

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

April 5, 2017 • Volume 56, No. 14



Tiger Head Alla Prima, by Joe Weatherly (see page 3)

Daniel Maghen, Paris, France

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Meetings

April

5

Employment and Labor Law Section Board, noon, State Bar Center

11

Appellate Practice Section Board

Noon, teleconference

12

Taxation Section Board

11 a.m., teleconference

13

Business Law Section Board

4 p.m., teleconference

13

Public Law Section Board

Noon, Montgomery & Andrews, Santa Fe

14

Prosecutors Section Board

Noon, State Bar Center

18

Solo and Small Firm Section Board

11 a.m., State Bar Center

19

Animal Law Section

Noon, State Bar Center

19

Real Property, Trust and Estate Section Board,

noon, State Bar Center

Workshops and Legal Clinics

April

5

Divorce Options Workshop

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

7

Civil Legal Clinic

10 a.m.-1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

8

Legal Fair

10 a.m.-1 p.m., Beatrice Martinez Senior Center, Española 505-814-5033

14

Civil Legal Clinic

10 a.m.-1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817

19

Family Law Clinic

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

25

Common Legal Issues for Senior Citizens

Presentation 10 a.m.-noon, Agnes Kastner Head Community Center, Hobbs, 1-800-876-6657

About Cover Image and Artist: *Tiger Head Alla Prima*, oil on panel, 5 by 7 inches

Joe Weatherly is a Southern California based artist specializing in the drawing and painting of animals. His style is bold and vigorous capturing the essence and drama of the subjects he draws and paints. The attitude and expression of the animal's character along with telling a visual story is what his work conveys. Conservation of the natural world is something Weatherly is very passionate about and hopes his work will motivate people to protect it and promote its survival. Weatherly has published several books and teaches drawing part time. His drawings and paintings hang in private collections in Europe and North America. For more of his work, visit www.joeweatherly.com.

Notices

COURT NEWS

New Mexico Supreme Court Proposed Revisions

Rules of Criminal Procedure for the District Courts, Rules of Criminal Procedure for the Magistrate Courts, Rules of Criminal Procedure for the Metropolitan Courts, and Rules of Appellate Procedure Proposal 2017-041

The Supreme Court is considering the adoption of new rules to govern pretrial detention proceedings, see Proposed New Rules 5 409, 6 409, and 7 409 NMRA, as well as amendments to the rules governing appeals from orders concerning pretrial detention or release pending appeal. See Rules 5 405, 12 204, and 12 205 NMRA. To comment on the proposed amendments published in the March 29 *Bar Bulletin* before the Court takes final action, submit a comment electronically at supremecourt.nmcourts.gov/open_for_comment.aspx or sending written comments to: Joey D. Moya, Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, New Mexico 87504 0848; nmsupremecourtclerk@nmcourts.gov; or 505 827 4837 (fax). Comments must be received by the Clerk on or before April 17, to be considered by the Court. Any submitted comments may be posted on the Supreme Court's website for public viewing.

Board of Legal Specialization Comments Solicited

The following attorneys are applying for certification as a specialist in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 19-101 through 19-312 NMRA, which provide that the names of those seeking to qualify shall be released for publication. Further, attorneys and others are encouraged to comment upon any of the applicant's qualifications within 30 days after the publication of this notice. Address comments to New Mexico Board of Legal Specialization, PO Box 93070, Albuquerque, NM 87199.

Natural Resources Law
Michael H. Feldewert
Ocean Munds-Dry

Secured Odyssey Public Access New Registration Required for SOPA System

The Supreme Court has approved the New Mexico Judiciary Case Access Policy for Online Court Records to expand online access to court records for attorneys and

Professionalism Tip

With respect to opposing parties and their counsel:

I will be courteous and civil, both in oral and in written communications.

their staff, governmental justice partners, and the press through the Secured Odyssey Public Access website. To register as an attorney, visit www.nmcourts.gov/public-access-help.aspx and choose Public Access to Court Records > Tier 1 SOPA Applications > Attorney Application.

Third Judicial District Court Gov. Martinez Appoints Conrad Perea as Judge

On March 23, Gov. Susana Martinez announced the appointment of Conrad Perea to Division III of the Third Judicial District Court, filling the vacancy created by the resignation of Judge Darren M. Kugler.

Sixth Judicial District Court Announcement of Vacancy

A vacancy on the Sixth Judicial District Court will exist as of March 27 due to the retirement of Hon. H.R. Quintero effective March 24. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Alfred Mathewson, chair of the Sixth Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., April 13. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Sixth Judicial District Court Judicial Nominating Commission will meet beginning at 9 a.m. on April 27 to interview applicants for the position in Silver City. The Commission meeting is open to the public and anyone who has comments will be heard.

Bernalillo County Metropolitan Court Investiture Ceremony of Judge Christine E. Rodriguez

The judges and employees of the Bernalillo County Metropolitan Court

invite members of the legal community and the public to attend the investiture of the Hon. Christine E. Rodriguez, Division II. The ceremony will be held at 5:15 p.m., April 6, in the Bernalillo County Metropolitan Court Rotunda. Following the investiture, the reception will be held at the Slate Street Café, 515 Slate Avenue NW. Judges who wish to participate in the ceremony should bring their robes and report to the 1st Floor Viewing Room by 5 p.m.

STATE BAR NEWS

Attorney Support Groups

- April 10, 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#.
- April 17, 7:30 a.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)
- May 1, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)

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

Committee on Women and the Legal Profession Professional Clothing Closet

Does your closet need spring cleaning? The Committee on Women seeks gently used, dry cleaned professional clothing donations for their professional clothing closet. Individuals wishing to donate to the closet may drop off donations at the West Law Firm, 40 First Plaza NW, Suite 735 in Albuquerque, during business hours or to Committee Co-chair Laura Castille at Cuddy & McCarthy, LLP, 7770 Jefferson NE, Suite 102 in Albuquerque. Individuals who want to look for a suit can stop by the West Law Firm during business hours or call 505-243-4040 to set up a time to visit the closet.

UNM

Law Library

Hours Through May 13

Building & Circulation

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

Reference

Monday–Friday	9 a.m.–6 p.m.
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Mexican American Law Student Association

Annual Fighting for Justice Banquet

Join the Mexican American Law Student Association for the 22nd Annual Fighting for Justice Banquet honoring Emerita Professor Eileen Gauna. Executive Director of Enlace Comunitario Antoinette Sedillo-Lopez will be the keynote speaker for the evening. The event will start at 6 p.m., April 14, at Hotel Albuquerque in Old Town Albuquerque and will feature a cocktail hour, live music and a silent auction. To purchase tickets or sponsorship packages visit www.malsanm.org or contact MALSA President Mish Rosete at mishrosete@gmail.com.

OTHER BARS

Albuquerque Bar Association New Judges Reception

Join the Albuquerque Bar Association for a reception to honor newly elected and appointed judges. The reception is 5 p.m., April 5, at Slate Street Cafe in Albuquerque. R.S.V.P. to 505-842-1151 or at www.abqbar.org.

Albuquerque Lawyers Club April Luncheon Meeting

The Albuquerque Lawyers Club invites members of the legal community to its next lunch meeting featuring a panel discussion entitled “The Truth Underlying the Reporting on Guardianships/Conservatorships in New Mexico” led by Greg MacKenzie and including Judge Alan Malott, Ellen Leitzer and Mary Galvez. The meeting will be held

at noon on April 5 at Seasons Rotisserie and Grill. For more information, contact Yasmin Dennig at ydennig@Sandia.gov or 505-844-3558.

Women’s Bar Association

2017 Henrietta Pettijohn Reception

Join the Women’s Bar Association for its annual Henrietta Pettijohn Reception from 6–9:30 p.m., May 4, at Hotel Albuquerque, 800 Rio Grande Blvd. NW, Albuquerque. WBA will honor Judge Wendy York and Shona Zimmerman, Esq. It will also present the 2017 Supporting Women in the Law Award to the University of New Mexico’s Office of General Counsel. Hors d’oeuvres will be served and there will be a silent auction with proceeds going to law student bar review scholarships. Tickets are \$20 for students, \$35 for Women’s Bar Association members and \$45 for non-members. Visit www.nmwba.org to purchase tickets. On-site child care will be provided for Women’s Bar Association members. Contact Barbara Koenig at bkoenig617@gmail.com by May 2 to R.S.V.P. for childcare.

OTHER NEWS

Christian Legal Aid Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. Christian Legal Aid will be hosting a Training Seminar from noon–5 p.m. on April 21 at the State Bar Center. Join them for free lunch, 4 free CLE credits and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800 or email christianlegalaids@hotmail.com.

New Mexico Workers’ Compensation Administration New Judge Reassignment

Effective April 10, all pending and administratively closed cases before the New Mexico Workers’ Compensation Administration previously assigned to Judge Terry Kramer will be reassigned to newly appointed Judge Rachel Bayless. Parties who have not yet exercised their right to challenge or excuse will have 10 days from



New Mexico Lawyers and Judges Assistance Program

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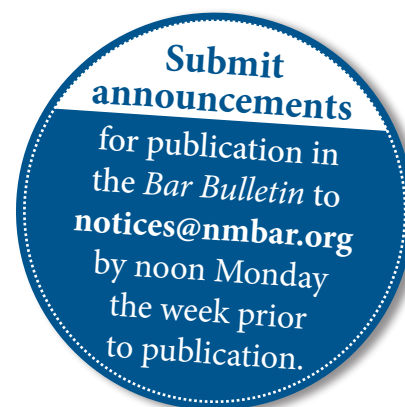
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Judges 888-502-1289

www.nmbar.org/JLAP



April 10, to challenge or excuse Judge Bayless pursuant to N.M.A.C. Rule 11.4.4.13. Questions about case assignments should be directed to WCA Clerk of the Court Heather Jordan at 505-841-6028.

Volunteer Attorney Program CLE for Volunteer Attorneys

The Volunteer Attorney Program and Justice for Families Project are holding a CLE for volunteer attorneys (1.5 G) from 3:30–5 p.m. on April 13 at New Mexico Legal Aid, in Albuquerque or via Skype. The CLE will be presented by Grace Allison, Andrew H. Weinstein, and Katie Withem. The seminar is free for VAP volunteers and attorneys willing to sign up to take a VAP/JFP case. Donations welcome from non-volunteers (\$25 or more per person suggested). For more information or to register, contact Katie Withem at 505-768-6134 or katiew@nmlegalaids.org.

Legal Education

April

- | | | |
|--|---|---|
| <p>4 Retail Leases: Drafting Tips and Negotiating Traps
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 Representing Low Income Taxpayers Before the IRS
1.5 G
Live Seminar, Albuquerque
New Mexico Legal Aid
505-814-5038</p> | <p>21 36th Annual Update on New Mexico Tort Law
6.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Trial Lawyers Association
www.nmtla.org</p> |
| <p>5 All About Basis Planning for Trust and Estate Planners
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Estate Planning and Elder Law
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</p> | <p>26 Landlord Tenant Law
5.6 G, 1.0 EP
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com</p> |
| <p>6 Basics of Adoption Law
1.0 G
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038</p> | <p>19 Examining the Excessive Cost of Lawyer Stress
2.0 EP
Live Seminar, Albuquerque
TRT CLE
www.trtcle.com</p> | <p>27 ECL, Solo and Small Firm Business Bootcamp Part II of I
3.4 G, 2.7 EP (total)
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>7 Advanced Attorney-Mediator Training
5.2 G, 2.0 EP
Live Seminar, Santa Fe
Association of Attorney Mediators
www.attorney-mediators.org</p> | <p>20 ECL, Solo and Small Firm Business Bootcamp Part I of II
3.4 G, 2.7 EP (total)
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Settlement Agreements in Employment Disputes and Litigation
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>11 Add a Little Fiction to Your Legal Writing
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Ethics of Representing the Elderly
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Annual Conference
13.0 G
Live Seminar, Santa Fe
Transportation Lawyers Association
www.translaw.org</p> |
| <p>11 H-1B Cap Subject Visa 2017: Exploring Key Issues, Trends and Alternatives
2.0 G
Live Webcast
The Knowledge Group LLC
theknowledgegroup.org/event-homepage/?event_id=2154</p> | <p>21 Legal Aid Training Seminar
4.0 G
Live Seminar, Albuquerque
New Mexico Christian Legal Aid
christianlegalaids@hotmail.com</p> | <p>28 Diversity Issues Ripped From the Headlines
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

May

- | | | |
|--|---|--|
| <p>5 32nd Annual Bankruptcy Year in Review (2017)
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 2016 Mock Meeting of the Ethics Advisory Committee
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 Charitable Estate Planning—What Opportunities Am I Missing?
2.5 G
Live Seminar, Santa Fe
St. Vincent Hospital Foundation
505-913-5209</p> |
| <p>5 Deposition Practice in Federal Cases (2016)
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 Lawyer Ethics and Client Development
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 Undue Influence and Duress in Estate Planning
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

May

- | | | |
|--|---|--|
| <p>12 Ethics of Co-Counsel and Referral Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Human Trafficking (2016)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 Living with Turmoil in the Oil Patch: What It Means to New Mexico (2016)
5.8 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>18 Annual Estate Planning Update
5.0 G, 1.0 EP
Live Seminar, Albuquerque
Wilcox Law Firm
www.wilcoxlawnm.com</p> | <p>19 Ethics in Discovery Practice
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>26 27th Annual Appellate Practice Institute (2016)
6.4 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 2016 Administrative Law Institute
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Drafting Gun Wills and Trusts— and Preventing Executor Liability
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>31 Ethics and Artificial Intelligence in Law Practice Software and Tools
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>19 NM DWI Cases: From the Initial Stop to Sentencing; Evaluating Your Case (2016)
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | |

June

- | | | |
|---|--|--|
| <p>1–3 2017 Jackrabbit Bar Conference
7.8 G
Live Seminar, Santa Fe
State Bar of New Mexico
www.nmbar.org/nmstatebar/JBC.aspx</p> | <p>9 Gender and Justice (2016 Annual Meeting)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Ethical Issues of Social Media and Technology in the Law (2016)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>2 Drafting Employee Handbooks
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>9 The Disciplinary Process (2016 Ethicspalooza)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 The Ethics of Supervising Other Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 2017 Ethics in Civil Litigation Update, Part 1
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Reforming the Criminal Justice System (2017)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Representing Victims of Domestic and Sexual Violence in Family Law Cases
2.0 G
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5038</p> |
| <p>7 2017 Ethics in Civil Litigation Update, Part 2
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Avoiding Discrimination in the Form I-9 or E-Verify (2017)
1.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Lawyer Ethics and Credit Cards
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

Opinions

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

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

Effective March 24, 2017

PUBLISHED OPINIONS

No. 34814 12th Jud Dist Otero CR-14-512, STATE v Z LINDSAY (affirm) 3/20/2017

UNPUBLISHED OPINIONS

No. 35700 5th Jud Dist Lea CR-13-600, STATE v C RUIZ (reverse and remand) 3/20/2017

No. 35660 2nd Jud Dist Bernalillo JQ-14-20, CYFD v LYNETTE S (affirm) 3/22/2017

No. 35991 2nd Jud Dist Bernalillo CV-15-780, S CHRISTOFFEL v J CLOUD (affirm) 3/22/2017

