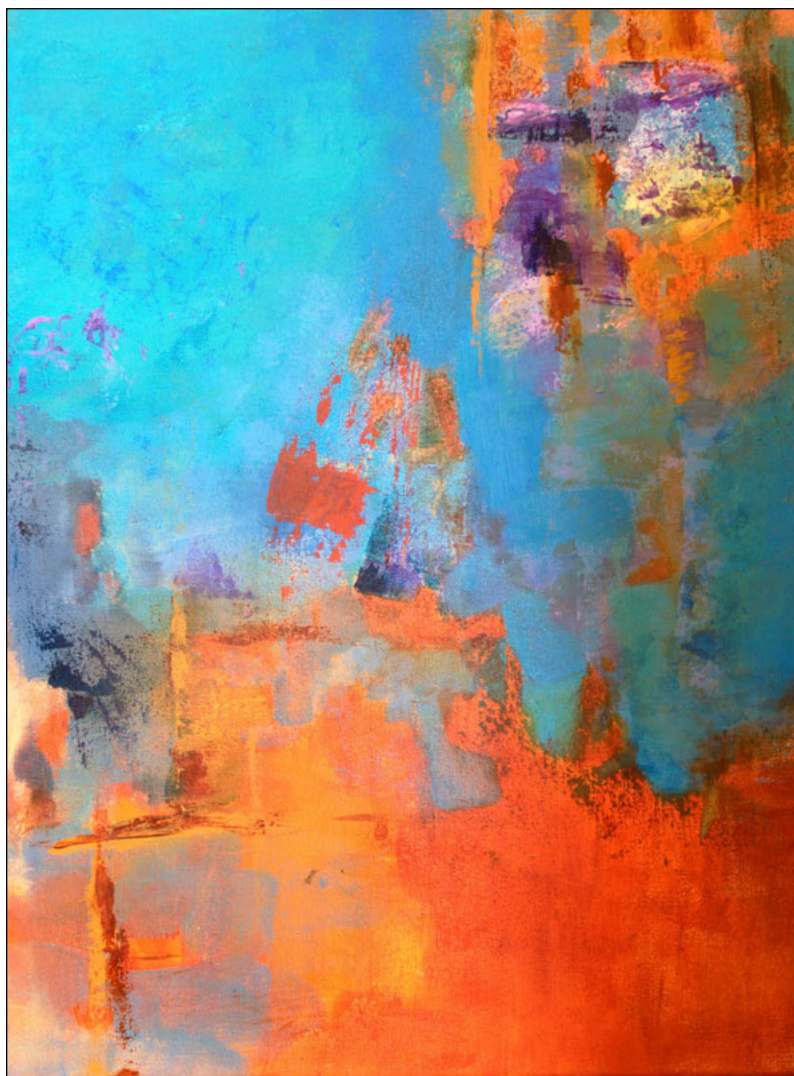


# BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

March 8, 2017 • Volume 56, No. 10



*Village*, by Linda Holland (see page 3)

[www.lindahollandstudio.com](http://www.lindahollandstudio.com)

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—SPECIAL INSERT—  
**CLE Planner**

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For more information, contact Richard Spinello,  
[rspinello@nmbar.org](mailto:rspinello@nmbar.org) or 505-797-6050.



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## Meetings

### March

- 8**  
**Taxation Section Board,**  
11 a.m., teleconference
- 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
- 15**  
**Real Property, Trust and Estate Section**  
**Real Property Division,**  
Noon, State Bar Center
- 17**  
**Family Law Section Board,**  
9 a.m., teleconference

## Workshops and Legal Clinics

### March

- 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
- 5**  
**Divorce Options Workshop**  
6–8 p.m., State Bar Center, Albuquerque,  
505-797-6003

**About Cover Image and Artist:** Linda Holland layers and blends color and intuitively responds to shades and textures which evoke patinas of urban and natural realms. Gesture and motion flow from martial arts and musical rhythms. Her abstract sculptures and paintings have been featured in numerous solo and two-person shows in New Mexico as well as juried regional group exhibits. In addition to corporate and private collections, several of her works have been selected for state, municipal and university art collections. More paintings can be viewed at [www.lindahollandstudio.com](http://www.lindahollandstudio.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 Court Judicial Nominees

The Third Judicial District Court Nominating Commission convened on Feb. 23 in Las Cruces and completed its evaluation of the eight applicants for the vacancy on the Third Judicial District Court. The Commission recommends the following two applicants (in alphabetical order) to Gov. Susana Martinez: **James Andrew Dickens** and **Conrad Frederick Perea**.

### Bernalillo County Metropolitan Court Change in Civil Summons

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

## STATE BAR NEWS

### Attorney Support Groups

- March 13 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.)
- April 3, 5:30 p.m.  
First United Methodist Church, 4th and

## Professionalism Tip

### With respect to my clients:

I will counsel my client that initiating or engaging in settlement discussions is consistent with zealous and effective representation.

Lead SW, Albuquerque (Group meets the first Monday of the month.)  
For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

### Animal Law Section

#### Animal Talk: City of ABQ Trap, Neuter and Return Program

Join the Animal Law Section for a lively discussion of the legal issues arising out of the City of Albuquerque's Trap, Neuter and Return Program. The Animal Talk will be from noon-1 p.m., March 31, at the State Bar Center. The speakers for this event represented the parties in *Britton v. Bruin*, et al., decided by the New Mexico Court of Appeals on Feb. 22, 2016. Professor Marsha Baum of the UNM School of Law will moderate the discussion between A. Blair Dunn and Nicholas H. Bullock, the attorneys who represented the parties in *Britton v. Bruin*. Dunn, of Western Agriculture Resource and Business Advocates LLP, represented Petitioner-Appellant Marci Britton. Bullock, assistant city attorney for the City of Albuquerque, represented Respondent-Appellee City of Albuquerque. Contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org) to indicate your attendance.

### 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](mailto:jconte@nmbar.org) or PO Box 92860, Albuquerque, NM 87199-2860.

### 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](mailto: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](http://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](mailto: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](mailto: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](mailto: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.

## 2017–2018 Bench & Bar Directory

Update Your Contact Information by March 24

To verify your current information: [www.nmbar.org/FindAnAttorney](http://www.nmbar.org/FindAnAttorney)

To submit changes (must be made in writing):

Online: Visit [www.nmbar.org](http://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](mailto:address@nmbar.org)

Publication is not guaranteed for information submitted after March 24.



### New Mexico Lawyers and Judges Assistance Program

Help and support are only a phone call away.

#### 24-Hour Helpline

Attorneys/Law Students

505-228-1948 • 800-860-4914

Judges 888-502-1289

[www.nmbar.org/JLAP](http://www.nmbar.org/JLAP)

### The Board Governing the Recording of Judicial Proceedings A Board of the Supreme Court of New Mexico

## Expired Court Reporter Certifications

The following list includes the names and certification numbers of those court reporters whose New Mexico certifications expired as of Dec. 31, 2016.

Name	CCR CCM No.	City, State
Ellen Allanic (ret.)	CCR# 100	Albuquerque, N.M.
Ellen Heckle	CCR# 270	Archer, Texas
Catherine Leon	CCT# 71	Albuquerque, N.M.
Dolores Rawlins	CCR# 308	Seattle, Wash.
Angela Weaver	CCR# 304	Khei, Hawaii
Joanne Williams	CCR# 508	Albuquerque, N.M.
Thomas Garrett (deceased)	CCR# 255	Albuquerque, N.M.

Saturday 10 a.m.–6 p.m.  
Sunday noon–6 p.m.

#### Reference

Monday–Friday 9 a.m.–6 p.m.  
*Abbreviated Hours for Spring Break*

March 12–19  
Monday–Friday 9 a.m.–6 p.m.

### 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 purchased for \$400 and seat approxi-

mately 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](mailto:goodwili@law.unm.edu).

### OTHER BARS 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](http://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 March 30–April 1 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](http://www.nmcdla.org) to register, or call 505-992-0050 for more information.

### OTHER NEWS Christian Legal Aid Donate for a Chance to Win Disneyland Passes

Register for a chance to win four one-day Park Hopper Passes to Disneyland (expiration: Nov. 14, 2018). The price is \$10 for one ticket or \$30 for four tickets. There is no limit on the number of tickets bought. All proceeds go to New Mexico Christian Legal Aid. Visit <http://nmchristianlegalaid.org/disney-passes-affle/> to enter.

### 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

*Continued on page 8.*

# Opinions

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

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

**Effective February 24, 2017**

## UNPUBLISHED OPINIONS

No. 33551	3rd Jud Dist Dona Ana CR-07-293, STATE v V BALDONADO (affirm in part, reverse in part and remand)	2/20/2017
No. 35685	2nd Jud Dist Bernalillo CV-13-6674, C HARVEY v B HOOTEN (affirm)	2/20/2017
No. 35463	10th Jud Dist Quay CR-14-35, STATE v D ROMERO (affirm)	2/20/2017
No. 35369	10th Jud Dist Quay CR-15-11, STATE v A GARCIA-PONCE (reverse and remand)	2/21/2017
No. 35678	13th Jud Dist Cibola CV-15-157, N RAINS v CITY OF GRANTS (affirm)	2/21/2017
No. 35818	2nd Jud Dist Bernalillo CR-15-1649, STATE v I MARQUEZ (reverse and remand)	2/21/2017
No. 34963	12th Jud Dist Lincoln LR-15-01, STATE v R TARIN (affirm)	2/21/2017
No. 35902	3rd Jud Dist Dona Ana CR-15-824, STATE v J DELGADO (affirm)	2/21/2017
No. 35100	2nd Jud Dist Bernalillo JQ-13-30, CYFD v AMANDA M (affirm)	2/22/2017
No. 35739	3rd Jud Dist Dona Ana CR-15-535, STATE v J BURNETTE (reverse)	2/22/2017
No. 34120	5th Jud Dist Lea CR-07-86, STATE v S PINON (dismiss)	2/23/2017
No. 35431	11th Jud Dist San Juan LR-15-50, CITY OF FARMINGTON v B SCOTT (affirm)	2/23/2017
No. 35501	2nd Jud Dist Bernalillo JQ-15-50, CYFD v AARON F (affirm)	2/24/2017
No. 35425	2nd Jud Dist Bernalillo JQ-15-50, CYFD v MELANIE G (affirm)	2/24/2017

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

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



## Arturo L. Jaramillo Summer Law Clerk Program

The State Bar of New Mexico Committee on Diversity in the Legal Profession would like to thank the law firms participating in the 2017 Arturo L. Jaramillo Summer Law Clerk Program. **Thanks to these law firms, 18 first year law students from the University of New Mexico School of Law will have the opportunity to gain valuable clerkship experience this summer.**

Albuquerque Business Law PC  
Bernalillo County Assessor  
Butt Thornton & Baehr PC  
Comeau Maldegen Templeman & Indall LLP  
Cuddy & McCarthy LLP  
David Walther Law  
Freedman Boyd Hollander Goldberg Urias & Ward PA  
Kennedy Kennedy & Ives  
Montgomery & Andrews PA

Peifer Hanson & Mullins  
PNM Resources Inc.  
Rodey Dickason Sloan Akin & Robb PA  
Rose L Brand & Associates PC  
Rothstein Donatelli LLP  
Roybal-Mack Law PC  
SaucedoChavez PC  
Sheehan & Sheehan PA

---

### Congratulations to the students selected to participate in the 2017 program!

Noe Astorga-Corral  
Israel Chávez  
Lilia Diaz  
Christian Goldsmith  
Sunderjeet Kaur  
Maya Lindgren

Vladimir L'Ouverture  
Anthony Maestas  
Dominique Oliver  
Benjamin Osborn  
Verenice Peregrino-Pompa  
Erin Phillips

Zackary Quintero  
Paul Roybal  
Stephanie Schneider  
Miguel Talamantes Guzman  
Serena Valley

---

Also, the Committee would like to extend a special thank you to **Mo Chavez**, chair of the Clerkship Program Selection Committee; **Heather Harrigan**, assistant dean for Career Services at the UNM School of Law; and **Quiana Salazar-King**, assistant director of Career Services at the UNM School of Law.



