

# BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

November 8, 2017 • Volume 56, No. 45



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

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

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See page 7.

## CLE Planner

*Upcoming programming  
from the  
Center for Legal Education*

**Specialized Areas of Law**

**FOR  
LAWYERS AND  
PARALEGALS**

*Annual Paralegal  
Division CLE*

**Friday, December 1, 2017**

**8:30 am to 4:15 pm**

– 5.0 GENERAL AND 1.0 ETHICS/PROFESSIONALISM CREDITS –  
*Approved for credit for paralegals and for attorneys.*

\$99 Non-members not seeking CLE credit

\$189 Paralegal Division Members

\$249 Government and legal services attorneys

\$279 Standard and Webcast fee

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Brought to you by the Paralegal Division, this year's annual institute is not only for paralegals, but attorneys alike! Topics include family law matters, immigration law, intellectual property, eDiscovery and much more

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For more information and to register, contact the Center for Legal Education at  
[www.nmbar.org/cle](http://www.nmbar.org/cle), [cleonline@nmbar.org](mailto:cleonline@nmbar.org) or 505-797-6020.





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## Meetings

### November

8

#### Taxation Section Board

11 a.m., teleconference

8

#### Children's Law Section Board

Noon, Juvenile Justice Center

9

#### Elder Law Section Board

Noon, State Bar Center

9

#### Public Law Section Board

Noon, Montgomery & Andrews, Santa Fe

14

#### Bankruptcy Law Section Board,

Noon, U.S. Bankruptcy Court

14

#### Committee on Women and the Legal Profession

Noon, Modrall Sperling, Albuquerque

14

#### Appellate Practice Section Board

Noon, teleconference

17

#### Family Law Section Board

9 a.m., teleconference

17

#### Indian Law Section Board

Noon, State Bar Center

17

#### Immigration Law Section Board

Noon, State Bar Center

## Workshops and Legal Clinics

### November

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

16

#### Common Legal Issues for Senior Citizens Workshop

10–11:15 a.m., Chaves County J.O.Y. Center,  
Roswell, 1-800-876-6657

17

#### Common Legal Issues for Senior Citizens Workshop

10–11:15 a.m., First Judicial District Court  
Jury Room, Santa Fe, 1-800-876-6657

### December

1

#### Civil Legal Clinic

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

6

#### Civil Legal Clinic

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

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



# Notices

## COURT NEWS

### New Mexico Supreme Court Board of Legal Specialization Comments Solicited

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

*Federal Indian Law*  
David Gomez

*Family Law*  
Kathrin Kinzer-Ellington

*Family Law*  
Jessica C. Roth

### 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.

### New Mexico Court of Appeals Investiture of Judge Emil J. Kiehne

The New Mexico Court of Appeals invites members of the legal profession to attend the investiture of Judge Emil J. Kiehne at 4 p.m., Nov. 8, at the New Mexico Court of Appeals, Pamela B. Minzner Law Center, 2211 Tucker NE, Albuquerque, NM 87106. Park in the "L" or "M" lot near the Courthouse. A reception will follow the ceremony at 5:30 p.m. at Modrall Sperling, 500 Fourth Street, NW, Sixth Floor.

## Professionalism Tip

### With respect to parties, lawyers, jurors, and witnesses:

I will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications.

### First Judicial District Court Mass Reassignment

Effective Nov. 1 a mass reassignment of all Division II cases previously assigned to Judge Sarah M. Singleton except cases:

1. D101CV200300668
2. D101CV201300014
3. D101CV201302328
4. D101CV201400793
5. D101CV201402535
6. D101CV201501232
7. D101CV201600290
8. D101CV201600603
9. D101CV201602176
10. D101CV201700176

will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. Hon. Gregory S. Shaffer has been appointed to fill the vacancy in Division II of the First Judicial District. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Nov. 15 to challenge or excuse Judge Gregory S. Shaffer pursuant to Rule 1-088.1.

### 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 regarding 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.

### U.S. District Court for the District of New Mexico Court Closure

The U.S. District Court for the District of New Mexico will be closed Nov. 23-24 for the Thanksgiving holiday. Court will resume on Monday, Nov. 27. After-hours access to CM/ECF will remain available as regularly scheduled. Stay current with the United States District Court for the District of New Mexico by visiting the Court's website at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov).