No. 35342 2nd Jud Dist Bernalillo JQ-14-20, CYFD v BRIDGETT W (affirm) 3/22/2017

No. 35523 12th Jud Dist Lincoln CR-15-93, STATE v CAKERS (affirm) 3/23/2017

No. 35766 9th Jud Dist Curry CR-11-693, STATE v L WIGGINS (affirm) 3/23/2017

No. 35848 9th Jud Dist Roosevelt JQ-15-1, CYFD v PATRICIA V (affirm) 3/24/2017

No. 35849 9th Jud Dist Roosevelt JQ-15-1, CYFD v FIDEL H (affirm) 3/24/2017

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

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



2017 | Annual Meeting— Bench & Bar Conference

Call for Nominations



State Bar of New Mexico 2017 Annual Awards

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

— Distinguished Bar Service Award-Lawyer —

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

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

— Distinguished Bar Service Award-Nonlawyer —

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

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

— Justice Pamela B. Minzner* Professionalism Award —

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

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

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

— Outstanding Legal Organization or Program Award —

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

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

— Outstanding Young Lawyer of the Year Award —

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

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

— Robert H. LaFollette* Pro Bono Award —

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

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

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

— Seth D. Montgomery* Distinguished Judicial Service Award —

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

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

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

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

Deadline for Nominations: May 12

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF ADMISSION

On March 21, 2017:
Jason M. Cline
Albuquerque Business Law, PC
1801 Rio Grande Blvd., NW,
Suite B
Albuquerque, NM 87104
505-246-2878
505-246-0900 (fax)
jcline@abqbizlaw.com

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

March 10, 2017:
Allen R. Ferguson Jr.
PO Box 972
121 Upper Colonias Road
El Prado, NM 87529
505-690-1492
ferguscaledonia@yahoo.com

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE

As of March 17, 2017:
Daniel J. Monte
1720 Reavis Road
Mexico, MO 65265
505-204-8449
djmonte@me.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective December 31, 2016:
Louis E. Valencia
2785 W. Island Drive
Rio Rancho, NM 87124

Effective February 21, 2017:
Mary Catherine McCulloch
2508 Don Pedro
Albuquerque, NM 87104

Effective March 1, 2017:
Janice E. Dale
3430 Florida Street, N.E.
Albuquerque, NM 87110

Effective March 2, 2017:
Christopher J. Lento
4701 W. 43rd Street
Houston, TX 77092

Effective March 6, 2017:
Jason Milan Mundy
3375 Hillcrest Avenue
Macon, GA 31204

Effective March 8, 2017:
Reber Boulton
3005 Carlota Road, N.W.
Albuquerque, NM 87104

Effective March 14, 2017:
William Knight Abney
Atlantic Resources
Company, LLC
300 N. Marienfeld, Suite 600
Midland, TX 79701
Effective March 17, 2017:

Thomas E. Hastings
323 N. Delaware Street
Indianapolis, IN 46204

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 April 5, 2017

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

See the special summary of proposed rule amendments published in the March 8, 2017, 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 2017-001 to -040 is April 5, 2017.

In addition, please see proposed rule amendments 2017-041 and -042 on the Supreme Court's website at the address noted below. The comment deadline for proposed rule amendments 2017-041 and -042 is April 17, 2017.

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2017 NMRA:

Effective Date

Rules of Civil Procedure for the District Courts

1-079	Public inspection and sealing of court records	03/31/2017
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017

Rules of Civil Procedure for the Magistrate Courts

2-112	Public inspection and sealing of court records	03/31/2017
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Rules of Civil Procedure for the Metropolitan Courts

3-112	Public inspection and sealing of court records	03/31/2017
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Civil Forms

4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
4-941	Petition to restore right to possess or receive a firearm or ammunition	03/31/2017

Rules of Criminal Procedure for the District Courts

5-123	Public inspection and sealing of court records	03/31/2017
5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	03/31/2017

Rules of Criminal Procedure for the Magistrate Courts

6-114	Public inspection and sealing of court records	03/31/2017
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

7-113	Public inspection and sealing of court records	03/31/2017
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

8-112	Public inspection and sealing of court records	03/31/2017
8-206	Bench warrants	04/17/2017
8-206.1	Payment of fines, fees, and costs	04/17/2017

Criminal Forms

9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017
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Children's Court Rules and Forms

10-166	Public inspection and sealing of court records	03/31/2017
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Rules of Appellate Procedure

12-314	Public inspection and sealing of court records	03/31/2017
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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>.

Rules/Orders

From the New Mexico Supreme Court

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

PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS, RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS, RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS, RULES OF PROCEDURE FOR THE MUNICIPAL COURTS, AND CRIMINAL FORMS GOVERNING PRETRIAL RELEASE

PROPOSAL 2017-042

The Supreme Court is considering amendments to the rules governing pretrial release, Rules 5-401, 6-401, 7-401, and 8-401 NMRA; the adoption of new rules to govern pretrial release by designee, Rules 5-408, 6-408, 7-408, and 8-408 NMRA; the adoption of a proposed new financial affidavit form, Form 9-301A NMRA; amendments to Forms 9-302 and 9-303 NMRA; and the withdrawal of Form 9-303A NMRA.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/openforcomment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 875040848
nmsupremecourtclerk@nmcourts.gov
5058274837 (fax)

Your comments must be received by the Clerk on or before April 17, 2017, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

CORRESPONDING AMENDMENTS ARE PROPOSED FOR RULES 6-401, 7-401, AND 8-401 NMRA. TO VIEW THE FULL TEXT OF THE PROPOSED AMENDMENTS FOR RULES 6-401, 7-401, AND 8-401, PLEASE SEE THE SUPREME COURT'S WEBSITE AT THE LINK SHOWN ABOVE.

5401. [Bail] Pretrial release.

A. Hearing.

(1) Time. If a case is initiated in the district court, and the conditions of release have not been set by the magistrate or metropolitan court, the district court shall conduct a hearing under this rule and issue an order setting the conditions of release as soon as practicable, but in no event later than

(a) three (3) days after the date of arrest, if the defendant remains in custody; or

(b) arraignment, if the defendant is not in custody.

(2) Right to counsel. The defendant has the right to counsel at the hearing.

[A.] B. Right to [bail] pretrial release; recognizance or unsecured appearance bond. Pending trial, any [person/bailable] defendant eligible for pretrial release under Article [2,] II, Section 13 of the New Mexico Constitution, shall be ordered released pending trial on the [person's] defendant's personal recognizance or upon the execution of an unsecured appearance bond in an amount set by the court, [subject to any release conditions imposed pursuant to Paragraph C of this rule;] unless the court makes [a written finding that such] written findings of particularized reasons why the release will not reasonably [assure] ensure the appearance of the [person] defendant as required. The court may impose non-monetary conditions of release under Paragraph D of this rule, but the court shall impose the least restrictive condition or combination of conditions that will reasonably ensure the appearance of the defendant as required and the safety of any other person or the community.

C. Factors to be considered in determining conditions of release. In determining the least restrictive conditions of release that will reasonably ensure the appearance of the defendant as required and the safety of any other person and the community, the court shall consider any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction, if any, and the financial resources of the

defendant. In addition, the court may take into account the available information concerning

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves alcohol or drugs;

(2) the weight of the evidence against the defendant;

(3) the history and characteristics of the defendant, including

(a) the defendant's character, physical and mental condition, family ties, employment, past and present residences, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(b) whether, at the time of the current offense or arrest, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense under federal, state, or local law;

(4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;

(5) any other facts tending to indicate the defendant may or may not be likely to appear as required; and

(6) any other facts tending to indicate the defendant may or may not commit new crimes if released.

D. Non-monetary conditions of release. In its order setting conditions of release, the court shall impose a standard condition that the defendant not commit a federal, state, or local crime during the period of release. The court may also impose the least restrictive particularized condition, or combination of particularized conditions, that the court finds will reasonably ensure the appearance of the defendant as required, the safety of any other person and the community, and the orderly administration of justice, which may include the condition that the defendant (1) remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;

(2) maintain employment, or, if unemployed, actively seek employment;

(3) maintain or commence an educational program;

(4) abide by specified restrictions on personal associations, place of abode, or travel;

(5) avoid all contact with an alleged victim of the crime or with a potential witness who may testify concerning the offense;

(6) report on a regular basis to a designated pretrial services agency or other agency agreeing to supervise the defendant;

(7) comply with a specified curfew;

(8) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(9) refrain from any use of alcohol or any use of an illegal drug or other controlled substance without a prescription by a licensed medical practitioner;

(10) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(11) submit to a drug test or an alcohol test on request of a person designated by the court;

(12) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(13) satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as required and the safety of any other person and the community.

[B.] E. Secured [bonds] bond. If the court makes [a written finding that] written findings of the reasons why release on personal recognizance or [upon execution of an] unsecured appearance bond, in addition to any non-monetary conditions of release, will not reasonably [assure] ensure the appearance of the [person] defendant as required, the court may require a secured bond for the defendant's release, [or will endanger the safety of any other person or the community, in addition to any release conditions imposed pursuant to Paragraph D of this rule, the court shall order the pretrial release of such person subject to the first of the following types of secured bonds which will reasonably assure the appearance of the person as required and the safety of any person and the community.]

(1) Factors to be considered in setting secured bond.

(a) In determining whether any secured bond is necessary, the court may consider any facts tending to indicate that the particular defendant may or may not be likely to appear as required.

(b) The court shall set secured bond at the lowest amount necessary to reasonably ensure the defendant's appearance and with regard to the defendant's financial ability to secure a bond.

(c) The court shall not set a secured bond that a defendant cannot afford for the purpose of detaining a defendant who is otherwise eligible for pretrial release.

(d) Secured bond shall not be set by reference to a predetermined schedule of monetary amounts fixed according to the nature of the charge.

(2) Types of secured bond. If a secured bond is determined necessary in a particular case, the court shall impose the first of the following types of secured bond that will reasonably ensure the appearance of the defendant.

(a) Percentage bond. [the execution of a bail] The court may require a secured appearance bond executed by the defendant in [a] the full amount specified in the order setting conditions of release, [specified amount executed by the person and] secured by a deposit [of] in cash of ten percent (10%) of the amount [set for bail] specified, [or secured by such greater or lesser amount as is reasonably necessary to assure the appearance of the person as required.] The deposit may be returned as provided in Paragraph M of this rule. [The cash deposit may be made by or assigned to a paid surety licensed

under the Bail Bondsmen Licensing Law provided such paid surety also executes a bail bond for the full amount of the bail set;]

(b) Property bond. The court may require the execution of a [bail] property bond by the defendant or by unpaid sureties in the full amount [of the bond] specified in the order setting conditions of release, secured by [and] the pledging of real property [as required by] in accordance with Rule 5401A NMRA[; or].

(c) Cash or surety bond. The court may give the defendant the option [the execution] of [a] either

—(i) a secured appearance bond executed by the defendant in the full amount specified in the order setting conditions of release, secured by a deposit in cash of one hundred percent (100%) of the amount specified, which may be returned as provided in Paragraph M of this rule, or

—(ii) a [bail] surety bond [with] executed by licensed sureties in accordance with Rule 5-401B for one hundred percent (100%) of the full amount specified in the order setting conditions of release, [as provided in Rule 5401B NMRA or execution by the person of an appearance bond and deposit with the clerk of the court, in cash, of one hundred percent (100%) of the amount of the bail set, such deposit to be returned as provided in this rule. Any bail, property or appearance bond shall be substantially in the form approved by the Supreme Court.]

C. Factors to be considered in determining conditions of release. The court shall, in determining the type of bail and which conditions of release will reasonably assure appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;—

(2) the weight of the evidence against the person;—

(3) the history and characteristics of the person, including:

(a) the person's character and physical and mental condition;—

(b) the person's family ties;—

(c) the person's employment status, employment history and financial resources;—

(d) —the person's past and present residences;—

(e) the length of residence in the community;—

(f) any facts tending to indicate that the person has strong ties to the community;—

(g) any facts indicating the possibility that the person will commit new crimes if released;—

(h) —the person's past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and—

(i) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of an offense under federal, state or local law;—

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release; and—

(5) any other facts tending to indicate the person is likely to appear.

D. Additional conditions; conditions to assure orderly administration of justice. The court, upon release of the defendant or any time thereafter, may enter an order, that such person's release be subject to:—

(1) the condition that the person not commit a federal, state

or local crime during the period of release; and—

(2) the least restrictive of, or combination of, the following conditions the court finds will reasonably assure the appearance of the person as required, the safety of any other person and the community and the orderly administration of justice:—

(a) a condition that the person remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;—

(b) a condition that the person maintain employment; or, if unemployed, actively seek employment;—

(c) a condition that the person maintain or commence an educational program;—

(d) a condition that the person abide by specified restrictions on personal associations, place of abode or travel;—

(e) a condition that the person avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;—

(f) a condition that the person report on a regular basis to a designated pretrial services agency or other agency agreeing to supervise the defendant;—

(g) a condition that the person comply with a specified curfew;—

(h) a condition that the person refrain from possessing a firearm, destructive device or other dangerous weapon;—

(i) a condition that the person refrain from excessive or any use of alcohol and any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;—

(j) a condition that the person undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency; and remain in a specified institution if required for that purpose;—

(k) a condition that the person submit to a urine analysis or alcohol test upon request of a person designated by the court;—

(l) a condition that the person return to custody for specified hours following release for employment, schooling, or other limited purposes;—

(m) a condition that the person satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.]

[E.]E. **[Explanation of conditions by court.] Order setting conditions of release; contents.** The [release order of the court] order setting conditions of release shall[:]

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the [person's] defendant's conduct;

(2) include written findings setting forth the particularized circumstances that require the imposition of a secured bond, if any; and

(3) advise the [person] defendant of[:]

(a) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(b) the consequences for violating a condition of release, including the immediate issuance of a warrant for the [person's] defendant's arrest, revocation of pretrial release, and forfeiture of bond; and

(c) the consequences of intimidating a witness, victim,

or informant or otherwise obstructing justice[; and—

(3) unless the defendant is released on personal recognizance; set forth the circumstances which require that conditions of release be imposed].

[F.]G. **[Detention] Pretrial detention.** [Upon motion by the state to detain a person without bail pending trial, the court shall hold a hearing to determine whether bail may be denied pursuant to Article 2, Section 13 of the New Mexico Constitution.] If the prosecutor files a motion for pretrial detention, the court shall follow the procedures set forth in Rule 5-409 NMRA.

[G.]H. **[Review] Case pending in district court; motion for review of conditions of release.** [A person for whom bail is set by]

(1) **Motion for review.** If the district court requires a secured bond for the defendant's release under Paragraph E of this rule or imposes non-monetary conditions of release under Paragraph D of this rule, and the defendant remains in custody [and who after] twentyfour (24) hours [from the time of transfer to a detention facility continues to be detained] after the issuance of the order setting conditions of release as a result of the [person's] defendant's inability to [meet the bail set] post the secured bond or meet the conditions of release in the present case, the defendant shall, [upon] on motion of the defendant or the court's own motion, be entitled to [have] a hearing to review the [amount of bail set] conditions of release.

(2) **Review hearing.** The district court shall hold a hearing in an expedited manner, but in no event later than ten (10) days after the filing of the motion. Unless the [release] order setting conditions of release is amended and the [person] defendant is thereupon released, the court shall state in the record the reasons for [continuing the amount of bail set] declining to amend the order setting conditions of release. The court shall consider the defendant's financial ability to secure a bond. No defendant eligible for pretrial release under Article II, Section 13 of the New Mexico Constitution shall be detained solely because of financial inability to post a secured bond unless the court determines by clear and convincing evidence and makes written findings of the reasons why the amount of secured bond required by the court is reasonably necessary to ensure the appearance of the particular defendant as required.

(3) **Work or school release.** A [person] defendant who is ordered released on a condition [which] that requires that the [person] defendant return to custody after specified hours[; upon application] shall, on motion of the defendant or the court's own motion, be entitled to [have] a hearing to review the conditions imposed. Unless the requirement is removed and the [person] defendant is [thereupon] released on another condition, the court shall state in the record the reason for the continuation of the requirement. A hearing to review conditions of release [pursuant to this paragraph] under this subparagraph shall be held by the district court as soon as practicable.