THE UNIVERSITY of  
NEW MEXICO SCHOOL of LAW



# Arturo L. Jaramillo Summer Law Clerk Program Celebrates 25 Years



*Past participants of the Summer Law Clerk Program*



*Art Jaramillo addresses the audience.*



*Mariposa Padilla Sivage and Liliana Benitez De Luna*

On Saturday, Jan. 14, program administrators, employers, and previous participants of the Arturo L. Jaramillo Summer Law Clerk Program gathered at the State Bar Center for a brunch celebrating the 25th anniversary of the program. The program's goal has been to offer law students of diverse backgrounds the opportunity to clerk in legal settings that provide a foundation for the students' law careers. More than 200 first-year law students have participated in the program, working in the best legal environments New Mexico has to offer.

In 2016, the Clerkship Program gained national recognition when it received the American Bar Association's Partnership Award, which recognized broad-based pipeline efforts aimed at nurturing diversity in the legal profession.

Arturo Jaramillo, the first Hispanic president of the State Bar of New Mexico, started the Clerkship Program in 1993, and it is named in his honor today. At the anniversary brunch, Jaramillo took time to reminisce about his experience with the program and to thank all those who have made it possible. After giving him a standing ovation, the audience hung onto every word. "Not being in the top percentage of the class does not mean you can't compete and succeed in this profession," he said.

Liliana Benitez De Luna, a 2016 participant of the Clerkship Program, spoke about her experience, saying that she's not traditionally impressive on paper but that this program helped her get her qualifications across.

For more information about the Summer Law Clerk Program, contact Program Chair Mo Chavez at [mo@saucedochavez.com](mailto:mo@saucedochavez.com).

For more photos, visit [www.nmbar.org/Photos](http://www.nmbar.org/Photos). For recognition of the 2017 program participants and employers, flip back to page 7.

*continued from page 4*

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, pending MCLE approval) 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](mailto:janez@nmlegalaid.org).



# Legal Education

## March

- |   |   |   |
|---|---|---|
| <p><b>9     Advanced Workers Compensation</b><br/>5.6 G<br/>Live Seminar, Albuquerque<br/>Sterling Education Services, Inc.<br/>www.sterlingeducation.com</p>                                     | <p><b>14    Planning to Prevent Trust, Estate<br/>and Will Contests</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>27    Keynote Address with Justice Ruth<br/>Bader Ginsburg (2016 Annual<br/>Meeting)</b><br/>1.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>10    Reforming the Criminal Justice<br/>System</b><br/>6.0 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                           | <p><b>15    Lawyer Ethics and Investigations<br/>for and of Clients</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>27    Lawyers Duties of Fairness and<br/>Honesty (Fair or Foul 2016)</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                |
| <p><b>10    Indian Law 2016: What Indian Law<br/>Practitioners Need to Know</b><br/>1.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>      | <p><b>20    Attorney vs. Judicial Discipline</b><br/>2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>29    2016 Administrative Law Institute</b><br/>4.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                      |
| <p><b>10    Journalism, Law and Ethics (2016<br/>Annual Meeting)</b><br/>1.5 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                        | <p><b>23    Drafting Demand Letters</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>29    Environmental Regulations/Oil<br/>and Gas Industry (2016 Annual<br/>Meeting)</b><br/>1.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>10    New Mexico DWI Cases: From the<br/>Initial Stop to Sentencing (2016)</b><br/>2.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>23–24 Improving Client Relations in Your<br/>Practice: Using Microsoft Word,<br/>Excel and PDF Files</b><br/>12.3<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>29    Fear Factor: How Good Lawyers<br/>Get Into Ethical Trouble (2016)</b><br/>3.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>             |
| <p><b>10    Sharpening Your Skills for Federal<br/>Court</b><br/>5.7 G<br/>Live Seminar, Albuquerque<br/>New Mexico Criminal Defense<br/>Lawyers Association<br/>www.nmcdla.org</p>               | <p><b>24    Microsoft Excel for Lawyers and<br/>Legal Staff</b><br/>2.8 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>29    BDITs: Beneficiary Defective<br/>Inheritor's Trusts—Reducing Taxes,<br/>Retaining Control</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>10    Justice for Families Project<br/>Attorney Orientation</b><br/>2.0 EP<br/>Live Seminar, Albuquerque<br/>New Mexico Legal Aid<br/>505-545-8543</p>                                      | <p><b>24    What a Lawyer Needs to Know<br/>About PDF Files</b><br/>3.0 G<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>30    Family Law Investigative and Legal<br/>Research on a Budget</b><br/>2.5 G, 1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>10    Ethical Issues in Pro Bono</b><br/>2.0 EP<br/>Live Seminar, Albuquerque<br/>Volunteer Attorney Program<br/>505-814-5038</p>   | <p><b>27    Wildlife/Endangered Species on<br/>Public and Private Lands (2016)</b><br/>6.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                     | <p><b>30    Trial Skills College</b><br/>14.7 G<br/>Live Seminar, Albuquerque<br/>New Mexico Criminal Defense<br/>Lawyers Association<br/>www.nmcdla.org</p>  |

## March

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| <p><b>30 SALT: How State and Local Tax Impacts Major Business Transactions</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>31 Ethics for Government Attorneys</b><br/>2.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |  |
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## April

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

## May

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| <p><b>5 Lawyer Ethics and Client Development</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>             | <p><b>18 Annual Estate Planning Update</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>Wilcox Law Firm<br/>www.wilcoxlawnm.com</p> | <p><b>23 Drafting Gun Wills and Trusts—and Preventing Executor Liability</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>        |
| <p><b>9 Undue Influence and Duress in Estate Planning</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>     | <p><b>19 Ethics in Discovery Practice</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>         | <p><b>31 Ethics and Artificial Intelligence in Law Practice Software and Tools</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>12 Ethics of Co-Counsel and Referral Relationships</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |  |   |

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Dated Feb. 20, 2017

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<hr/> <p><b>CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS</b></p> <hr/> <p>Effective February 15, 2017:  <b>Andrea Christman</b>  132 Lisbon Avenue S.E.  Rio Rancho, New Mexico 87124  drea_41@yahoo.com</p> <hr/> <p><b>CLERK'S CERTIFICATE OF ADMISSION</b></p> <hr/> <p>February 21, 2017:  <b>Maureen C. Dolan</b>  Office of the State Engineer  PO Box 25102  130 S. Capitol Place (87501)  Santa Fe, NM 87504  505-827-3824  505-476-7408 (fax)  maureen.dolan@state.nm.us</p> <hr/> <p><b>CLERK'S CERTIFICATE OF WITHDRAWAL</b></p> <hr/> <p>Effective February 17, 2017:  <b>Blair I. Fassburg</b>  601 Union Street, Suite 4100  Seattle, WA 98101</p> <p>Effective February 14, 2017:  <b>Gordon S. Sargent</b>  14 San Pedro View  Tijeras, NM 87059</p>	<hr/> <p><b>CLERK'S CERTIFICATE OF SUMMARY SUSPENSION FROM MEMBERSHIP IN THE STATE BAR OF NEW MEXICO</b></p> <hr/> <p>Effective <b>February 15, 2017</b>:  <b>Elena Moreno Hansen</b>  La Morena Law LLC  225 E. Idaho Avenue Suite 27  Las Cruces, NM 88005  575-932-8335  fax: 505-274-7783  e-mail: elena@lamorenalaw.com  or  1990 E. Lohman Suite 225  Las Cruces, NM 88001</p> <hr/> <p><b>CLERK'S CERTIFICATE OF CORRECTION</b></p> <hr/> <p>a clerk's certificate of address and/or telephone changes dated Jan. 27, 2017, contained a typographical error in the address change certified for <b>M. Naomi Salazar</b>. It is corrected below:  <b>M. Naomi Salazar</b>  PO Box 26542  Albuquerque, NM 87125  505-243-4433  505-243-1441 (fax)  naomisalazar@msn.com</p> <hr/> <p><b>IN MEMORIAM</b></p> <hr/> <p>As of July 10, 2016:  <b>Reed Thompson</b>  1000 New York Avenue  Alamogordo, NM 88310</p>	<hr/> <p><b>CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS</b></p> <hr/> <p>Effective December 31, 2016:  <b>Heidi M. Struse</b>  908 Princeton Drive SE  Albuquerque, NM 87106</p> <p>Effective January 1, 2017:  <b>D. Neill Benton</b>  1104 Florida Street NE  Albuquerque, NM 87110</p> <p><b>Sarah A. Bond</b>  4317 Glass Drive  Helena, MT 59602</p> <p><b>David G. Burlingame</b>  194 Camino Barranca  Placitas, NM 87043  <b>Charles N. Estes Jr.</b>  1315 Lobo Place NE  Albuquerque, NM 87106</p> <p><b>Sylvia M. Martinez</b>  4527 Brookwood NE  Albuquerque, NM 87109</p> <p>Effective January 1, 2017:  <b>Lisa Ann Buechler</b>  755 Parfet Street, Suite 151  Lakewood, CO 80215</p> <p><b>Jamye Boone Ward</b>  3014 El Dorado  Alamogordo, NM 88310</p> <p>Effective January 31, 2017:  <b>Raquel Antonio Muñoz</b>  600 E. Harrison Street #102  Brownsville, TX 78520</p>	<p>Effective January 9, 2017:  <b>Greg L. Gambill</b>  2000 Sixteenth Street  Denver, CO 80202</p> <p>Effective January 19, 2017:  <b>Tara C. Neda</b>  229 Ashley Lane  Corrales, NM 87048</p> <p><b>Abigail Sullivan-Engen</b>  436 Fourteenth Street, Suite 716  Oakland, CA 94612  Effective January 25, 2017:  <b>Michael Joseph Barthelemy</b>  5101 Coors Blvd. NW, Suite G  Albuquerque, NM 87120</p> <p>Effective January 31, 2017:  <b>Philip C. Gaddy</b>  4420 Prospect Avenue NE  Albuquerque, NM 87110</p> <p><b>J. E. Sauseda</b>  1008 S. Madison Street  Amarillo, TX 79101</p> <p>Effective February 1, 2017:  <b>James C. McKay</b>  8116 E. Whispering Wind Drive  Scottsdale, AZ 85255</p> <p><b>Yolanda Catalina Rodriguez</b>  PO Box 140028  Austin, TX 78714</p>
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# Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

**Effective March 8, 2017**

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## PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

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*See the special summary of proposed rule amendments published in this issue of the Bar Bulletin. The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 5, 2017.*

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## RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2016 NMRA:

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Effective Date

### Rules of Criminal Procedure for the Magistrate Courts

6-207	Bench warrants	04/17/2017
6.207.1	Payment of fines, fees, and costs	04/17/2017

### Rules of Criminal Procedure for the Metropolitan Courts

7-207	Bench warrants	04/17/2017
7-207.1	Payment of fines, fees, and costs	04/17/2017

### Rules of Procedure for the Municipal Courts

8-206	Bench warrants	04/17/2017
8-206.1	Payment of fines, fees, and costs	04/17/2017

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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>.

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## NOTICE OF PUBLICATION FOR COMMENT

### PROPOSED AMENDMENTS TO SUPREME COURT RULES OF PRACTICE AND PROCEDURE

In accordance with the Supreme Court's annual rulemaking process under Rule 23106.1 NMRA, which includes an annual publication of proposed rule amendments for public comment every spring, the following Supreme Court Committees are proposing to recommend for the Supreme Court's consideration proposed amendments to the rules of practice and procedure summarized below.