### Notice to Federal Bench and Bar Association Members

The following is the Federal Bench & Bar Association's 2018 projected expenditure plan: WiFi at Domenici, 421 Gold, Campos and Las Cruces Courthouses—\$10,000.00; Santa Fe Attorney Lounge copier/printer/fax annual maintenance/supplies—\$800; Albuquerque copier/printer/fax annual maintenance/supplies—\$700; Las Cruces copier/printer supplies—\$200; software maintenance/upgrades (security)—\$300; court ceremonies—\$6,000; WiFi at 500 Gold for Bankruptcy Court—\$650; Federal Bar seminars and training—\$20,000; Bench and Bar WiFi at all courthouse annual maintenance—\$14,000; hospitality baskets for visiting judges—\$1,500; dry cleaning of visiting judges' robes—\$150; administrative costs (consumable mailing supplies, check stock, etc.)—\$400; senior judge portraits—\$28,000. To access this report, see the "Attorney Information" page on the Court's web site at [www.nmd.uscourts.gov/](http://www.nmd.uscourts.gov/).

## STATE BAR NEWS

### Attorney Support Groups

- 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#.

- Dec. 4, 5:30 p.m.  
First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)  
For more information, contact 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.

### **Real Property, Trust and Estate Section Division Meetings Open to Section Membership**

To more effectively promote its activities, the Real Property, Trust and Estate Section established two divisions in 2014: the Real Property Division and the Trust and Estate Division. The RPTE Board of Directors overseeing the divisions will meet on the following dates: Real Property Division: noon-1 p.m., Dec. 6, during the Real Property Institute; Trust and Estate Division: 8-8:30 a.m., Nov. 16, during the Probate Institute. At the meetings, members will be updated about recent rule changes and brainstorm activities for the remainder of 2017 and beginning of 2018. Meals will be provided during the meetings. R.S.V.P. to Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org). If you cannot attend the meeting but would like to provide suggestions of what you would like to see from the divisions this year, or have questions generally, contact Real Property Division Chair Charles Price at [cprice@cpricelaw.com](mailto:cprice@cpricelaw.com) or Trust and Estate Division Chair Greg MacKenzie at [greg@hurleyfirm.com](mailto:greg@hurleyfirm.com).

### **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 55 years of age or older and who have practiced law for 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.

### **Attorney Memorial Scholarship Reception**

Four 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.

### **Solo and Small Firm Section Fall Speaker Series Line-up**

The Solo and Small Firm Section's monthly luncheon presentations on unique law-related subjects continue on Nov. 21 with Eric Sirotkin. He will explain how his principle of non-violent advocacy developed from his work with Truth Commissions in both South Africa and South Korea, and peacebuilding across the DMZ in North Korea, can be applied to create a healthier and more successful law practice. On Jan. 16, 2018, Mark Rudd, former UNM associate professor and social activist, will speak about political movements over the last 50 years and the effects (if any)



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on American and international law. Both presentations will take place from noon-1 p.m. at the State Bar Center. Contact Breanna Henley at [bhenley@nmbar.org](mailto:bhenley@nmbar.org) to R.S.V.P.

### **UNM SCHOOL OF LAW**

#### **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)	
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### **Women's Law Caucus**

#### **Justice Mary Walters**

#### **2018 Honoree Nomination**

Each year, the Women's Law Caucus at the University of New Mexico School of Law chooses an outstanding woman in the New Mexico legal community to honor in the name of former Justice Mary Walters, who was the first woman appointed to the New Mexico Supreme Court. The Women's Law Caucus is currently soliciting nominations for the 2018 recipient of the Award. To nominate an inspiring woman, submit the following information to Erin Phillips at [phillier@law.unm.edu](mailto:phillier@law.unm.edu) by Dec. 1. Include: nominee name and firm/organization/title; a description of why that person should receive the award; if that nominee is chosen, would you be willing to introduce them; and the nominator's name and email/phone so we can contact you for more information.

## OTHER BARS

### **Albuquerque Bar Association Raise a Glass: Honoring the Women of the Bar**

Join the Albuquerque Bar Association for the 2017 Raise a Glass Wine Pairing. Enjoy food and conversation as the Albuquerque legal community gathers to honor the female presidents of the Albuquerque Bar Association. Spread across the venue, four courses of pairings are thoughtfully curated to accentuate the notes in the wine and create a social atmosphere. Guests will have the chance to walk away with an enticing bottle for their enjoyment from the wine pull. The event is at 6 p.m., Nov. 11, at the Hyatt Regency Albuquerque. Individual tickets, tables and sponsorships are available. R.S.V.P. to 505-842-1151 or tbeckmann@abqbar.org.