(4) **Subsequent motion for review.** The defendant may file subsequent motions for review of the order setting conditions of release, but the court may rule on subsequent motions with or without a hearing.

[H.]I. **Amendment of conditions.** The court [ordering the release of a person on any condition specified in this rule] may amend its order setting conditions of release at any time[; to increase the amount of bail set or impose additional or different conditions of release]. If [such] the amendment of the [release] order [results] may result in the detention of the [person as a result of the person's inability to meet such conditions or in the release of the person on a condition requiring the person to return to

custody after specified hours, the provisions of Paragraph G of this rule shall apply] defendant or in more restrictive conditions of release, the court shall not amend the order without a hearing. If the court is considering revocation of the defendant's pretrial release or modification of the defendant's conditions of release for violating a condition of release, the court shall follow the procedures set forth in Rule 5-403 NMRA.

[F.]L. **Record of hearing.** A record shall be made of any hearing held by the district court [pursuant to] under this rule.

[J.] **Return of cash deposit.** If a person has been released by executing an appearance bond and depositing a cash deposit set pursuant to Subparagraph (1) or (3) of Paragraph B of this rule; when the conditions of the appearance bond have been performed and the defendant's guilt for whom bail was required has been adjudicated by the Court, the clerk shall return the sum which has been deposited to the person who deposited the sum, or that person's personal representatives or assigns.]

K. **Cases pending in magistrate, [or] metropolitan, or municipal court; petition for release or review by district court.**

(1) **Case within magistrate, metropolitan, or municipal court trial jurisdiction.** A defendant charged with an offense that is within magistrate, metropolitan, or municipal court trial jurisdiction may file a petition in the district court for review of the magistrate, metropolitan, or municipal court's order setting conditions of release only after the magistrate, metropolitan, or municipal court has ruled on a motion to review the conditions of release under Rule 6-401(H) NMRA, Rule 7-401(H) NMRA, or Rule 8-401(G) NMRA. The defendant shall attach to the district court petition a copy of the magistrate, metropolitan, or municipal court order disposing of the defendant's motion for review.

(2) **Felony case.** A [person] defendant charged with [an] a felony offense [which is not within magistrate or metropolitan court trial jurisdiction and] who has not been bound over to the district court may file a petition in the district court for release under this rule at any time after the [person's] defendant's arrest, [with the clerk of the district court for release pursuant to this rule jurisdiction of the magistrate or metropolitan court to release the accused shall be terminated upon the filing of a petition for release in the district court. Upon the filing of the petition, the district court may:—

(1)—continue the bail set and any condition of release imposed by the magistrate or metropolitan court;—

(2)—impose any bail or condition of release authorized by Paragraphs A, B or D of this rule;—

(3)—continue any revocation of release imposed pursuant to Rule 5403 NMRA; or—

(4)—after a hearing, revoke the release of a defendant pursuant to Subparagraph (2) of Paragraph A of Rule 5403 NMRA.]

(3) **Petition; requirements.** A petition under this paragraph shall include the specific facts that warrant review by the district court and may include a request for a hearing. The petitioner shall promptly

(a) file a copy of the district court petition in the magistrate, metropolitan, or municipal court;

(b) serve a copy on the district attorney; and

(c) provide a copy to the assigned district court judge.

(4) **Magistrate, metropolitan, or municipal court's jurisdiction pending determination of the petition.** Upon the filing of a petition under this paragraph, the magistrate, metropolitan, or municipal court's jurisdiction to set or amend the conditions of release shall be suspended pending determination of the petition by the district court. The magistrate, metropolitan,

or municipal court shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the magistrate, metropolitan, or municipal court while the district court petition is pending. The magistrate, metropolitan, or municipal court's order setting conditions of release, if any, shall remain in effect unless and until the district court issues an order amending the conditions of release.

(5) **District court review.** The district court shall rule on the petition in an expedited manner. Within two (2) days after the petition is filed, the district court shall take one of the following actions:

(a) set a hearing no later than ten (10) days after the filing of the petition and notify the magistrate, metropolitan, or municipal court that a hearing has been set;

(b) deny the petition summarily; or

(c) amend the order setting conditions of release without a hearing.

(6) **District court order; transmission to magistrate, metropolitan, or municipal court.** The district court shall promptly transmit to the magistrate, metropolitan, or municipal court a copy of the district court order disposing of the petition, and jurisdiction over the conditions of release shall revert to the magistrate, metropolitan, or municipal court.

L. **Expedited trial scheduling for defendant in custody.** The district court shall provide expedited priority scheduling in a case in which the defendant is detained as a result of inability to post a secured bond or meet the conditions of release.

M. **Return of cash deposit.** If a defendant has been released by executing a secured appearance bond and depositing a cash deposit under Paragraph E of this rule, when the conditions of the appearance bond have been performed and the defendant's case has been adjudicated by the court, the clerk shall return the sum that has been deposited to the person who deposited the sum, or that person's personal representatives or assigns.

[E.]N. **Release from custody by designee.** [Any or all of the provisions of this rule, except the provisions of Paragraphs F, G and K of this rule, may be carried out by responsible persons designated in writing by the] The chief judge of the district court may designate by written court order responsible persons to implement the pretrial release procedures set forth in Rule 5-408 NMRA. A designee shall release a defendant from custody prior to the defendant's first appearance before a judge if the defendant is eligible for pretrial release under Rule 5-408 NMRA, but may contact a judge for special consideration based on exceptional circumstances. No person shall be qualified to serve as a designee if [such] the person or [such] the person's spouse is [—

(1)—related within the second degree of blood or marriage to a paid surety who is licensed to sell property or corporate bonds within this state, [; or—

(2)—employed by a jail or detention facility unless designated in writing by the chief judge of the judicial district in which the jail or detention facility is located.]

[M.]O. **Bind over [in] to district court.** [The] For any case that is not within magistrate or metropolitan court trial jurisdiction, upon notice to that court, any bond shall [remain in the magistrate or metropolitan court, except that it shall] be transferred to the district court upon the filing of an information or indictment [or bind over to that] in the district court.

[N.]P. **Evidence.** Information [stated in, or] offered in connection with [;] or stated in any proceeding held or order entered [pursuant to] under this rule need not conform to the New Mexico Rules of Evidence.

[O.]Q. **Forms.** Instruments required by this rule, including

any order setting conditions of release, appearance bond, property bond, or surety bond, shall be substantially in the form approved by the Supreme Court.

[P.] **R. Judicial discretion.** Action by any court on any matter relating to [bail] pretrial release shall not preclude the statutory or constitutional disqualification of a judge.

[As amended, effective January 1, 1987; October 1, 1987; September 1, 1990; December 1, 1990; September 1, 2005; as amended by Supreme Court Order 07830029, effective December 10, 2007; by Supreme Court Order No. 108300033, effective December 10, 2010; as amended by Supreme Court Order No. 148300017, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — [Under Section 13 of Article 2 of the New Mexico Constitution, every accused, except a person accused of first degree murder where the proof is evident or the presumption great, is entitled to bail. Paragraph E was added in 1990 to recognize the amendment of Article 2, Section 13 of the New Mexico Constitution which permits the denial of bail for 60 days by an order entered within 7 days after incarceration if:

(1) — the defendant is accused of a felony and has been previously convicted of two or more felonies within the state; or

(2) — the defendant is accused of a felony involving the use of a deadly weapon and has a prior felony conviction within this state.]

This rule provides “the mechanism through which a person may effectuate the right to pretrial release afforded by Article II, Section 13 of the New Mexico Constitution.” *State v. Brown*, 2014-NMSC-038, ¶ 37, 338 P.3d 1276. In 2016, Article II, Section 13 of the New Mexico Constitution was amended (1) to permit a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any other person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community; and (2) to require the pretrial release of a defendant who is in custody solely due to financial inability to post a secured bond. This rule was derived from the [Federal Bail Reform Act of 1966, as amended] federal statute governing the release or detention of a defendant pending trial. [Under the federal bail law, the right to bail is restated as the right to have conditions of release set by the court:] See 18 U.S.C. §[§] 3142. [et seq. The 1990 amendments to Paragraphs B and C of this rule were taken from Subsections (g) and (c), respectively, of 18 USC § 1342.] [— In 1990 this rule was amended to encourage more releases on personal recognizance. Release conditions may now be imposed in addition to the execution of a unsecured personal appearance bond or a secured bond. Because bail and additional conditions of release will usually be set initially by a magistrate or metropolitan court judge, Rules 6401 and 7401 NMRA govern the procedure in those courts. The magistrate, municipal and metropolitan court bail rules were derived from and are substantially identical to this rule.] This rule was amended in 2017 to implement the 2016 amendment to Article II, Section 13 and the Supreme Court’s holding in *Brown*, 2014-NMSC-038. Corresponding rules are located in the Rules of Criminal Procedure for the Magistrate Courts, see Rules 6-401 NMRA, the Rules of Criminal Procedure for the Metropolitan Courts, see Rule 7-401 NMRA, and the Rules of Procedure for the Municipal Courts, see Rule 8-401 NMRA.

Paragraph A provides that a defendant in custody is entitled

to an initial pretrial release hearing within three days after the date of arrest and has a right to counsel at the hearing. See generally NMSA 1978, § 311510(C) (providing that the public defender’s representation of an indigent defendant “who is charged . . . with any crime that carries a possible sentence of imprisonment . . . shall begin not later than the time of the initial appearance”). Time periods specified in this rule, including the three-day deadline in Subparagraph (A)(2), are computed in accordance with Rule 5-104 NMRA.

As set forth in Paragraph B, a defendant is entitled to release on personal recognizance or unsecured bond unless the court determines that such release, in addition to any non-monetary conditions of release under Paragraph D, will not reasonably ensure the appearance of the defendant and the safety of any other person or the community.

Paragraph C lists the factors the court should consider when determining conditions of release. In all cases, the court is required to consider any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction, if any, and the financial resources of the defendant.

Paragraph D lists various non-monetary conditions of release. The court must impose the least restrictive condition, or combination of conditions, that will reasonably ensure the appearance of the defendant as required and the safety of any other person and the community. See *Brown*, 2014-NMSC-038, ¶¶ 1, 37, 39. If the defendant has previously been released on standard conditions prior to a court appearance, the judge should review the conditions at the defendant’s first appearance to determine whether any particularized conditions should be imposed under the circumstances of the case. Paragraph D also permits the court to impose non-monetary conditions of release to ensure the orderly administration of justice. This provision was derived from the American Bar Association, ABA Standards for Criminal Justice: Pretrial Release, Standard 10-5.2 (3d ed. 2007). Some conditions of release may have a cost associated with the condition. The court should make a determination as to whether the defendant can afford to pay all or a portion of the cost, or whether the court has the authority to waive the cost, because detaining a defendant due to inability to pay the cost associated with a condition of release is comparable to detaining a defendant due to financial inability to post a secured bond.

[Under this rule, the types of bonds authorized to be posted are set forth] As set forth in Paragraph E, the only purpose for which the court may impose a secured bond is to ensure that the defendant will appear for trial and other pretrial proceedings for which the defendant must be present. See *Stack v. Boyle*, 342 U.S. 1, 5 (1951) (“[R]equiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused.”); *State v. Ericksons*, 1987-NMSC-108, ¶ 6, 106 N.M. 567, 746 P.2d 1099 (“[T]he purpose of bail is to secure the defendant’s attendance to submit to the punishment to be imposed by the court.”); see also NMSA 1978, § 31-3-2(B)(2) (authorizing the forfeiture of bond upon the defendant’s failure to appear).

The 2017 amendments to this rule clarify that the amount of secured bond must not be based on a bond schedule, i.e., a predetermined schedule of monetary amounts fixed according to the nature of the charge. Instead, the court must consider the individual defendant’s financial resources and must set secured bond at the lowest amount that will reasonably ensure the defendant’s appearance in court.

Secured bond cannot be used for the purpose of detaining

a defendant who may pose a danger to the safety of any other person or the community. See *Brown*, 2014NMSC038, ¶ 53 (“Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set high bail for the purpose of preventing a defendant’s pretrial release.”); see also *Stack*, 342 U.S. at 5 (stating that secured bond set higher than the amount reasonably calculated to ensure the defendant’s appearance in court “is ‘excessive’ under the Eighth Amendment”). A felony defendant who poses a danger that cannot be mitigated through the imposition of non-monetary conditions of release under Paragraph D of this rule should be detained under Article II, Section 13 and Rule 5-409 NMRA.

The court should consider the authorized types of secured bonds in the order of priority [they are to be considered by the judge or designee] set forth in Paragraph E. [The first priority is release upon the execution of a personal recognizance or unsecured appearance bond. If the court determines that release on personal recognizance or upon the execution of an unsecured bond will not reasonably assure the appearance of the defendant as required, the court may require a secured bond.]

If a secured bond is required to assure the appearance of the defendant, the judge or designee [The court must first consider requiring an appearance bond [with] secured by a cash deposit of 10% [or such other percentage of the amount of the bond]. If this is inadequate, the court then must consider a property bond where the property belongs to the defendant or other unpaid surety. If neither of these options is sufficient to reasonably ensure the defendant’s appearance, the court may require a cash or surety bond for the defendant’s release. If the court [has not authorized a cash deposit of less than 100% of the amount of bond set,] requires a cash or surety bond, the defendant [may] has the option either to execute an appearance bond and deposit [one hundred percent {100%}] of the amount of the bond with the court [Last of all the defendant may] or to purchase a bond from a paid surety. A paid surety may execute a [corporate] surety bond or a real or personal property bond [A real or personal property bond may only be executed by a paid surety] only if the conditions of Rule 5401B NMRA are met. [Under the 1990 amendments to Rule 5401B NMRA, a bond which has as collateral real or personal property is authorized only in those districts in which an order has been entered finding that the pledging of an irrevocable letter of credit will result in the detention of persons otherwise eligible for release.]

Paragraph F governs the contents of an order setting conditions of release. See Form 9-303 NMRA (order setting conditions of release). Although [bail] pretrial release hearings are not required to be a matter of record in the magistrate, metropolitan, or municipal courts, [Form 9302A] Paragraph F requires the [judge or designee to set forth] court to make written findings justifying the imposition of [the reasons why] a secured bond, if any [was required rather than release on personal recognizance].

[The provision allowing the court to set additional conditions of release in order to assure “the orderly administration of justice” was derived from American Bar Association Standards Relating to Pretrial Release, Section 5.5 (Approved Draft 1968) and 18 USC § 3142 and Rule 46(b) of the Federal Rules of Criminal Procedure.]

Paragraph G addresses pretrial detention of a dangerous defendant under Article II, Section 13. If the defendant poses a danger to the safety of any other person or the community that cannot be addressed through the imposition of non-monetary conditions of release, the prosecutor may file a motion for pretrial detention. If the prosecutor files a motion for pretrial detention, the district court must follow

the procedures set forth in Rule 5-409 NMRA.

Paragraphs H and K provide avenues for a defendant to seek district court review of the conditions of release. Paragraph H applies to a defendant whose case is pending before the district court. Paragraph K sets forth the procedure for a defendant whose case is pending in the magistrate, metropolitan, or municipal court. Article II, Section 13 requires the court to rule on a motion or a petition for pretrial release “in an expedited manner” and to release a defendant who is being held solely due to financial inability to post a secured bond. A defendant who wishes to present financial information to a court to support a motion or petition for pretrial release may present Form 9-301A NMRA (pretrial release financial affidavit) to the court. The defendant shall be entitled to appear and participate personally with counsel before the judge conducting any hearing to review the conditions of release, rather than by any means of remote electronic conferencing.

