income families and single-parent households in underserved rural communities. NMLA's Volunteer Attorney Program closely collaborates with the State Bar of New Mexico, the New Mexico Commission on Access to Justice, local Judicial District pro bono committees, individual private attorneys and law firms, law school faculty and student groups, and civil legal services partner agencies throughout the state to support pro bono assistance to low-income New Mexicans. Requirements: Candidates must be licensed in New Mexico or eligible for admission by examination or licensed in another state and eligible for reciprocity admission or for New Mexico legal aid providers limited licensing. Prior experience working with pro bono programs or handling pro bono cases is a plus. Candidates must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a significant caseload and build collaborative relationships within the staff and the community. Must be willing to travel. Proficiency in Spanish is a plus. Send a current resume and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org Salary: DOE, NMLA is an EEO Employer. Deadline: March 13, 2017.

DDPC Office of Guardianship Contract Attorneys Needed for FY18 (July 1, 2017 to June 30, 2018)

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

Bilingual Domestic Violence Family Law Attorney and Legal Director

Enlace Comunitario (EC), a social justice non-profit organization in Albuquerque, N.M. works to eliminate domestic violence in the immigrant community and is seeking applications for a Legal Director and a staff attorney. With a staff of approximately 30, EC provides direct services to more than 750 survivors and child witnesses of domestic violence a year and engages former victims and community members in prevention and advocacy efforts. The legal department takes referrals for services from our client base. Attorneys in the legal department represent EC clients and the Legal Director supervises the legal work of the department. The legal director must be an experienced and effective attorney, mentor and trainer. The legal director must lead the legal team in collaborating with the multidisciplinary team at Enlace and work well with court personnel, other agencies and community members. The Legal Director is part of the leadership team and will work collaboratively to further EC's mission. More information about the positions can be found on EC's web site. <http://www.enlacenm.org/>. Required: State of New Mexico Bar License or eligible for NM limited license pursuant to NM Rule 15-301.2. Spanish/English bilingual proficiency and committed to social justice. LEGAL DIRECTOR: At least three years of family law practice experience for legal director position. STAFF ATTORNEY: At least one year as a licensed attorney preferably with family law practice experience. Preferred: Preference will be given to individuals with experience working with domestic violence, immigrant rights and/or social justice issues. Competitive salary and benefits depending on experience. These are full-time positions. If interested, please send your resume, letter of interest and a recent writing sample to info@enlacenm.org. Closing date: Open until filled.

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

Paralegal

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

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

Positions Wanted

Legal Assistant/Paralegal Seeks FT Employment

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

Services

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Experienced freelance paralegal available for civil litigation cases. Excellent references. civilparanm@gmail.com.

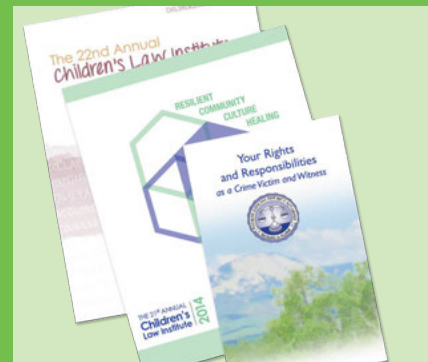
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