

# BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

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*Quiet Overlook* by Janice St. Marie (see page 3)

janicestmarie.com

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See page 11.

Register  
today for these  
upcoming  
programs!

# CLE Planner

Find these programs and more at [www.nmbar.org/CLE](http://www.nmbar.org/CLE)! Programs already available through late December and new courses are coming soon. With subjects including immigration law, real property law, trial practice, technology and the law and ethics and professionalism, there is something for everyone!

Oct. 20



## Rise of the Machines, Death of Expertise: Skeptical Views of Scientific Evidence

3.5 G

2.5 EP



Friday, Oct. 20 • 9 a.m.–4:30 p.m.  
State Bar Center, Albuquerque

\$249 Government and legal services attorneys and Paralegal Division members  
\$279 Standard and Webcast fee

Attendees will see how scientific thought is generated and evaluated for use in court. The methods of skeptically evaluating the quality of scientific evidence and the procedures by which it is used in the law are applicable to civil and criminal attorneys alike. Speakers will address the New Mexico Supreme Court's "scrivener" fallacy when assessing machine generated evidence. Other topics include witness cognitive bias, toxicology and ethical issues including extraordinary medical measures for keeping children alive.

Oct. 27



## Craig Othmer Memorial Procurement Code Institute

2.5 G

1.0 EP



Friday, Oct. 27 • 8:15 a.m.–Noon  
Live only at the New Mexico State Personnel Office Auditorium, Santa Fe

\$104 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members  
\$140 Standard Fee

*A group rate of \$110 per person, with a minimum of three registrants, is available (all group registrants must register and pay together in one transaction). Call us at 505-797-6020 to register.*

**Co-sponsor:** Public Law Section

Speakers include Lawrence Maxwell, Jenifer Bradley, Ramona Martinez, Andrea Salazar and Dennis Ritschel. This program will walk attendees through procurement basics, highlight potential procurement distinctions relating to local government versus the state, and discuss ethical considerations.

*This program is a great value for government attorneys! With shrinking agency budgets and busier-than-ever schedules, get the most out of your CLE, at the Craig Othmer Memorial Procurement Code Institute. Join the Public Law Section for its Annual Section Meeting, immediately following the program!*

Oct. 27



## Fall Elder Law Institute— Hot Topics in Adult Guardianship Law

4.5 G

1.5 EP



Friday, Oct. 27 • 8:30 a.m.–4:15 p.m.  
State Bar Center, Albuquerque

\$249 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members  
\$279 Standard and Webcast fee

**Co-sponsor:** Elder Law Section

Join the Elder Law Section for the full-day CLE, which will include an overview of the newly revisited Uniform Guardianship Act, a report on the New Mexico Adult Guardianship Study Commission and more.

*A \$20 late fee will be assessed for walk-in registrations (applies to live attendance only).  
Registration and payment must be received in advance to avoid the fee.*



Register online at [www.nmbar.org/CLE](http://www.nmbar.org/CLE)  
or call 505-797-6020.



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## Meetings

### October

- 18**  
**Real Property, Trust and Estate Section**  
Noon, State Bar Center
- 19**  
**ADR Committee**  
Noon, State Bar Center
- 20**  
**Family Law Section**  
9 a.m., teleconference
- 24**  
**Intellectual Property Law Section**  
Noon, Lewis Roca Rothgerber Christie
- 25**  
**Natural Resources, Energy and Environmental Law Section**  
Noon, teleconference
- 26**  
**ADR Steering Committee**  
11:30 a.m., teleconference
- 26**  
**Trial Practice Section**  
Noon, State Bar Center
- 27**  
**Immigration Law Section**  
Noon, teleconference

## Workshops and Legal Clinics

### October

- 18**  
**Family Law Clinic**  
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861
- 25**  
**Consumer Debt/Bankruptcy Workshop**  
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

### November

- 1**  
**Civil Legal Clinic**  
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861
- 1**  
**Divorce Options Workshop**  
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003
- 10**  
**Civil Legal Clinic**  
10 a.m.–1 p.m., Bernalillo County Metropolitan Court, Albuquerque, 505-841-9817
- 15**  
**Family Law Clinic**  
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

#### About Cover Image and Artist: *Quiet Overlook*, pastel, 9 by 12

Janice St. Marie paints and draws traditional, representational landscapes in addition to her career in graphic design, based in Santa Fe. The drama of sky and earth and light and shadow entrances St. Marie. Living in New Mexico has provided her with an abundance of beautiful destinations for landscape painting. Returning to the same location allows her to explore the many variations of form and rhythms that the scene has to offer. She combines her love of travel with her love of art and has been fortunate to paint in Spain, Italy, Ireland, Sri Lanka and many other places. She paints en plein air as well as in the studio, with pen and ink, watercolor, pencil and acrylic but has always loved pastels which are her primary medium. For more of her work visit [www.janicestmarie.com](http://www.janicestmarie.com).



# Notices

## COURT NEWS

### Supreme Court Law Library Hours and Information

The Supreme Court Law Library is open to any individual in the legal community or public at large seeking legal information or knowledge. The Library's staff of professional librarians is available to assist visitors. The Library provides free access to Westlaw, Lexis, NM OneSource and HeinOnline on public computers. Search the online catalog at <https://n10045.eos-intl.net/N10045/OPAC/Index.aspx>. Visit the Library at the Supreme Court Building, 237 Don Gaspar, Santa Fe NM 87501. Learn more at [lawlibrary.nmcourts.gov](http://lawlibrary.nmcourts.gov) or by calling 505-827-4850.

#### Hours of Operation

Monday–Friday 8 a.m.–5 p.m.

#### Reference and Circulation

Monday–Friday 8 a.m.–4:45 p.m.

### Second Judicial District Court Children's Court Abuse and Neglect Brown Bag

The Second Judicial District Court Children's Court Abuse and Neglect Brown Bag will be held at noon, Oct. 20, in the Chama Conference Room at the Juvenile Justice Center, 5100 2nd Street NW, Albuquerque. Attorneys and practitioners working with families involved in child protective custody are welcome to attend. Call 841-7644 for more information.

### Eleventh Judicial District Court Judicial Vacancy

A vacancy on the Eleventh Judicial District Court will exist as of Jan. 2, 2018 due to the retirement of Hon. Sandra Price effective Jan. 1, 2018. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the Court. Alfred Mathewson, chair of the Eleventh 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: <http://lawschool.unm.edu/judsel/application.php>. The deadline for applications is 5 p.m., Jan. 10, 2018. Applications received after that time will not be considered. Applicants seeking information regard-

ing election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Eleventh Judicial District Court Judicial Nominating Commission will meet beginning at 9 a.m. on Jan. 25, 2018, to interview applicants in Farmington. The Commission meeting is open to the public and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

### Twelfth Judicial District Court Notice of Reassignment of Cases

A mass reassignment of all cases previously assigned to the Hon. Jerry H. Ritter, Twelfth Judicial District Judge, Division I, were automatically reassigned to the Hon. Steven Blankinship effective Sept. 11. Pursuant to Rules 1-088.1 and 5-106, NMRA, any party who wants to exercise their right to excuse Judge Blankinship must do so by Oct. 25.

### Bernalillo County Metropolitan Court Bonding Window New Hours

Effective Sept. 30, Bernalillo County Metropolitan Court's bonding window is open from 7 a.m.–10:30 p.m. Monday through Sunday. Bonds during "graveyard" hours are no longer accepted.

### Court Closure Notice

The Bernalillo County Metropolitan Court will be closed on Oct. 27 for the Court's Annual Employee Conference. Misdemeanor custody arraignments and felony first appearances will not be held that day. The conference is sponsored by the New Mexico Judicial Education Center at the University of New Mexico and paid for by fees collected by state courts.

## STATE BAR NEWS

### Attorney Support Groups

- Nov. 6, 5:30 p.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)

## Professionalism Tip

### With respect to the public and to other persons involved in the legal system:

I will commit to the goals of the legal profession, and to my responsibilities to public service, improvement of administration of justice, civic influence, and my contribution of voluntary and uncompensated time for those persons who cannot afford adequate legal assistance.

- Nov. 13, 5:30 p.m.  
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- Nov. 20, 7:30 a.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)

For more information, contact Latisha Frederick at 505-948-5023 or 505-453-9030 or Bill Stratvert at 505-242-6845.

### Board of Bar Commissioners New Mexico Access to Justice Commission

The Board of Bar Commissioners will make two appointments to the New Mexico Access to Justice Commission for three-year terms. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico wishing to serve on the Commission should send a letter of interest and brief resume by Nov. 17 to Kris Becker at [kbecker@nmbar.org](mailto:kbecker@nmbar.org) or fax to 505-828-3765.

### Children's Law Section 15th Annual Art Contest

The Children's Law Section will host the 15th Annual Art Contest reception from 5:30-7:30 p.m., Oct. 25, at the West Mesa Community Center in Albuquerque. Members are invited to attend to view the artwork produced by youth who have come in contact with the juvenile justice system. Using materials funded by the Section's generous donors, contestants will decorate flip flips to demonstrate their idea based on the theme "How I will leave my footprint on the world." R.S.V.P.s are appreciated, contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org). To donate to the Art Contest, visit [www.nmbar.org/ChildrensLaw](http://www.nmbar.org/ChildrensLaw) and click Art Contest or

make a check out to the New Mexico State Bar Foundation and note "Children's Law Section Art Contest Fund" in the memo line and mail to: State Bar of New Mexico, Attn: Breanna Henley, PO Box 92860, Albuquerque, NM 87199.

### **Indian Law Section Call for Donations: First Annual Indian Law Section Silent Auction**

The Indian Law Section seeks donations for the First Annual Silent Auction to be held in conjunction with the Section's Annual CLE, "The Duty to Consult with Tribal Governments: Law, Practice and Best Practices" and Annual Meeting on Nov. 2 at the State Bar Center. Artwork or photography, jewelry, gift certificates for a business, restaurant or spa service, and more are accepted. Donations are tax deductible as provided by law and donors will be recognized on the Section's website. The Silent Auction will benefit the Section's Bar Preparation Scholarship Fund, which assists law school graduates in their efforts to prepare for and take the New Mexico Bar Exam. To donate, contact Delilah Tenorio in Albuquerque at dmt@stetsonlaw.com or Kathryn S. Becker in Santa Fe at Kathryn.becker@state.nm.us.

### **Intellectual Property Law Section Networking Opportunity with the USPTO for IP and Business Practitioners**

Join the Intellectual Property Law Section from 8:45 a.m.-4:45 p.m., Oct. 18, at the Hyatt Regency Hotel in Albuquerque for "The U.S. Trademark Office Comes to Albuquerque" CLE. Lawyers and entrepreneurs alike will find this to be a highly unique opportunity. Attendees will meet and hear from patent examiners, patent trial and appeal board judges, and trademark examiners from the USPTO. Topics will include the patent examination and trademark registration processes, the administrative trial and appeal process, litigating infringement cases in federal court, and the value intellectual property protection can bring to a startup. Over lunch, the USPTO will present an update on their Dallas regional office and what resources are available to local start-ups and entrepreneurs. The day will end with a panel discussion by local businesses engaged in innovation and economic development followed by a reception. The

cost is \$130 for attorneys (5.0 G), \$25 for non-attorneys and free to law students. Register online at [www.nmbar.org/cle](http://www.nmbar.org/cle) or call 505-797-6020. Space is limited.

### **Natural Resources, Energy and Environmental Law Section Annual NREEL Section and Environmental Law Society Fall Mixer**

The NREEL Section invites members to attend their annual fall mixer with the UNM School of Law Environmental Law Society from 5:30-7:30 p.m., Oct. 19, on the UNM School of Law back patio. This will be a great opportunity for Section members to catch up and to meet the new class of natural resources attorneys! R.S.V.P.s are appreciated, please contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org).

### **Nominations Open for 2017 Lawyer of the Year Award**

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 15. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. More detailed criteria and nomination instructions are available at [www.nmbar.org/NREEL](http://www.nmbar.org/NREEL). Nominations are due by Oct. 27 to Breanna Henley, [bhenley@nmbar.org](mailto:bhenley@nmbar.org).

### **Senior Lawyers Division Annual Meeting of Membership**

The Senior Lawyers Division invites Division members to its annual meeting of membership to be held at 4 p.m., Nov. 14, at the State Bar Center. Members of the SLD include members of the State Bar of New Mexico in good standing who are fifty-five (55) years of age or older and who have practiced law for twenty-five (25) years or more. During the annual meeting of membership, members will have the opportunity to meet with members of the SLD Board of Directors and learn more about the activities of the Division. The meeting will last an hour and attendees are welcome to stay for the Attorney Memorial Scholarship Reception following the annual meeting.