Paragraph L requires the district court to prioritize the scheduling of trial and other proceedings for cases in which the defendant is held in custody due to inability to post bond or meet the conditions of release. See generally *United States v. Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform Act, 18 U.S.C. § 3142, did not violate due process, in part due to “the stringent time limitations of the Speedy Trial Act, 18 U.S.C. § 3161”); Am. Bar Ass’n, ABA Standards for Criminal Justice: Pretrial Release, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice.”).

[Pursuant to] Under NMSA 1978, Section 3131 [NMSA 1978], the court may appoint a designee to carry out the provisions of this rule. As set forth in Paragraph N, a designee [Designees] must be [named in writing] designated by the chief district court judge in a written court order. A person may not be appointed as a designee if such person is related within the second degree of blood or marriage to a paid surety licensed in this state to execute bail bonds. A jailer may [not] be appointed as a designee. Paragraph N and Rule 5-408 NMRA govern the limited circumstances under which a designee shall release an arrested defendant from custody prior to that defendant’s first appearance before a judge.

Paragraph O requires the magistrate or metropolitan court to transfer any bond to the district court upon notice from the district attorney that an information or indictment has been filed. See Rules 6-202(E)-(F), 7-202(E)-(F) NMRA (requiring the district attorney to notify the magistrate or metropolitan court of the filing of an information or indictment in the district court). Paragraph [M] P of this rule dovetails with [Subparagraph (2) of Paragraph D of] Rule [11101] 11-1101(D)(2) NMRA. Both provide that the Rules of Evidence are not applicable to proceedings in [either the magistrate or] district court with respect to matters of pretrial release [or bail]. Like other types of proceedings where the Rules of Evidence do not apply, at a pretrial release hearing the court is responsible “for assessing the reliability and accuracy” of the information presented. See *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the responsibility for assessing the reliability and accuracy of the government’s information, whether presented by proffer or by direct proof”); see also *United States v. Marshall*, 519 F. Supp. 751, 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has sufficient indicia of reliability to support its probable accuracy, the information may properly be taken into

account in passing sentence.”), aff’d 719 F.2d 887 (7th Cir.1983); State v. Guthrie, 2011NMSC014, ¶¶ 3639, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation revocation hearing, the court should focus on the reliability of the evidence).

[As amended by Supreme Court Order 07830029, effective December 10, 2007; as amended by Supreme Court Order No. _____, effective _____.]

CORRESPONDING NEW RULES ARE PROPOSED AS RULES 6-408, 7-408, AND 8-408 NMRA. TO VIEW THE FULL TEXT OF THE PROPOSED NEW RULES 6-408, 7-408, AND 8-408, PLEASE SEE THE SUPREME COURT’S WEBSITE AT THE LINK SHOWN ABOVE.

[NEW MATERIAL]

RULE 5-408. PRETRIAL RELEASE BY DESIGNEE.

A. Scope. This rule shall be implemented by any person designated in writing by the chief judge of the district court under Rule 5-401(N) NMRA. A designee shall execute Form 9-302 NMRA to release a person from detention prior to the person’s first appearance before a judge if the person is eligible for pretrial release under either Paragraph B or Paragraph C of this rule, provided that a designee may contact a judge for special consideration based on exceptional circumstances. A judge may issue a pretrial order imposing a type of release and conditions of release that differ from those set forth in this rule.

B. Minor offenses; release on recognizance.

(1) **Persons eligible.** A designee shall release a person from custody on personal recognizance, subject to the conditions of release set forth in Form 9-302 NMRA, if the person has been arrested and detained for a municipal code violation, game and fish offense under Chapter 17 NMSA 1978, petty misdemeanor, or misdemeanor, subject to the exceptions listed in Subparagraph (B)(2) of this rule; and is not presently on probation, on parole, or on other release pending trial, sentencing, or appeal for any offense under federal, state, or local law.

(2) **Exceptions.** A person arrested for any of the following offenses is not eligible for release under this paragraph:

- (a) battery under Section 30-3-4 NMSA 1978;
- (b) aggravated battery under Section 30-3-5 NMSA 1978;
- (c) assault against a household member under Section 30-3-12 NMSA 1978;
- (d) battery against a household member under Section 30-3-15 NMSA 1978;
- (e) aggravated battery against a household member under Section 30-3-16 NMSA 1978;
- (f) criminal damage to property of a household member under Section 30-3-18 NMSA 1978;
- (g) stalking under Section 30-3A-3 NMSA 1978;
- (h) abandonment of a child under Section 30-6-1(B) NMSA 1978;
- (i) negligent use of a deadly weapon under Section 30-7-4 NMSA 1978;
- (j) enticement of a child under Section 30-9-1 NMSA 1978;
- (k) violating an order of protection under Section 40-13-6 NMSA 1978; or
- (l) driving under the influence of intoxicating liquor or

drugs in violation of Section 66-8-102 NMSA 1978.

C. Pretrial release based on risk assessment. A designee shall release a person from custody prior to the person’s first appearance before a judge if the person qualifies for pretrial release based on a risk assessment and a pretrial release schedule approved by the Supreme Court.

D. Type of release and conditions of release set by judge. A person who is not eligible for pretrial release by a designee under either Paragraph B or Paragraph C of this rule shall have the type of release and conditions of release set by a judge under Rule 5-401 NMRA.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — Under NMSA 1978, Section 31-3-1 and Rule 5-401(N) NMRA, the chief judge of the district court may designate responsible persons in writing who are authorized to release certain arrested persons from detention prior to the arrested person’s first appearance before a judge. The exceptions set forth in Subparagraph (B)(2) of this rule include the misdemeanors and petty misdemeanors listed in the Victims of Crime Act, NMSA 1978, §§ 31-26-1 to -16, and the Crimes Against Household Members Act, NMSA 1978, §§ 30-3-10 to -18, as well as battery, enticement of a child, violating an order of protection, and driving under the influence of intoxicating liquor or drugs.

[Commentary adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

9-301A. PRETRIAL RELEASE FINANCIAL AFFIDAVIT.

[For use with District Court Rule 5401 NMRA, Magistrate Court Rule 6401 NMRA, Metropolitan Court Rule 7401 NMRA, and Municipal Court Rule 8401 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]

v. No. _____

_____, Defendant.

PRETRIAL RELEASE FINANCIAL AFFIDAVIT

(This form may be used to gather the available information concerning the defendant’s employment status, employment history, and financial resources available to secure a bond.)

INCOME & ASSETS

A. EMPLOYMENT

Are you now employed? Yes ☐ No ☐
 If yes, please provide the name and address of employer.

 How much do you earn per month? _____
 If no, give month and year of last employment. _____
 How much did you earn per month? _____
 Do you receive unemployment benefits?
 Yes ☐ No ☐
 If yes, how much do you receive per month? _____
 If married, is your spouse employed?
 Yes ☐ No ☐
 If yes, how much does your spouse earn per month? _____

B. PUBLIC ASSISTANCE

Do you receive public assistance? Yes ☐ No ☐
 If yes, please check the applicable programs and list how much you receive per month.
 Department of Health Case Management Service (DHMS) _____
 Temporary Assistance for Needy Families (TANF) _____
 General Assistance (GA) _____
 Food Stamps _____
 Medicaid _____
 Public Housing _____
 Social Security Income/Social Security Disability Income _____
 VA Disability _____

C. OTHER INCOME

Have you received within the past 12 months any income from other sources?
 Yes ☐ No ☐
 If yes, give value and description for each.

D. ASSETS

Do you have any cash on hand or money in savings or checking accounts?
 Yes ☐ No ☐
 If yes, total amount? _____
 Do you own any real estate, automobiles, or other valuable property (excluding ordinary household furnishings)?
 Yes ☐ No ☐
 If yes, give value and description for each.

OBLIGATIONS & DEBTS

A. DEPENDENTS

List persons you actually support and your relationship to them.

B. MONTHLY EXPENSES

House payment/rent _____
 Utilities _____
 Groceries (after food stamps) _____
 Car payment _____
 Gas _____
 Insurance _____
 Child care _____
 Student and consumer loans _____
 Court-ordered family support obligations _____
 Other court-ordered payments _____
 Medical expenses _____
 Other _____

I hereby swear or affirm that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies.

Defendant's Signature _____ Date _____
 Defendant's Printed Name _____

USE NOTES

Use of this form is optional. A defendant may use this form to support a motion or petition for pretrial release under Rule 5-401(H) or (K) NMRA, Rule 6-401(H) or (J) NMRA, Rule 7-401(H) or (J) NMRA, or Rule 8-401(G) or (I) NMRA.

[Adopted by Supreme Court Order No. _____, effective _____.]

9302. Order ~~[setting conditions of release and appearance bond]~~ for release on recognizance by designee.

[For use with District Court Rule ~~[5401]~~ 5-408 NMRA, Magistrate Court Rule ~~[6401]~~ 6-408 NMRA, Metropolitan Court Rule ~~[7401]~~ 7-408 NMRA, and Municipal Court Rule ~~[8801]~~ 8-408 NMRA]

STATE OF NEW MEXICO
 [COUNTY OF _____]
 [CITY OF _____]
 _____ COURT
 [No.]
 [STATE OF NEW MEXICO]
 [COUNTY OF _____]
 [CITY OF _____]

v. No. _____, Defendant,

[ORDER SETTING CONDITIONS OF RELEASE AND APPEARANCE BOND]

~~-(This form is to be used if the defendant is to be released on personal recognizance or an unsecured appearance bond.)-(check applicable alternatives)~~
 [] Release on personal recognizance. It is ordered that the defendant be released without bail on the defendant's promise to appear and subject to the conditions checked below.

☐ Release on unsecured appearance bond. It is ordered that the defendant be released on bail in the amount of _____ dollars (\$ _____) provided that the defendant executes an unsecured appearance bond and agrees to the conditions checked or set forth below.

☐ Thirdparty custodian. It is ordered that the defendant report to (name) _____ (set forth designated entity or pretrial services agency agreeing to supervise the defendant) _____ (set forth telephone number of entity).

APPEARANCE BOND

I _____, defendant in the aboveentitled matter, do hereby bind myself to the following conditions of release:—
I agree to appear before the above court on _____, at _____ [a.m.] [p.m.] in courtroom _____ and at such other places as I may be required to appear, in accordance with any and all orders and directions relating to my appearance in the aboveentitled matter as may be given or issued by the above court or any magistrate, district or appellate court to which above entitled case may be filed, removed or transferred.—
(check and complete if applicable)

☐ I further agree to pay the [State of New Mexico] [City of _____] the full amount of the bail set forth above in the event that I fail to appear as required.—

Agreement to Comply with All
Additional Conditions of Release—

—(complete and check only applicable conditions—
prior to signature of this bond by the defendant)—
I further agree that:—

☐ I will remain in the custody of the above named thirdparty custodian who has agreed to report any violation of a release condition to the court;—

☐ I understand that my release is subject to my maintaining my employment. If my employment is terminated I agree to immediately report such termination to the court;—

☐ I will actively seek employment;—

☐ I will attend classes at _____;—

☐ I will not associate with the following persons _____, _____;

☐ I will not leave the [city of _____] [this county] [the county of _____] [this state] [the state of _____] without further permission of the court;—

☐ I will reside at _____ unless otherwise agreed to by the court;—

☐ I will avoid all contact with _____ and _____ (set forth the names of the alleged crime victim or any potential witness to the crime);—

☐ I will not leave my residence between the hours of _____ [p.m.] and _____ [a.m.] without prior permission of the court;—

☐ I will not possess a firearm, destructive device or other dangerous weapon without prior permission of the court;—

☐ I will:—

☐ refrain from excessive consumption of beer, wine and other alcoholic beverages;—

☐ not drink any alcoholic beverages;—

☐ I will not take or use any narcotic drugs without a prescription by a licensed medical practitioner;—

☐ I will submit to any urine analysis or alcohol test upon the request of _____;—

☐ I agree to the following [medical] [psychological or psychiatric] treatment for _____ (set forth treatment such as treatment for drug or alcohol dependency);

☐ I will remain at _____ (set forth name of institution) for the following treatment _____ for a period of _____;

☐ I agree that if I am released for the purpose of [employment] [schooling], I will return to _____ (set forth place of detention) each day immediately after [work] [school] [classes]. I understand the above conditions of release and agree to them. I understand that the court may have me arrested at any time, without notice, to review and reconsider these conditions.—

I understand, that if I fail to appear as required, I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change the address indicated below.—

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim or an informant or if I otherwise obstruct justice.—

I further understand that my conditions of release will be revoked if I violate a federal, state or local criminal law.—

Defendant—

Address—

City and State—

Telephone Number—

The above conditions of release are hereby approved. The defendant shall be released from custody upon the execution of this agreement and the posting of the required bond.—

(Judge) (Designee) _____ Date]

**ORDER FOR RELEASE ON
RECOGNIZANCE BY DESIGNEE**

IT IS ORDERED that the defendant be released on personal recognizance on the defendant's promise to appear and subject to the following standard conditions of release.

The defendant shall not violate any federal, state, or local criminal law.

The defendant shall notify the court of any change of address.

The defendant shall appear before the court as directed.

The defendant shall not possess firearms or dangerous weapons.

The defendant shall not consume alcohol.

The defendant shall not buy, sell, consume, or possess non-prescription drugs.

The defendant shall avoid all contact with the alleged victim or anyone who may testify in this case.

Defendant's acceptance of conditions and promise to appear:
I understand the above conditions of release and agree to them.

I understand that the court may review and amend these conditions, and may have me arrested anytime, with or without notice, to do so.

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim, or an informant, or if I otherwise obstruct justice.

Rules/Orders

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

I further understand that my conditions of release may be revoked if I violate a federal, state, or local criminal law.

I agree to appear before the court on _____,
at _____ (a.m.) (p.m.) located at _____
and thereafter at such
times and places required in this case by any court.

I understand, that if I fail to appear as required, I may be
prosecuted and sent to [jail] [the penitentiary] for the separate
offense of failure to appear. I agree to comply fully with each of
the conditions imposed on my release and to notify the court
promptly in the event I change the address indicated below.

Defendant's signature Date of signature

Date of release Time of release

Cell phone number Alternate phone number

Email address

Mailing address (include city, state, and zip code)

Physical address (include city, state, and zip code)

Designee's Order for Release:

The above conditions of release are hereby approved. The
defendant shall be released from custody upon the execution of
this agreement.

Designee (signature) Designee (printed name)

Date

[As withdrawn and approved, effective September 1, 1990;
as amended by Supreme Court Order 07830029, effective
December 10, 2007; as amended by Supreme Court Order No. _____,
effective _____.]

9303. ORDER SETTING CONDITIONS OF RELEASE[- BAIL BOND].

[For use with District Court Rule 5401 NMRA,
Magistrate Court Rule 6401 NMRA,
Metropolitan Court Rule 7401 NMRA and
Municipal Court Rule 8401 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

[No.]
[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v. _____ No. _____, Defendant.

[ORDER SETTING CONDITIONS OF RELEASE BAIL BOND-

(This form is to be used if the defendant is to be released on a
secured appearance bond or bail bond. If a surety provides bond

for the defendant, Form 9304 must also be completed. If the
defendant personally deposits cash as required, no other form
is required.)

It is ordered that the defendant be released on bail in the amount of
_____ dollars (\$ _____)

provided that the defendant executes this order and agreement
and:-

(check and complete applicable alternatives)

☐ deposits with the court the sum of _____
dollars (\$ _____) in cash being _____%

of the required bond to secure its performance. (A paid surety
may post cash with the court provided the paid surety executes
an agreement that upon forfeiture the paid surety will pay the
balance of the full amount of the bail set forth above.)