### **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 Trial Lawyers Foundation Negotiation, Mediation and Settlement Seminar**

The New Mexico Trial Lawyers Foundation presents a seminar, "Negotiation, Mediation and Settlement" (5.2 G, 1.0 EP) on Nov. 17 at the Albuquerque Marriott Pyramid North Hotel. To register, call 505-243-6003 or visit [www.nmtla.org](http://www.nmtla.org).

### **New Mexico Women's Bar Association Nominations Open for Board of Directors**

Elections for two year terms, beginning January 2018, for the New Mexico Women's Bar Association will be held on Nov. 17. The Board invites interested members of the association to apply with a short letter of interest and résumé. Send the letter and résumé to the WBA at [nmwba1990@gmail.com](mailto:nmwba1990@gmail.com). Board members are expected to attend an overnight retreat Jan. 20-21, 2018; to attend bi-monthly meetings, in person or by phone; to actively participate on one or more committees; and to support the events sponsored by the Women's Bar Association. The New Mexico Women's Bar does not discriminate on the basis of sex or gender and encourages all licensed attorneys to become members and apply to be on the Board. For more information about the Women's Bar Association or to become a member, visit [www.nmwba.org](http://www.nmwba.org).

## OTHER NEWS

### **Center for Civic Values Animas High School Seeks Attorney Coach**

Animas High School in Animas, N.M., 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 [kristen@Civicvalues.org](mailto:kristen@Civicvalues.org).

### **State of New Mexico Workers' Compensation Administration Notice of Destruction of Records**

In accordance with NMAC 11.4.4.9 (Q)-Forms, Filing and Hearing Procedures: Return of Records—the New Mexico Workers' Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2011, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE, Albuquerque, NM, 87106 and can be picked up until Nov. 30. For further information, contact the Workers' Compensation Administration at 505-841-6028 or 1-800-255-7965 and ask for Heather Jordan, clerk of the court. Exhibits and depositions not claimed by the specified date will be destroyed.



STATE BAR  
of NEW MEXICO

# Board of Bar Commissioners Election 2017

Voting in the 2017 election for the State Bar of New Mexico Board of Bar Commissioners will begin Nov. 9 and close at noon on Nov. 30. Voting will be conducted electronically (see page 10).

Voting  
begins online  
Nov. 9.

There are two open positions in the **First Bar Commissioner District (Bernalillo County)**. Three candidates submitted nomination petitions for the two positions, so there will be a contested election in that district. There are two open positions in the **Sixth Bar Commissioner District (Chaves, Eddy, Lea, Lincoln and Otero counties)**. Three candidates submitted nomination petitions for the two positions, so there will be a contested election in that district.

There were two open positions in the **Third Bar Commissioner District (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties)**. One nomination petition was received from Elizabeth J. Travis, so she will be elected by acclamation. The Board will appoint a member from that district to fill the other position at the February meeting.

## First Bar Commissioner District Candidates

### Shavon M. Ayala



#### Biography

My practice caters to the entrepreneurial and nonprofit communities, both of which, I am passionate about serving. Through serving businesses, with a focus on entity, contracts, tax considerations, and intellectual property needs, as well as serving the individuals behind these organizations, by way of Estate Planning, I have gotten to know and serve our local community in unique ways. Most recently,

I've enjoyed venturing beyond direct client involvement, by joining the labs in our state, the city, the UNM School of Business and a number of entrepreneurial focused and lead organizations, as a contributor of the Tech Navigator Program, to assist local entrepreneurs in commercialization of their technology and in getting their innovations to market. It seems to me, we all have something to offer the communities around us, and if chosen as a representative for the First District, I look forward to serving the legal community and community in general, and the State Bar as well.

#### 1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

Issues I consider to be of increasing importance, that we as a profession and a Bar can more fully address going forward, are, technological advancement in the legal industry, and community contribution by way of skill and knowledge based aid, from the legal profession to the public.

As attorneys, our perspective and ability to discern what the issues are in a given situation, is unique. With critical thinking

being valued less and less in today's culture in general, and since it is unlikely much societal support and clarity, would or could be offered by another source, the legal profession could be of great value to the public, by contributing from its knowledge-base and skill set in this regard.

#### 2. Do you think the State Bar is fulfilling its mission and objectives?

The Bar is fulfilling its purpose and objectives, and is staying true to its mission of "being a united and inclusive organization serving the legal profession and the public," and I believe we and the public, both, would benefit from adjusting or expanding our focus in these areas, as we adapt to the increased pace around us and consider what is to come, and how best to serve the legal community and public with that in mind, as we move forward.