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and Judges  
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505-228-1948 • 800-860-4914  
Judges 888-502-1289  
[www.nmbar.org/JLAP](http://www.nmbar.org/JLAP)

### **ADDRESS CHANGES**

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

#### **Supreme Court**

Web: [supremecourt.nmcourts.gov](http://supremecourt.nmcourts.gov)

Email: [attorneyinfochange@nmcourts.gov](mailto:attorneyinfochange@nmcourts.gov)

Fax: 505-827-4837

Mail: PO Box 848  
Santa Fe, NM 87504-0848

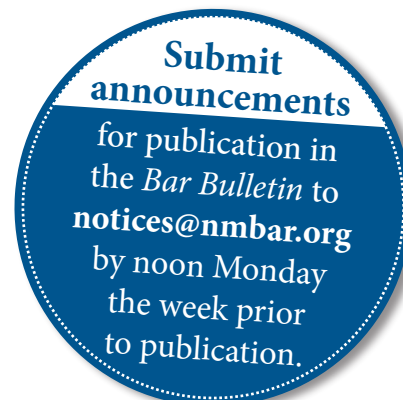
#### **State Bar**

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

Email: [address@nmbar.org](mailto:address@nmbar.org)

Fax: 505-797-6019

Mail: PO Box 92860  
Albuquerque, NM 87199



## Attorney Memorial Scholarship Reception

Three UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The reception will be held from 5:30-7:30 p.m., Nov. 14, at the State Bar Center. All State Bar members, UNM School of Law faculty, staff, and students and family and colleagues of the deceased are welcome to attend. A list of attorneys being honored can be found at [www.nmbar.org/SLD](http://www.nmbar.org/SLD) under "Attorney Memorial Scholarship." Contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org) to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.

## Young Lawyers Division Lunch with Judges in Santa Fe

Join the YLD, Judge Sylvia F. LaMar and retired Judge Sarah M. Singleton for lunch from 11:30 a.m.-1 p.m., Nov. 3, at Montgomery & Andrews Santa Fe, located at 325 Paseo De Peralta in Santa Fe. The YLD Lunch with Judges program is designed to allow YLD members to meet with local judges in an informal setting, ask questions of the judges and receive advice relating to their career paths in the legal profession. Space is limited to 10 YLD members. R.S.V.P. to Region 2 Director Kaitlyn Luck at [luck.kaitlyn@gmail.com](mailto:luck.kaitlyn@gmail.com). Lunch will be provided.

## UNM Law Library Hours Through Dec. 16

### *Building and 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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### *Holiday Closures*

Nov. 24–25 (Thanksgiving)

## OTHER BARS Albuquerque Lawyers Club Monthly Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its November lunch meeting. Dick Minzner will

present "State Government—Expectation and Reality." The lunch meeting will be held at noon, Nov. 1, at Seasons Restaurant, 2031 Mountain Road NW, Albuquerque. For more information, email [ydenning@Sandia.gov](mailto:ydenning@Sandia.gov) or call 505-844-3558.

## New Mexico Criminal Defense Lawyers Association The Notorious DWI Seminar

From Birchfield to field sobriety testing to use of science and experts, the New Mexico Criminal Defense Lawyers Association presents "The Notorious DWI Seminar" (6.0 G) on Oct. 27 in Albuquerque. The program will feature experienced attorneys and a segment by retired New Mexico Court of Appeals Judge Roderick Kennedy. This advanced CLE is packed with the latest information for lawyers' DWI practice. Visit [nmcdla.org](http://nmcdla.org) to join NMCDLA and register for this seminar.

## New Mexico Hispanic Bar Association

### Las Cruces Meet and Greet

UNM Law Deans Alfred Mathewson and Sergio Pareja and the New Mexico Hispanic Bar Association cordially invite members of the State Bar to attend a reception for Las Cruces area alumni and friends. The meet and greet event will be 5–7 p.m., Oct. 27, at Salud de Mesilla, 1800 Avenida de Mesilla, Las Cruces, NM 88005. To R.S.V.P., visit [goto.unm.edu/cruces](http://goto.unm.edu/cruces).

## OTHER NEWS Center for Civic Values Requesting Judges for Gene Franchini High School Mock Trial

Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people. Mock Trial qualifiers will be held Feb. 16–17, 2018, at the Bernalillo County Metropolitan Court in Albuquerque. CCV needs volunteers for judges (opportunities exist for sitting judges and non-judges). Learn more and register at [www.civicvalues.org](http://www.civicvalues.org).

## V. Sue Cleveland High School Seeks Attorney Coach

V. Sue Cleveland High School in Rio Rancho seeks an attorney coach to help with its mock trial team. For more information, contact Kristen Leeds, director, Center for Civic Values and Gene Franchini New Mexico High School Mock Trial Program, at 505-764-9417 or [kirsten@civicvalues.org](mailto:kirsten@civicvalues.org).

## Christian Legal Aid New Volunteer Training Seminar

Christian Legal Aid of New Mexico 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 New Volunteer Training Seminar at 11 a.m., Oct. 27, at the State Bar Center. Join them for free lunch, free CLE credits and training as they learn the basics 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. [christianlegalaid@hotmail.com](mailto:christianlegalaid@hotmail.com).

## New Mexico Black Lawyers Association Sports and Entertainment Law CLE

The New Mexico Black Lawyers Association invites members of the legal community to attend its "Sports and Entertainment Law" CLE (5.0 G, 1.0 EP) from 8 a.m.–4:30 p.m. on Nov. 17 at the State Bar Center. Registration is \$199 and the deadline to request a refund is Nov. 10. Visit [www.newmexicoblacklawyersassociation.org](http://www.newmexicoblacklawyersassociation.org) for more information, or to register.

## New Mexico Estate Planning Council CLE Seminar

The New Mexico Estate Planning Council is hosting a seminar from 1-5 p.m., Oct. 19, at the Albuquerque Country Club. Mike Halloran, CFP, ChFC, CLU, RICP, AEP, wealth management advisor for Northwestern Mutual in Jacksonville, Fla., with Margaret Graham will present on domestic asset protection trusts, beneficiary defective inheritor's trusts and due diligence in choosing a life insurance policy. This seminar has been approved

*continued on page 9*

# Legal Education

## October

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|--|--|---|
| <p><b>18 U.S. Patent and Trademark Office Comes to Albuquerque</b><br/>5.0 G<br/>Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                   | <p><b>20 Rise of the Machines, Death of Expertise: Skeptical Views of Scientific Evidence</b><br/>3.5 G, 2.5 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>26 2016 Real Property Institute</b><br/>4.5 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |
| <p><b>19 New Mexico Estate Planning Council Seminar</b><br/>3.7 G<br/>Live Seminar, Albuquerque<br/>New Mexico Estate Planning Council<br/>www.nmpec.com</p>                               | <p><b>20 Ethics and Client Money: Trust Funds, Setoffs and Retainers</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>26 Lessons Learned from the “Trial of The Century” (2017 Annual Meeting)</b><br/>1.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>               |
| <p><b>19 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>              | <p><b>20 Annual Criminal Law Seminar</b><br/>10.0 G, 2.0 EP<br/>Live Seminar, Ruidoso<br/>El Paso Criminal Law Group, Inc.<br/>915-534-6005</p>  | <p><b>27 Craig Othmer Memorial Procurement Code Institute</b><br/>2.5 G, 1.0 EP<br/>Live Seminar, Santa Fe<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                              |
| <p><b>19 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Seminar, Taos<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                             | <p><b>24 Network of State and Federal Counsel Conference</b><br/>7.7 G, 2.0 EP<br/>Live Seminar, Santa Fe<br/>Davis and Henderson<br/>800-274-7280 x2816</p>   | <p><b>27 Fall Elder Law Institute—Hot Topics in Adult Guardianship Law</b><br/>4.5 G, 1.5 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
| <p><b>19 New Mexico DWI Cases: From the Initial Stop to Sentencing (2016)</b><br/>2.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>25 Drafting Contract Remedies</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>27 The Notorious DWI Seminar</b><br/>6.0 G<br/>Live Seminar<br/>Albuquerque<br/>New Mexico Criminal Defense Lawyers Association<br/>info@nmcdla.org</p>   |
| <p><b>19 Practical Succession Planning for Lawyers (2017)</b><br/>2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                        | <p><b>26 2016 Trial Know-How! (The Reboot)</b><br/>4.0 G, 2.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>31 2017 Americans with Disabilities Act Update</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |

## November

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| <p><b>2 Drafting Lease Guarantees</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>2 The Duty to Consult with Tribal Governments: Law, Practice and Best Practices</b><br/>2.3 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>3 2017 ADR Institute Is Your Dispute Resolution Safe?—Issues to Consider in Meditation and Other ADR Processes</b><br/>4.0 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> |
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## November

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| <p><b>3 Local Tax Court Cases with National Implications Including the Mescalero Apache U.S. Tax Court Decision</b><br/>1.0 G<br/>Live Seminar, Las Cruces<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>9 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                          | <p><b>17 2016 Ethics, Confidentiality and the Attorney-Client Privilege Update</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                      |
| <p><b>3 Ethics for Transactional Lawyers</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  | <p><b>9 Strategies for Well-Being and Ethical Practice</b><br/>2.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                        | <p><b>17 Sports and Entertainment Law</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>New Mexico Black Lawyers Association<br/><a href="http://www.newmexicoblacklawyersassociation.org/">www.newmexicoblacklawyersassociation.org/</a></p> |
| <p><b>3 Get Smart About Open Government Laws</b><br/>6.0 G<br/>Live Seminar, Albuquerque<br/>New Mexico Foundation for Open Government<br/>505-220-2820</p>   | <p><b>9 Thriving or Surviving? Strategies for Well-being and Ethical Practice</b><br/>2.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>28 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                            |
| <p><b>7 Complying with the Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Live Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                     | <p><b>15 2017 Business Law Institute</b><br/>4.5 G, 1.5 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                                   | <p><b>29 New Mexico Liquor Law for 2017 and Beyond</b><br/>3.5 G<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  |
| <p><b>7 28th Annual Appellate Practice Institute (2017)</b><br/>6.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>   | <p><b>16 2017 Probate Institute</b><br/>6.3 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  | <p><b>30 The Basics of Family Law</b><br/>5.2 G, 1.0 EP (plus an optional 1.0 EP)<br/>Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                            |
| <p><b>8 Litigation and Argument Writing in the Smartphone Age</b><br/>5.0 G, 1.0 EP<br/>Live Webcast/Live Seminar<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>                          |  |   |

## December

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|---|---|--|
| <p><b>1 Specialized Areas of Law for Lawyers and Paralegals—Annual Paralegal Division CLE</b><br/>5.0 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>1 Office Leases: Drafting Tips and Negotiating Traps</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> | <p><b>4 Legal Malpractice Potpourri</b><br/>2.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p> |
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continued from page 6

for 3.7 hours of CLE. The seminar is free for members of the NMEPC and \$125 for non-members. Registration information can be found on the NMEPC website, nmpec.com.

## New Mexico Superintendent of Insurance Healthcare Road Show

New Mexico's Superintendent of Insurance and beWellnm invite the legal community to attend an in-depth discussion of changes to the health insurance marketplace for the 2018 plan year.

These events will feature presentations by representatives of the Superintendent of Insurance, beWellnm, and insurance carriers offering coverage on the beWellnm marketplace. Presentations will include a preview of a new plan comparison tool and provider search tool. To view the complete schedule and to R.S.V.P. go to [www.bitly.com/osirsvp](http://www.bitly.com/osirsvp) or call 1-833-ToBeWell today to reserve your spot.

## Trojan Horse Method Women-only Training in Albuquerque

The Trojan Horse Method training is coming to Albuquerque for its first

women-only event on Nov. 2-5 at Hotel Parq Central. Trojan Horse's mission is to train, mentor and assist trial lawyers as they commit to the process of becoming winning trial lawyers. The method takes attendees out of their comfort zone in order to aid the development of the highest level of skills required to obtain justice. Attendees will learn how to discover the emotional core of their case and transport juries into the truth—not the manufactured truth—by the insurance carriers and prosecutors. Visit <https://events.bizzabo.com/thm47> for more information and to register.

# CELEBRATE

## PRO BONO

[www.celebrateprobono.org](http://www.celebrateprobono.org)

your local pro bono committee, **please contact Aja Brooks at [ajab@nmlegalaid.org](mailto:ajab@nmlegalaid.org) or (505)814-5033**. Thank you for your support of pro bono in New Mexico!