If you would like to view and comment on the proposed amendments summarized below before they are submitted to the

Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's website at [supremecourt.nmcourts.gov/openforcomment.aspx](http://supremecourt.nmcourts.gov/openforcomment.aspx), by email to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov), by fax to 5058274837, or by mail to

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P O Box 848  
Santa Fe, New Mexico 875040848

**Comments must be received by the Clerk on or before April 5, 2017**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

### *Ad Hoc Habeas Corpus Review Committee*

*Proposal 2017001 Filing and Processing of Petitions for a Writ of Habeas Corpus*  
[Rule 5802 and Forms 9701 and 702 NMRA]

The Ad Hoc Habeas Corpus Review Committee proposes to amend Rule 5802 NMRA and Form 9701 NMRA to address implementation issues with regard to the 2014 amendments to Rule 5802. The proposed amendments eliminate the thirty (30) day review and acceptance period under Rule 5802(F), and instead require that all petitions for a writ of habeas corpus be filed immediately upon receipt by the district court. The proposed amendments provide guidance to the district court as to how petitions should be classified and assigned upon filing. The proposed amendments also clarify how the various deadlines in Rule 5802 should be calculated. Finally, the proposed amendments to Rule 5802 address the transportation of incarcerated petitioners. The committee proposes amending Form 9701 to be consistent with the proposed amendments to Rule 5802. Amendments are also proposed to Form 9702 to make it consistent with the prison mailbox rule.

### *Appellate Rules Committee*

*Proposal 2017002 Calendar Assignments for Direct Appeals*  
[Rule 12210 NMRA]

The Appellate Rules Committee proposes to amend Rule 12210 NMRA, which controls the use of the calendaring process in the screening of direct appeals and the procedure followed in their disposition. The amendments are intended to clarify the screening function of the rule and to reflect more accurately the actual practices of the appellate courts in the use of the calendaring system.

*Proposal 2017003 Appellate Mediation*  
[Rule 12313 NMRA]

The Appellate Rules Committee proposes to replace existing Rule 12313 NMRA, which recognizes the possible adoption of procedures to govern settlement conferences, with a comprehensive rule describing the existing appellate mediation procedures.

*Proposal 2017004 Petition for Writ of Certiorari*  
[Rule 12502 NMRA]

The Appellate Rules Committee proposes to amend Rule 12502 NMRA, as follows: (1) a new Subparagraph (C)(2)(f), requiring the petitioner to alert the Supreme Court to any related or prior appeals, consistent with a similar obligation contained in Rules 12202 and 12208 NMRA; (2) a new Paragraph F, clarifying how parties should be denominated when opposing parties file separate petitions for writ of certiorari; (3) a new Paragraph I, addressing replies; (4) amendments to Paragraph K to provide more detailed information about the typical briefing schedule, depending on whether the petition for writ of certiorari has been granted from a case on the Court of Appeals' general calendar, summary calendar, or legal calendar; (5) amendments to Paragraph L to reflect that the Supreme Court may order oral argument at its discretion, as set forth in Rule 12319 NMRA; and (6) a new Paragraph M, regarding the Supreme Court's expedited process for briefing and oral argument in timesensitive cases.

### *Children's Court Rules Committee*

*Proposal 2017005 Sealing of Court Records in Delinquency Proceedings*  
[Rule 10166 NMRA]

The Children's Court Rules Committee proposes to amend Rule 10166(C) NMRA to require the automatic sealing of all court records in proceedings under the Delinquency Act, NMSA 1978, Chapter 32A, Article 2. The proposed amended rule would recognize exceptions to automatic sealing for the following: (1) the persons and entities identified in NMSA 1978, Section 32A232(C); (2) a facility, organization, or person providing care, treatment, or shelter to the child, including a detention facility; and (3) the Children, Youth, and Families Department, as governed by Section 32A232. The committee also recommends amending the committee commentary to highlight the proposed 2017 amendment.



*Proposal 2017006 Criminal Contempt in Children's Court Proceedings*  
[New Rule 10169 NMRA]

The Children's Court Rules Committee proposes to adopt new Rule 10169 NMRA to govern criminal contempt proceedings in children's court. The proposed new rule would treat adults and children differently for the purposes of criminal contempt. Adults would be subject to criminal contempt as provided in Rule 1093 NMRA; children would not be subject to criminal contempt at all. The proposed committee commentary to the rule explains that, in the committee's view, the punitive focus of criminal contempt is inconsistent with the rehabilitative purposes of the Children's Code.

*Proposal 2017007 Transfer of Case Erroneously Filed in Another Tribunal*  
[New Rule 10216 NMRA]

The Children's Court Rules Committee proposes to adopt new Rule 10216 NMRA to clarify how the children's court must proceed upon receipt of an order transferring a delinquency proceeding from another tribunal. Among other things, the proposed rule would require the clerk of the court to forward a copy of the transfer order and all papers filed in the other tribunal to the Juvenile Probation and Parole Office and the children's court attorney to assess whether a delinquency petition should be filed. For a related proposal, see Proposal 2017018, below, in which the Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to adopt new Form 9809 NMRA, Order of Transfer to Children's Court.

*Proposal 2017008 Guardian Ad Litem Notice of Whether Child Will Attend Hearing*  
[New Rule 10325.1 NMRA and new Form 10570.1 NMRA]

The Children's Court Rules Committee proposes to adopt new Rule 10325.1 NMRA and new Form 10570.1 NMRA. The proposed new rule would require a guardian *ad litem*, before each hearing in an abuse and neglect proceeding, to provide written notice of the following: (1) whether the child has been advised of the right to attend the hearing; (2) whether the child wishes to attend the hearing; and (3) whether the guardian ad litem believes that attendance is in the child's best interests. The proposed new form would be used to provide the required notice.

## **Code of Judicial Conduct Committee**

*Proposal 2017009 Parttime Judge Reporting Requirements*  
[Rule 21004 NMRA]

The Code of Judicial Conduct Committee proposes to amend to Rule 21004(B) NMRA. First, to eliminate redundancy, the committee proposes to combine Paragraphs (B)(1) and (B)(2) pertaining to parttime probate and municipal judges. Second, the committee proposes to amend Paragraph B to state that elected parttime probate and municipal judges, and judges appointed to a vacant seat on a parttime probate or municipal court, as well as other judges serving by contract or appointment on a parttime basis, are not required to comply with Rule 21315 NMRA (reporting requirements), "unless the extrajudicial compensation, expense reimbursement, or waiver of fees or charges to be reported relates

to the judge's judicial duties." Illustrative examples are provided in the committee's proposed new Comment 3.

## **Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee**

Because the rules of procedure for the magistrate, metropolitan, and municipal courts often overlap, the proposals from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee are summarized together in this section. In some instances, the committees are submitting joint proposals for the Supreme Court's consideration that would amend similar rules in similar ways. In other instances, only one committee is proposing amendments to its own particular set of rules.

*Proposal 2017010 Affirmation in Lieu of Notarization*  
[Rules 2301 and 3301 NMRA]

The Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to amend Rules 2301 and 3301 NMRA to add a new Paragraph I, titled "Unsworn affirmations under penalty of perjury." Paragraph I would provide that a written statement has the same effect as a notarized statement if the statement includes a date, a signature, and a "written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct." The new paragraph mirrors Rule 23115 NMRA of the Supreme Court General Rules and Rule 1011(B) NMRA of the Rules of Civil Procedure for the District Courts, which were adopted in 2014. Although the provisions in Rule 23115 apply to papers filed in the limited jurisdiction courts, the committees believe it would be helpful to practitioners and judges if the provisions were replicated in the magistrate and metropolitan court rules.

*Proposal 2017011 Answers and Defenses in Civil Cases*  
[Rules 2302, 2307, 3302, and 3307 NMRA]

The Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to amend Rules 2302 and 3302 NMRA, addressing answers and defenses, and Rules 2307 and 3307 NMRA, addressing motions. The amendments are intended to address a conflict regarding whether defenses must be raised in the answer or may be raised by separate motion.

*Proposal 2017012 Release on Recognizance Due to Lack of Probable Cause*  
[Rules 6203, 7203, and 8202 NMRA]

The Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to amend Rules 6203, 7203, and 8202 NMRA, which address probable cause determinations following warrantless arrests. The proposed amendments affect Subparagraph (C)(1) of the rules and clarify that if the court does not find probable cause, the court must release the defendant on personal recognizance "pending further proceedings." Currently, the rule provides that if the court does not find probable cause, the court shall release the defendant "pending trial."

*Proposal 2017013 Motions to Suppress Evidence*  
[Rules 6304 and 8304 NMRA]

The Courts of Limited Jurisdiction Rules Committee proposes to amend the provisions addressing motions to suppress evidence

in Rules 6304 and 8304 NMRA. First, the committee proposes to move the suppression paragraph from Paragraph B to Paragraph F of the rule. Second, the committee proposes to amend Subparagraph (F)(1)(b) to clarify that the suppression provisions apply to any motion to exclude evidence obtained through allegedly unconstitutional means. Third, the committee proposes a deadline for suppression motions of twenty days before trial or the time specified for a motion hearing, whichever is earlier. Fourth, the committee proposes to require the prosecution to file a written response within fifteen days after service of a motion to suppress, and to permit the court to rule on a motion to suppress without a hearing if the prosecution fails to file a timely written response. And finally, the committee proposes to adopt new committee commentary. The proposed amendments are consistent with the amendments to Rule 7304 of the Rules of Criminal Procedure for the Metropolitan Courts that took effect at the end of 2016.

## Proposal 2017014 Time Limits for Arraignment [Rules 6506, 7506, and 8506 NMRA]

Amendments are proposed to Rules 6506(A), 7506(A), and 8506(A) NMRA, which govern the time limits for arraignment in the magistrate, metropolitan, and municipal courts. Currently, Rules 6506(A) and 8506(A) require the magistrate and municipal courts to arraign a defendant in custody within four days after arrest, while Rule 7506(A) requires the metropolitan court to arraign a defendant in custody within two calendar days after arrest. Under the proposed amendments, the deadline for all limited jurisdiction courts to arraign a defendant in custody would be two days after the date of arrest. The amendments to Rules 6506 and 7506 also clarify the deadline for arraignment in a case where all felony charges have been dismissed and the only remaining charges are within the trial jurisdiction of the magistrate or metropolitan court.

## Proposal 2017015 Voluntary Dismissal and Refiled Proceedings [Rules 6506A, 7506A, and 8506A NMRA]

Amendments are proposed to Rules 6506A, 7506A, and 8506A NMRA, which addresses voluntary dismissal and refiled proceedings. First, the Courts of Limited Jurisdiction Rules Committee proposes to delete most of the references to felony cases to avoid any conflicts or confusion with the preliminary examination rule, Rule 6202 NMRA. For a related proposal, see Proposal 2017029, below, regarding proposed amendments to the preliminary examination rules, Rules 5302, 6202, and 7202 NMRA. Second, the Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose amendments to Paragraph B to clarify that voluntary dismissal results in the automatic exoneration of bond only as provided in Rules 6406, 7406, and 8406 NMRA. Third, the Court is considering three options for clarifying or amending in Paragraph D the method for calculating the time limits for the commencement of trial in a case where the prosecution dismisses and later refiles the charges. Under Option 1, the time between dismissal and refile *does* count as part of the unexpired time for the commencement of trial. Under Option 2, the time between dismissal and refile *does not* count as part of the unexpired time for the commencement of trial. And under Option 3, the time between dismissal and refile *does not* count as part of the unexpired time for the commencement of trial if the prosecution dismisses the charges less than thirty days after filing, but the time between dismissal and refile *does* count as part of the unexpired time for commencement of trial if the

prosecution dismisses the charges thirty or more days after filing. The proposed new committee commentary addressing Paragraph D would be adopted only if Option 3 is approved by the Court. Finally, the Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to add a new Paragraph E and new committee commentary to Rules 6506A and 7506A to address the situation where the prosecution files a complaint, information, or indictment in the district court that contains one or more charges pending before the magistrate or metropolitan court.