#### 3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

This past year, as a member of the Business Law Section Board, I've served on committees related to legislation, CLEs, and currently, head our committee working on an event with the Employment and Labor Law Section and DWFS for Small Business Employers, and have had the pleasure of co-presenting on the topic of Technology and the Law at the Annual Meeting—Bench & Bar Conference and the Tax Symposium, and look forward to presenting on this topic, and its practical application at the Business Law Institute. I've been active in Christian Legal Aid since October of 2015, and most recently, have been appointed as Chair of the State Bar Law Related Education Committee, which has facilitated a collaboration with the State Bar of Texas for the benefit of New Mexico students.

*BBC election information is continued on the next page.*



## Aja N. Brooks



### Biography

Aja Nicole Brooks, Esq. is a native New Mexican, born in Hobbs, New Mexico. She is a graduate of Wake Forest University in Winston-Salem, North Carolina where she received her Bachelor of Arts in English and Spanish. She attended the University of New Mexico School of Law and graduated with her juris doctorate in 2008. Thereafter, she worked as a criminal defense attorney in Albuquerque for

the Law Office of the Public Defender in its metropolitan and felony divisions from 2008 until 2014. She is currently employed as the statewide Pro Bono Coordinator for New Mexico Legal Aid's Volunteer Attorney Program. Aja is involved in many State Bar activities, and is the treasurer of the New Mexico Black Lawyers Association, a member of the National Bar Association, and a board member of both the Women's Bar Association and Pegasus Legal Services for Children.

### 1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

The main reason that I ran for the Board of Bar Commissioners three years ago was to ensure that the Board was always aware of how poverty affects our state and profession. I have enjoyed my three years on the Board, and have worked with my fellow Commissioners to make pro bono opportunities available to those who cannot afford legal services. Unfortunately, our state is still one of the poorest in the nation, and we must continue to

work to bridge the justice gap. I hope to continue this work and also would like to focus on specific issues like bar passage rates, compensation disparities between women and men, and diversity issues if I am reelected.

### 2. Do you think the State Bar is fulfilling its mission and objectives?

Before I joined the Board three years ago, I knew that the State Bar's mission was "to be a united and inclusive organization serving the legal profession and the public," however I had no personal knowledge of the inner workings of how this was achieved. I can tell you, after serving on the Board and getting to know the State Bar staff, it's Executive Director, and my fellow Commissioners, everyone strives very, very hard to fulfill this mission. However, there is always room for improvement! Geographically, our state is huge and it's important to make sure all communities, not just our "urban" centers, feel included.

### 3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I have been active in the State Bar since becoming a member in 2008. I am in the Young Lawyers Division, and have been involved in its Mentorship and Constitution Day Programs. I am a Bridge the Gap mentor, and was on the Curriculum Committee that revamped the program in 2015. I am on the State Bar's Committee on Diversity in the Legal Profession, and its Legal Services and Programs Committee. I am the BBC liaison for the Supreme Court's Code of Professional Conduct Committee. With regards to voluntary bar organizations, I currently serve as the treasurer of the New Mexico Black Lawyers Association, am a member of the National Bar Association, and am on the board of the New Mexico Women's Bar Association.

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## Robert Lara



### Biography

Robert Lara is an experienced attorney practicing in the areas of domestic relations, administrative and election law. Mr. Lara has practiced on behalf of federal and state government agencies, non-profit groups, political organizations, and private clients. Mr. Lara currently has his own private law practice focusing on domestic relations and political consulting. Robert Lara has been honored

by the State Bar of New Mexico for his work at the 3rd Judicial District Court's Self-Help Center with the 2016 Outstanding Legal Program of the Year. He is a 2007 graduate of the University of New Mexico School of Law and was honored with the Dean's Award for Service to the Law School Community. Robert Lara received his undergraduate degree in Political Science from the University of Texas at El Paso. When not in the courtroom or the campaign trail you will find him on triathlon course or behind a DJ turntable.

### 1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

The State Bar needs to address the quality of life balance for attorneys and the quality of practice for the profession. Our profession has one of the highest rates of illness, stress, and drug abuse. The State Bar needs to focus on these issues and provide our members with the resources to help attorneys to recognize and combat these issues so they may achieve and maintain a healthy work/life balance. Additionally, the practice of law is under assault by an overstretched Court docket, underfunded legal services, and rising business costs. The State Bar needs to work with our legislature to ensure that the necessary funding is available to ensure due process and that the business of the practice of law is encouraged by our legislators.