### 1st JUDICIAL DISTRICT:

#### Free Legal Fair

Oct. 21, 2017 from 10 am – 1 pm  
Mary Esther Gonzales Senior Center  
(1121 Alto St., Santa Fe, NM 87501)

#### Pro Bono Appreciation Luncheon and CLE

Oct. 23, 2017 from 11 am – 1:30 pm  
Hilton of Santa Fe  
(100 Sandoval St., Santa Fe, NM 87501)  
CLE and luncheon details TBA

### 2nd JUDICIAL DISTRICT:

#### Law-La-Palooza Free Legal Fair

Oct. 19, 2017 from 3 – 6 pm  
Westside Community Center  
(1250 Isleta Blvd SW, Albuquerque, NM 87105)

### 3rd JUDICIAL DISTRICT:

#### Free Legal Fair

Oct. 27, 2017 from 10 am – 1 pm  
Third Judicial District Court  
(201 W. Picacho Avenue, Las Cruces, NM 88005)

### 5th JUDICIAL DISTRICT (LEA):

#### Free Legal Fair, Pro Bono Appreciation Luncheon and CLE

Nov. 3, 2017 from 11 am – 4 pm  
Hobbs City Hall  
(200 E. Broadway, Hobbs, NM 88240)  
CLE and luncheon details TBA

### 6th JUDICIAL DISTRICT (LUNA):

#### Free Legal Fair

Nov. 3, 2017 from 10 am – 1 pm  
Luna County District Court  
(855 S. Platinum, Deming, NM 88030)

### 8th JUDICIAL DISTRICT:

#### Pro Bono Appreciation Luncheon and CLE

Oct. 19, 2017 from 11:30 am – 3 pm  
Taos Country Club  
(54 Golf Course Drive, Ranchos de Taos, NM 87557)  
1-2 pm: Expanding ADR in Civil & Domestic Relations Litigation (1.0 G)  
2-3 pm: Complying with the Disciplinary Board Rule 17-204 (1.0 EP; presented by the Center for Legal Education)

### 12th JUDICIAL DISTRICT (LINCOLN):

#### Free Legal Fair

Oct. 28, 2017 from 10 am – 2 pm  
Ruidoso Community Center  
(501 Sudderth Dr., Ruidoso, NM 88345)



*From the Lawyers Professional Liability and Insurance Committee*

## Good Signs to Look for When Choosing a Professional Liability Insurance Company

*These tips are part of a series of good signs to look for when choosing a professional liability insurance company, compiled by the Lawyers Professional Liability and Insurance Committee. Look for a new tip in the third issue of each month. Read the full list of tips and introduction (plus a guidance disclaimer) in the Oct. 19, 2016, (Vol. 55, No. 42) issue of the Bar Bulletin.*

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### Policy Provides Innocent Insured Coverage

Lawyers Professional Liability insurance policies—legal malpractice policies—typically exclude coverage for “Intentional Acts.” These are claims arising from any dishonest, fraudulent, criminal or malicious act or omission or intentional wrongdoing by an insured. Many policies, however, include an exception to this exclusion so that coverage will be provided to an insured who did not personally commit the intentional wrongful act, and was unaware of it. Thus, if one of the lawyers in a law firm or law practice committed an “intentional act” giving rise to a claim that is excluded from coverage, other lawyers in the firm who did not personally commit the wrongful act and were unaware of it

will still be covered under the policy. When purchasing LPL insurance coverage, you should insure that it includes “Innocent Insured” coverage.

Unfortunately, there is typically not “Innocent Insured” coverage where the issue is a failure to give timely notice of a claim, resulting in a denial of coverage under the policy. All current LPL policies are “claims made” policies. There is only coverage for claims made and reported during the policy period. If a claim is made (or circumstances that could give rise to a claim are learned) during a policy period, but that claim is not reported during that

policy period, the insurer will likely deny the claim if reported during a subsequent policy period.

Thus, if a lawyer in a firm or law practice learns of a claim or circumstances that could give rise to a claim but hides that fact from the other lawyers in the firm or practice so that no one gives a timely notice of the claim to the insurer within that policy period, the insurer will likely deny coverage to the firm and all of its lawyers if the claim is reported under a subsequent policy. There is no “innocent insured” protection when it comes to failure to give timely notice of a claim.

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### Policy Provides a Broad Definition of “Legal Services” to Include Mediation, Arbitration, Guardian ad Litem and Personal Representative Services Provided by the Attorney.

We all know that legal malpractice insurance covers claims against us lawyers that allege we were negligent in the practice of law. But not all actions taken by lawyers in the course of providing legal advice may be covered by your policy.

All legal malpractice policies include a definition of “legal services,” “professional services,” or otherwise “covered services” that determines what actions on your part may constitute a covered claim. All policies include in this definition a lawyer’s services performed in conjunction with an attorney-client relationship. Most also include services as a mediator, arbitrator, or other facilitator in an alternative dispute

resolution process; and most also include services as an administrator, conservator, guardian, executor, personal representative, trustee, or other fiduciary capacity so long as the lawyer isn’t a beneficiary of the trust or estate.

In addition to these definitions, legal malpractice policies also exclude from coverage some specific actions taken by the lawyer. For example, some exclude investment advice, certain types of title work, actions taken as a public official, and actions taken as a director or officer of an organization. The exclusions can run the gamut.

The point is this: at a minimum, you should make sure your policy’s definition of legal services includes those services you and your colleagues regularly provide in the course of your practice, including any services as a mediator, arbitrator, guardian, trustee, etc. If the services provided aren’t in your policy, talk to your carrier. In addition, before taking on any unusual work, take a tour through your policy to see whether the services you provide are covered. If they’re not, you need to notify your client that you are uninsured for those services, and you may need to evaluate the scope of your representation.

# BOARD OF BAR COMMISSIONERS ELECTION NOTICE 2017



Pursuant to Supreme Court Rule 24-101, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico. Candidates must consider that voting members of the Board of Bar Commissioners are required to do the following:

## **Duties and Requirements for Board of Bar Commissioner Members:**

- Attend all Board meetings (up to six per year), including the Annual Meeting of the State Bar.
- Represent the State Bar at local bar-related meetings and events.
- Communicate regularly with constituents regarding State Bar activities.
- Promote the programs and activities of the State Bar and the New Mexico State Bar Foundation.
- Participate on Board and Supreme Court committees.
- Evaluate the State Bar's programs and operations on a regular basis.
- Ensure financial accountability for the organization.
- Support and participate in State Bar referral programs.
- Establish and enforce bylaws and policies.
- Serve as a director of the New Mexico State Bar Foundation Board.

Notice is hereby given that the 2017 election of six commissioners for the State Bar of New Mexico will close at noon, Nov. 30. Nominations to the office of bar commissioner shall be by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice is in the respective district. Members of the State Bar may nominate and sign for more than one candidate. **(See the nomination petition at [www.nmbar.org/nmbardocs/aboutus/governance/BBCElectionNotice-Petition.pdf](http://www.nmbar.org/nmbardocs/aboutus/governance/BBCElectionNotice-Petition.pdf)). The following terms will expire Dec. 31, and need to be filled in the upcoming election. All of the positions are three-year terms and run from Jan. 1, 2018–Dec. 31, 2020.**

### **First Bar Commissioner District**

#### **Bernalillo County**

Two positions currently held by:

- Aja N. Brooks
- Raynard Struck

### **Third Bar Commissioner District**

#### **Los Alamos, Rio Arriba, Sandoval and Santa Fe counties**

Two positions currently held by:

- J. Brent Moore \*
- Elizabeth J. Travis

### **Sixth Bar Commissioner District**

#### **Chaves, Eddy, Lea, Lincoln and Otero counties**

Two positions currently held by:

- Erinna M. Atkins
- Jared G. Kallunki

\*Ineligible to seek re-election

### **Send nomination petitions to:**

Interim Executive Director Richard Spinello  
State Bar of New Mexico  
PO Box 92860  
Albuquerque, NM 87199-2860  
[rspinello@nmbar.org](mailto:rspinello@nmbar.org)

**Petitions must be received by 5 p.m., Oct. 20**

Direct inquiries to 505-797-6038 or [kbecker@nmbar.org](mailto:kbecker@nmbar.org).

# NOMINATION PETITION FOR BOARD OF BAR COMMISSIONERS

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We, the undersigned, members in good standing of the State Bar of New Mexico, nominate \_\_\_\_\_, whose principal place of practice is in the \_\_\_\_\_ Bar Commissioner District, State of New Mexico, for the position of commissioner of the State Bar of New Mexico representing the \_\_\_\_\_ Bar Commissioner District.

Submitted \_\_\_\_\_, 2017

(1)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(2)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(3)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(4)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(5)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(6)	_____ Signature	_____ Address
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(7)	_____ Signature	_____ Address
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(8)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(9)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address
(10)	_____ Signature	_____ Address
	_____ Type or Print Name	_____ Address

# 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 October 6, 2017**

## **PUBLISHED OPINIONS**

A-1-CA-34951	State v. L Byrom	Reverse	10/02/2017
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## **UNPUBLISHED OPINIONS**

A-1-CA-36201	State v. E Happy	Affirm	10/02/2017
A-1-CA-36482	State v. R Garcia-Larondo	Affirm	10/02/2017
A-1-CA-34514	State v. J Black	Affirm	10/03/2017
A-1-CA-36089	J Johnson v. D Johnson	Affirm	10/03/2017
A-1-CA-36188	CYFD v. Chris M	Affirm	10/03/2017
A-1-CA-36383	State v. L Sanchez	Affirm	10/03/2017
A-1-CA-36441	CYFD v. Vincent M	Affirm	10/03/2017
A-1-CA-36460	NM Med Bd. v. W Seidel	Reverse/Remand	10/03/2017
A-1-CA-35916	State v. N Rowland	Affirm	10/04/2017
A-1-CA-36109	Jardinero Investments v. Jardinero Professional Plaza	Affirm	10/04/2017
A-1-CA-36147	Selene Finance v. M Duran	Affirm	10/04/2017
A-1-CA-36189	CYFD v. Dennis G	Affirm	10/04/2017
A-1-CA-36219	State v. Bryant W	Affirm	10/04/2017
A-1-CA-36248	State v. G Galaviz	Affirm	10/04/2017
A-1-CA-36366	State v. P Robles	Affirm	10/05/2017
A-1-CA-36382	State v. J Roberts	Affirm	10/05/2017

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

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



# 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

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## CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

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Effective September 27, 2017:  
**Michael Joseph Barthelemy**  
Michael J. Barthelemy,  
Attorney at Law, PC  
5101 Coors Blvd. NW, Suite G  
Albuquerque, NM 87120  
505-452-9937  
505-897-9937 (fax)  
mbarthelemy@comcast.net

Effective September 27, 2017:  
**Josh Ewing**  
Boise Matthews LLP  
1001 S.W. Fifth Avenue,  
Suite 1400  
Portland, OR 97204  
503-228-0487  
503-227-5984 (fax)  
josh@boisematthews.com

Effective September 27, 2017:  
**Trevor Thomas White**  
Shadle & White, PLC  
833 E. Plaza Circle, Suite 200  
Yuma, AZ 85365  
928-783-8321  
twhite@shadlaw.com

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## IN MEMORIAM

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As of September 13, 2017:  
**Hon. Pete V. Domenici Sr.**

As of March 13, 2017:  
**Paul J. Matteucci**  
317 Sixth Street NW  
Albuquerque, NM 87102

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## CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

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Effective October 1, 2017:  
**Ronald G. Harris**  
7636 Arroyo del Oso NE  
Albuquerque, NM 87109

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## CLERK'S CERTIFICATE OF ADMISSION

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On October 3, 2017:  
**Elizabeth Elsbach**  
Superior Court of  
Washington  
Snohomish County  
Courthouse  
3000 Rockefeller Avenue,  
M/S 502  
Everett, WA 98201  
425-388-3421  
425-388-3498 (fax)

On October 3, 2017:  
**Jordan Diane Johnson**  
Office of the Thirteenth  
Judicial District Attorney  
101 S. Main Street, Suite 201  
Belen, NM 87002  
505-861-0311  
jjohnson@da.state.nm.us

**Jolanna Kristyn Peterson**  
Office of the Thirteenth  
Judicial District Attorney  
101 S. Main Street, Suite 201  
Belen, NM 87002  
505-861-0311  
jpeterson@da.state.nm.us

On October 3, 2017:  
**Rocio A. Ocano**  
New Mexico Legal Aid  
200 N. Dalmont Street  
Hobbs, NM 88240  
575-263-3287  
rocioo@nmlegalaid.org

On October 3, 2017:  
**Richard Alan Stubbs**  
United States Navy JAG  
Corps  
676 N. 1600 E.  
Mapleton, UT 84664  
801-376-4496  
ricstubbs@hotmail.com

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## CLERK'S CERTIFICATE OF CORRECTION

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A clerk's certificate of address and/or telephone changes dated Sept. 22, 2017, contained a typographical error in the e-mail address for **Jessica Eaves Mathews**.  
**Jessica Eaves Mathews**  
Leverage Legal Group, LLC  
317 Commercial Street NE,  
3rd Floor  
Albuquerque, NM 87102  
888-505-5838  
jessica@leveragelegalgroup.com

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## CLERK'S CERTIFICATE OF NAME CHANGE

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As of October 2, 2017  
**Laura Oropeza Platero f/k/a  
Laura Oropeza Bird**  
420 N.W. 11th Avenue, Unit 511  
Portland, OR 97209  
503-407-4082  
lb-llc@live.com

# Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

**Effective October 18, 2017**

## PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

*There are no proposed rule changes currently open for comment.*

## RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2017 NMRA:

	Effective Date
<b>Rules of Civil Procedure for the District Courts</b>	
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
<b>Rules of Civil Procedure for the Magistrate Courts</b>	
2-112 Public inspection and sealing of court records	03/31/2017
<b>Rules of Civil Procedure for the Metropolitan Courts</b>	
3-112 Public inspection and sealing of court records	03/31/2017
<b>Civil Forms</b>	
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
<b>Rules of Criminal Procedure for the District Courts</b>	
5-106 Peremptory challenge to a district judge; recusal; procedure for exercising	07/01/2017
5-123 Public inspection and sealing of court records	03/31/2017
5-204 Amendment or dismissal of complaint, information and indictment	07/01/2017
5-401 Pretrial release	07/01/2017
5-401.1 Property bond; unpaid surety	07/01/2017
5-401.2 Surety bonds; justification of compensated sureties	07/01/2017
5-402 Release; during trial, pending sentence, motion for new trial and appeal	07/01/2017
5-403 Revocation or modification of release orders	07/01/2017

5-405	Appeal from orders regarding release or detention	07/01/2017
5-406	Bonds; exoneration; forfeiture	07/01/2017
5-408	Pretrial release by designee	07/01/2017
5-409	Pretrial detention	07/01/2017
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
6-401	Pretrial release	07/01/2017
6-401.1	Property bond; unpaid surety	07/01/2017
6-401.2	Surety bonds; justification of compensated sureties	07/01/2017
6-403	Revocation or modification of release orders	07/01/2017
6-406	Bonds; exoneration; forfeiture	07/01/2017
6-408	Pretrial release by designee	07/01/2017
6-409	Pretrial detention	07/01/2017
6-506	Time of commencement of trial	07/01/2017
6-703	Appeal	07/01/2017

## 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
7-401	Pretrial release	07/01/2017
7-401.1	Property bond; unpaid surety	07/01/2017
7-401.2	Surety bonds; justification of compensated sureties	07/01/2017
7-403	Revocation or modification of release orders	07/01/2017
7-406	Bonds; exoneration; forfeiture	07/01/2017
7-408	Pretrial release by designee	07/01/2017
7-409	Pretrial detention	07/01/2017
7-506	Time of commencement of trial	07/01/2017
7-703	Appeal	07/01/2017

## 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
8-401	Pretrial release	07/01/2017
8-401.1	Property bond; unpaid surety	07/01/2017
8-401.2	Surety bonds; justification of compensated sureties	07/01/2017
8-403	Revocation or modification of release orders	07/01/2017
8-406	Bonds; exoneration; forfeiture	07/01/2017
8-408	Pretrial release by designee	07/01/2017
8-506	Time of commencement of trial	07/01/2017
8-703	Appeal	07/01/2017

## Criminal Forms

9-301A	Pretrial release financial affidavit	07/01/2017
9-302	Order for release on recognizance by designee	07/01/2017
9-303	Order setting conditions of release	07/01/2017
9-303A	Withdrawn	07/01/2017
9-307	Notice of forfeiture and hearing	07/01/2017
9-308	Order setting aside bond forfeiture	07/01/2017
9-309	Judgment of default on bond	07/01/2017
9-310	Withdrawn	07/01/2017
9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	03/31/2017

## 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

12-204	Expedited appeals from orders regarding release or detention entered prior to a judgment of conviction	07/01/2017
12-205	Release pending appeal in criminal matters	07/01/2017
12-307.2	Electronic service and filing of papers	07/01/2017*
12-307.2	Electronic service and filing of papers	08/21/2017*
12-314	Public inspection and sealing of court records	03/31/2017

\*The rule adopted effective July 1, 2017, implemented mandatory electronic filing for cases in the Supreme Court. The rule adopted effective August 21, 2017, implements mandatory electronic filing in the Court of Appeals.

## Rules Governing Admission to the Bar

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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>.

# 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-025**

No. S-1-SC-35524 (filed August 3, 2017)

STATE OF NEW MEXICO, ex rel. LEAGUE OF WOMEN VOTERS OF NEW MEXICO,  
Petitioner,  
v.  
ADVISORY COMMITTEE TO THE NEW MEXICO COMPILATION COMMISSION,  
Respondent.

## ORIGINAL PROCEEDING

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## Opinion

**Petra Jimenez Maes, Justice**

{1} Article VII, Sections 1 and 3 of the New Mexico Constitution set forth the elective franchise, which is among the most precious rights in a democracy. The two provisions work in tandem to establish and guarantee the right to vote. Section 1, among other things, identifies who is qualified to vote; and Section 3 protects the right from being “restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages . . .” N.M. Const. art. VII, §§ 1, 3.

{2} To protect the elective franchise even further, the framers declared in two separate constitutional provisions that Article VII, Sections 1 and 3 “shall never be amended except upon a vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state . . . shall vote for such amendment.” N.M. Const. art. VII, § 3; *see* N.M. Const. art. XIX, § 1. These heightened protections have led this Court to describe Article VII, Section 1, as the “unamendable section” of the Constitution. *See State ex rel. Witt v. State Canvassing Bd.*, 1968-NMSC-017, ¶ 8, 78 N.M. 682, 437 P.2d 143. {3} Petitioner, League of Women Voters of New Mexico, sought a writ of mandamus

directing Respondent, Advisory Committee to the New Mexico Compilation Commission, to effectuate the compilation of three constitutional amendments to the so-called unamendable section. The proposed amendments to Article VII, Section 1 were submitted to the electorate in 2008, 2010, and 2014, and each received more than a majority, but less than a three-fourths super-majority, of the vote. The Compilation Commission did not compile the amendments into the Constitution. {4} Petitioner asked this Court to clarify that under a separate constitutional provision, the 2008, 2010, and 2014 amendments required the approval of only a simple majority of the voters. *See* N.M. Const. art. XIX, § 1 (1996) (setting forth general requirements for amending the Constitution and specific requirements for amendments that “restrict the rights created” in Article VII, Section 1, among others). As such, Petitioner contended that Respondent has a non-discretionary duty to advise the Compilation Commission to compile the amendments into the Constitution. Respondent took no position on the merits of the question presented, but asked that we deny the petition on the grounds that Respondent was not a proper party. After full briefing by the parties and by numerous amici curiae and after hearing oral arguments, we granted the petition and issued a writ of mandamus as requested by Petitioner. We now issue this formal opinion to explain our reasoning.

### I. Facts and Procedural History

{5} In 2008, Constitutional Amendment 4 was placed on the ballot for the general election. The amendment proposed to amend Article VII, Section 1 to permit school elections to be held with other, non-partisan elections:

Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which [he] the person offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors. All

school elections shall be held at different times from [other] partisan elections.

2008 N.M. Laws, S.J. Res. 4, § 1 at 1554 (showing original language of Article VII, Section 1 in brackets and strikethrough; showing proposed language with underlining). The proposed amendment received 512,962 votes in favor of passage or 74.48 percent of the votes cast on the amendment. See N.M. Sec'y of State, *Canvass of Returns of General Election Held on November 4, 2008 - State of New Mexico*, at 11, <http://www.sos.state.nm.us/uploads/files/Election%20Results/StatewideGen08.pdf> (last visited July 20, 2017). The amendment was not compiled into the Constitution.

{6} In 2010, Constitutional Amendment 3 was placed on the ballot for consideration by the voters. The 2010 amendment proposed to substantially revise the first sentence of Article VII, Section 1 to account for various changes in federal voting law and to remove the provision's offensive use of the terms "idiots" and "insane persons":

~~[Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers.]~~  
Every person who is a qualified elector pursuant to the constitution and laws of the United States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference.

2010 N.M. Laws, S.J. Res. 6, § 1 at 1229 (showing first sentence of original language of Article VII, Section 1 in brackets and strikethrough; showing proposed language with underlining). The proposed amendment received 290,593 votes in

favor of passage or 56.92 percent of the votes cast on the amendment. See N.M. Sec'y of State, *Canvass of Returns of General Election Held on November 2, 2010*, at 8, [http://www.sos.state.nm.us/uploads/files/StatewideResults\\_Gen\\_2010.pdf](http://www.sos.state.nm.us/uploads/files/StatewideResults_Gen_2010.pdf) (last visited July 20, 2017). Again, the amendment was not compiled into the Constitution.

{7} In 2014, Constitutional Amendment 1 was placed on the ballot for consideration. Like the 2008 amendment, Constitutional Amendment 1 sought to amend Article VII, Section 1 to allow for school elections to take place in conjunction with non-partisan elections. 2013 N.M. Laws, H.R.J. Res. 2, § 1 at 2569. The language of the proposed amendment was substantively identical to the amendment proposed in 2008. Compare *id.* with 2008 N.M. Laws, S.J. Res. 4, § 1 at 1554. The amendment received 258,673 votes in favor of passage or 57.68 percent of the votes cast on the amendment. See N.M. Sec'y of State, *Canvass of Returns of General Election Held on November 4, 2014 - State of New Mexico*, at 9, <http://www.sos.state.nm.us/uploads/files/Statewide%20Summary.pdf> (last visited July 20, 2017). Like the amendments proposed in 2008 and 2010, the 2014 amendment was not compiled into the Constitution.

{8} On September 24, 2015, more than ten months after the election on the 2014 amendment, Petitioner filed a Petition for a Writ of Mandamus. Petitioner asked this Court to direct Respondent to advise the Compilation Commission to compile the 2008, 2010, and 2014 amendments into Article VII, Section 1 of the New Mexico Constitution. We ordered Respondent to file a response and subsequently denied the petition without further briefing or argument. See *State ex rel. League of Women Voters v. Advisory Comm. to the N.M. Compilation Comm'n, writ granted*, No. 35,524, Sept. 29, 2015). Petitioner then filed a motion for rehearing, which we granted and ordered full briefing and oral argument on four issues, three that are procedural and one that poses questions of substantive law: whether the petition is timely or time-barred, whether Petitioners have standing to raise the issues presented in the petition, whether the Advisory Committee is the proper respondent to the petition, and the interpretation of any conflicts or inconsistencies in the constitutional provisions at issue. See *State ex rel. League of Women Voters v. Advisory Comm. to the N.M. Compilation Comm'n, writ granted*, No. 35,524 (Mar. 7, 2016).

We assert original jurisdiction under Article VI, Section 3 of the New Mexico Constitution over extraordinary writs for mandamus against state officers, boards, and commissions. See *State ex rel. Bird v. Apodaca*, 1977-NMSC-110, ¶ 3, 91 N.M. 279, 573 P.2d 213.

## II. Discussion

### A. Petitioner Has Standing to Petition for Mandamus

{9} We first address whether Petitioner has standing to raise the issues presented in this proceeding. We need not address here whether Petitioner meets the traditional requirements for standing of an organization because this Court has inherent authority to confer standing when the issue brought by a party presents a matter of great public importance. See *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 33, 144 N.M. 471, 188 P.3d 1222 ("It is clear that this Court can 'confer' standing and reach the merits of a case regardless of whether a plaintiff meets the traditional standing requirements, based on a conclusion that the questions raised involve matters of great public importance.").

{10} "Assuming mandamus would otherwise lie, we exercise our power of original jurisdiction in mandamus if the case presents a purely legal issue that is a fundamental constitutional question of great public importance." *Cty. of Bernalillo, N.M. v. N.M. Pub. Reg. Comm'n*, 2000-NMSC-035, ¶ 6, 129 N.M. 787, 14 P.3d 525. The substantive question raised by the petition here—whether the 2008, 2010, and 2014 amendments were properly approved by the voters and therefore should be compiled into the Constitution—is a matter of great public importance. The right of qualified electors to vote is fundamental to the integrity of state government. So too is the question of whether a constitutional provision has been validly amended, particularly when the provision in question directly implicates the right to vote. See, e.g., *Cobb v. N.M. State Canvassing Bd.*, 2006-NMSC-034, ¶ 39, 140 N.M. 77, 140 P.3d 498 ("[T]he issue of clarifying our Election Code, especially in the current political climate, make this a case of great public importance."). We therefore conclude that Petitioner has standing in this proceeding, regardless of whether the traditional elements of standing have been satisfied. Cf. *Gunaji v. Macias*, 2001-NMSC-028, ¶ 20, 130 N.M. 734, 31 P.3d 1008 (conferring third-party standing in an election case implicating the guarantee of free and open elections under Article



II, Section 8 of the New Mexico Constitution).

**B. The Substantive Question in This Proceeding Is Not an Election Contest and Therefore Is Not Time-barred by the Election Code**

{11} We next consider whether the petition presents an untimely election contest under the Election Code's thirty-day statute of limitations. *See* NMSA 1978, § 1-14-3 (1971). Respondent emphasizes that the petition was filed approximately one, five, and seven years after the elections at issue were certified—well beyond the thirty days permitted to file an election contest under Section 1-14-3. Petitioner counters that Section 1-14-3 is inapposite because the substantive issue presented, whether a simple majority of the voters was enough to approve the 2008, 2010, and 2014 amendments, is not an election contest. We must resolve the question because if the petition amounts to an untimely election contest under Section 1-14-3, we need not reach the merits of the constitutional issue presented. *See Morris v. Brandenburg*, 2016-NMSC-027, ¶ 14, 376 P.3d 836 (noting that if a statutory determination will resolve the case, “we need not address [p]etitioners’ constitutional claims”); *Allen v. LeMaster*, 2012-NMSC-001, ¶ 28, 267 P.3d 806 (“It is an enduring principle of constitutional jurisprudence that courts will avoid deciding constitutional questions unless required to do so”).