☐ executes a bail bond on a form approved by the supreme
court in the sum of _____ dollars

(\$ _____) or deposits with the clerk of the court,
in cash, one hundred percent (100%) of the amount of the bail set.
(If a surety posts bond for the defendant the defendant and the
surety must also execute Form 9304 NMRA.)

☐ It is ordered that the defendant report to (name)
_____ (set forth designated entity or
pretrial services agency agreeing to supervise the defendant)
_____ (set forth telephone number of entity).

-DEFENDANT'S BOND-

I _____, defendant in the above entitled matter,
do hereby bind myself to the following conditions of release:-
(court or designee must complete before
the defendant reads and signs this bond)-

I agree to appear before the above court on _____,
at _____ [a.m.] [p.m.] in courtroom _____

and at such other places as I may be required to appear, in
accordance with any and all orders and directions relating to
my appearance in the above entitled matter as may be given or
issued by the above court or any magistrate, district or appellate
court to which the above entitled case may be removed or the
cause transferred.

I further agree to pay the [State of New Mexico] [City of
_____] the full amount of the bail set forth above
in the event that I fail to appear as required.

Agreement to Comply with All
Additional Conditions of Release

I further agree that:-

(court or designee must complete
applicable conditions prior
to signature by the defendant)-

☐ I will remain in the custody of the above named third party
custodian who has agreed to report any violation of a release
condition to the court;

☐ I understand that my release is subject to my maintaining
my employment. If my employment is terminated I agree to
immediately report such termination to the court;

☐ I will actively seek employment;

☐ I will attend classes at _____;

☐ I will not associate with the following persons _____
_____;

☐ I will not leave the [city of _____] [this
county] [the county of _____] [this state] [the
state of _____] without further permission of
the court; -

☐ I will reside at _____ unless otherwise
agreed to by the court; -

☐ I will avoid all contact with _____ and

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5.0 G 1.0 EP



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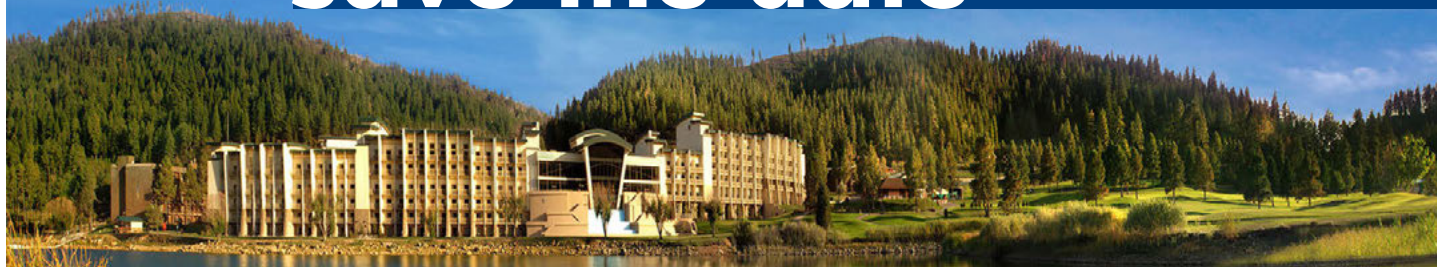
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_____ (set forth the names of the alleged crime victim or any potential witness to the crime); —
☐ I will not leave my residence between the hours of _____ [p.m.] and _____ [a.m.] without prior permission of the court; —
☐ I will not possess a firearm, destructive device or other dangerous weapon without prior permission of the court; —
☐ I will: —
☐ refrain from excessive consumption of beer, wine and other alcoholic beverages; —
☐ not drink any alcoholic beverages; —
☐ I will not take or use any narcotic drugs without a prescription by a licensed medical practitioner; —
☐ I will submit to any urine analysis or alcohol test upon the request of _____; —
☐ I agree to the following [medical] [psychological or psychiatric] treatment for _____ (set forth treatment such as treatment for drug or alcohol dependency); —
☐ I will remain at (set forth institution) _____ for the following treatment _____ for a period of _____; —
☐ I agree that if I am released for the purpose of [employment] [schooling], I will return to _____ (set forth place of detention) each day immediately after [work] [school] [classes]. I understand the above conditions of release and agree to them. I understand that the court may have me arrested at any time, without notice, to review and reconsider these conditions. —
I understand, that if I fail to appear as required, I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change the address indicated below. —
I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim or an informant or if I otherwise obstruct justice. —
I further understand that my conditions of release will be revoked if I violate a federal, state or local criminal law. —

Defendant—

Address—

City and State—

Telephone Number—

— The above conditions of release are hereby approved. The defendant shall be released from custody upon the execution of this agreement and the posting of the required bail bond. —

— (Judge) (Designee) —

— Date]

ORDER SETTING CONDITIONS OF RELEASE

Release on recognizance or unsecured bond:

It is ordered that Defendant be released from custody on:
(check and complete applicable alternatives)

☐ Personal recognizance.
☐ Unsecured appearance bond of \$ _____.
☐ Thirdparty custody release to: _____
(individual or organization).
I/We agree to supervise Defendant; to use every effort to assure Defendant's appearance at all scheduled hearings; and to notify the Court immediately in the event Defendant violates any conditions of release.

Signature of Custodian Address (city/zip) A r e a
Code/Telephone #

Defendant's conditions of release:

The Court **FINDS** that the following conditions of release are the least restrictive conditions necessary to reasonably assure the appearance of the defendant as required and the safety of any other person and the community. The defendant shall not violate any federal, state, or local criminal law and shall:
(complete and check only applicable conditions prior to signature by Defendant)

☐ not possess firearms or dangerous weapons;
☐ not return to the location of the alleged incident;
☐ not consume alcohol;
☐ not buy, sell, consume, or possess non-prescription drugs;
☐ notify the court of any change of address;
☐ not leave the (county of _____) (State of _____) without prior permission of the Court;
☐ maintain contact with the defendant's attorney/seek and consult with an attorney;
☐ avoid all contact with the alleged victim or anyone who may testify in this case;
☐ have an ignition interlock device installed on any vehicle the defendant may drive; (☐ camera capable ignition interlock device);
☐ be on Pretrial Supervision and abide by all conditions set by the Court and by Pretrial Services;
☐ reside at _____ (address) unless otherwise agreed to by the court;
☐ submit to drug or alcohol testing upon the request of _____;
☐ not leave the defendant's residence between the hours of _____ p.m. and _____ a.m. without prior permission of the Court;
☐ maintain employment, or, if unemployed, actively seek employment;
☐ maintain or commence an educational program;
☐ (other conditions) _____

Release on secured bond:

☐ The Court **FINDS** that release on non-monetary conditions will not reasonably assure the appearance of Defendant. In making this determination, the Court finds that the following particularized factors require imposition of a secured bond in the amount set forth below:

Secured bond of \$ _____, secured by:

☐ cash at 10 % of total bond.
☐ real property bond executed on Form 9304 NMRA.
☐ either 100% cash or a surety bond executed on Form 9-304 NMRA.

Defendant's acceptance of conditions and promise to appear:

I understand the above conditions of release and agree to them.

I understand that the court may have me arrested at any time, without notice, to review and reconsider these conditions.

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim, or an informant, or if I otherwise obstruct justice.

I further understand that my conditions of release may be revoked if I violate a federal, state, or local criminal law.

I agree to appear before the court on _____, at _____ (a.m.) (p.m.) located at _____ and thereafter at such times and places required in this case by any court.

I understand, that if I fail to appear as required, my bond, if any, may be forfeited, and I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change the address indicated below.

 Defendant's signature Date of signature

 Date of release Time of release

 Cell phone number Alternate phone number

 Email address

 Mailing address (include city, state, and zip code)

 Physical address (include city, state, and zip code)

Judicial approval of conditions:

 Judge's signature

USE NOTES

(Do not print use notes on preprinted forms)

This form was revised in 2017 in conjunction with amendments to Rules 5-401, 6-401, 7-401, and 8-401 NMRA.

If a surety provides bond for the defendant, Form 9304 NMRA must also be completed. If a third party custodian is named, the third party custodian agreement must also be completed and signed.

[Approved, effective September 1, 1990; as amended by Supreme Court Order 07830029, effective December 10, 2007;

as amended by Supreme Court Order No. _____, effective _____.]

[WITHDRAWN]

9303A. Release Order and Bond-

~~[For use with Magistrate Court Rule 6401 NMRA, Metropolitan Court Rule 7401 NMRA and Municipal Court Rule 8401 NMRA]~~

STATE OF NEW MEXICO
 {COUNTY OF _____}
 {CITY OF _____}
 _____ COURT

No. _____
 {STATE OF NEW MEXICO}
 {COUNTY OF _____}
 {CITY OF _____}

_____, Defendant

RELEASE ORDER AND BOND-

It is ordered that the defendant be released from custody subject to the following conditions:-

(check and complete applicable alternatives)-

☐ Personal recognizance
☐ Unsecured appearance bond of \$ _____
☐ Third party custodian: _____ (name)
 _____ (address)
 _____ (city & zip code)
 _____ (telephone)-

☐ Secured bond of \$ _____:
☐ cash at _____ % of a bond
☐ bail bond executed on Rule 9304
☐ property bond executed on Rule 9304-

I agree to appear before the court on _____, at _____ (a.m.) (p.m.) located at _____ and thereafter at such times and places required in this case by any court.

I further agree:-
☐ not to possess firearms or dangerous weapons;
☐ not to possess or consume alcohol or enter liquor establishments;-

☐ not to violate any federal, state or local criminal law;
☐ to notify the court of any change of address;-
☐ not to leave the (county of _____) (State of _____) without prior permission of the Court;-

☐ to maintain contact with my attorney;-
☐ to avoid all contact with the alleged victim or anyone who may testify in this case;-
☐ (other conditions) _____

Judicial approval of conditions:-

 Date ordered _____ (Judge)
 (designee) _____

Defendant's approval of conditions:

I UNDERSTAND THE ABOVE CONDITIONS OF RELEASE AND AGREE TO THEM. If I fail to appear, I understand that bond will be forfeited and I agree to pay the amount of the bond to the state. I understand that additional criminal charges may be filed if I violate conditions of release.

_____	_____
Date of signature	Defendant's signature
_____	_____
Date of release	Address (mailing)
_____	_____
Time of release	City, state, zip
_____	_____
Defendant's telephone number	

USE NOTE

(Do not print use note on preprinted forms)

This form may be used instead of Rule 9303 NMRA if the defendant is to be released on a secured or unsecured appearance bond or bail bond. It has been designed for printing on one page. It may be modified to include any of the conditions set forth on Rule 9303 NMRA.

If a surety provides bond for the defendant, Rule 9304 NMRA must also be completed. If a third party custodian is named, a third party custodian agreement must also be completed and signed.

A paid surety may post cash with the court provided the paid surety executes an agreement that upon forfeiture the paid surety will pay the balance of the full amount of the bail set forth above.]

[Adopted, effective January 1, 1995; as amended by Supreme Court Order 08830017, effective October 15, 2008; withdrawn by Supreme Court Order No. _____, effective _____.]

Advance Opinions

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

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2017-NMSC-004

No. S-1-SC-34993 (filed October 20, 2016)

T.H. MCELVAIN OIL & GAS LIMITED PARTNERSHIP, a New Mexico limited partnership; KAREN ANN HANDLEY ANDERSON, an individual; SUSAN R. HANDLEY MCGREW, an individual; BILLIE L. PHILLIPS, an individual; BILLIE L. PHILLIPS RECOVERABLE TRUST DATED APRIL 23, 1996, BILLIE L. PHILLIPS Trustee; JUDY LYNN QUINT, an individual; RONALD CHARLES WEEBER, an individual; LUCILE ALICE NORTHCOTE TRUST DATED MAY 29, 1996, BILLIE L. PHILLIPS, Successor Trustee, Plaintiffs-Respondents,

v.

GROUP I: BENSON-MONTIN-GREER DRILLING CORP., INC., a Delaware corporation; ELIZABETH JEANNE TURNER CALLOWAY, an individual; KELLY R. KINNEY, an individual; KATHERINE P. MILLER, an individual; RONALD MICHAEL MILLER, an individual; VICKIE ROANN MILLER, an individual; THOMAS R. MILLER, an individual; FRED E. TURNER, LLC, a Delaware limited liability company; JOHN LEE TURNER, an individual; LINDA VOITL a/k/a LINDA DAVIS, an individual; ESTATE OF WILLIAM G. WEBB, deceased, JOHN G. TAYLOR, independent executor, Defendants-Petitioners,

GROUP II: CHERYL U. ADAMS, an individual; E'TWILA J. AXTELL, an individual; BP AMERICA PRODUCTION COMPANY, a Delaware corporation; COASTAL WATERS PETROLEUM COMPANY, INC., a Louisiana corporation; ENERGEN RESOURCES CORPORATION, an Alabama corporation; THE ESTATE OF ANNE B. LITTLE, FIRST SECURITY BANK OF NEW MEXICO, as personal representative; LANA GAY PHILLIPS, an individual; HENRIETTA SCHULTZ, an individual; THE FRANK AND HENRIETTA SCHULTZ REVOCABLE TRUST DATED JANUARY 2, 1990, HENRIETTA SCHULTZ, Trustee; SCHULTZ MANAGEMENT, LTD., a Texas limited partnership; J. GLENN TURNER, JR., LLC, a Delaware limited liability company; MARY FRANCES TURNER, JR. TRUST, JP MORGAN CHASE BANK, NA, Trustee, Defendants,

GROUP III: ALL UNKNOWN CLAIMANTS OF INTEREST IN THE PREMISES ADVERSE TO THE PLAINTIFFS, Defendants.

and

No. S-1-SC-34997

T.H. MCELVAIN OIL & GAS LIMITED PARTNERSHIP, a New Mexico limited partnership; KAREN ANN HANDLEY ANDERSON, an individual; SUSAN R. HANDLEY MCGREW, an individual; BILLIE L. PHILLIPS, an individual; BILLIE L. PHILLIPS RECOVERABLE TRUST DATED APRIL 23, 1996, BILLIE L. PHILLIPS, Trustee; JUDY LYNN QUINT, an individual; RONALD CHARLES WEEBER, an individual; LUCILE ALICE NORTHCOTE TRUST DATED MAY 29, 1996, BILLIE L. PHILLIPS, Successor Trustee, Plaintiffs-Respondents,

v.

GROUP I: BENSON-MONTIN-GREER DRILLING CORP., INC., a Delaware corporation; ELIZABETH JEANNE TURNER CALLOWAY, an individual; KELLY R. KINNEY, an individual; KATHERINE P. MILLER, an individual; RONALD MICHAEL MILLER, an individual; VICKIE ROANN MILLER, an individual; THOMAS R. MILLER, an individual; FRED E. TURNER, LLC, a Delaware limited liability company; JOHN LEE TURNER, an individual; LINDA VOITL a/k/a LINDA DAVIS, an individual; ESTATE OF WILLIAM G. WEBB, deceased, JOHN G. TAYLOR, independent executor, Defendants,

GROUP II: CHERYL U. ADAMS, an individual; E'TWILA J. AXTELL, an individual; LANA GAY PHILLIPS, an individual; Defendants-Petitioners,

and

BP AMERICA PRODUCTION COMPANY, a Delaware corporation; COASTAL WATERS PETROLEUM COMPANY, INC., a Louisiana corporation; ENERGEN RESOURCES CORPORATION, an Alabama corporation; THE ESTATE OF ANNE B. LITTLE, FIRST SECURITY BANK OF NEW MEXICO, as personal representative; HENRIETTA SCHULTZ, an individual; THE FRANK AND HENRIETTA SCHULTZ REVOCABLE TRUST DATED JANUARY 2, 1990, HENRIETTA SCHULTZ, Trustee; SCHULTZ MANAGEMENT, LTD., a Texas limited partnership; J. GLENN TURNER, JR., LLC, a Delaware limited liability company; MARY FRANCES TURNER, JR. TRUST, JP MORGAN CHASE BANK, NA, Trustee, Defendants,

GROUP III: ALL UNKNOWN CLAIMANTS OF INTEREST IN THE PREMISES ADVERSE TO THE PLAINTIFFS, Defendants.