## Proposal 2017016 Witness Interviews in Metropolitan Court [Rules 7504 and 7606 NMRA]

The Metropolitan Courts Rules Committee proposes to amend Rule 7504 NMRA (discovery) and Rule 7606 NMRA (subpoena) to more accurately reflect the existing procedures in the metropolitan court for obtaining a witness interview in a criminal case, including the process for obtaining a subpoena for a witness interview when good faith efforts to schedule an interview have failed. The proposed amendments consolidate all of the subpoena provisions in Rule 7606 and clarify that a subpoena for a witness statement is valid only if signed by the trial judge. The committee also proposes to amend Rule 7504(F) to give the judge discretion to determine whether a party's failure to comply with the discovery rule should be deemed a waiver of the party's right to conduct a witness interview or deposition.

## Proposal 2017017 Untimely Probable Cause Determination [Rule 9207A NMRA]

The Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to amend Form 9207A NMRA to add a new checkbox, as follows: "A probable cause determination has not been made within 48 hours of the defendant's arrest. It is ordered that the defendant be released on personal recognizance." This checkbox would be used in circumstances where a probable cause determination has not been made within the forty-eight hour deadline set forth in Rules 6203 and 7203 NMRA.

## Proposal 2017018 Order of Transfer to Children's Court [New Rule 9809 NMRA]

The Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee propose to adopt a new criminal form, Form 9809 NMRA, Order of Transfer to Children's Court. The form reflects the procedure set forth NMSA 1978, Section 32A26, which requires the limited jurisdiction courts to transfer juvenile delinquency cases to the district court. *See* NMSA 1978, § 32A18(A)(1) (providing that the children's court has exclusive original jurisdiction over all proceedings in which a child is alleged to be delinquent). For a related proposal, see Proposal 2017007, above, in which the Children's Court Rules Committee proposes to adopt new Rule 10216 NMRA to address the procedure that the children's court must follow upon receipt of an order transferring a delinquency proceeding from another tribunal.

March  
2017

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# Live Programs



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## March



### Reforming the Criminal Justice System

Friday, March 10, 2017 • 8:30 a.m.–4:15 p.m.

Live at the State Bar Center and via Live Webcast

**Co-sponsor:** Criminal Law Section

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

6.0 G



### Attorney vs. Judicial Discipline

Monday, March 20, 2017 • 9:30–11:45 a.m.

Live at the State Bar Center and via Live Webcast

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

2.0 EP



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

Thursday and Friday, March 23–24, 2017

Live at the State Bar Center and via Live Webcast

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

UP TO  
12.3 G



### Family Law Internet Investigative Research on a Budget

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

Thursday, March 30, 2017 • 9 a.m.–12:45 p.m.

Live at the State Bar Center and via Live Webcast

Using hypothetical family law research scenarios, presenters, Carole Levitt, Esq., and Mark Rosch, will demonstrate the best internet legal and investigative research strategies for finding free and low cost websites and tricks to enhance family law research.

2.5 G 1.0 EP



### Ethics for Government Attorneys

Friday, March 31, 2017 • 1:30 –3:45 p.m.

Live at the State Bar Center and via Live Webcast

Join Bill Slease, chief disciplinary counsel for the New Mexico Supreme Court Disciplinary Board as he discusses ethical implications and considerations for government attorneys.

2.0 EP





# Live Replays



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## March

### Monday, March 27, 2017

#### Wildlife and Endangered Species on Public and Private Lands (2016)

6.0 G

9 a.m.–4:30 p.m.

#### Keynote Address with Justice Ginsburg (2016 Annual Meeting)

1.0 G

9 a.m.–10 a.m.

#### Lawyers Duties of Fairness and Honesty (Fair Or Foul-2016)

2.0 EP

11 a.m.–1 p.m.

### Wednesday, March 29, 2017

#### 2016 Administrative Law Institute

4.0 G 2.0 EP

8:55 a.m.–4:15 p.m.

#### Environmental Regulations of the Oil and Gas Industry (2016 Annual Meeting)

1.0 G

9:30 a.m.–10:30 a.m.

#### The Fear Factor: How Good Lawyers Get Into (and Avoid) Ethical Trouble (2016)

3.0 EP

11:30 a.m.–2:45 p.m.

### Thursday, March 30, 2017

#### 2016 Trial Know-How! (The Reboot)

4.0 G

2.0 EP

9 a.m.–4:20 p.m.

#### 2016 Real Property Institute

4.5 G

1.0 EP

9 a.m.–3:50 p.m.

#### The U.S. District Court: The Next Step in Appealing Disability Denials (2015)

3.0 G

1.0 EP

Noon–4:10 p.m.

### Friday, March 31, 2017

#### Living with Turmoil in the Oil Patch: What it Means to New Mexico (2016)

5.8 G

1.0 EP

8:30 a.m.–4:45 p.m.

#### The Trial Variety: Juries, Experts and Litigation (2015)

6.0 G

9 a.m.–4:15 p.m.

#### Ethically Managing Your Law Practice (2016 Ethicspalooza)

1.0 EP

9 a.m.–10 a.m.

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## **Domestic Relations Rules Committee**

### *Proposal 2017019 Amendments to Guardian Ad Litem Rule and Order*

[Rule 1053.3 NMRA and Form 4402 NMRA]

The Domestic Relations Rules Committee proposes to amend Rule 1053.3 NMRA and Form 4402 NMRA, the rule and form that govern the appointment of a guardian *ad litem* (GAL) in a domestic relations proceeding. The amendments are intended to clarify various aspects of a GAL's authority and of proceedings in which a GAL is a participant, including the following: (1) formally authorizing a GAL to communicate with mental health and medical professionals; (2) providing a GAL with discretion to interview a child under six years of age outside the presence of the parties and counsel; (3) refining the process for filing objections to a GAL's recommendations and holding a hearing on the objections; and (4) clarifying in the rule and commentary that a GAL may provide a verbal report and recommendations at a hearing without violating Rule 16307 NMRA. The amended rule also would provide greater protections for communications between the child and the GAL and for information in the GAL's files. The former would be privileged as provided in Rule 11503 NMRA, and the latter would be confidential except as provided in Rule 1026(B)(5) NMRA. The proposed amendments to the form substantially mirror the proposed amendments to the rule.

### *Proposal 2017020 Domestic Relations Mediation Act Programs* [Rule 1125 NMRA]

The Domestic Relations Rules Committee proposes to amend Rule 1125 NMRA, the rule that governs court programs under the Domestic Relations Mediation Act. The amendments would affect the rule in three ways. First, the amended rule would permit the parties to jointly interview a consultant who submits contested recommendations to the court after a priority or advisory consultation. Second, the amended rule would provide that information obtained during a priority consultation, advisory consultation, or similar service conducted by a courtoperated program is confidential and may be disclosed only under the limited circumstances set forth in the rule. And third, the amended rule would create an exception to the requirement to submit a proposed sliding fee scale to the Court for approval when the associated program is subject to the procurement process through the Administrative Office of the Courts.

### *Proposal 2017021 Assignment of Cases Under the Family Violence Protection Act* [New Rule 1129 NMRA]

The Domestic Relations Rules Committee proposes to adopt new Rule 1129 NMRA to govern the assignment of cases under the Family Violence Protection Act. The proposed new rule distinguishes between the first domestic violence petition filed between two parties and subsequent petitions filed between the same two parties. The former shall be opened and assigned to a judge in the same manner as any other case subject to the Rules of Civil Procedure for the District Courts. The latter shall be filed as part of the original proceeding to ensure continuity, whenever possible, in domestic violence proceedings involving the same two parties.

### *Proposal 2017022 Motion to Enforce Order* [Forms 4A200, 4A209, and 4A210 NMRA]

The Domestic Relations Rules Committee proposes to amend Forms 4A200 and 4A209 NMRA and to withdraw Form 4A210 NMRA. Amended Form 4A209 would replace the current motion and order to appear and show cause, Forms 4A209 and 4A210, with a single motion to enforce a court order. Amended Form 4A200 would revise the Stage 2 Instructions accordingly. The amendments are intended to avoid any conflict with criminal contempt proceedings under Rule 1093 NMRA, while still allowing a party to seek the enforcement of a court order.

### *Proposal 2017023 Amendments to Temporary Domestic Order and Rule 1121 NMRA* [Form 4A201 NMRA and Rule 1121 NMRA]

The Domestic Relations Rules Committee proposes to amend Form 4A201 NMRA, the Temporary Domestic Order (TDO), and corresponding Rule 1121 NMRA. The committee proposes to amend the TDO and the rule to make the order binding on the respondent immediately upon service. The committee also proposes to amend the TDO to prohibit the parties from engaging in conduct that would adversely affect their retirement accounts.

### *Proposal 2017024 Motion to Modify Final Order* [New Form 4A321 NMRA]

The Domestic Relations Rules Committee proposes to adopt new Form 4A321 NMRA. The new form would be used to ask a court to modify the conditions of a final order in a domestic relations proceeding, including a custody plan and order, a child support obligation and order, or a spousal support provision in a final decree of dissolution of marriage.

## **Rules of Civil Procedure for the District Courts**

### *Proposal 2017025 Relation Back of Amendments* [Rule 1015 NMRA]

The Rules of Civil Procedure Committee proposes to amend Rule 1015(C) NMRA to incorporate the "deeming" rule adopted by the Court in *Snow v. Warren Power & Mach., Inc.*, 2015NMSC026, 354 P.3d 1285, where a party files a motion to amend a pleading prior to the running of the statute of limitations seeking to change the party against whom a claim is asserted. The committee also proposes to incorporate the language of Federal Rule of Civil Procedure 15(c) and the Court's decision in *Galion v. Conmaco Int'l, Inc.*, 1983NMSC006, 99 N.M. 403, 658 P.2d 1130, where a party files a motion to amend a pleading after the statute of limitations has run seeking to change the party against whom a claim is asserted.

### *Proposal 2017026 Correction of References to Code of Judicial Conduct* [Rules 1053.1 and 1053.2 NMRA]

The Rules of Civil Procedure Committee proposes to amend Rules 1053.1(J) and 1053.2(K) NMRA to correct outdated references to the Code of Judicial Conduct and add to the commentary of both rules a new reference to Rule 21004(C) NMRA.

*Proposal 2017027 Notice to Statutory Beneficiaries in Wrongful Death Cases*  
[New Rule 1105 NMRA]

The Rules of Civil Procedure Committee proposes to adopt a new rule to govern the timing of notice to statutory beneficiaries and the required contents of the notice in wrongful death cases.

***Rules of Criminal Procedure for the District Courts Committee, Courts of Limited Jurisdiction Rules Committee, and Metropolitan Court Rules Committee***

*Proposal 2017028 Telephonic Approval of Warrants*  
[Rules 5211, 6208, 7208, and 8207 NMRA]

The Rules of Criminal Procedure for the District Courts Committee proposes to amend Rule 5211 NMRA to establish a preference for search warrant requests in writing and to require that testimony taken in support of telephonic warrant requests be recorded and filed with the court. Finally, the committee proposes to add commentary regarding the sealing and redaction of warrants under *State v. Malloy*, 2001NMCA067, 131 N.M. 222, 34 P.3d 611. Corresponding amendments are proposed to Rules 6208, 7208 and 8207 NMRA.