{12} Section 1-14-3 provides, “Any action to contest an election shall be commenced by filing a verified complaint of contest in the district court . . . Such complaint shall be filed no later than thirty days from issuance of the certificate of . . . election to the successful candidate.” The thirty-day limit “accords with the need for speedy resolution of election contests[.]” *Gunaji*, 2001-NMSC-028, ¶ 26. The thirty-day limit does not apply, however, to just any challenge to governmental action associated with or following an election that might render “virtually every lawsuit against a governmental entity . . . subject to the Election Code’s thirty-day statute of limitations.” *Glaser v. LeBus*, 2012-NMSC-012, ¶ 11, 276 P.3d 959.

{13} Instead, in *Dinwiddie v. Bd. of Cty. Comm’rs*, 1985-NMSC-099, ¶ 7, 103 N.M. 442, 708 P.2d 1043, we identified certain features of these challenges crucial for characterizing the challenges as election contests invoking the Section 1-14-3 thirty-day limit. The plaintiffs in *Dinwiddie* sought a declaratory judgment to: (1)

invalidate a special bond election due to allegedly faulty election procedures and (2) disallow certain “[i]nvalid” ballots. *Dinwiddie*, 1985-NMSC-099, ¶ 1. The district court dismissed the complaint because, among other things, it was not verified as required by Section 1-14-3. *Dinwiddie*, 1985-NMSC-099, ¶¶ 1-2. The plaintiffs argued on appeal that their claim to invalidate the election was distinct from their claim to invalidate certain ballots and therefore was not an election contest subject to the requirements of Section 1-14-3. *Dinwiddie*, 1985-NMSC-099, ¶ 7. This Court disagreed and held both issues raised in the district court were election contests under Section 1-14-3, explaining:

A challenge to the validity of an election is also a challenge to its result, for if it is successful, the result is changed. Similarly, a challenge to the result contests the inherent validity of the election. *Both seek to alter the certified result of the election.* An election is a process, not a single event, and the whole process or any part of it, may be subject to contest.

*Dinwiddie*, 1985-NMSC-099, ¶ 7 (emphasis added); *see also Glaser*, 2012-NMCA-028, ¶ 20 (“We thus view New Mexico case law as defining an election contest as a challenge to the result of an election, as well as a challenge to the inherent validity of an election when the challenge would necessarily require overturning the results or effects of the election.”).

{14} By contrast, the contentions Petitioner presses in this case—namely, that the 2008, 2010, and 2014 amendments were validly approved by the voters—do not “seek to alter the certified result of the election[s]” or contest “the whole process or any part of [the elections].” *Dinwiddie*, 1985-NMSC-099, ¶ 7. There is no question in this case that each of the elections conformed with the requirements of the Election Code and no question that the 2008, 2010, and 2014 amendments received 74.48 percent, 56.92 percent, and 57.68 percent of the votes, respectively. *See* NMSA 1978, §§ 1-1-1 to 1-24-4 (1969, as amended through 2016). The sole question is whether the three amendments—having received more than a simple majority, but less than a three-fourths super-majority, of the votes cast—were duly ratified and therefore should have been compiled into the Constitution. Rather than seeking to alter the certified results of the elections, the petition seeks clarity about the mean-

ing and effect of the uncontested certified results of the elections under our Constitution. Accordingly, the petition does not present an election contest and therefore is not untimely under Section 1-14-3.

**C. The Advisory Committee Is a Proper Respondent**

{15} We next turn to whether the Advisory Committee is a proper respondent in this proceeding. Petitioner candidly admits it is unsure who the proper respondent should be because “[n]either the constitution nor the statutes assign the duty of declaring the winner of a constitutional amendment.” Petitioner contends, however, that “the Advisory Committee has been performing that function [declaring the winner of an election for a constitutional amendment], even if it has been doing so unwittingly.” Petitioner therefore asserts that the Advisory Committee is the proper respondent for a writ of mandamus.

{16} The Advisory Committee disagrees. It argues that it has no responsibility to declare the results of an election and it therefore has not failed to fulfill any legal duty to Petitioner. According to the Advisory Committee, the State Canvassing Board is the proper respondent for the relief being sought by Petitioner, as the Canvassing Board is the entity charged under the Constitution and the Election Code with the duty to “canvass and declare the result of the election.” N.M. Const. art. V, § 2; NMSA 1978, § 1-13-15 (“The Canvassing Board ‘shall also canvass and declare the result of the vote on any constitutional amendment . . .’”).

{17} The Advisory Committee is appointed by this Court and tasked with providing “advice and approval” to the Compilation Commission. *See* NMSA 1978, § 12-1-3 (2006) (providing that the Compilation Commission “act[s] on the advice and approval of an advisory committee appointed by the New Mexico supreme court”). Without the Advisory Committee’s advice and approval, the Compilation Commission cannot fulfill its statutory responsibilities, which include compiling, certifying, and publishing the various laws of the state of New Mexico. *See id.*; NMSA 1978, § 12-1-7 (2006) (providing that the Commission shall, “with the advice and approval of the advisory committee[.]” certify the 1978 compilation); *see also* § 12-1-3.1 (setting forth additional powers of the Commission). In other words, the Advisory Committee’s advice and approval is a condition precedent to the valid exercise of the Compilation

Commission's authority. *Cf.* NMSA 1978, § 12-1-7 (2006) ("Upon the certification of the compilation of 1978 or any supplement by the New Mexico compilation commission, with the advice and approval of the advisory committee of the supreme court, the compilation or supplement shall be in force . . .").

{18} Thus, the Advisory Committee must provide advice and approval for any action necessary for the Compilation Commission's execution of its statutory responsibilities. The duty necessarily extends to advising and approving the compilation of duly ratified constitutional amendments. The duty would extend to advising and approving the compilation of the 2008, 2010, and 2014 amendments, if they were properly approved by the electorate. But the Committee has not so advised the Commission here, and the amendments have therefore not been compiled. Thus, if we agree in this proceeding that the amendments were properly approved, it would be incumbent upon the Advisory Committee to advise and approve their compilation by the Commission. We therefore hold that the Advisory Committee is the proper Respondent, and we need not consider whether the State Canvassing Board also may be a proper respondent. We turn to the merits of the petition.

**D. The 1996 Amendment to Article XIX, Section 1 Preserved Historic Protections for the Political and Educational Rights of Minorities While Making Article VII, Section 1 and Its Sister Provisions Easier to Amend in General**

{19} The substantive question before us is whether the 2008, 2010, and 2014 amendments to Article VII, Section 1 were effective, having received more than a simple majority, but less than a three-fourths super-majority, of the vote. To answer this question, we must interpret two constitutional provisions that address how Article VII, Section 1 may be amended. "Interpretation of constitutional clauses begins with the language of the text." *State v. Lynch*, 2003-NMSC-020, ¶ 15, 134 N.M. 139, 74 P.3d 73. We seek to construe constitutional provisions in harmony, but when "provisions cannot be harmonized, the specific section governs over the general regardless of priority of enactment." *City of Albuquerque v. N.M. State Corp. Comm'n*, 1979-NMSC-095, ¶ 6, 93 N.M. 719, 605 P.2d 227. If "one section is not readily identifiable as the more specific one of the two[,] . . . the latter provision governs 'as

the latest expression of the sovereign will of the people, and as an implied modification pro tanto of the original provision of the Constitution in conflict therewith.' " *Id.* ¶ 6 (quoting *Asplund v. Alarid*, 1923-NMSC-079, ¶ 11, 29 N.M. 129, 219 P. 786).

**1. Article XIX, Section 1, as Amended in 1996, Controls the Outcome of This Proceeding**

{20} The requirements for amending Article VII, Section 1 are prescribed in two constitutional provisions—Article XIX, Section 1 and Article VII, Section 3. Article XIX, Section 1 sets forth the requirements for amending the Constitution and provides, in general, that an amendment becomes part of the Constitution once it has been approved by a simple majority of both houses of the Legislature and ratified by a simple majority of the voters in a popular election. Article VII, Section 3 protects the rights of New Mexicans "to vote, hold office or sit upon juries" and declares that those rights "shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages."

{21} Both provisions also impose heightened requirements for amending several constitutional provisions, including Article VII, Section 1, that guarantee certain political and educational rights. Article XIX, Section 1, amended in 1996, provides in relevant part:

[n]o amendment shall restrict the rights created by Sections One and Three of Article VII hereof, on elective franchise, and Sections Eight and Ten of Article XII hereof, on education, unless it be proposed by vote of three-fourths of the members elected to each house and be ratified by a vote of the people of this state in an election at which at least three-fourths of the electors voting on the amendment vote in favor of that amendment.

Article VII, Section 3 similarly provides: the provisions of this section [Section Three] and of Section One of this article [Article VII] shall never be amended except upon a vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state, and at least two-thirds of those voting in each county of the state, shall vote for such amendment.

Thus, rather than the simple majorities required to amend other constitutional provisions, Article XIX, Section 1 and Article VII, Section 3 both require an amendment to Article VII, Section 1 to pass with at least three-fourths of the votes cast on the amendment in a statewide election. See N.M. Const. art. XIX, § 1; N.M. Const. art. VII, § 3; *see also Witt*, 1968-NMSC-017, ¶ 38 (holding that the requirement in Article VII, Section 3 for "at least three-fourths of the electors voting in the whole state" was met when the amendment received the vote of at least three-fourths of the electors who voted on the amendment). For ease of reference, we refer to this threshold as the three-fourths requirement for the remainder of this opinion.

{22} Despite sharing the three-fourths requirement, these provisions differ in several ways with respect to how Article VII, Section 1 may be amended. One of these differences, according to Petitioner, is outcome-determinative in this proceeding. Specifically, Petitioner asserts that Article XIX, Section 1 imposes the three-fourths requirement only on an amendment that "restrict[s] the rights created by Sections One and Three of Article VII hereof, on elective franchise . . ." (emphasis added). Article VII, Section 3, by contrast, imposes the three-fourths requirement on an amendment to "the provisions of this section [Section Three] and of Section One of this article [Article VII] . . ." (emphasis added). The difference, according to Petitioner, is that under the former provision, an amendment that is neutral or that expands the rights set forth in Article VII, Section 1 takes effect like an amendment to any other constitutional provision, when it receives a simple majority of the votes in the Legislature and in an election.

{23} We agree that these two provisions conflict about when the three-fourths requirement applies to an amendment to Article VII, Section 1. Further, the general-specific rule is of little help because the two provisions address distinct aspects of Article VII, Section 1: Article XIX, Section 1 protects the *rights* created in the provision, whereas Article VII, Section 3 protects the *language* used to create those rights. *Cf. State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464, 27 P.3d 456 ("[I]f two statutes dealing with the same subject conflict, the more specific statute will prevail over the more general statute absent a clear expression of legislative intent to the contrary. The specific statute operates as an exception to the general statute . . .")

(emphasis added) (citation omitted)). The question before us, therefore, is answered by the simple rule that “the latter provision governs as the latest expression of the sovereign will of the people, and as an implied modification pro tanto of the original provision of the Constitution in conflict therewith.” *City of Albuquerque*, 1979-NMSC-095, ¶ 6 (internal quotation marks and citation omitted).

{24} As we explain more fully below, the conflicting language between Article XIX, Section 1 and Article VII, Section 3 resulted from amendments to the former provision that were approved by the voters in 1996. See 1996 N.M. Laws, H.R.J. Res. 2, § 1 at 1074-76 (proposing various amendments to Article XIX). Prior to the 1996 amendments, both provisions imposed the three-fourths requirement on any amendment “to the provisions of” Article VII, Section 1. See N.M. Const. art. XIX, § 1 (1911); N.M. Const. art. VII, § 3. The amended language of Article XIX, Section 1 therefore is controlling as the most recent expression of the sovereign will of the people. See *City of Albuquerque*, 1979-NMSC-095, ¶ 6. To fully understand the meaning and effect of the 1996 amendments, we review the history of the three-fourths requirement as it has evolved to its present formulation in Article XIX, Section 1.

## 2. Article VII, Section 1 Is One of Four Provisions Intended to Protect Political and Educational Rights of Minorities

{25} The three-fourths requirement featured in the original Constitution was submitted to Congress after the constitutional convention of 1910. See *The Constitution of the State of New Mexico*, H.R. Doc. No. 1369, at 25-26, 38-39, 1911 Leg., 3d. Sess. (1911). The requirement protected four constitutional provisions from easy amendment: “sections one and three of article seven hereof on elective franchise and sections eight and ten of article twelve hereof on education . . .” H.R. Doc. No. 1369, at 39 (Article XIX, Section 1, requiring an amendment to Article VII, Sections 1 and 3 and Article XII, Sections 8 and 10 to pass with three-fourths of the votes of both houses); H.R. Doc. No. 1369, at 25-26 (Article VII, Section 3, requiring an amendment to Article VII, Sections 1 and 3 to receive at least three-fourths of the popular vote in a statewide election); H.R. Doc. No. 1369, at 35-36 (Article XII, Section 10, requiring an amendment to Article XII, Section 10 to receive at least

three-fourths of the popular vote in a statewide election).