ORIGINAL PROCEEDING ON CERTIORARI

JOHN A. DEAN, JR., District Judge

JAKE EUGENE GALLEGOS
MICHAEL J. CONDON
GALLEGOS LAW FIRM, P.C.
Santa Fe, New Mexico
for Petitioners Group I

DYLAN O'REILLY
LUKE SALGANEK
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JOHN F. MCCARTHY, JR.
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Y. JUN ROH
CUDDY & MCCARTHY, LLP
Santa Fe, New Mexico

HERBERT A. DELAP
NIXON SHEFRIN HENSEN OGBURN, P.C.
Greenwood Village, Colorado
for Respondents T.H. McElvain Oil &
Gas Limited Partnership, et al.,

JOEL M. CARSON, III
CARSON RYAN LLC
Roswell, New Mexico
for Amicus Curiae Landmen's
Association

Opinion

Barbara J. Vigil, Justice

I. INTRODUCTION

{1} The underlying claim giving rise to this controversy constitutes a collateral attack, requiring us to determine whether it is apparent on the face of a 1948 quiet title judgment that the district court, which entered said judgment, affirmatively lacked jurisdiction over certain parties because they were notified by publication. It is alleged that in the 1948 lawsuit such notice violated the Due Process Clause, depriving the district court of jurisdiction. Only when a party's whereabouts are not reasonably ascertainable following diligent search and inquiry can constructive notice substitute for personal notice of suit. Here, constructive service of process by publication satisfied due process and established the 1948 district court's personal jurisdiction. Therefore, the district court's 1948 quiet title judgment was not void, and, accordingly, we reverse the judgment of the Court of Appeals.

II. BACKGROUND

{2} This opinion addresses the consolidated appeals of two groups of Defendants from a Court of Appeals ruling favorable to T.H. McElvain Oil & Gas Limited Partnership, et al. (Plaintiffs). See *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp.*, 2015-NMCA-004, ¶ 55, 340 P.3d 1277. The identities of the numerous parties and undisputed facts underlying the case are as follows.

{3} In 1927 W.W. McEwan conveyed by general warranty deed fee-simple title in 160 acres of land in San Juan County, New Mexico (the Property) to Judson Wilson, Eva Wilson, and Mabel Wilson, as joint

tenants with the right of survivorship. The Wilsons, according to that deed, were "of San Diego, California." The following year, on August 16, 1928, the Wilsons executed a general warranty deed in San Diego, conveying the Property to David Miller, subject to the following reservation:

[E]xcepting and reserving to the grantors herein the oil and gas existing or found therein, with the right to enter on for prospecting or developing same, provided they must pay all damage to land or crops in prospecting or development.

{4} On March 14, 1931, David Miller conveyed by quitclaim deed his interest in the Property to his brother, Thomas Miller.¹ The quitclaim deed to Thomas Miller was silent as to any reservation clouding fee-simple title. Thomas Miller did not record the deed until April 29, 1937, after David Miller's death. David Miller had also bequeathed his property in full to Thomas Miller.

{5} Judson Wilson died on May 16, 1929, and Eva Wilson died on December 17, 1944, leaving Mabel Wilson as the only surviving joint tenant from the original W.W. McEwan deed. Nothing in the record indicates that after 1928 Judson and Eva Wilson took any action regarding the Property.

{6} Mabel Wilson, the remaining joint tenant, lived in San Diego until her death in 1970. Mabel had married Charles Weeber prior to 1944, and thereafter went by her married name of Mabel W. Weeber. Following her death, Mabel's estate was probated in the Superior Court for San Diego County. Her estate identified an interest in residential property in San Diego, but made no claim to real property in New Mexico. Charles Weeber's estate similarly

made no claim to real property in New Mexico upon his death in 1978.

{7} On October 21, 1948, Thomas Miller filed a quiet title action in the District Court for San Juan County. In his complaint, Thomas Miller alleged that he was the owner in fee simple of a total of 931 acres in San Juan County (the Subject Acreage), with that acreage encompassing the 160-acre Property presently in dispute. Over fifty individuals were named as defendants—all of whom were named as defendants if living, or if deceased, by their unknown heirs—with Judson Wilson, Eva Wilson, and Mabel Wilson each making the list. Thomas Miller's attorney verified under oath the allegations of the complaint, which in part stated that

if any [d]efendants herein . . . still are living, and reside in or have their places of residence in the State of New Mexico, the said [d]efendants have secreted themselves so that service of process cannot be had upon them in this cause, and that the only way in which said [d]efendants can be served herein is by publication.

The complaint also alleged that any unknown heirs of deceased were "unknown to the [p]laintiff, and [p]laintiff has been unable to learn or determine the names, places of residence, Post Office addresses and whereabouts of the said unknown heirs, after diligent search and inquiry for the same." Based on the allegations in the verified complaint, service of process was accomplished by publication of a Notice of Action Pending in the *Times Hustler*, a weekly newspaper published in San Juan County—specifically Farmington, New Mexico. Notice of the action ran in the paper for four successive weeks.

¹The record indicates that while David Miller had purchased the Property from the Wilsons, Thomas Miller may have contributed one-half of the purchase price to possess an undivided one-half interest in the Property.

{8} On November 19, 1948, the Sheriff of San Juan County attempted to serve notice on all parties and submitted a sheriff's return stating that he

diligently searched and inquired for the [d]efendants, and each of them, in the above-entitled cause; that after such search and inquiry, I have been unable to find any of the [d]efendants in San Juan County, New Mexico, and I have been unable to find the Post Office addresses, places of residence, or whereabouts of the [d]efendants, or either of them.

No named defendant entered an appearance in the quiet title action, but some filed a disclaimer of interest in the Subject Acreage. As such, a quiet title judgment (the 1948 judgment) was entered on December 20, 1948, quieting title to the Subject Acreage—which, again, included the Property—in favor of Thomas Miller. The 1948 judgment provided that Thomas Miller was the owner of the Subject Acreage in “Fee Simple Title,” and

that after diligent search and inquiry the post office addresses, places of residence, and whereabouts of all the [d]efendants’ herein [excepting those that filed a Disclaimer of Interest], all are unknown and ascertained; and that none of the said [d]efendants, other than those set out above, can be personally served with process in this cause.

{9} Thomas Miller thereafter exercised fee-simple ownership over the Property. On January 15, 1950, Thomas Miller conveyed the Subject Acreage to V.H. McRee while reserving three-quarters of the mineral rights. Then, in 1952, the Property was committed to the San Juan 32-5 federal unit area, of which Stanolind Oil and Gas Company was the operator. In 1953, Miller and McRee executed an oil, gas, and mineral lease with Stanolind Oil and Gas Company—and McRee reserved a one-eighth royalty interest in the minerals produced from the lease. Stanolind Oil Company became Pan American Petroleum Corporation in 1957 and made three assignments of its leasehold interest

to J. Glenn Turner, ultimately conveying to him all of its interest appurtenant to the Property. J. Glenn Turner subsequently, in 1959, 1960, and 1961, made various other assignments of his mineral interests appurtenant to the Property before dying in 1975 and leaving his property in trust for his son, J. Glenn Turner, Jr., and a Dallas bank.

{10} In 1956 V.H. McRee conveyed his interest in the Property, by warranty deed, to H.F. and Freda Axtell. The Axtells thereafter executed separate trust agreements, naming E'Twila Axtell, Cheryl Adams, and Lana Phillips as beneficiaries. As of May 2008 the beneficiaries had become successor co-trustees of the trusts through a series of quitclaim transactions, thus entitling them to the one-eighth royalty interest stemming from McRee's one-quarter interest in the mineral rights, as conveyed by Miller in 1950.

{11} As noted, Mabel Weeber—the surviving joint tenant from the McEwan deed—and her husband, Charles Weeber, died in the 1970s without claiming any property in New Mexico. The 1948 San Diego City Directory contains a listing for “Weeber Chas E (Mabel W).” The directory indicated that Charles and Mabel Weeber lived at 3767 Pershing Avenue. Historical versions of the directory, from 1926 and 1930, listed that same Pershing address for then-living Judson and Eva Wilson.

{12} Again, there is nothing in the record indicating that Judson, Eva, or Mabel Wilson took any action regarding the Property after granting the 1928 deed to David Miller. Indeed, it was not until 2002 when a landman representing a Plaintiff in this case, T.H. McElvain Oil & Gas Limited Partnership (T.H. McElvain Oil & Gas), informed Judy Lynn Quint and Ronald Charles Weeber—Mabel Wilson's successors-in-interest—that they were “the current owners of the oil and gas” interests appurtenant to the Property. Subsequently, Judy Lynn Quint and Ronald Charles Weeber entered into a five-year lease with T.H. McElvain Oil & Gas for \$2,320.00 each.

{13} The Property presently lies beneath Navajo Lake. In 2007 the appurtenant mineral interests greatly increased in value after Energen Resources success-

fully drilled coal seam gas wells in the underlying bedrock, and the Property was then-after incorporated into two Fruitland coalbed well-spacing units. Energen Resources holds hundreds of thousands of dollars in escrow pending resolution of this litigation—the primary dispute in this case, then, concerns ownership of those mineral rights.

{14} The procedural posture of this case is as follows. In 2010 Plaintiffs—T.H. McElvain Oil & Gas, and other successors-in-interest to the 1927 joint tenancy granted to Judson Wilson, Eva Wilson, and Mabel Wilson by W.W. McEwan—filed suit to quiet title in the mineral interests appurtenant to the Property, initially making no mention of the 1948 quiet title judgment. After becoming aware of the 1948 judgment in the course of the pleadings, Plaintiffs were forced to change course and, hence, challenged the constitutional effectiveness of the service of process made by publication on their predecessors-in-interest. In essence, Plaintiffs trace their claim to title back to the reservation of mineral interests in the 1928 deed from the Wilsons to David Miller, alleging that reservation is still effective because the allegedly insufficient service of process on the Wilsons voided the 1948 judgment as it applied to them.

{15} The named Defendants in the instant suit fall into two groups: Group 1 (the Benson group) and Group 2 (the Axtell Group). The parties² in Group 1 counterclaimed to quiet title in the Property's oil and gas leasehold interests, while some parties in Group 2 counterclaimed to quiet title in a percentage of royalty interests flowing from the Property's mineral production. Group 1 Defendants derive their claim to title in the Property's oil and gas leasehold interests from the 1948 judgment in favor of Thomas Miller, and subsequent assignments made by Miller, Pan American Petroleum Corporation, and J. Glenn Turner. This Court has previously quieted title in the Property in favor of some of the Group 1 Defendants, following an ancillary probate of J. Glenn Turner's estate. See *M.H. Clark v. Benson-Montin-Greer Drilling Corp.*, No. 78-1260 (N.M. Sup. Ct. Jul. 12, 1982) (mandate). Group

²The alignment of the parties and briefing in this case do not match the case caption. In its order the district court quieted the right, title, and ownership of the oil and gas leasehold estate appurtenant to the Property in Benson-Montin-Greer Drilling Corp., Inc.; Henrietta Schultz Trustee, Shultz Management Ltd.; Elizabeth Jeanne Turner Calloway; J. Glenn Turner, Jr., LLC; John Lee Turner; Fred E. Turner LLC; and Mary Francis Turner, Jr. Trust, J.P. Morgan Chase Bank N.A. Trustee. Those interests herein represent Group 1. The district court also quieted right, title, and ownership of a 3.125% mineral interest royalty in the Property in Cheryl U. Adams, E'Twila J. Axtell, and Lana Gay Phillips. Those interests herein represent Group 2.

2 Defendants derive their claim to title in royalty interests in the Property from V.H. McRee's reservation of a one-eighth royalty interest in the minerals produced by his lease to Stanolind Oil and Gas Company, and the subsequent transaction between V.H. McRee and Harrison and Freda Axtell that resulted in various trust agreements benefitted by the royalties.

{16} The parties filed cross-motions for summary judgment claiming title to the relevant mineral interests. To assist the district court in determining the ownership of the mineral rights at issue, the district court appointed a special master pursuant to Rule 1-053 NMRA. The special master determined that the Group 1 and Group 2 Defendants were entitled to summary judgment. The special master rejected the Plaintiffs' collateral attack on the 1948 quiet title judgment stating, "there is nothing to indicate that Thomas Miller had information regarding Mabel Weeber's whereabouts or that her whereabouts could be identified through reasonable diligence; therefore, the [c]ourt's conclusion in 1948 that she could not be located for personal service appears appropriate." The special master determined that any investigation by Thomas Miller in 1948 would not have been likely to locate Mabel Weeber for service of process because she did not appear in the 1948 San Diego telephone directory as Mabel Wilson, and also because, by 1948, both Judson and Eva Wilson had died.

{17} The special master further concluded that the Plaintiffs' claim to title was barred by laches, waiver, and estoppel because "[t]he Wilsons and their successors did nothing to claim any ownership interest in the oil and gas connected to the property from the date of the deed to David [Miller] in 1928 until 2002 when McElvain Oil & Gas sought to enter into a lease." The special master also recognized that there was not an ancillary probate proceeding for either of the estates of Mabel or Charles Weeber that listed ownership interest in the Property as being part of their estates. The district court entered an order adopting the special master's report and recommendations, and ruled in favor of Defendants by granting their motion for summary judgment. Title was thus quieted in favor of the Group 1 and Group 2 Defendants.

{18} Plaintiffs then appealed the district court's order, and the Court of Appeals reversed the district court's grant of summary judgment in favor of Defendants.

T.H. McElvain Oil & Gas, 2015-NMCA-004, ¶ 4. The Court of Appeals concluded that Thomas Miller had failed to exercise diligence and good faith in notifying the Wilsons of the 1948 quiet title action, enabling Plaintiffs' collateral attack on the 1948 judgment for lack of personal jurisdiction. *Id.* ¶ 55. The Court of Appeals further concluded that the record did not support a finding of waiver, laches, and estoppel on the part of Plaintiffs. *Id.* ¶ 55. Group 1 and Group 2 Defendants then appealed the Court of Appeals opinion to this Court, and we granted certiorari. See *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer, Drilling Corp.*, 2014-NMCERT-012.

{19} This appeal rests upon the validity of the 1948 judgment quieting title to the Property in favor of Thomas Miller. Our determination of this ultimate issue rests upon whether the constructive service of process made by publication upon the Wilsons back in 1948 met constitutional standards of due process and was in accordance with the Rules of Civil Procedure then in effect. If the 1948 judgment is valid, Plaintiffs' right to the mineral interests is foreclosed and Defendants would be entitled to judgment as a matter of law. On the other hand, if the 1948 judgment is void, Plaintiffs may continue to adjudicate the merits of their claim in accordance with this opinion. To support their claim Plaintiffs make a collateral attack on the 1948 judgment, which can only succeed if "lack of jurisdiction appears affirmatively on the face of the judgment or in the judgment roll or record, or is made to appear in some other permissible manner." *In re Estate of Baca*, 1980-NMSC-135, ¶ 11, 95 N.M. 294, 621 P.2d 511. In deciding the validity of the 1948 judgment we are called upon to consider not only the inherent complexities of a successful collateral attack on a longstanding judgment, but also the competing principles of finality in court judgments and the right to due process before the deprivation of one's property by another. Before we address these important legal principles in the context of the positions taken by the parties, we pause to articulate the legal standards of review for summary judgment in New Mexico with respect to the specific legal issues presented by this appeal.