*Proposal 2017029 Preliminary Examination*  
[Rules 5302, 6202, and 7202 NMRA]

The Rules of Criminal Procedure for the District Courts Committee, Courts of Limited Jurisdiction Rules Committee, and Metropolitan Courts Rules Committee propose to amend Rules 5302, 6202, and 7202 NMRA, addressing preliminary examinations. The proposed amendments address several issues. First, the amendments to Paragraph A explain how certain interrupting events affect the ten and sixtyday deadlines for holding a preliminary examination. Second, the amendments to Subparagraph (D)(2) clarify the deadline for the limited jurisdiction court to arraign the defendant in a case involving both felony and misdemeanor charges where the court determines that there is no probable cause to support the felony charges. And third, a new Paragraph H states that if a case is dismissed and refiled, the refiled will trigger the commencement of a new ten or sixtyday time period to hold the preliminary examination. Proposed new Paragraph H also sets forth the information that the prosecutor must include in a refiled complaint.

***Rules of Professional Conduct***

*Proposal 2017030 Social Media*  
[Rules 16100, 16101, 16106, 16304, 16305, 16402, 16403, and 16701 NMRA]

The Code of Professional Conduct Committee proposes to amend several of the Rules of Professional Conduct to provide guidance to lawyers on the use of social media. The proposed amendments stem from research indicating that a lawyer's interface with social media could implicate a number of important areas of professional responsibility, including a lawyer's competency, client confidentiality, the ethical solicitation of clients, forthright and complete discovery, the privacy of potential and

seated jurors, and the control the court maintains over the information received by the jury.

*Proposal 2017031 Agreements to Arbitrate Legal Malpractice Claims*  
[Rule 16108 NMRA]

The Code of Professional Conduct Committee proposes to amend Comment 14 of Rule 16108 NMRA in light of *Castillo v. Arrieta*, 2016NMCA040, ¶¶ 2223, 368 P.3d 1249, which states that a lawyer is permitted to enter into an agreement with a client to arbitrate legal malpractice claims provided that the client is fully informed of the scope and effect of the agreement and gives informed consent.

*Proposal 2017032 Reporting Professional Misconduct*  
[Rule 16803 NMRA]

The Code of Professional Conduct Committee proposes to amend Rule 16803(E) NMRA to exempt not only impairments from alcohol, drugs, or other addiction disorders from the reporting requirement, but also impairments caused by mental, emotional, or other physical conditions not related to substance abuse.

***State Bar Rules***

*Proposal 2017033 Public Employee Limited Law Licenses*  
[Rule 15301.1 NMRA]

Amendments are proposed for the rule governing the issuance of limited law licenses to public employees to recognize the additional methods for seeking a permanent law license during the oneyear period of a limited law license issued under Rule 15301.1 NMRA in light of the recent adoption of admission by motion under Rule 15107 NMRA and admission by transferred Uniform Bar Examination score under Rule 15202 NMRA.

*Proposal 2017034 Bridge the Gap Mentorship Program*  
[Rule 24110 NMRA]

The Commission on Professionalism proposes to amend Rule 24110 NMRA, governing the State Bar's Bridge the Gap Mentorship Program, to clarify the exemption available to new attorneys who reside outside of New Mexico and new lawyers admitted under a limited law license.

***UJICivil Committee***

*Proposal 2017035 Legal Malpractice*  
[New Chapter 24: UJIs 132401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, -2410, 2411, 2412, 2413, 2414 NMRA]

The UJICivil Committee proposes to adopt a new Chapter 24 for use in legal malpractice cases. The Introduction provides a useful orientation to the new chapter. Practitioners and judges should pay special attention to the committee commentary to each proposed instruction. The committee commentary explains the legal basis for each instruction and highlights some of the issues faced by the committee in drafting the instructions. Finally, the



proposed Appendix provides two examples of how the instructions should be used in an actual case.

## ***UJICriminal Committee***

### *Proposal 2017036 Vehicular Homicide*

[UJI 14251 NMRA; new UJIs 14240B, 240C, and 240D NMRA; withdrawal of UJI 14240 NMRA]

The UJICriminal Committee proposes to separate UJI 14240 NMRA into three separate instructions in light of the recent amendments to NMSA 1978, Section 668101 (Homicide by vehicle; great bodily harm by vehicle) which created greater penalties for death caused by driving under the influence of alcohol or drugs than for death caused by reckless driving. In addition, the proposed amendment clarifies the causation requirement for vehicular homicide. Finally, the committee proposes to amend UJI 14251 NMRA (Homicide; “proximate cause”; defined) to clarify the state’s theory of causation and to further ensure that the jury’s findings are consistent with New Mexico’s requirement that intoxication or recklessness be the proximate cause of death.

### *Proposal 2017037 Possession of Burglary Tools* [UJI 141633 NMRA]

The UJICriminal Committee proposes to amend UJI 141633 NMRA to require a separate finding that the item possessed “is commonly used for the commission of a burglary.” The committee believes this to be an essential jury finding. Furthermore, the committee recommends bracketed alternatives for this element based upon case law.

### *Proposal 2017038 Accessory Liability* [UJIs 142820, 2821, and 2822 NMRA]

The UJICriminal Committee proposes to amend UJIs 142820, 2821, and 2822 NMRA to expressly state that the jury must find each of the elements listed. The committee also proposes to amend the Use Note and commentary to reflect recent developments in the relevant case law.

### *Proposal 2017039 Money Laundering* [New UJIs 144201, 4202, 4203, 4204, and 4205 NMRA]

The UJICriminal Committee proposes to adopt a new set of uniform jury instructions for offenses under the Money Laundering Act, NMSA 1978, Sections 30511 to 5 (1998).

### *Proposal 2017040 Duress* [UJI 145130 NMRA]

The UJICriminal Committee proposes to amend UJI 145130 NMRA (Duress; nonhomicide crimes) to resolve a tension between the instruction and the controlling case law. In *State v. Wyatt B.*, 2015NMCA110, ¶ 35, 359 P.d 165, the Court of Appeals noted “the district court used the terms of the uniform jury instruction rather than the fourfactor test articulated in [*State v.*] *Rios*[, 1999NMCA069, ¶ 25, 127 N.M. 334, 980 P.2d 1068].”

THE PROPOSED RULE AMENDMENTS SUMMARIZED ABOVE CAN BE VIEWED IN THEIR ENTIRETY AT THE NEW MEXICO SUPREME COURT WEBSITE  
<http://supremecourt.nmcourts.gov/openforcomment.aspx>

From the New Mexico Supreme Court and Court of Appeals

**Certiorari Granted, August 22, 2016, S-1-SC-35974**

From the New Mexico Court of Appeals

**Opinion Number: 2017-NMCA-002**

No. 34,427 (filed June 9, 2016)

BRUCE THOMPSON, as Guardian Ad Litem for  
A.O., J.P., and G.G., Minor Children,  
Plaintiff-Appellant,  
v.

CITY OF ALBUQUERQUE, RAY SCHULTZ,  
former Chief of Police of the City of Albuquerque,  
and K. SANCHEZ, City of Albuquerque Police Officer,  
Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

DENISE BARELA Shepherd, District Judge

SHANNON L. KENNEDY  
JOSEPH P. KENNEDY  
MICHAEL L. TIMM, JR.  
KENNEDY KENNEDY & IVES, LLC  
Albuquerque, New Mexico  
for Appellant

JESSICA M. HERNANDEZ,  
CITY ATTORNEY  
STEPHANIE M. GRIFFIN,  
DEPUTY CITY ATTORNEY  
CITY OF ALBUQUERQUE  
Albuquerque, New Mexico  
for Appellees

## Opinion

### Michael D. Bustamante, Judge

{1} Plaintiff appeals the dismissal of loss of consortium claims filed under Section 41-4-12 of the New Mexico Tort Claims Act on behalf of three minors. Because we conclude that the district court erred in ruling that the Tort Claims Act did not waive immunity for such claims, we reverse.

#### BACKGROUND

{2} In March 2010 Albuquerque Police Department officers responded to a report of a stolen vehicle in a Walmart parking lot. Several officers parked unmarked police cars in the lot around the stolen car. Decedent Mickey Owings (Owings), the father of A.O., J.P., and G.G. (Children), drove into the lot and parked next to the stolen vehicle, and a passenger got out of Owings' car and approached the stolen car. Officers moved one of the unmarked cars behind Owings' car to block it in, while another officer, Officer Sanchez, approached Owings' car on foot. Owings then backed

his car into the unmarked police car. As Owings was backing into the police car, Officer Sanchez shot toward Owings' car, hitting Owings in the chest. Although Owings drove away, he lost consciousness and came to a stop on a nearby road. He ultimately died from the gunshot wounds sustained in the parking lot. Owings was unarmed.

{3} On May 7, 2014, just over four years after the shooting, Bruce Thompson (Plaintiff) was appointed guardian ad litem for Children. A month later, Plaintiff filed a complaint against the City of Albuquerque, Ray Schultz (who was the police chief at the time of the shooting), and Officer Sanchez (collectively, Defendants) for "loss of consortium under the Tort Claims Act for the wrongful death of Mickey Owings." See NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015) (the Tort Claims Act or TCA). The complaint alleged, among other things, that "Defendant Sanchez shot Mr. Owings in violation of City policy and the law on deadly force, as [Owings] did not pose a threat of immediate death or serious physi-

cal injury to [Officer Sanchez] or others" and that "[t]he City of Albuquerque and Ray Schultz contributed to Mr. Owings' death by negligently hiring, training, retaining, failing to discipline, and failing to supervise its officers and by maintain[ing] a policy that allowed police officers to shoot at a moving vehicle." At the time of the filing of the complaint, Children were three, five, and twelve years old.

{4} Defendants filed a motion to dismiss for failure to state a claim under Rule 1-012(B)(6) NMRA. As grounds for dismissal, Defendants argued that (1) Plaintiff had failed to comply with the TCA's notice provisions, see § 41-4-16, (2) Plaintiff's claims were barred by the statute of limitations in the TCA, see § 41-4-15, (3) the facts alleged in the complaint were insufficient to establish a loss of consortium claim, (4) there is no waiver of immunity under Section 41-4-12 for loss of consortium or negligent hiring or retention claims. After a hearing, the district court granted the motion to dismiss. Plaintiff appealed.

#### DISCUSSION

{5} "Whether or not the district court has properly granted a motion to dismiss under Rule 1-012(B)(6) is a question of law, which we review de novo." *Fitzjerrell v. City of Gallup ex rel. Gallup Police Dep't*, 2003-NMCA-125, ¶ 8, 134 N.M. 492, 79 P.3d 836. In our review, we accept properly pleaded facts as true. *Id.* "Dismissal of a claim under this rule is only proper if [the p]laintiffs are not legally entitled to relief under any set of provable facts." *Id.*

{6} The district court's dismissal order was based on the district court's conclusion that "the [TCA] . . . does not waive sovereign immunity for the loss of consortium claim[s] asserted in this case." The district court did not reach Defendants' arguments for dismissal related to notice, statute of limitations, or sufficiency of the allegations. The district court's conclusion was based on its determination that (1) loss of consortium is not one of the enumerated torts for which immunity is waived under Section 41-4-12; (2) even if a loss of consortium claim is derivative of an enumerated tort, such claim "must be brought together with the claim from which it is derived," i.e., the battery on Owings, (3) Plaintiff's claims must fail because Children themselves did not suffer one of the enumerated torts. On appeal, Plaintiff argues that each of these conclusions is incorrect. We agree with Plaintiff.