{26} Three of the four provisions protected by the three-fourths requirement explicitly guarantee certain political and educational rights for Spanish-speakers. See N.M. Const. art. VII, § 3 (“The right of any citizen of the state to vote, hold office or sit upon juries, shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages except as may be otherwise provided in this constitution . . .”); N.M. Const. art. XII, § 8 (“The legislature shall provide for the training of teachers in the normal schools or otherwise so that they may become proficient in both the English and Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state, and shall provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and students.”); N.M. Const. art. XII, § 10 (“Children of Spanish descent in the state of New Mexico shall never be denied the right and privilege of admission and attendance in the public schools or other public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality with other children in all public schools and educational institutions of the state, and the legislature shall provide penalties for the violation of this section.”).

{27} The fourth provision protected by the three-fourths requirement—Article VII, Section 1, which is the subject of this proceeding—sets forth voter eligibility and addresses other voting-related matters. While the provision does not explicitly mention Spanish-speakers, it has always guaranteed the right to vote without reference to a person’s ability to speak, read, or write in English. See N.M. Const. art. VII, § 1 (1911) (providing in part that “[e]very male citizen . . . shall be qualified to vote at all elections for public officers”); *Witt*, 1968-NMSC-017, ¶ 39 (holding that Article VII, Section 1 was successfully amended, thereby extending the right to vote by absentee ballot and repealing the language restricting the voting rights of women and “Indians not taxed”).

{28} Scholars and historians agree that these four provisions were intended to safeguard the political and educational rights of Spanish-speaking citizens in the aspiring state. See, e.g., 2 Ralph Emerson

Twitchell, *The Leading Facts of New Mexico History*, at 587 (facsimile of original 1912 ed., Sunstone Press 2007) (observing in the new Constitution that “the Spanish-speaking citizen was so thoroughly protected in his rights”); Robert W. Larson, *New Mexico’s Quest for Statehood 1846-1912*, at 279, (The University of N.M. Press 1968) (“Constitutional safeguards of the rights of *Hispanos* were made nearly impossible to amend.”); David V. Holtby, *Forty-Seventh Star*, at 243-44 (University of Okla. Press 2012) (“The constitution also ensured the civil rights of *Nuevomexicanos* in politics and education, which made it unique among such documents and an early promoter of equality . . . [T]he constitution afforded strong protections for *Nuevomexicanos* in the use of their language, including in public affairs, in voting, and in schools.”). As one scholar has explained, “The stringent provisions regarding equality for the Spanish-speaking citizen were intended to overcome the fears and apprehensions of the native population that they might be discriminated against by the Anglo majority.” Larson, *supra*, at 279.

{29} The history surrounding New Mexico’s attempts to become a state—and the language repeatedly employed to block statehood—reveal the source of the framers’ concern for the political and educational rights of Spanish-speakers. To be sure, a number of factors delayed New Mexico’s admission to the Union as a state until 1912, including the growing controversy over slavery. See *id.* at 50-57 (describing events leading to the Compromise of 1850 in which California was admitted as a free state and New Mexico and Utah were organized as territories without reference to slavery). But from the time New Mexico was annexed to the United States in 1848 from Mexico, its “Spanish-speaking, Roman Catholic people” were the subject of prejudice and ridicule. See *id.* at 12, 303.

{30} In 1848 for example, Senator Daniel Webster of Massachusetts argued on the Senate floor that the people of New Mexico were unfit to govern themselves as a state. See Holtby, *supra*, at 4. He implored, “Have they [New Mexicans] any notion of popular government? Not the slightest. . . . It is farcical to talk of such people making a constitution for themselves.” *Id.* (internal quotation marks omitted) (omission in original) (quoting 10 Daniel Webster, *The Writings and Speeches of Daniel Webster*, at 21, 29-30, 27-28 (1903)). As support for his views, Senator Webster quoted from the writings of an Englishman who recently

had visited New Mexico and had found its people lacking: “[Nuevomexicanos] are as deficient in energy of character and physical courage as they are in all the moral and intellectual qualities. In their social state but one degree removed from the veriest savages.” Holtby, *supra*, at 4 (alteration in original). Fifty years later, aspiring Senator Albert J. Beveridge echoed these sentiments in his imperialistic “March of the Flag” speech at the Republican National Convention, describing New Mexico as having a “savage and alien population.” *Id.* at 42. Mr. Beveridge won his election and later, as chair of the Senate Committee on Territories from 1901-1911, blocked several of New Mexico’s last attempts at statehood. *Id.* at 95.

{31} In the first decade of the twentieth century, similar attitudes were on display, particularly about voting rights for the territory’s non-Anglo population. In 1906, for example, after the Republican candidate won in a closely contested election to become New Mexico’s congressional delegate, one prominent territorial newspaper accused non-Anglo New Mexicans of being under gang control and argued that they should not be permitted to vote. Holtby, *supra*, at 118-119. The paper declared that “it emphatically would remove the privilege of voting from anyone . . . whose moral nature is so low, whose intellectual capacity is so limited that it cannot exercise this privilege with intelligence, virtue, and honesty, but instead falls under the whip of the [political] party and of a partisan lackey.” *Id.* (alteration in original). The paper elaborated, “[T]here is but one race on the earth qualified by its nature to manage and govern man’s destiny—the pure Anglo-Saxon.” *Id.* Far away in the Senate, there was similar talk of adding a literacy requirement to the Enabling Act to deny the vote to Spanish-speaking New Mexicans, most of whom were presumed to be illiterate. *See id.* at 239; *see also id.* at 54 (summarizing the views of a then-leading educational expert who claimed that the illiteracy rate in the New Mexico territory circa 1900 was “scandalously high” and approaching 60 percent).

{32} Despite decades of hostility toward New Mexico’s Spanish-speaking population, Congress passed the Enabling Act for New Mexico in 1910, free from literacy tests and other measures that would have restricted the political rights of Spanish-speaking New Mexicans. *See* Enabling Act for New Mexico, ch. 310, 36 Stat. 557 (1910). New Mexico held a constitutional

convention that same fall in Santa Fe, and nearly a third of the convention’s one hundred elected delegates were native Spanish-speakers. *See* Larson, *supra*, at 274. Their influence on the final document was clear, as evidenced by the four provisions protected by the three-fourths requirement and the inclusion of the three-fourths requirement itself. *See* N.M. Const. art. VII, § 3; N.M. Const. art. XIX, § 1; *see also, e.g.*, N.M. Const. art. II, § 5 (“The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.”).

{33} Congress’s response to the proposed Constitution has been well-documented, and we need not revisit it here in detail. *See, e.g., Witt*, 1968-NMSC-017, ¶¶ 1-6 (comparing the text of Article XIX, Section 1, as originally proposed to Congress and as amended after a statewide popular vote required by Congress before New Mexico would be admitted as a state). Suffice it to say, Congress generally approved of the proposed Constitution but conditioned New Mexico’s admission on holding an election for a proposed amendment to Article XIX, Section 1 to make the general provisions of the Constitution easier to amend. *See* S.J. Res. 57, 62nd Cong. § 3, 37 Stat. 39 (1911) (enacted). Congress prescribed the language of the proposed amendment and required the ballots to be printed separately “on paper of a blue tint, so that they may be readily distinguished from the white ballots provided for the election of county and State officers.” *See id.* §§ 3, 4.

{34} But Congress’s “blue ballot” proposal did not affect the three-fourths requirement for amending Article VII, Section 1 and its sister provisions. *See id.* Indeed, the proposal arguably fortified the protections in Article XIX, Section 1 for the four protected provisions. *Compare The Constitution of the State of New Mexico*, H.R. Doc. No. 1369, at 39 (requiring an amendment to the four protected provisions to pass with the support of three-fourths of the vote of both houses) with S.J. Res. 8, 62nd Cong. (1911) (enacted) (requiring such an amendment to pass with three-fourths of the vote of both houses and three-fourths of the vote in a statewide popular election). Thus, while Congress sought to make the Constitution easier to amend in general, it respected New Mexicans’ desire to protect the political and educational rights of Spanish-speakers in the aspiring state.

*See Chase v. Lujan*, 1944-NMSC-027, ¶¶ 74-78, 48 N.M. 261, 149 P.2d 1003 (Mabry, J., dissenting) (explaining that Congress conditioned New Mexico’s admission on a popular vote to amend Article XIX, Section 1 due to concern “that we should have a more easily amended Constitution, as to all general amendments, but not to include those relating to the elective franchise, equal educational opportunities and equal right to hold office”). New Mexicans approved the amendment to Article XIX, Section 1 in November 1911, and New Mexico was admitted to the Union in January 1912 after more than six decades as a territory. *See* Proclamation No. 62, 37 Stat. 1723 (Jan. 6, 1912); *see also* Chuck Smith, *The New Mexico State Constitution, A Reference Guide* 1, 12 (Greenwood Press 1996).

### 3. The Heightened Protections for Article VII, Section 1 Proved to Be an Effective Deterrent to Amending That Section

{35} Since New Mexico became a state, the heightened protections for Article VII, Section 1 have frustrated numerous attempts to expand voting rights, despite expansions at the federal level. *See, e.g.*, U.S. Const. amend. XIX (extending the franchise to women); U.S. Const. amend. XXVI (extending the franchise to citizens over the age of 18). As early as 1920, New Mexicans made their first of many attempts to amend the Constitution to permit absentee voting. *See generally Baca v. Ortiz*, 1936-NMSC-054, 40 N.M. 435, 61 P.2d 320 (considering whether a 1920 amendment to Article VII that permitted absentee voting for members of the military was validly enacted); *see also Witt*, 1968-NMSC-017, ¶ 8 (observing that prior to 1967 “no less than ten unsuccessful attempts were made . . . to amend the constitution so as to make absentee voting possible”). The 1920 amendment was thought to have passed, but sixteen years later, this Court held that it was void “because [the amendment was] never constitutionally adopted.” *See Baca*, 1936-NMSC-054, ¶¶ 10, 13 (noting that the amendment had passed with 6,742 votes in favor and 5,069 against, or 57.08 percent of the vote, and thus had failed to satisfy the three-fourths requirement).

{36} Similar attempts to amend Article VII, Section 1 failed, not only because of the three-fourths requirement, but also because of the requirement that an amendment to that provision must receive two-thirds of the votes cast in each county. *See* N.M. Const. art. VII, § 3; N.M. Const.

art. XIX, § 1 (1911). This additional requirement was the subject of this Court's opinion in *Witt*. In that case, more than 81 percent of the voters in a statewide election had voted in favor of an amendment to Article VII, Section 1 to permit absentee voting and to repeal the provision's original language that restricted the right to vote for women and for "Indians not taxed." See *Witt*, 1968-NMSC-017, ¶¶ 2, 9, 14. Nonetheless, the amendment would have failed because despite having met the three-fourths requirement, it had not received the requisite two-thirds majority of the votes cast in every county. See *id.* ¶ 9 n.11 ("[A] change of 634 votes in twelve counties was needed to meet the requirement of Art. VII, Sec. 3, and Art. XIX, Sec. 1."). *Witt* held the two-thirds requirement to be an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment. *Witt*, 1968-NMSC-017, ¶ 20 ("Where, as here, a vote in Harding County outweighs a hundred votes in Bernalillo County, the 'one person, one vote' concept announced in *Gray v. Sanders*, [372 U.S. 368 (1963)], certainly is not met."). The amendment therefore was effective, having satisfied the three-fourths requirement by passing with more than 81 percent of the vote. See *Witt*, 1968-NMSC-017, ¶ 39.

{37} *Witt* thus left the three-fourths requirement as the sole protection against amending Article VII, Section 1 and its sister provisions. Even by itself, however, the three-fourths requirement has proven difficult to overcome. Despite numerous attempts to amend Article VII, Section 1, no proposed amendment has met the 75 percent threshold since *Witt*, including the amendments in this proceeding, which received 74.48 percent, 56.92 percent, and 57.68 percent of the votes cast in their respective elections. See also, e.g., 1973 N.M. Laws, H.R.J. Res. 31, § 1 at 2040 (proposing to amend Article VII, Section 1 by, *inter alia*, lowering the voting age to 18); N.M. Const. art. VII, § 1 compiler's notes (noting that the proposed 1973 amendment "was defeated by a vote of 25,198 for and 16,455 against").

**4. The 1996 Amendments to Article XIX, Section 1 Clarified That the Three-fourths Requirement Applies Only to Amendments That Restrict the Right to Vote**

{38} Against this historical backdrop, the Legislature created a Constitutional Revision Commission in 1993 and tasked it with reviewing the Constitution of New Mexico and other states and to recom-

mend changes "as it deems desirable and necessary." See NMSA 1978, §§ 12-15-1 to -7 (1993, expired prior to the convening of the second session of the forty-second Legislature in 1996). After completing its review, the commission recommended revisions to ten of the Constitution's twenty-four articles. See *Report of the Constitutional Revision Commission* Table of Contents (Dec. 1995) [hereinafter Report]. The recommendations were separated by importance, ranging from "Highest Priority" to "Lower Priority." See *id.* at i-iv. Significantly, all of the "Highest Priority" recommendations were directed at the "Amendment Process" set forth in Article XIX, which the commission described as "the major defect in the current constitution." Report, *supra*, at i-ii, 98.