III. STANDARD OF REVIEW

{20} The district court, upon cross motions for summary judgment, granted Defendants' motion. We review that grant of summary judgment de novo. *Hydro Res.*

Corp. v. Gray, 2007-NMSC-061, ¶ 14, 143 N.M. 142, 173 P.3d 749. Summary judgment is appropriate where the facts are undisputed and the movant is entitled to judgment as a matter of law. *Id.* We view the facts in the light most favorable to the party opposing the motion and indulge all reasonable inferences in their favor. *Smith v. Durden*, 2012-NMSC-010, ¶ 5, 276 P.3d 943. New Mexico Courts generally view summary judgment with disfavor. *Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶ 8, 148 N.M. 713, 242 P.3d 280. Because the district court granted summary judgment in favor of Defendants, we must review the facts in the light most favorable to Plaintiffs.

{21} A party moving for summary judgment must meet its initial burden of establishing a prima facie case for summary judgment. See *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331, 825 P.2d 1241. Once a moving party meets that initial burden of establishing evidence that there are no issues of material fact, and that judgment as a matter of law may be appropriate, the burden shifts to the nonmoving party to alternatively establish evidence that issues of material fact remain requiring a trial on the merits. See *Romero*, 2010-NMSC-035, ¶ 10 (citations omitted). The "evidence adduced must result in reasonable inferences." *Id.* (citations omitted). "An inference is not a supposition or a conjecture, but is a logical deduction from facts proved and guess work is not a substitute therefor." *Id.* (internal quotation marks and citation omitted).

{22} Defendants offer as evidence in support of their motion for summary judgment the 1948 quiet title judgment granting their predecessors-in-interest title to the mineral interests in the Property, which they thereby assert entitles them to judgment as a matter of law. To successfully rebut Defendants' motion for summary judgment, Plaintiffs needed to adduce evidence establishing the existence of material issues of fact justifying a trial on the merits as to whether that 1948 judgment was void and did not bind Plaintiffs' predecessors-in-interest. See *Romero*, 2010-NMSC-035, ¶ 10. Void judgments can be subject to a collateral attack. *Nesbit v. City of Albuquerque*, 1977-NMSC-107, ¶ 12, 91 N.M. 455, 575 P.2d 1340. A litigant may collaterally attack a judgment by impeaching that judgment with matters outside of its record. See *Arthur v. Garcia*, 1967-NMSC-205, ¶ 6, 78 N.M. 381, 431 P.2d 759 (referring to *Lucas v. Ruckman*, 1955-NMSC-014, ¶

12, 59 N.M. 504, 287 P.2d 68, *overruled on other grounds by Kalosha v. Novick*, 1973-NMSC-010, ¶ 12, 84 N.M. 502, 505 P.2d 845). Plaintiffs' rebut of Defendants' motion for summary judgment thus needed to advert to evidence demonstrating that the 1948 judgment should be set aside, and "one who challenges an unreversed judgment regularly entered has a very difficult task." *City of Albuquerque v. Huddleston*, 1951-NMSC-032, ¶ 12, 55 N.M. 240, 230 P.2d 972 (citations omitted).

{23} We begin our examination of the merits of Plaintiffs' claim by acknowledging the high standard that

in New Mexico that every presumption consistent with the record is indulged in favor of the jurisdiction of courts of general jurisdiction whose judgments cannot be questioned when attacked collaterally, unless lack of jurisdiction appears affirmatively on the face of the judgment or in the judgment roll or record, or is made to appear in some other permissible manner."

In re Estate of Baca, 1980-NMSC-135, ¶ 11. Here, Plaintiffs allege it is facially apparent that the district court entering the 1948 judgment affirmatively lacked personal jurisdiction over Plaintiffs' predecessors-in-interest due to insufficient service of process under the Due Process Clause, U.S. Const. amend. XIV, § 1, rendering the judgment void. Defendants, by contrast, assert that the service of process by publication in the 1948 district court proceedings met constitutional standards and was therefore effective for the district court to acquire personal jurisdiction over all of the defendants, including Plaintiffs' predecessor-in-interest, Mabel Weeber.

{24} By our de novo review of Defendants' motion for summary judgment, we must also consider what is necessary to lodge a meritorious collateral attack on a longstanding judgment, where the collateral attack alleges voidness for the lack of personal jurisdiction because the method of personal service did not satisfy the requirements of due process. We review those interrelated issues of law de novo. *City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 5, 147 N.M. 693, 228 P.3d 477 (citations omitted).

IV. DISCUSSION

A. Due Process Requires Adequate Notice

{25} The Due Process Clause of the Fourteenth Amendment to the United

States Constitution prohibits deprivation of property absent adequate procedural safeguards. U.S. Const. amend. XIV, § 1. The right to be heard in a court of law in response to proceedings seeking to deprive one of one's own property is a fundamental requirement of due process. "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (internal quotation marks and citation omitted). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (citations omitted). A judgment entered absent sufficient service of process upon a defendant violates due process and is void as to the defendant for want of personal jurisdiction. *See id.* at 313 (noting "the right of [a state's] courts to determine the interest of all claimants, resident or nonresident, provided its procedure accords full opportunity to be heard"); *see also Johnson v. Shuler*, 2001-NMSC-009, ¶ 11, 130 N.M. 144, 20 P.3d 126 (Jurisdiction over the person embraces notions of contacts with the State and sufficiency of notice of the action." (internal quotation marks and citation omitted)); *In re Estate of Baca*, 1980-NMSC-135, ¶ 10, ([W]hen attacked for failure of service of process, [a judgment] is void as to those persons not served and their successors." (citations omitted)); Restatement (Second) on Judgments § 65 (Am. Law Inst. 1982) ("A court has authority to render judgment in an action when the court has jurisdiction of the subject matter of the action . . . and . . . [a]dequate notice has been afforded the party.")

{26} To meet the fundamental requirements of due process, a plaintiff must undertake a diligent and good faith effort to locate defendants and serve them personally with notice. *Campbell v. Doherty*, 1949-NMSC-030, ¶¶ 30-31, 53 N.M. 280, 206 P.2d 1145. But personal service is not always feasible, and in such cases constructive notice may satisfy due process. *Mullane*, 339 U.S. at 317. To meet constitutional standards,

[t]he notice must be of such nature as reasonably to convey the required information and it must afford a reasonable time for those interested to make their appearance, [b]ut if with due regard for

the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied.

Id. at 314-15 (citations omitted).

{27} Notice of court proceedings cannot just be a mere gesture, else it will not pass constitutional muster—"[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Mullane*, 339 U.S. at 315 (citations omitted).

{28} Notice by publication, then, is proper in some circumstances as a last resort. *See Campbell*, 1949-NMSC-030, ¶ 31 ("Constructive service . . . is only resorted to from necessity." (internal quotation marks and citation omitted)). It was not always so. Surveying the history of constructive service, the United States Supreme Court explained that "in *in rem* or *quasi in rem* proceedings in which jurisdiction was based on the court's power over property within its territory, constructive notice to nonresidents was traditionally understood to satisfy the requirements of due process." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 796 n.3 (1983) (citing *Shaffer v. Heitner*, 433 U.S. 186, 196-205 (1977)). In *in personam* proceedings, by contrast, due process traditionally required personal service to establish a state court's personal jurisdiction over an individual who did not submit to jurisdiction. *Id.* (citations omitted). This distinction is no longer relevant. In *Mullane*, the Supreme Court rejected the idea that the requirements of due process as they apply to constructive service vary depending on whether actions are *in rem* or *in personam*. 339 U.S. at 312; *see also Mennonite*, 462 U.S. at 796 n.3.

{29} *Mullane* clarified, in all cases, the circumstances in which constructive notice by publication comports with due process. *Mullane* concerned the constitutional sufficiency of notice of a judicial settlement of a common trust fund account that was provided by the trustee to beneficiaries of the fund. 339 U.S. at 307. While beneficiaries previously had been notified about trust investments by mail—as all the names and addresses of beneficiaries from participating estates were contained in the bank's records—notice to beneficiaries about the judicial settlement of the common trust fund account was effected solely through publication. *Id.* at 309-10, 318.

Further, the publication failed to identify each individual beneficiary or each participating estate or trust. *Id.* at 310. This, the Supreme Court held, violated the Due Process Clause and, therefore, constituted ineffective service of process. *Id.* at 319 (“The statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand.”).

{30} Following *Mullane*, in *Mennonite Board of Missions v. Adams*, the Supreme Court held that an Indiana tax sale statute, which required notice to a mortgagee by publication only, violated due process. 462 U.S. at 798. The Supreme Court held that “unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.” *Id.* The Court explained that “[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.” *Id.* at 800.

{31} In light of *Mullane* and *Mennonite*, we make clear that constructive service of process by publication satisfies due process if and only if the names and addresses of the defendants to be served are not “reasonably ascertainable.” *Mennonite*, 462 U.S. at 800; *see also Schroeder v. City of N.Y.*, 371 U.S. 208, 212-13 (1962) (“The general rule that emerges from the *Mullane* case is that notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable . . .”); *Mullane*, 339 U.S. at 317 (“This Court has not hesitated to approve of resort to publication as a customary substitute . . . where it is not reasonably possible or practicable to give more adequate warning . . . and [this means of notification] creates no constitutional bar to a final decree foreclosing their rights.”); *Clark v. LeBlanc*, 1979-NMSC-034, ¶ 6, 92 N.M. 672, 593 P.2d 1075 (“It is clear that due process prohibits the use of constructive service where it is feasible to give notice to the defendant in some manner more likely to bring the action to his attention.” (citing *Mullane*, 339 U.S. 306)). In this case, we apply the principle articulated in both *Mennonite* and *Mullane* to determine if constructive service by publication satisfied due process and thereby established the personal

jurisdiction of the 1948 district court over Plaintiffs’ predecessors in interest. *See Harper v. Va. Dep’t. of Tax’n*, 509 U.S. 86, 97-98 (1993) (holding that unless the Court “reserve[s] the question whether its holding should be applied to the parties before it,” a new rule articulated by the Court will “apply retroactively” (quoting *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 539 (1991) (opinion of Souter, J.))).

{32} Furthermore, we note that the New Mexico Rules of Civil Procedure, both as they exist today and as they existed in 1948, effectuate the requirements of due process set forth in *Mullane* and its progeny. *See, e.g.*, Rule 1-004(E) NMRA, comm. cmt. (“Rule 1-004(E)(1) makes explicit in the rule the general test for constitutionally-adequate service of process established in *Mullane* . . .”). For example, in 1948, the New Mexico Rule of Civil Procedure 4(g) required a party seeking to serve notice by publication to “file a sworn pleading or affidavit, stating that any defendant” had either gone out of state, concealed himself or herself within the state, otherwise avoided service, or that his or her name or place of residence are unknown. *Campbell*, 1949-NMSC-030, ¶ 24 (quoting Rule 4(g) of the Rules of Civil Procedure. *See* NMSA 1941, § 19-101(4) (g) (Vol. 2)). Such a showing required the clerk of the court to issue notice of the action in a publication in the county in which the action was pending. *See id.* Compliance with this rule was “considered as sufficient notice of summons and valid in law,” giving a district court personal jurisdiction over relevant defendants. *Id.* (quoting NMSA 1941, § 19-101(4)(g) (Vol. 2)). We also acknowledge that in light of *Mullane*, and recognized by this Court even before *Mullane*, the exercise of diligence and good faith to locate a defendant are implicit prerequisites to effective service of process by publication. *Campbell*, 1949-NMSC-030, ¶ 31 (citing NMSA 1941, § 19-101(4)(g) (Vol. 2)); *see also Mullane*, 339 U.S. at 315 (holding, with respect to known defendants, that “[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it”).

B. Defendants’ Predecessors-in-Interest Effected Service Upon Plaintiffs’ Predecessors-in-Interest in Compliance With the Due Process Clause and the New Mexico Rules of Civil Procedure

{33} We consider whether the notice preceding the 1948 judgment satisfied the

forementioned standards of due process. Plaintiffs allege that Mabel Weeber, their predecessor-in-interest, did not receive adequate notice of the 1948 quiet title lawsuit filed by Thomas Miller. Therefore, they argue, the judgment granting Thomas Miller title and negating the Wilsons’ 1928 reservation of mineral interests in the Property was void as to Mabel Weeber. Defendants argue that Plaintiffs’ predecessors-in-interest were either unknown or missing in 1948, and that the district court thus acted in conformance with due process by authorizing constructive service of process on Mabel Weeber. Defendants point out that both Thomas Miller and the Sheriff of San Juan County affirmatively stated in 1948 that they could not ascertain through diligent effort the addresses or places of residence for certain defendants named in the complaint, including Mabel Weeber. Accordingly, Defendants assert that constructive service by publication in the *Times Hustler*, a local Farmington newspaper, satisfied due process.

{34} The summary judgment granted to Defendants by the district court was based upon the recommendations of the special master, who in reaching his decision below distinguished the instant case from *Mullane*. In *Mullane*, the trustee had the names and addresses of the beneficiaries on its books, and it had used mail to communicate with the beneficiaries in the past. In contrast to *Mullane*, the district court determined that “there is nothing to indicate that Thomas Muller had information regarding Mabel Weeber’s whereabouts or that her whereabouts could be identified through reasonable diligence.” We agree.

{35} We begin by examining the record of the 1948 district court proceedings. It reveals that the district court had before it a verified complaint and sheriff’s return specifically indicating that, after diligent search and inquiry, Plaintiffs’ predecessors-in-interest could not be located and personally served with process. The complaint contains two specific allegations necessary to authorize notice by publication under Rule 4(g). First, the complaint alleges that defendants living, or if deceased, their unknown heirs, at some time made a claim of interest in the Property, and “that after diligent search and inquiry” “the Plaintiff has been unable to learn or determine the names, places of residence, Post Office addresses and whereabouts [of the unknown heirs of any deceased defendants].” Second, the complaint contains the allegation that if any

defendants were still living and residing in New Mexico they could not be located because they had secreted themselves so that personal service of process could not be effected. See NMSA 1941, § 19-101(4) (g) (Vol. 2).

{36} Thus, in 1948, Judson and Eva Wilson were deceased, Mabel Wilson had married and went by the name of Weeber, and that married name—and in conjunction, her address under that name—was unknown. In order to personally serve Mabel Wilson with process, Thomas Miller would have been required to ascertain her new name and current address by first assuming that Mabel still lived in San Diego, based on the sale of the Property twenty years earlier to his brother, David Miller. Next, Thomas Miller would also have needed to acquire and search through the San Diego City Directory from either 1926 or 1930 to find Judson and Eva Wilson's San Diego address. Then, in order to identify Mabel Wilson as Mabel Weeber, he would have been required to search through San Diego's public records for Eva Wilson's death certificate which named her daughter Mabel Weeber as her informant, or alternatively, he would have been required to sift through twenty years of San Diego Union newspaper obituary notices in order to find Eva Wilson's obituary which named Mabel Weeber as the daughter she left behind. To get that far along in the search for Mabel Weeber, Thomas Miller would have been required to infer from the 1928 deed the exact familial relationship between Judson, Eva, and Mabel Wilson (father, mother, and daughter). Plaintiffs rely upon this labyrinth to lead to the discovery of Mabel Wilson, and they ask us to conclude today that because this path was ostensibly available and since Mabel Wilson was not located back then that Miller failed to make a diligent inquiry into her whereabouts.