{7} We begin with a discussion of loss of consortium and then turn to the claim in the context of the TCA. “Loss of consortium was defined in an early case as the emotional distress suffered by one spouse who loses the normal company of his or her mate when the mate is physically injured due to the tortious conduct of another.” *Brenneman v. Bd. of Regents of Univ. of N.M.*, 2004-NMCA-003, ¶ 7, 135 N.M. 68, 84 P.3d 685 (internal quotation marks and citation omitted). Later cases have recognized loss of consortium claims by children, grandparents, siblings, and unmarried cohabitating partners. *See id.* ¶ 20 (recognizing minor children’s loss of consortium claims); *Fitzjerrell*, 2003-NMCA-125, ¶¶ 9-11, 17 (discussing development of loss of consortium law in New Mexico). Uniform Jury Instruction 13-1810A NMRA defines loss of consortium as “[t]he emotional distress of \_\_\_\_\_ (plaintiff) due to the loss [of the society], [guidance], [companionship] and [sexual relations] resulting from the injury to \_\_\_\_\_ (name of injured or deceased spouse or child of plaintiff).” (alterations in original). A loss of consortium claim “derives from the underlying cause of action in the physically-injured [person].” *Archer v. Roadrunner Trucking Inc.*, 1997-NMSC-003, ¶ 11, 122 N.M. 703, 930 P.2d 1155. Generally, plaintiffs “should be allowed to recover for loss of consortium if the evidence shows that their relationships with [the d]ecedent [were] sufficiently close financially, socially, or both, and if it was foreseeable that the injury to [the d]ecedent would harm the relationships.” *Fitzjerrell*, 2003-NMCA-125, ¶ 14.

{8} In New Mexico, “governmental entities and public employees shall only be liable within the limitations of the [TCA] and in accordance with the principles established in that act.” Section 41-4-2(A). Hence, Plaintiff’s claim “must fit within one of the exceptions to the immunity granted, or it may not be maintained.” *Pemberton v. Cordova*, 1987-NMCA-020, ¶ 4, 105 N.M. 476, 734 P.2d 254.

{9} The particular section addressing waivers for law enforcement officials is Section 41-4-12, which states,

The immunity granted pursuant to Subsection A of Section 41-4-4 . . . does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution,

abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.

{10} Liability under this section “requires . . . that the defendants were law enforcement officers acting within the scope of their duties, and that the plaintiff’s injuries arose out of either a tort enumerated in this section or a deprivation of a right secured by law.” *Wachocki v. Bernalillo Cty. Sheriff’s Dep’t*, 2010-NMCA-021, ¶ 23, 147 N.M. 720, 228 P.3d 504 (internal quotation marks and citation omitted), *aff’d*, 2011-NMSC-039, ¶ 1, 150 N.M. 650, 265 P.3d 701. “[I]mmunity [is also waived] for negligent training and supervision by a law enforcement officer that causes the commission by a subordinate law enforcement officer of a tort listed in Section 41-4-12.” *McDermitt v. Corr. Corp. of Am.*, 1991-NMCA-034, ¶ 7, 112 N.M. 247, 814 P.2d 115.

{11} The district court apparently agreed with Defendants’ position that, because loss of consortium is not listed in Section 41-4-12 as a tort, Plaintiff’s claim cannot stand. We disagree. In *Wachocki*, this Court considered a wrongful death claim under Section 41-4-12 against the Bernalillo County Sheriff’s Department for negligence in enforcement of the law, which led to the decedent’s death. *Wachocki*, 2010-NMCA-021, ¶ 24 (“Claims for injuries proximately caused by an officer’s negligent breach of one or more of the[] duties [established by statute] are within the purview of Section 41-4-12.”). Included in the Court’s analysis was assessment of whether the decedent’s brother’s loss of consortium claim was correctly denied by the district court. *Wachocki*, 2010-NMCA-021, ¶ 50. Although the bulk of the analysis focused on whether the brother met his burden to demonstrate the elements of a loss of consortium claim, *id.* ¶ 54, the Court stated “that damages for loss of consortium may be recovered under the Section 41-4-2(A) waiver of sovereign immunity.” *Wachocki*, 2010-NMCA-021, ¶ 50; *see Williams v. Bd. of Regents of the Univ. of N.M.*, No. Civ. 13-0479 JB/WPL, 2014 WL 4351533, \_\_\_ F. Supp. 3d \_\_\_, at \* n.8 (Aug. 18, 2014) (stating that “[l]oss of consortium can be asserted against New Mexico government actors, despite

that it is not specifically mentioned in the [TCA], provided that the underlying tort—the one that caused direct physical injury—itsself triggers an immunity waiver under the [TCA].”). For support of this statement, the court cited *Brenneman*. The *Brenneman* Court held that loss of consortium claims fall within the waiver of immunity in the TCA because the TCA waived immunity “with respect to specific people and places which, in the performance of certain governmental functions, give rise to traditional duties to the public.” 2004-NMCA-003, ¶ 19. It went on to state that loss of consortium damages fall within the traditional tort concepts on which the TCA is based.

Once a duty is established, loss of consortium damages flow from the principles of tort liability. As loss of consortium is a damage resulting from bodily injury and our courts have repeatedly held that loss of consortium plaintiffs are foreseeable, we believe that loss of consortium is exactly the type of damage “based upon the traditional tort concepts of duty” that the Legislature intended to include under the applicable waivers of sovereign immunity in the [TCA].

*Id.* (quoting § 41-4-2(B)).

{12} Defendants argue that neither *Wachocki* nor *Brenneman* applies here. First, Defendants argue that *Wachocki* is distinguishable because it did not address whether a loss of consortium claim must be brought together with a wrongful death action and because the facts differed from those here. We fail to see how these differences render inapplicable *Wachocki*’s general statement that loss of consortium claims may be brought under the TCA.

{13} Defendants also argue that, because the discussion of the loss of consortium claim in *Wachocki* did not reference a particular section of the TCA, it is unclear whether its holding applied to Section 41-4-12 or Section 41-4-5, which addresses the negligent operation of a motor vehicle. It is true that, in that case, the decedent’s death was caused by a vehicle driven by a law enforcement officer. *Wachocki*, 2010-NMCA-021, ¶ 3. However, the *Wachocki* Court began its analysis with the statement, “We review de novo whether this wrongful death claim falls within the waiver of immunity under Section 41-4-12[,]” *id.* ¶ 18, and referenced Section 41-4-12 ten times in the opinion. *Wachocki*,

2010-NMCA-021, ¶¶ 1, 18-19, 23-24, 28-29. In contrast, it never mentioned Section 41-4-5 once. We therefore disagree with Defendants that “it is unknown as to whether [this Court] was referring to Section 41-4-12 or Section 41-4-5.”

{14} To the extent that Defendants argue that *Wachocki*'s reliance on *Brenneman* was misplaced and that therefore *Wachocki*'s holding is suspect, we disagree. Defendants' argument stems from statements in *Brenneman* that Section 41-4-12 “is quite distinct from the rest of the Act” and that “[t]he plain language of [Sections 41-4-9 and -10] reveals that limitations on recoverable damages under Section 41-4-12 are inapplicable to cases under Sections 41-4-9 and -10.” *Brenneman*, 2004-NMCA-003, ¶ 14. We do not interpret these statements, as Defendants do, to indicate that loss of consortium claims or damages are unavailable under Section 41-4-12. We can find no case relying on *Brenneman* to limit the types of damages available under Section 41-4-12. Moreover, in the context of the entire opinion, these statements were intended to distinguish an earlier case, which, for several reasons, was not good law on loss of consortium. *Brenneman*, 2004-NMCA-003, ¶¶ 14-16 (stating that the earlier case, *Lucero v. Salazar*, 1994-NMCA-066, 117 N.M. 803, 877 P.2d 1106, did not address loss of consortium, did not decide whether loss of consortium claims were barred by the TCA, and was decided before expansion of the loss of consortium body of law in New Mexico). Since the Court did not undertake a full

examination of Section 41-4-12 and these statements were not based on statutory construction of that section, we decline to consider these statements as anything more than dicta. See *Sangre de Cristo Dev. Corp. v. City of Santa Fe*, 1972-NMSC-076, ¶ 23, 84 N.M. 343, 503 P.2d 323 (“The general rule is that cases are not authority for propositions not considered.”). Hence, they do not undermine the subsequent direct holding in *Wachocki* on which we rely here.

{15} We next address the district court's conclusion that even if a loss of consortium claim is derivative of an enumerated tort, such claim “must be brought together with the claim from which it is derived[.]” This contention was rejected in *State Farm Mutual Automobile Insurance Co. v. Luebbers*, in which this Court considered whether a minor child could bring a loss of consortium claim separate from a wrongful death claim. 2005-NMCA-112, ¶ 37, 138 N.M. 289, 119 P.3d 169. Stating that New Mexico case law had established that “loss of consortium claims have a place in our tort jurisprudence[.]” the Court held “that upon the death of a parent, a minor child may pursue a separate claim for loss of parental consortium outside of a wrongful death action.” *Id.* {16} Defendants argue that *Luebbers* is inapplicable because it did not address claims under the TCA. However, since we have concluded that loss of consortium claims can be brought under the TCA, we see no reason that the *Luebbers* holding would not extend to the TCA as well. *Luebbers*' holding is now part and parcel of

the “traditional tort concepts of duty” that the legislature intended to include under the TCA. Section 41-4-2(B).

{17} Finally, in the dismissal order, the district court stated that “Plaintiff argues the loss of consortium claim arises from the battery perpetrated on Owings and that battery is an enumerated tort. While it is true that battery is an enumerated tort, [C]hildren did not suffer a battery.” To the extent this statement can be interpreted to indicate that the district court dismissed Plaintiff's loss of consortium claims because Children themselves did not suffer a battery, it erred. A loss of consortium claim is derivative of another claim. *Archer*, 1997-NMSC-003, ¶ 11. A “derivative action” is “[a] lawsuit arising from an injury to another person, such as a husband's action for loss of consortium arising from an injury to his wife caused by a third person.” *Black's Law Dictionary* 538 (10th ed. 2014) (emphasis added). As such, the party claiming a loss of consortium is never the same person who suffered the tort that caused the loss of consortium.<sup>1</sup>

#### CONCLUSION

{18} The district court erred in dismissing Children's complaint on the ground that their loss of consortium claims did not fall within the TCA. We reverse and remand for further proceedings.

{19} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

#### WE CONCUR:

MICHAEL E. VIGIL, Chief Judge  
TIMOTHY L. GARCIA, Judge

<sup>1</sup>There are references in the briefs to potential statute of limitations issues. However, the district court's ruling did not rest on the statute of limitations. We therefore are not addressing the statute of limitations issues.

**Certiorari Granted, August 22, 2016, S-1-SC-36009**

From the New Mexico Court of Appeals

**Opinion Number: 2017-NMCA-003**

No. 34,008 (filed June 27, 2016)

ZUNI PUBLIC SCHOOL DISTRICT #89,  
Petitioner-Appellant,

v.

STATE OF NEW MEXICO PUBLIC EDUCATION DEPARTMENT and VERONICA  
GARCIA, SECRETARY OF EDUCATION,  
Respondents-Appellees.**APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

GRANT L. FOUTZ, District Judge

RONALD J. VANAMBERG  
C. BRYANT ROGERS  
VANAMBERG, ROGERS, YEPa,  
ABEITA, GOMEZ, & WORKS, L.L.P.  
Santa Fe, New Mexico  
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Santa Fe, New MexicoSUSAN M. HAPKA  
SUTIN, THAYER, & BROWNE, P.C.  
Albuquerque, New Mexico  
for Appellees**Opinion****Michael E. Vigil, Chief Judge**

{1} This case presents an issue of first impression under the Public School Finance Act (the Act), NMSA 1978, §§ 22-8-1 to -48 (1967, as amended through 2015). We consider when the New Mexico Public Education Department (the Department) may lawfully deduct federal impact aid funds that a school district receives from the federal government.

{2} The parties filed cross motions for summary judgment in the district court. The district court found that there was no dispute of material fact and, as more fully discussed below, concluded that the Department properly deducted federal impact aid funds it anticipated Zuni Public School District #89 (Zuni) would receive. The district court also concluded that the Department properly made deductions for federal impact aid funds that Zuni actually received, although the deductions were made before the Secretary of the United

States Department of Education (DOE) certified that a deduction was permissible. The district court therefore granted summary judgment in favor of the Department. We reverse.