{39} The commission recommended a number of "Highest Priority" amendments to Section 1 of Article XIX, in particular, to allow for greater flexibility in amending the Constitution. Report, *supra*, at 101 (recommending the creation of "an additional mechanism which allows substantial constitutional revision without the necessity of calling a constitutional convention"). For purposes of this proceeding, the most notable recommendation was to amend the requirements for amending Article VII, Section 1 and its sister provisions protected by the three-fourths requirement. Report, *supra*, at 102. The commission acknowledged the importance of the heightened requirements, which "stem from the historic sensitivity to minority rights which were clearly articulated in the 1910 constitution." *Id.* at 102. The commission nonetheless recommended replacing the phrase "no amendment shall apply to or affect the provisions of Sections One and Three of Article VII hereof, on elective franchise" with "[n]o amendment shall restrict the rights created by Sections One and Three of Article VII hereof, on elective franchise." Report, *supra*, 100. This change, according to the commission, "would maintain the historic rights-protection purpose of the original provision, while also allowing expansion of such rights without the restrictions of the supermajority requirement." *Id.* at 102; see also *id.* at ii (recommending an amendment to Article XIX, Section 1 "[t]o eliminate the 75 % requirement to bring about general change in voter qualifications, while preserving that important requirement for the protection of minority rights"). The commission also recommended eliminating the requirement for two-thirds of the

vote in each county, which had been held unconstitutional in *Witt*. Report, *supra*, at 102. And the commission recommended parallel amendments to Article VII, Section 3 so that the two provisions would remain consistent with each other with respect to the three-fourths requirement. Report, *supra*, at 56-57; see also *id.* at 89-90 (recommending similar revisions to Article XII, Section 10).

{40} Based on the commission's report, the Legislature submitted several proposed amendments to the voters in 1996, including Constitutional Amendment 4, a proposal to amend Article XIX for the first time since the blue ballot amendment of 1911. See 1996 N.M. Laws, H.R.J. Res. 2, § 1 at 1074-77 (proposing various amendments to Article XIX); see also *Piecemeal Amendment of the Constitution of New Mexico 1911 to 2010*, at 16, N.M. Leg. Council Serv. (18th. Rev. Apr. 2011). The amendment to Article XIX, Section 1 passed with nearly 64 percent of the vote which changed the language to: "[n]o amendment shall restrict the rights created by Sections One and Three of Article VII hereof, on elective franchise . . ." as described above. See 1996 N.M. Laws, H.R.J. Res. 2, § 1 at 76 (emphasis added); see also N.M. Sec'y of State, *Canvass of Returns of General Election Held on November 5, 1996 - State of New Mexico*, at 13, <http://www.sos.state.nm.us/uploads/files/1996%20General%20Summary.pdf> (last visited July 2017). As previously explained, the three-fourths requirement in Article XIX, Section 1 now safeguards "the rights created by" Article VII, Section 1, rather than "the provisions of" that section. The Legislature, however, did not submit to the voters the commission's recommended parallel amendments to Article VII, Section 3. The 1996 amendments to Article XIX, Section 1 thus created the disparity at issue in this proceeding.

{41} In light of the foregoing history, we hold that the 1996 amendment to Article XIX, Section 1 effectuated a deliberate, long-overdue refinement of the three-fourths requirement. The requirement continues to protect against amendments that would restrict the voting rights of any non-English speaking minority who is otherwise qualified to vote. *Accord* N.M. Const. art. VII, § 3 (providing that the right to vote "shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages" (emphasis added)); *Cf. State v.*



*Rico*, 2002-NMSC-022, ¶ 11, 132 N.M. 570, 52 P.3d 942 (“Although the state constitution speaks of an inability ‘to speak, read or write the English or Spanish languages,’ we construe the provision to require reasonable accommodation for a language barrier posed by competency only in a language other than English.”). But the requirement can no longer frustrate the will of a majority of the voters to expand the right to vote or to make other changes to general voter qualifications that do not restrict the elective franchise. Under the controlling language of Article XIX, Section 1, such an amendment requires only a simple majority of the vote to become part of the Constitution. Having clarified the intended meaning of the 1996 amendment, we consider whether the 2008, 2010, and 2014 amendments were effective.

#### E. The 2008, 2010, and 2014

##### **Amendments Did Not Restrict the Rights Created in Article VII, Section 1 and Therefore Became Effective With a Simple Majority of the Popular Vote**

#### 1. The 2008 and 2014 Amendments Were Effective

{42} The 2008 and 2014 amendments to Article VII, Section 1 were straightforward and identical. See 2008 N.M. Laws, S.J. Res. 4, § 1 at 1554; 2013 N.M. Laws H.R.J. Res. 2, § 1 at 2569. Both replaced the pronoun “he” with “the person,” consistent with the modern convention of replacing gender-specific language with gender-neutral language whenever possible. See NMSA 1978, § 2-3-13.1(C) (2013) (“Whenever current laws and other published legislative documents are the subject of a legislative request to the legislative council service for amendment or revision, the legislative council service as part of its work shall replace gender-specific language with gender-neutral language where appropriate and reasonable.”). This change is neutral with respect to the rights created in Article VII, Section 1 and therefore was validly approved by a simple majority of the voters. *Accord Witt*, 1968-NMSC-017, ¶ 14 (setting forth amendments to Article VII, Section 1, including the repeal of language that restricted the right to vote for women).

{43} More substantively, the 2008 and 2014 amendments also provided, “All

school elections shall be held at different times from ~~other~~ partisan elections.” 2008 N.M. Laws, S.J. Res. 4, § 1 at 1554; 2013 N.M. Laws, H.R.J. Res. 2, § 1 at 2569. Petitioner contends that this change allows “school elections [to] be combined with non-partisan elections, but [to] remain separate from partisan [elections].” As such, Petitioner argues that this change is neutral with respect to voting rights because it is a “scheduling matter and not a change to the elective franchise.” Amicus curiae Common Cause New Mexico agrees that the change implicates the timing of school elections. Common Cause further argues that permitting school elections to be consolidated with other non-partisan elections will improve voter turnout and participation and thereby expand access to the elective franchise.<sup>1</sup> See Zoltan L. Hajnal et al., *Municipal Elections in California: Turnout, Timing, and Competition* vii-viii (2002), [http://ppic.org/content/pubs/report/R\\_302ZHR.pdf](http://ppic.org/content/pubs/report/R_302ZHR.pdf) (last visited July 20, 2017) (concluding, based on a study of municipal elections in California, that the timing of elections affected voter turnout more than any other factor and that “a move to concurrent elections has the greatest potential to expand voter participation in California’s local political arena”). *Id.* ix. We take no position on whether improving participation by already-registered voters represents an expansion of the right to vote. Nevertheless, we are satisfied that allowing school elections to take place with other non-partisan elections, at a minimum, is neutral with respect to the rights created in Article VII, Section 1. As the 2008 and 2014 amendments did not restrict voting rights, only a simple majority was required for ratification.

#### 2. The 2010 Amendment Was Effective

{44} A close comparison of the existing language of Article VII, Section 1 with the proposed language of the 2010 amendment similarly reveals that the amendment would either expand or be neutral with respect to voter qualifications. Since Article VII, Section 1 was amended in *Witt*, the first sentence has read as follows:

Every citizen of the United States who is over the age of twenty-one years and has resided in New Mexico twelve months, in the

county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers.

N.M. Const. art. VII, § 1(A).

{45} These qualifications and exclusions are rooted in the original Constitution submitted to Congress after the constitutional convention of 1910. See *The Constitution of the State of New Mexico*, H.R. Doc. No. 1369, at 25. As such, they do not reflect significant developments in federal voting law over the past century. See, e.g., U.S. Const. amend. XXVI, § 1 (1971) (“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”); 52 U.S.C. § 10502 (1970) (providing that no United States citizen shall be denied the right to vote for President or Vice President “because of the failure of such citizen to comply with any durational residency requirement”); 52 U.S.C. § 20507(a)(3)(B) (2002) (providing that a registered voter’s name may not be removed from a state’s voter rolls except, *inter alia*, “as provided by state law, by reason of criminal conviction or mental incapacity”). Moreover, the terms used to exclude otherwise-qualified voters are outdated and do not provide clear constitutional standards. Terms like “infamous crime[s]” and “idiots [and] insane persons” are of little help in determining who should be permitted to vote. See *Carroll v. Cobb*, 354 A.2d 355, 359 (N.J. Super. Ct. App. Div. 1976) (“[I]t should be abundantly evident that a lay person is completely unequipped to determine whether an applicant is either an ‘idiot’ or an ‘insane person,’ . . . and thus disenfranchised. Indeed, we suspect that those imprecise terms may be troublesome to experts in the fields of psychiatry or psychology.”). Worse still, the latter are deeply offensive by modern standards to describe individuals who suffer from a mental illness or disability.

{46} The 2010 amendment therefore proposed to “modernize” the first sentence of Article VII, Section 1 by rewriting it as follows:

<sup>1</sup>Common Cause New Mexico is a self-described “non-partisan, grassroots organization dedicated to fair elections and making government at all levels more democratic, open, and responsive to the interests of all people.” They persuasively demonstrate that voter turnout over the past decade in Albuquerque, Las Cruces, and Santa Fe has been far lower at school elections than at non-partisan municipal elections.

Every person who is a qualified elector pursuant to the constitution and laws of the United States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity, being limited to only those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference.

See 2010 N.M. Laws, S.J. Res. 6 at 1229 (“Proposing an Amendment to Article 7, Section 1 of the Constitution of New Mexico to Modernize Language on Qualified Electors by Removing Language Denigrating Persons With Developmental Disabilities, Adopting Federal Requirements to Vote, Defining Mental Incapacity for Voting Purposes and Restricting Felons From Voting Except as Restored by Statute.”). If effective, the amendment would extend the right to vote to those who (1) are qualified electors under the Constitution and laws of the United States, (2) are citizens of the United States, and (3) meet residency and registration requirements as provided by law. The amendment would exclude an otherwise-qualified voter who is restricted by statute from voting because the voter (1) is a convicted felon or (2) lacks mental capacity, limited to an inability to mark one’s ballot and to communicate one’s voting preference.

{47} By modernizing the language in Article VII, Section 1, the 2010 amendment would simplify a confusing web of federal and state laws regarding voter qualifications. In doing so, the amendment would expand, or at least would not restrict, the right to vote in several ways. First, the amendment would align the right to vote under the New Mexico Constitution with federal voting laws. The practical effect of such an alignment would be minimal because federal law already supersedes Article VII, Section 1 to the extent that federal law is more expansive. See U.S. Const. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land . . .”). But the change would eliminate confusion that may result from inconsistencies between the antiquated language of Article VII, Section 1 and other controlling law. *Com-*

*pare* N.M. Const. art. VII, § 1 (limiting the right to vote to a citizen “over the age of twenty-one”) with U.S. Const. amend. XXVI, § 1 (“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”).

{48} Second, the amendment would recognize the right of the legislative and executive branches to craft laws to define and expand the right to vote. Currently, any state law that would expand voting qualifications beyond Article VII, Section 1 must be based in federal law. See, e.g., Uniform Military and Overseas Voters Act, NMSA 1978, §§ 1-6B-1 to -17 (2015) (setting forth procedures for complying with the federal Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 928-29 (1986)). The amendment would permit voting rights to be expanded via the legislative process without having to wait for a change in controlling federal law.

{49} And third, the amendment would shift to the legislative and executive branches the authority to define the circumstances under which an otherwise qualified voter may be excluded from voting as a result of a felony conviction or mental incapacity. In doing so, the amendment would eliminate the exception in Article VII, Section 1 for a person convicted of an “infamous crime,” and would provide a more precise—and far-less offensive—description of who may be excluded due to mental incapacity. These changes would empower the political branches to define the voting rights of convicted felons and mentally incapacitated individuals, consistent with the narrower restrictions of the amended constitutional provision.

{50} None of these changes would restrict the right to vote as previously set forth in Article VII, Section 1. We therefore conclude that the 2010 amendment was effective, having passed with more than 50 percent of the popular vote.

### 3. Article VII, Section 1, as Amended, Incorporates the 2010 and the 2014 Amendments

{51} As a final matter, we clarify that Article VII, Section 1, as amended through this proceeding, incorporates both the 2010 and the 2014 amendments. We emphasize the point to avoid confusion about the effect of the 2014 amendments, which were approved by the voters with the amended language about the timing of school elections *and* with the pre-2010

language about voter qualifications in the first sentence of Article VII, Section 1. See 2013 N.M. Laws, H.R.J. Res. 2, § 1 at 2569. Taken in context, the most sensible explanation for including the pre-2010 language in the 2014 amendment is the Compilation Commission’s failure to compile the 2010 amendment. But an alternate reading of the 2014 amendment could lead to the conclusion that the Legislature—or perhaps even the voters—intended to repeal the 2010 amendment and restore the previous language about voter qualifications. We therefore clarify that the 2014 amendment had no effect on the 2010 amendment.