{37} We indulge all reasonable inferences in Plaintiffs' favor and conclude that the diligence that was necessary to locate Mabel Wilson back in 1948 did not require this level of effort or investigation, particularly in light of the facts, circumstances and resources available in 1948. Today, with relatively easy access to the internet, social media, and numerous global search engines, it is often not difficult to find persons whose identity and whereabouts are necessary to effectuate personal service of process. The world was quite different in 1948 in this regard. At the time, the task would have undoubtedly been signifi-

cantly more onerous and time consuming. Further, the failure to find Mabel Weeber was not ipso facto evidence of a lack of diligence under Rule 4(g) in 1948. We conclude that the facts premised on Miller's verified complaint and the sheriff's return of service support the district court's conclusion "that after diligent search and inquiry the post office addresses, places of residence, and whereabouts of all of the Defendants herein . . . all are unknown," and, thus, Mabel Wilson's whereabouts were not readily ascertainable.

{38} Under the federal precedent interpreting due process requirements in the context of constructive service of process, we conclude that the constructive notice given in the underlying case was sufficiently "reasonably calculated" under the circumstances as they existed in 1948. *Mullane*, 339 U.S. at 314; see also *Mennonite*, 462 U.S. at 799-800. Without additional evidence in the record that reveals a more direct path toward Mabel's identity and whereabouts in 1948, we reject Plaintiffs theory that, on its face, the 1948 quiet title judgment was premised upon an obvious lack of diligence on the part of Miller.

C. Plaintiffs Fail to Mount a Successful Collateral Attack on the 1948 Judgment

{39} Our conclusion that the record before the 1948 district court did not reveal an obvious lack of diligence to support a collateral attack finds support in other courts that also have been called upon to consider the reasonableness of the search efforts made in a prior, underlying case. In addition to the allegations in the record, we must consider the reasonableness of the efforts made by Thomas Miller in the search for Mabel Weeber. In determining the validity of the collateral attack on the 1948 judgment in this regard, we refrain from relying on speculation. Furthermore, regarding the reasonableness of the search Miller would have needed to make to ascertain Mabel Wilson's whereabouts, we note that other courts have held that even "a search of the conveyance records to identify parties with mineral interests would be unduly burdensome" and, in such cases, constructive notice may be "sufficient to satisfy the requirements of due process." *Davis Oil Co. v. Mills*, 873 F.2d 774, 791 (5th Cir. 1989); see also *Aarco Oil & Gas Co. v. EOG Res. Inc.*, 20 So. 3d 662, 669-670 (Miss. 2009).

{40} For example, in *Davis Oil*, the holder of a mineral lease sought to invalidate a ju-

dicial sale of land on due process grounds because he was never given actual notice of the sale. 873 F.2d at 775. Still, the Fifth Circuit determined that constructive notice satisfied the requirements of due process because a search of the conveyance records would be unduly cumbersome. *Id.* at 789. The federal court of appeals explained:

[W]e do not construe *Mennonite* as requiring actual notice to every party who has a publicly recorded interest in the subject property. . . . Accordingly, the reasonableness of constructive notice in a particular case may turn on the nature of the property interest at stake and the relative ease or difficulty of identifying such interest holders from the land records and also the existence of alternative means of insuring the receipt of notice.

Id. at 790 (citations omitted). The *Davis Oil* court noted, moreover, that the lessee there easily could have assured actual notice of the sale by paying a nominal fee to place his name and address on file in the mortgage records. *Id.* at 790-91. While the lessee did not waive his due process rights by failing to place his name and address on file, the availability of a means to protect his property interest informed whether his identity was reasonably ascertainable and, hence, whether due process required actual notice. *Id.* at 78-90.

{41} More recently, in *Aarco Oil*, the Mississippi Supreme Court held that constructive notice by publication as to owners of mineral interests regarding a 1942 tax sale did not violate their due process rights. 20 So. 3d at 670. In that case, the plaintiffs attacked the validity of the 1942 tax sale because the county conducting the tax sale did not provide notice to the then-mineral owners, "either by mail or personal service, in violation of federal and state due process requirements." *Id.* at 667. The plaintiffs contended that the statutorily-required newspaper notices of the sale and "notice to the surface owners [only] was insufficient to satisfy the due process rights of the mineral owners." *Id.* at 668. The Mississippi Supreme Court disagreed, explaining that under *Mennonite* and *Mullane*, a governmental body is not obligated to undertake extraordinary efforts to discover the identity and whereabouts of all interested parties to the sale. *Id.* (citing *Mennonite*, 462 U.S. at 795; *Mullane*, 339 U.S. at 314). The Court additionally noted that the plaintiffs' predecessors could have protected their interests by ensuring their

severed mineral interest was separately assessed for taxes. *Id.* at 670. The Court concluded that “because the identity and whereabouts of the owners of the severed mineral interests were not readily ascertainable, publication and notice to the surface owners [only] were sufficient to satisfy due process.” *Id.* at 670.

{42} The conclusions reached in *Aarco Oil*, and *Davis Oil*—that publication notice afforded adequate due process on those facts—are equally applicable to the 1948 judgment in this case. Here, although not dispositive in our analysis, the owners of the mineral estate at the time of the 1948 judgment easily could have assured actual notice of the sale by taking some care to protect their investment. Neither Judson nor Eva Wilson had made a record of their ownership interests in probate following their deaths, and Mabel Wilson took no action during her lifetime to ensure an address was on record in the county where the Property was located. While not necessary to protect one’s interest, we consider those facts persuasive to our instant analysis of whether Miller could have discovered the Wilsons’ whereabouts with reasonable diligence. Miller, moreover, was under no obligation to comb San Diego records to identify individuals who might appear to have an interest in the Property and who were not reasonable ascertainable.

{43} As has been the case in other jurisdictions, and in line with the relevant federal precedent in *Mennonite* and *Mullane*, we again conclude that there was not a readily apparent lack of diligence by Miller in searching for Mabel Wilson’s whereabouts. Mabel Wilson’s address was not in any of the original deeds, and she had changed her name by the time of the 1948 action. Plus, she did not exercise ownership in the Property between 1928 and 1948, and was only one of many potential interest holders named as defendants in Miller’s complaint. In light of those facts, it is apparent from the record in the 1948 judgment that Mabel Wilson was not ascertainable. Nor can we conclude from the record facts before us that Miller was not diligent in searching for her whereabouts. As such, under guiding precedent, we cannot conclude that there was a violation of Mabel Wilson’s due process. An absence of jurisdiction is thus not apparent from the face of the 1948 judgment, so the judgment was valid with respect to Plaintiffs’ predecessors-in-interest. Plaintiffs thus fail to carry their burden in response to Defendant’s motion for summary judgment,

eliminating their claim to title in the mineral interests presently at issue.

{44} Further underlying that conclusion is the importance we must accord to finality in the context of court judgments. The disposition of a controversy before a court has far reaching consequences beyond the parties instantly affected. Quiet title judgments, in particular, contribute to the efficient keeping of land ownership records, and as the Landmen’s Association amicus brief stated, are “the bedrock of the thousands of land and mineral transactions which take place each year and which involve every type of land transaction from a couple buying their first home to an oil and gas company spending millions of dollars to acquire leasehold acreage.” In fact, it is common practice for landmen and title examiners to rely upon county records and regularly entered judgments where a quiet title decree establishes the chain of title. Such quiet title judgments provide the certainty needed to ensure that one is the record owner of property in New Mexico to the exclusion of others.

{45} This Court has said that “[j]udicial decisions, affecting title to real estate presumptively acquired in reliance upon such decisions, should not be disturbed or departed from except for the most cogent reasons, certainly not because of doubts as to their soundness.” *Duncan v. Brown*, 1914-NMSC-013, ¶ 9, 18 N.M. 579, 139 P. 140; *see also Bogle Farms v. Baca*, 1996-NMSC-051, ¶ 26, 122 N.M. 422, 925 P.2d 1184. That reasoning still rings true in present times, and is in part protected by the showing of proof needed in order to establish a valid collateral attack upon a quiet title judgment. Without evidence on the face of a quiet title judgment that the district court lacked jurisdiction, that judgment must be accorded finality in accordance with the reliance interests created as a consequence of the quieting of the title in its owner.

{46} We thus conclude that the high standard for successfully mounting a collateral attack on this record is insurmountable in the instant case. Because we hold that Plaintiffs’ suit constitutes an improper collateral attack on the validity of the 1948 judgment, we need not address whether the record also supports a finding of laches, waiver, or estoppel.

V. CONCLUSION

{47} The district court correctly found that the suit brought by T.H. McElvain, et al., constituted an improper collateral attack on the 1948 judgment quieting title

in Defendants’ predecessors-in-interest. Constructive service by publication of the 1948 proceedings satisfied the due process of Plaintiffs’ predecessors-in-interest; accordingly, the 1948 quiet title judgment is not void. The judgment of the Court of Appeals is reversed, and the district court’s orders quieting title to the Property in Group 1 and Group 2 Defendants, and granting summary judgment in favor of said Defendants, affirmed.

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

BARBARA J. VIGIL, Justice

WE CONCUR:

CHARLES W. DANIELS, Chief Justice

EDWARD L. CHÁVEZ, Justice

JUDITH K. NAKAMURA, Justice

PETRA JIMENEZ MAES, Justice, dissenting.

MAES, Senior Justice (dissenting).

{49} I respectfully dissent from the majority’s opinion and adopt in full the opinion of the Court of Appeals, *T.H. McElvain Oil & Gas Ltd. P’ship v. Benson-Montin-Greer Drilling Corp.*, 2015-NMCA-004, 340 P.3d 1277, as my dissent. I find there was ample evidence and no need to speculate that the 1948 judgment was void because the Millers failed to undertake a good faith effort to provide the Wilson heirs sufficient notice of suit. The evidence presented shows that with minimal diligence on the part of Thomas Miller, the location of Mabel Weeber (née Wilson) would have been discovered. In fact, Ms. Weeber’s location may have already been known by Mr. Miller. The warranty deed conveying the property to David Miller, and the warranty deed granting Judson, Eva, and Mabel Wilson joint tenancy with right of survivorship both indicated the parties were from San Diego, California. Even with this information, Mr. Miller only posted notice of suit in a New Mexico newspaper and the sheriff only searched San Juan County, New Mexico for the Wilsons. It is not a stretch of logic to assume a diligent plaintiff would take the extra step to post notice of suit in a San Diego newspaper or at least look to a resident listing in southern California with the information provided on the deeds. In sum, I believe the record shows the notice provided to Mabel Weeber was not constitutionally adequate, thus making the quiet title action subject to collateral attack. The notice and the quiet title action should be void as to her descendants.

{50} Furthermore, I must note I do not believe *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) presents an issue related to this case. Though *Mullane* established a heightened standard for service by publication, the New Mexico notice statute from 1948 comported with *Mullane* and therefore we require no analysis as to the retroactive effect of the case.

{51} As the majority states and I agree, “a plaintiff must undertake a diligent and good faith effort to locate defendants and serve them personally with notice.” *T. H. McElvain Oil & Gas Ltd. P’ship v. Benson-Montin-Greer Drilling Corp.*, 2017-NMSC-004, ¶ 26, ___ P.3d ___, citing *Campbell v. Doherty*, 1949-NMSC-030, ¶¶ 27, 30-31, 53 N.M. 280, 206 P.2d 1145. If personal service is not possible, plaintiffs have the option of alternative service, in this case service by publication. Notice by publication is not available though if a plaintiff has not first made a good faith effort to find the respondents in the plaintiff’s case. The requirement for good faith effort can be found in the service by publication rule in effect in 1948, which

stated notice by publication, effectuated by the court clerk, could be made when a “due inquiry and search has been made” by the plaintiff, and plaintiff has filed a sworn affidavit stating as much. Rule 4(g) of the Rules of Civil Procedure. *See* NMSA 1941, § 19-101(4)(g) (Vol. 2). In *Mullane* the U.S. Supreme Court took issue with the New York notice by publication statute, which did not require naming of each defendant in the pending case, “[t]hus the only notice required, and the only one given, was by newspaper publication setting forth merely the name and address of the trust company, the name and the date of establishment of the common trust fund, and a list of all participating estates, trusts or funds.” *Mullane*, 339 U.S. at 310. The company made notice this way despite having knowledge of the names and addresses of every person “who would be entitled to share in the principal” of the trust if it were to become distributable. *Id.* The Court found the trust company should have served all parties by mail. “Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less

likely than the mails to apprise them of its pendency.” *Id.* at 318. In addition, the Court also found the New York statute violated the due process clause of the Fourteenth Amendment because the notice rule was not “reasonably calculated to reach those who could easily be informed by other means at hand.” *Id.* at 319.

{52} In contrast, the New Mexico 1948 rule required notice by publication to include “the names of the plaintiff and defendant to the cause, or if there is more than one defendant to the cause the notice shall contain the name of said plaintiff and the name of the first of said defendants,” which on its face appears to comport with the *Mullane* ruling. NMSA 1941, § 19-101(4)(g) (Vol. 2). Furthermore, as stated earlier, this type of notice is only available after the plaintiff has sworn in a statement the plaintiff was unable to find the respondent by other means. Presently, there is no conflict between the New Mexico statute and the findings in *Mullane*, as it appears New Mexico was ahead of the curve in preserving due process rights through their notice statute.

PETRA JIMENEZ MAES, Justice



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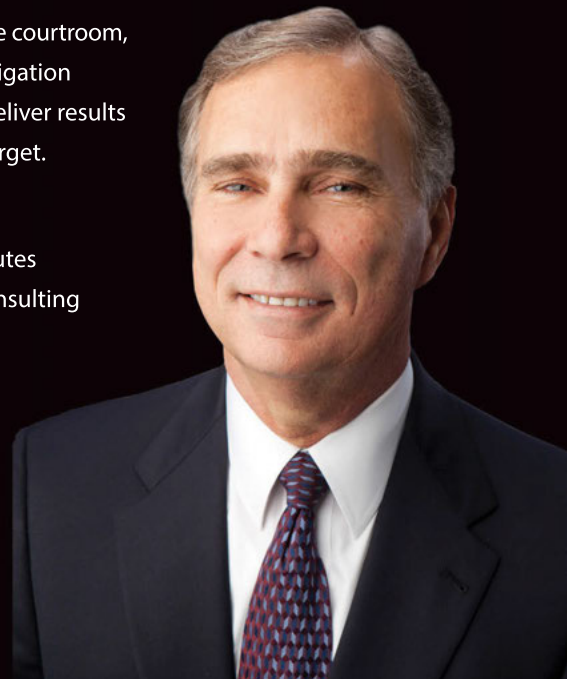
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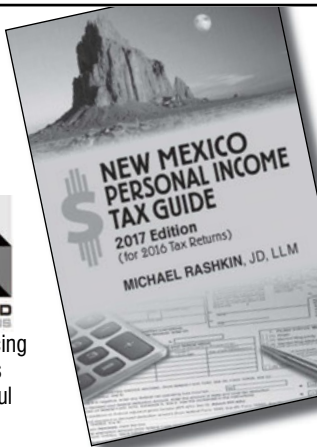
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A graphic for the Bridge the Gap Mentorship Program. It features a central circular flow diagram with four overlapping circles. The top circle shows a smiling woman and is labeled 'confidence'. The right circle shows two men in business attire looking at a laptop and is labeled 'integrity'. The bottom circle is empty and labeled 'professionalism'. The left circle shows hands shaking and is labeled 'mentoring'. In the center of the flow is a red circle with the text 'Mentoring Has Its Rewards'. To the right of the graphic, the title 'Bridge the Gap Mentorship Program' is written in a large, purple, serif font. Below the title, text provides information on how to apply and contact details for Jill Yeagley. At the bottom right is the logo for the State Bar of New Mexico, which includes a stylized scale of justice and the text 'STATE BAR of NEW MEXICO'.

Bridge the Gap Mentorship Program

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

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





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