**I. BACKGROUND**

{3} Zuni filed a petition in the district court alleging in material part that in the 2009-2010 school year,<sup>1</sup> the Department made a deduction for federal impact aid funds it anticipated that Zuni was going to receive from funds it was otherwise entitled to under the Act; that making such a deduction before federal impact aid funds were received violated the Act; that as to federal impact aid funds actually received, the Act allows a deduction of federal impact aid funds only if the funds are authorized “in accordance with” federal law; that under federal law a deduction is only allowed after the DOE Secretary certifies that a state has a school funding system that satisfies federal standards to equalize expenditures for free public education among local school districts; and that, in violation of the Act, the Department

deducted Zuni’s share of school funding before the DOE Secretary issued its certificate. Zuni asked for a writ of mandamus, declaratory relief, injunctive relief, and class action certification for other school districts who received such deductions.

{4} The Department filed a motion to dismiss Zuni’s petition, arguing that sovereign immunity bars the relief Zuni seeks. The district court denied the motion, but certified its order for an interlocutory appeal, and stayed the proceedings until we ruled on the Department’s application for an interlocutory appeal. We granted the Department’s application for an interlocutory appeal, held that sovereign immunity is not a bar to the relief Zuni seeks, and remanded the case to the district court. *Zuni Pub. Sch. Dist., No. 89 v. N.M. Pub. Educ. Dep’t*, 2012-NMCA-048, ¶ 21, 277 P.3d 1252.

{5} On remand, the Department filed a motion for summary judgment. The Department contended that under the undisputed material facts, it properly deducted Zuni’s anticipated federal impact aid funds in calculating the funds Zuni was entitled to receive from the State under the Act. Zuni in turn filed a motion for partial summary judgment, asserting that it was entitled to recover the funds the Department withheld, arguing that the Act does not permit the Department to calculate and make deductions from Zuni’s state funds based on federal impact aid payments it expected Zuni to receive or before the DOE Secretary has issued its certificate.

{6} The district court granted the Department’s motion and denied Zuni’s on grounds that, although the Department made a deduction from the state funds Zuni was entitled to receive based on its anticipation that Zuni would receive federal impact aid funds, once the DOE Secretary issued its certificate, the Department was entitled to make an offset for the entire school year, including the “retroactive” offsets that were made before the DOE Secretary’s certificate. Zuni appeals.

**II. DISCUSSION**

{7} The Department again reiterates its argument that Zuni’s claims are barred by sovereign immunity. However, we resolved this issue in *Zuni Public School District, No. 89*, 2012-NMCA-048, ¶ 21, and do not revisit this issue here. Zuni’s petition and the relief it seeks have not changed. We therefore turn to the merits of this appeal.

<sup>1</sup>Our use of the term “school year” throughout this Opinion coincides with the fiscal year of school districts, which begins on July 1 and ends on June 30 each year.

### A. Standard of Review

{8} On appeal from a grant of summary judgment, our review is de novo when, as in this case, no material issues of fact exist and the appeal raises only a question of law. *Harris v. Vasquez*, 2012-NMCA-110, ¶ 9, 288 P.3d 924. In addition, this case requires us to engage in statutory interpretation, which presents a question of law that is also subject to de novo review. *Id.* ¶ 10. When construing statutes, it is our duty to determine and give effect to the Legislature's intent. *Little v. Jacobs*, 2014-NMCA-105, ¶ 7, 336 P.3d 398. To determine the legislative intent, we examine the "plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." *In re Borland*, 2012-NMCA-108, ¶ 9, 288 P.3d 912 (internal quotation marks and citation omitted). "We will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions." *Id.* (internal quotation marks and citation omitted). Finally, we read all sections of the statute together so every section is given effect. *Llena v. Montoya*, 2013-NMCA-048, ¶ 11, 299 P.3d 456.

### B. Analysis

{9} The material facts in this case are not in dispute. The Act guarantees that each school district in New Mexico will receive sufficient funds from the State to meet its operating budget. Section 22-8-25(A) ("The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost."). In order to accomplish this purpose, the Legislature has adopted a formula called the State Equalization Guarantee Distribution (SEG) under Section 22-8-25, which is implemented by the Department. Section 22-8-25(D). Generally speaking, and in the context of this case, the SEG requires the Department to distribute to each school district its total program cost, minus a deduction for federal impact aid funds the school district receives. Section 22-8-25(D) and (F). Schools operate on a fiscal year basis, which begins on July 1 and ends on June 30 of the following year. Each month the Department distributes to every school district one-twelfth of the funds it is entitled to receive under the SEG formula.

{10} In the 2009-2010 school year, Zuni received federal impact aid funds in January and March 2010. The dispute in this case is not whether the Department could make a deduction for those funds, but when it could make the deduction. The Department calculated the amount of federal impact aid funds it anticipated Zuni would receive, and commencing on July 1, 2009, made a monthly, pro-rata deduction of the funds Zuni was otherwise entitled to receive. Zuni contends that the Department was not authorized to make any deduction until the DOE Secretary issued its certificate that New Mexico's SEG satisfied federal standards. The certification was made on April 26, 2010, ten months into the school year, and after the Department had already deducted \$4,004,349.37 of funds that Zuni would have otherwise received. The certificate was for the period from July 1, 2009 through June 30, 2010. We begin our analysis by examining what is required by New Mexico's SEG formula.

#### 1. New Mexico's SEG Formula

{11} The SEG was established by the Legislature to guarantee that the amount of money distributed to each school district is at least equal to the school's total program cost. As applied to this case, the SEG directs that the total program cost of the school district is first determined and "federal revenues as defined" are then calculated. Section 22-8-25(D)(1)-(5). The "federal revenues" are then deducted from the total program cost, Section 22-8-25(D)(6), and "[t]he amount of the [SEG] to which a school district is entitled is the balance remaining[.]" Section 22-8-25(F). {12} The SEG formula requires "federal revenues as defined" to be calculated and then deducted from the total program cost of a school district. We therefore turn our attention to this requirement. Section 22-8-25(C) defines "federal revenue" and the provision applicable here is Section 22-8-25(C)(2) that defines "federal revenue" to mean:

[S]eventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as 'PL 874 funds' [P.L. No.81-874, 64 Stat. 1100 (1950)] or 'impact aid'.

(Emphasis added.)

State law therefore requires that P.L. 81-874 or "impact aid" funds be authorized "in accordance with" Title 20 of the United

States Code before they can be considered as "federal revenue" under Section 22-8-25(D)(5) and deducted under Section 22-8-25(D)(6). We therefore turn our attention to the federal statute. We first discuss the history behind federal impact aid funds, and then we examine the pertinent statutes.

#### 2. Federal Impact Aid Funds

{13} Congress enacted P.L. 81-874 as "impacted area" legislation in 1950, to assist school districts in providing adequate educational facilities that were adversely affected by a federal presence. *See Shephard v. Godwin*, 280 F. Supp. 869, 871-72 (E.D. Va.1968) (discussing conditions that led Congress to adopt P.L. 81-874); *Hergenreter v. Hayden*, 295 F. Supp. 251, 252 (D. Kan. 1968) (mem.) (same); *Douglas Indep. Sch. Dist. No. 3 v. Jorgenson*, 293 F. Supp. 849, 850 (D.S.D. 1968) (same). An "impacted area" includes, for example, an area whose school population has been burdened because of attendance by a large number of federal employees' children, and at the same time is losing school tax revenues because of the United States governmental immunity from land taxes. *See Shephard*, 280 F. Supp. at 871 (stating these were factors that led Congress to adopt P.L. 81-874); *Hergenreter*, 295 F. Supp. at 252 (same); *Douglas Indep. Sch. Dist. No. 3*, 293 F. Supp. at 850 (same).

{14} Notwithstanding Congress's express intention that impact aid funds were to be used only to compensate impacted local school districts, and not to be used or applied to compensate a state in any respect, fifteen states began offsetting the amount of impact aid funds received by school districts by reducing the state aid allocated to those districts. *See Shephard*, 280 F. Supp. at 874-75 (quoting House Report No. 1814 (August 5, 1966)). Congress reacted by enacting a penalty that reduced impact aid funds in proportion to any such deduction made by a state. *Id.* (quoting 20 U.S.C. § 240(d)(Supp. 1967)). In addition, legislation enacted by Virginia, Kansas, and South Dakota, under which a percentage of the federal impact aid funds received by a school district was deducted from the funds allocated to the school district by the state, was declared unconstitutional. Federal courts in those states held that such legislation violated the supremacy clause of the United States Constitution because the federal legislation mandated that the impact aid funds were exclusively for supplementing impacted local school revenue sources and not to lessen state



efforts in funding schools. *See id.*; *Hergener*, 295 F. Supp. at 255-56; *Douglas Indep. Sch. Dist. No. 3*, 293 F. Supp. at 853-54.

{15} P.L. 81-874 evolved into the Impact Aid Act, 20 U.S.C. §§ 7701-14 (1994, as amended through 2015), which retained many of its original features but at the same time recognized that, where a state seeks to equalize per-pupil expenditures, an offset of impact aid funds may be warranted. *Zuni Public School District No. 89 v. Department of Education*, 550 U.S. 81 (2007) explained that the Impact Aid Act:

[P]rovides financial assistance to local school districts whose ability to finance public school education is adversely affected by a federal presence. Federal aid is available to districts, for example, where a significant amount of federal land is exempt from local property taxes, or where the federal presence is responsible for an increase in school-age children (say, of armed forces personnel) whom local schools must educate. The statute typically prohibits a [s]tate from offsetting this federal aid by reducing its own state aid to the local district. If applied without exceptions, however, this prohibition might unreasonably interfere with a state program that seeks to equalize per-pupil expenditures throughout the [s]tate, for instance, by preventing the state program from taking account of a significant source of federal funding that some local school districts receive. The statute consequently contains an exception that permits a [s]tate to compensate for federal impact aid where the Secretary of Education determines and certifies that the [s]tate has in effect a program of [s]tate aid that *equalizes* expenditures for free public education among local school districts in the [s]tate.

*Id.* at 84-85 (alterations, internal quotation marks, and citation omitted).

{16} We now turn to the applicable federal statute, 20 U.S.C. § 7709 (2015), which we hereinafter refer to as Section

7709.<sup>2</sup> Under Section 7709(a)(1) a state “may not” consider impact aid payments in determining the amount of state funds to be allocated to a school district. In addition, a state “may not” make state funds available to a school district “in a manner that results in less [s]tate [funds] to [a school district] that is eligible for [impact aid funds] than such [school district] would receive if such [school district] were not so eligible.” Section 7709(a)(2). Section 7709(a) therefore prohibits a state from offsetting impact aid funds in allocating state funds to public school districts “[e]xcept as provided in subsection(b) [.]” Section 7709(b)(1) in turn provides in pertinent part that a state may offset impact aid funds “for any fiscal year if the [DOE] Secretary determines, and certifies under subsection (c)(3)(A) of this section, that the [s]tate has in effect a program of [s]tate aid that equalizes expenditures for free public education among local educational agencies in the [s]tate.” (Emphasis added.) Under Section 7709(c)(3)(A), if the DOE Secretary determines that a program of state aid qualifies, “the Secretary shall . . . certify the program and so notify the [s]tate.” Finally, relevant to this case, Section 7709(d)(2) expressly states, “[a] s]tate may not take into consideration payments under this subchapter before such [s]tate’s program of [s]tate aid has been certified by the [DOE] Secretary under subsection (c) (3) of this section.”