{52} Under well-established law, the 2014 amendment, which was initiated by the Legislature, could not have amended the language about the timing of school elections *and* repealed the 2010 amendment without being submitted separately to the voters. See N.M. Const. Art. XIX, § 1 (“If two or more amendments are initiated by the legislature, they shall be so submitted as to enable the electors to vote on each of them separately.”); see also *State ex rel. Clark v. State Canvassing Bd.*, 1995-NMSC-001, ¶ 8, 119 N.M. 12, 888 P.2d 458 (“The purpose of this provision [in Article XIX, Section 1] is to prevent the abusive practice of ‘logrolling’ . . .”).

{53} Moreover, even if the two amendments could have been submitted as a single ballot question, the 2014 amendment did not suggest to the voters that the amendment was intended to affect anything but the timing of school elections. See 2013 N.M. Laws, H.R.J. Res. 2 at 2569 (“A Joint Resolution Proposing to Amend Article 7, Section 1 of the Constitution of New Mexico to Provide That School Elections Shall Be Held at Different Times From Partisan Elections”). Without such notice, the effect of the 2014 amendment was limited to the timing of school elections. Cf. *Clark*, 1995-NMSC-001, ¶ 25 (“[A] ballot title should be intelligible, and impartial . . . [and] complete enough to convey an intelligible idea of the scope and import of the proposed law[,] and be free from any misleading tendency whether of amplification, of omission, or of fallacy.” (alteration in original) (internal quotation marks and citation omitted))).

{54} We therefore ordered Respondent to advise and approve the compilation of Article VII, Section 1 to include both amendments as follows:

A. Every person who is a qualified elector pursuant to the constitution and laws of the United States

and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference. The legislature may enact laws providing for absentee voting by qualified electors. All school

elections shall be held at different times from partisan elections.

B. The legislature shall have the power to require the registration of the qualified electors as a requisite for voting and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot and the purity of elections and guard against the abuse of elective franchise. Not more than two members of the board of registration and not more than two judges of election shall belong to the same political

party at the time of their appointment.

*State ex rel. League of Women Voters v. Advisory Comm. to the N.M. Compilation Comm'n, writ granted*, No. 35,524 (Sept. 21, 2016).

### III. Conclusion

{55} IT IS SO ORDERED.

PETRA JIMENEZ MAES, Justice

### WE CONCUR:

JUDITH K. NAKAMURA,

Chief Justice

EDWARD L. CHÁVEZ, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice



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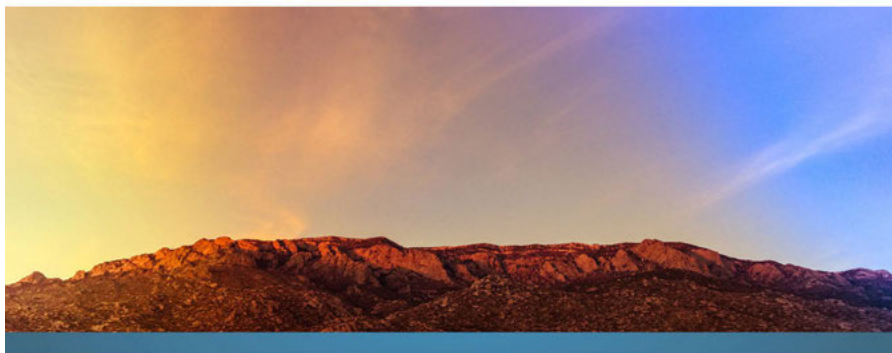


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Ms. Jones earned her bachelor's degrees in Psychology in 2008 and Philosophy in 2009 from University of New Mexico and her Doctor of Jurisprudence in 2014 from Temple University Beasley School of Law.

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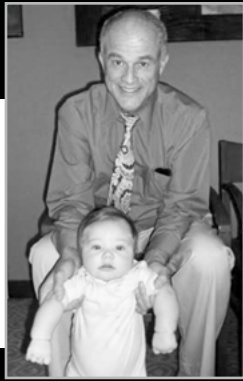
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#### Staff Attorney-Public Benefits

New Mexico Center on Law and Poverty ([www.nmpovertylaw.org](http://www.nmpovertylaw.org)) seeks full-time staff attorney for our Public Benefits Team to enhance our work with low income New Mexicans to address hunger and secure fundamental fairness in the administration of the public safety net. Required: Law degree and license; minimum three years of civil litigation experience; excellent research, writing, and legal advocacy skills; 'no-stone-unturned' thoroughness and persistence; leadership; ability to be articulate and forceful in the face of powerful opposition; commitment to economic and racial justice in alignment with the mission of the NM Center on Law & Poverty. Preferred: experience with advocacy seeking systemic fairness in the administration of government benefit programs or in related institutional contexts; experience working with diverse community groups and other allies; familiarity with poverty law; Spanish fluency. Varied, challenging, rewarding work. Good non-profit salary. Excellent benefits. Balanced work schedule. Apply in confidence by emailing a resume and a cover letter describing your interests in social justice to [veronica@nmpovertylaw.org](mailto:veronica@nmpovertylaw.org). Please put your name in the subject line. EEOE. People with disabilities, people of color, former recipients of public assistance, or people who have grown up in poverty are especially encouraged to apply.

#### Hearing Officer or Judge *Pro Tempore* Services

The Thirteenth Judicial District Court is requesting proposals (RFP) #2018-0002-1 for Hearing Officer or Judge *Pro Tempore* Services in Cibola County. This is the first amendment to RFP 2018-0002. The full RFP can be found at: <https://thirteenth-districtcourt.nmcourts.gov> This RFP was initially issued on August 25, 2017, and the amendment issued on September 20, 2017. The deadline for submissions is October 25, 2017 at noon (12:00 pm) MST. Offerors who submitted proposals under RFP 2018-0002 need not resubmit to be considered under this amendment. All questions should be directed to Karl Reifsteck at [berdkwr@nmcourts.gov](mailto:berdkwr@nmcourts.gov) or by calling 505-865-2404.

#### Associate Attorney

Holt Mynatt Martínez, P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking two associate attorneys with 1-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pre-trial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Prefer attorney licensed in New Mexico and Texas but will consider applicants only licensed in Texas. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to [bb@hmm-law.com](mailto:bb@hmm-law.com).

#### Attorney Associate

The Bernalillo County Metropolitan Court is accepting applications for a full-time Associate Attorney position in the Office of General Counsel. Education/Experience: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the state of New Mexico; and have at least three years' experience in the practice of law. Salary: \$28,128 to \$35,160 hourly DOE plus State of NM benefits package. A complete copy of the job description is available at <https://metro.nmcourts.gov> or may be obtained in the Human Resource office of the Metropolitan Court. Apply at or send application/resume with a legal writing sample to the Bernalillo County Metropolitan Court, H. R. Division, P.O. Box 133, Albuquerque, NM 87103. Applications/Resume must be submitted by October 27, 2017.



### Associate Attorney

The Sanders Law Firm in Roswell, NM is seeking a New Mexico licensed associate attorney interested in practicing in the areas of general civil litigation and family law with an emphasis in family law in our Roswell, NM office. Please send your cover letter, resume, law school transcript, writing sample and references to amh@sbcw.com. All inquiries will be kept confidential.

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### NMLA Managing Attorney position available in Albuquerque

New Mexico Legal Aid is seeking a Managing Attorney for our main office in Albuquerque. The position will help lead NMLA's advocacy efforts throughout central New Mexico. The Managing Attorney will supervise and mentor attorneys, paralegals and other staff and volunteers; handle administrative duties; and handle cases as sole counsel or co-counsel for low-income individuals and families in a wide variety of poverty law areas including family law, housing, public benefits, and consumer issues. Requirements: Minimum five years as a licensed attorney; prior experience in administrative and supervisory roles preferred. Must be willing to travel. Must be able to effectively use computer technology and remote communications systems. Candidates also must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a caseload and build collaborative relationships within the staff and the community. Proficiency in Spanish is a plus. Send a current resume, three references, and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org. Salary: DOE, NMLA is an EEO Employer. Application Deadline: November 3rd, 2017.

### NMLA seeks staff attorneys for LGBTQ advocacy project

New Mexico Legal Aid, with special funding from the U.S. Dept. of Justice's Office of Violence Against Women, seeks two staff attorneys for a new project to assist LGBTQ victims of domestic violence, sexual assault and stalking. The positions will be based in Albuquerque and in Gallup, NM. This project will use innovative legal strategies and collaborative community partnerships to serve LGBTQ victims statewide, especially in underserved rural and tribal communities. Funding for the project is expected to continue for at least three years. The attorneys will handle a variety of cases, especially including family law cases, but also potentially including housing law, consumer issues, public benefits cases and other issues. The attorney will be active in local bar and community activities, and will participate in community education and outreach to eligible clients and community partner agencies. We are looking for highly motivated candidates who are passionate and strongly committed to helping NMLA better serve LGBTQ clients, including development of effective team strategies to handle complex advocacy and extended representation cases. Requirements: Candidates must be licensed in New Mexico or eligible for admission by examination or licensed in another state and eligible for reciprocity admission or for a New Mexico legal aid providers limited license. Candidates must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a significant caseload and build collaborative relationships within the staff and the community. Must be willing to travel. Proficiency in Spanish is a strong plus. Send a current resume and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org. Salary: DOE, NMLA is an EEO Employer. Deadline: October 25th, 2017.

### Assistant County Attorney

Dona Ana County is seeking an Assistant County Attorney who will perform internal counseling duties such as draft ordinances, review contracts, consult in matters of potential liability, attend public meeting and hearings on behalf of the Board of County Commissioners, County Manager, elected officials, department directors, and other appointed boards and commissions and defends and/or represents the county in limited litigation matters. The full job description and application procedures can be found at <https://careers-donaanacounty.icims.com>

### NMLA staff attorney position available in Las Cruces

New Mexico Legal Aid seeks a staff attorney to be based in Las Cruces, NM. The attorney will handle a variety of cases in Las Cruces and other southern New Mexico communities, especially including family law cases, but also potentially including housing law, consumer issues, public benefits cases and other issues. Requirements: Candidates must be licensed in New Mexico or eligible for admission by examination or licensed in another state and eligible for reciprocity admission or for a New Mexico legal aid providers limited license. Candidates must possess excellent written and oral communication skills, the ability to manage multiple tasks, manage a significant caseload and build collaborative relationships within the staff and the community. Must be willing to travel. Proficiency in Spanish is a strong plus. Send a current resume and a letter of interest explaining what you would like to accomplish if you are selected for this position to: jobs@nmlegalaid.org. Salary: DOE, NMLA is an EEO Employer. Deadline: October 25th, 2017.

### Assistant City Attorney Position

City of Albuquerque Legal Department Assistant City Attorney position available within the Employment/Labor Law Section of the Litigation Division with desired experience in civil litigation, handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking an attorney with an interest in defending employment and labor law matters within a positive team environment. Salary will be based upon experience. Please submit resume to the attention of "Litigation-Emp. Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant, P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov, no later than Friday, October 27, 2017.

### Assistant City Attorney Position

City of Albuquerque Legal Department Assistant City Attorney position available within the Litigation Division with desired experience in civil litigation, handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking an attorney with an interest in defending civil rights, personal injury, and premises liability cases within a positive team environment. Salary will be based upon experience. Please submit resume to the attention of "Litigation Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant, P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov, no later than Friday, October 27, 2017.

### Communications Assistant

The State Bar of New Mexico seeks a FT Communications Assistant to assist with writing and design tasks. Successful applicants will have excellent writing skills as demonstrated in application materials and experience with Adobe InDesign or a proven history of learning new software and programs. Proficiency with Microsoft Word, Excel, and Outlook is required. Ideal candidates will have strong copyediting skills, experience with uniform writing styles (AP), and familiarity with Adobe InDesign. Email cover letter, resume, and 2 writing samples to [hr@nmbar.org](mailto:hr@nmbar.org). Full description at [www.nmbar.org/Nmstatebar/About\\_Us/Career\\_Center.aspx](http://www.nmbar.org/Nmstatebar/About_Us/Career_Center.aspx). EOE.

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Small solo firm seeks motivated individual for a position in Ruidoso or Alamogordo. Certificate in paralegal studies preferred. To apply, please submit a resume to: [team@truittlegalgroup.com](mailto:team@truittlegalgroup.com)

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### Navajo Law CLE on Dec. 1

Sutin, Thayer & Browne law firm will host its annual Navajo Law CLE on December 1 at Sheraton Albuquerque Uptown. The non-profit CLE offers 8 credits (including 2 ethics credits) applicable to the Navajo Nation Bar and the State Bar of New Mexico. Details at [sutinfirm.com/news](http://sutinfirm.com/news).

### Search for Will:

Decedent: Rose Gish; Place of Residence: Santa Fe, NM; DOD: 9/19/17; Age: 85; If located, please contact Mary Ann Green, Attorney At Law, 505-254-0600.

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