### 3. The Deductions Were Not Allowed

{17} Applying settled principles of statutory construction, we conclude that the deductions made by the Department in this case were not authorized by the Act. The SEG formula, which the Legislature directed the Department to follow, is clear. After calculating Zuni’s “total program cost” for the 2009-2010 school year, the Department was allowed to make a deduction for the amount of Zuni’s “federal revenues,” and the balance remaining was the SEG distribution, which Zuni was entitled to receive from the Department for the 2009-2010 school year. *See* § 22-8-25(D)(1)-(6). However, the allowable deduction was limited to “federal revenues as defined,” Section 22-8-25(D)(5), and such revenues are defined as federal “im-

pact aid” funds “authorized in accordance with Title 20 of the United States Code[.]” Section 22-8-25(C)(2) (emphasis added). Here, if the federal impact aid funds were not authorized “in accordance with” Title 20 of the United States Code, they failed to satisfy the definition of “federal revenues” under state law and could not be deducted in computing Zuni’s SEG. Whether the Department could deduct those funds from Zuni’s “total program cost” in computing Zuni’s SEG depends on how federal law treats the impact aid funds Zuni received. {18} The DOE Secretary certified, pursuant to federal law, that for the 2009-2010 school year, New Mexico had in effect a program of state aid to equalize expenditures for free public education among local school districts. This certification meant that the Department could offset Zuni’s impact aid funds in allocating funds to Zuni under the SEG. *See* 20 U.S.C. § 7709. The dispute here was not whether the Department could do so, but when it could do so. Federal law on this question is clear: the Department was prohibited from taking into account Zuni’s impact aid payments before the DOE Secretary issued the certification on April 26, 2010. *See* 20 U.S.C. § 7709(d)(2).

{19} Under the SEG, the Department was obligated to provide Zuni with an amount of money to meet its operating budget, but that did not happen here. Instead, the Department made monthly deductions based on federal impact aid funds it anticipated, without certification from the DOE Secretary, that Zuni would in fact be entitled to receive such funds. The Department cannot point to any provision in the SEG or the Act that allows deductions for impact aid funds that are merely anticipated, and anticipated funds do not satisfy the SEG’s definition of “federal revenue.” For January and March 2010, the applicable statutes did not authorize the Department to deduct anticipated impact aid funds until the DOE Secretary issued its certificate on April 26, 2010. There is nothing in the SEG or Title 20 of the United States Code that allows for a “retroactive” deduction after the DOE Secretary issues its certificate. Federal law expressly directs that a state may not take into consideration impact

<sup>2</sup>The Every Student Succeeds Act, P.L. No. 114-95, 129 Stat. 1802 (2015) is comprehensive legislation adopted by Congress that amends certain aspects of Section 7709. However, we do not concern ourselves with this Act, as the amendments that affect Section 7709 do not take effect until the beginning of fiscal year 2017. Every Student Succeeds Act, P.L. No. 114-95 § 5(d) (stating that with respect to Impact Aid under Title VII of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 6301-7981 (1965, as amended through 2015), “the amendments made by this Act shall take effect with respect to appropriations for use under such title beginning fiscal year 2017, except as otherwise provided in such amendments”).

aid payments before the DOE certification. *See* 20 U.S.C. § 7709(d)(2) (“A [s]tate may not take into consideration payments under this subchapter before such [s]tate’s program of [s]tate aid has been certified by the [DOE] Secretary[.]”).

{20} From the beginning of the school year until the DOE Secretary certificate was issued on April 26, 2010, Zuni and the children it serves were deprived of \$4,004,349.37 of the funds they were entitled to receive under the SEG. We do not know how this impacted the school district or the quality of education the children received, but we do know that for ten months of the school year the effect was inconsistent with the Legislature’s guarantee to Zuni and the children that they would receive

sufficient funds from the Department to meet the operating budget.

{21} We recognize that due to the timing of the DOE Secretary certificate, and how the Department distributes state funds to the school districts, it is possible that Zuni could receive more funds than it is entitled to receive under the SEG. The Public School Finance Act anticipates such a result and provides, “In the event that a school district or charter school has received more of the [SEG distribution] than its entitlement, a refund shall be made by the school district or charter school to the state general fund.” Section 22-8-25(G). Even in such a scenario, however, Zuni and the children it serves would have received, in a timely fashion, the funds it is

entitled to under the SEG as intended by the Legislature. We have considered the Department’s remaining arguments and conclude that they are not persuasive in light of the clear statutory language before us.

### III. CONCLUSION

{22} The order of the district court granting summary judgment to the Department is reversed and the case is remanded for further proceedings consistent with this Opinion.

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

**MICHAEL E. VIGIL, Chief Judge**

### WE CONCUR:

**LINDA M. VANZI, Judge**

**M. MONICA ZAMORA, Judge**

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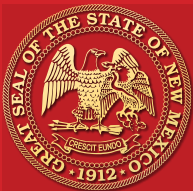
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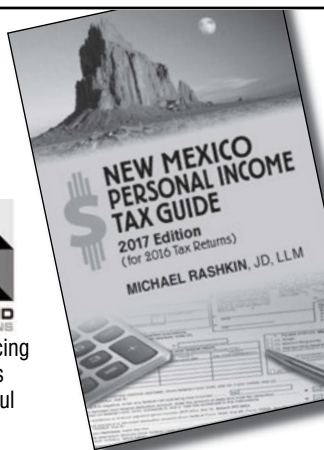


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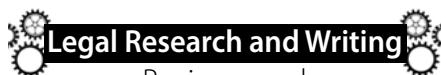
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NMDVR or NMCFTB's position will be upheld or whether the individual's position should be adopted by the NMDVR or NMCFTB. The IHO makes decisions applying applicable State plans, Federal vocational rehabilitation and independent living laws and regulations, 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](mailto: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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Seeking applicants for Associate Attorney position: you will receive outstanding compensation and benefits as part of a vibrant, growing plaintiffs personal injury practice. Mission: To provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients the attention needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows that Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Strong negotiation skills. Ability to thrive in a productive and fast-paced work environment. Organized. Detail-oriented. Team player. Willing to tackle challenges with enthusiasm. Frequent contact with your clients, team, opposing counsel and insurance adjusters is of paramount importance in this role. Integrate the 5 values of our team: Teamwork, Talent, Tenacity, Truth, and Triumph. Compelled to do outstanding work. Strong work ethic. Barriers to success: Lack of fulfillment in role. Not enjoying people. Lack of empathy. Not being time-effective. Unwillingness to adapt and train. Arrogance. If you are interested in this position, and you have all the qualifications necessary, please submit your resume detailing your experience, a cover letter explaining why you want to work here, and transcripts of grades. Send documents to [Bert@ParnallLaw.com](mailto:Bert@ParnallLaw.com), and type "Mango" in the subject line.

### Part and Full Time Attorneys

Part and Full Time Attorneys, licensed and in good standing in NM. Minimum of 3-5 years of experience, preferably in Family Law and Civil Litigation, and must possess strong court room, client relations, and computer skills. Excellent compensation and a comfortable, team-oriented working environment with flexible hours. Priority is to fill position at the Santa Fe location, but openings available in Albuquerque. Support staff manages client acquisitions and collection efforts, leaving our attorneys to do what they do best. Please send resume and cover letter to [ac@lightninglegal.biz](mailto:ac@lightninglegal.biz). All inquiries are maintained as confidential.

### 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](mailto:holly@lyndalatta.com)

### Director of Compliance

The State of New Mexico - Board of Nursing is currently accepting applications for the Director of Compliance. The Director of Compliance oversees all investigations of Nursing Practice Act violations by licensees and certificate holders, discipline administration, disciplinary hearings, legal correspondence, discipline monitoring, reporting of investigations, reporting of violations of Board of Nursing disciplinary orders, case management Diversion Program Participants, coordination of investigations with other jurisdictions and agencies. This director manages the staff and programs of investigation, audit, diversion, and discipline monitoring. All interested parties must logon to [www.spo.state.nm.us](http://www.spo.state.nm.us) and apply through NEOGOV to be considered for employment. SALARY: \$58,136.00 - \$101,150.40 annually. The closing date for the position is 03/21/17 11:59 PM. Link to Agency: <http://www.bon.state.nm.us/>

## BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

### SUBMISSION DEADLINES

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

For more advertising information, contact:  
Marcia C. Ulibarri at 505-797-6058  
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## Bilingual Associate Attorney

Rebecca Kitson Law in Uptown Albuquerque is seeking a full time, bilingual associate attorney. Candidate must have passion and commitment to advocate for immigrants in all areas of relief. Duties to include but not limited to: drafting appeals/motions, legal research, consultations, case opening, hearings/USCIS interviews, case work. We are an inclusive, supportive office culture that welcomes all to apply. Position available immediately. Must be fluent in Spanish. NM Law License preferred. Experience preferred. Salary DOE, full benefits and fun perks offered. E-mail letter of interest, resume, and writing sample to Rebecca Kitson at rk@kitsonlaw.com. We will not contact you unless you are being considered for the position and incomplete applications will be immediately discarded.

## Assistant Trial Attorney

**\$48,980-\$61,225/ Annually**

(Hiring salary depends on experience and budget availability). Job Duties: Incumbent handles a variety of misdemeanors and lower level felony cases, such as DWI's and bad check cases; does legal research for felony cases for higher level Attorney's; assists in trial teams; performs non-prosecution duties as assigned and performs other related job duties. Felony work is performed under supervision. Requirements: J.D. degree and current license to practice law in New Mexico. Preferred Qualifications: Legal experience totaling up to at least one (1) year. Submit Resume & Cover Letter to: 3rd Judicial District Attorney's Office, C/O Whitney Safranek, Human Resources Administrator, 845 N. Motel Blvd., Suite D, Las Cruces, NM 88007; wsafranek@da.state.nm.us.

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## Paralegal

Seeking applicants for a Paralegal; experience needed for busy, growing, plaintiffs personal injury law firm. We offer great pay and generous benefits (health/dental/401K/ bonus plan) for the right candidate. Mission: To work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Organized. Detail-oriented. Meticulous but not to the point of distraction. Independent / self-directed. Able to multitask. Proactive. Take initiative and ownership. Courage to be imperfect, and have humility. Willing / unafraid to collaborate. Willing to tackle the most unpleasant tasks first. Willing to help where needed. Willing to ask for help. Acknowledging what you don't know. Eager to learn. Integrate 5 values of our team: Teamwork; Tenacity; Truth; Talent; Triumph. Compelled to do outstanding work. Know your cases. Strong Work ethic. Work Hours: Monday to Friday 8AM to 5PM. Barriers to success: Lack of fulfillment in role. Treating this as "just a job." Not enjoying people. Lack of empathy. Thin skinned to constructive criticism. Not admitting what you don't know. Guessing instead of asking. Inability to prioritize and multitask. Falling and staying behind. Not being time-effective. Unwillingness to adapt and train. Waiting to be told what to do. Overly reliant on instruction. We need to see superior grades, or achievement and longevity in prior jobs. 8AM-5PM M-F. Email cover letter, resume and any recent transcripts to [James@ParnallLaw.com](mailto:James@ParnallLaw.com) and print "Apples" in the subject line.

## 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](mailto:LegalAssistant0425@yahoo.com).

## Services

### Freelance Paralegal

Experienced freelance paralegal available for civil litigation cases. Excellent references. [civilparanm@gmail.com](mailto:civilparanm@gmail.com).

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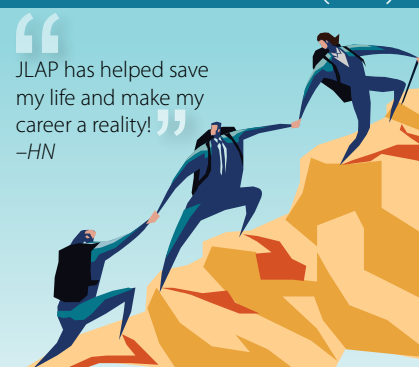
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## Miscellaneous

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