### 2. Do you think the State Bar is fulfilling its mission and objectives?

The State Bar has changed dramatically since I was sworn in 2009. The State Bar has expanded its outreach and operations in both the Albuquerque/Santa Fe area and to our outlying districts. Everyone, including the State Bar staff, wishes they could do more for the profession however they make an excellent use of the resources we have available to reach out to law students, attorneys, and judges in a variety of ways. CLE's, service projects, legal clinics; the list goes on. The most important thing is that New

Mexico attorneys feel connected to the State Bar and are aware of the resources available to them, that is an ongoing effort but one the State Bar is more successful at each day.

**3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?**

I have been a board member for the New Mexico Young Lawyers Division since 2010 and have chaired our Student Essay Contest, Summer Fellowship, and Annual CLE. I have also coordinated

the "Lunch with a Judge" and Wills for Heroes service projects, including having record turnout for our 2016 event. Additionally, I was privileged to assist the State Bar Foundation and fundraise for the 2009 Justice for All Ball. I have served as Treasurer for the New Mexico Hispanic Bar association for two terms and was a board member from 2011-2015. Finally, I served from 2009-2017 as a Board Member for Phi Alpha Delta Law Fraternity, International an organization dedicated to service to the law school, law students, the legal profession and our community.

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## Sixth Bar Commissioner District Candidates

### Erinna "Erin" Atkins



#### Biography

Erinna "Erin" Atkins practices law with her father, S. Bert Atkins, in Alamogordo. Specializing in criminal defense, family law, and children's law, she proudly also serves as the Guardian ad Litem in abuse and neglect cases and mental health guardianships. Atkins is active in her local community, serving as the vice-chair of the Legal Education Committee for NMSU-Alamogordo, a board

member of the Young Lawyers Division, the Children's Law Section, the Twelfth Judicial District Pro Bono Committee, the New Mexico Commission for Community Volunteerism, Alamogordo Municipal Labor Board, a state-wide non-profit service organization, and as the substitute Adult Drug Court Judge. Atkins was awarded the 2016 Young Lawyer of the Year Award for the Twelfth Judicial District, nominated for the 2016 State Bar Young Lawyer of the Year Award, and is a 2009 graduate of the University of New Mexico School of Law. She has been a Bar Commissioner since 2016.

**1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.**

I believe that pro bono and volunteer services provide much needed assistance to our elderly, indigent, and veteran members of our State. The State Bar should continue to support the strong work of the legal resources and pro bono committees and organizations and encourage outreach to rural areas. I continue to be supportive of the great work that is done by the Judges and

Lawyers Assistance Program and I believe that the State Bar should continue to invest in funding and structuring that program, providing services and intervention when needed. I am active in my local Bar Association and diligently work to present information to and from the Board of Bar Commissioners to my District.

**2. Do you think the State Bar is fulfilling its mission and objectives?**

I believe the State Bar is diligently working to meet its objectives while carrying out its mission. I believe the efforts of the Board of Bar Commissioners and the State Bar staff is seen by their dedication and service and I am proud to have served on the Board this year.

**3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?**

Board of Bar Commissioners, State Bar of New Mexico, Board Member 2016-present; Young Lawyers Division, State Bar of New Mexico, Board Member 2013-present; Children's Law Section, State Bar of New Mexico, Board Member 2016-present; 12th Judicial District Bar Association, President, March 2012-December 2015; 12th Judicial District Bar Association, Treasurer, 2010-2012; 12th Judicial District Bar Association, Member 2009-present; Alamogordo Public Schools Labor Board, Chair, 2010-2011; Alamogordo Municipal Labor Board, Board Member 2016-present; 12th Judicial District Pro Bono Committee, Board Member, 2016-present; 12th Judicial District Criminal Justice Coordinating Council, Member 2016-present; New Mexico Supreme Court Domestic Relations Rules Committee, BBC appointee, 2017-present; New Mexico Criminal Defense Lawyer's Association, 2006-present; National Association of Criminal Defense Lawyers, 2011-present.

*BBC election information is continued on the next page.*

## Jared Kallunki



### Biography

Originally from Provo, Utah, I graduated from the University of Alabama with a Bachelor's and Master's Degree. I attended Thomas Jefferson School of Law. I began my legal career in Roswell with New Mexico Legal Aid, where I worked for 4 years. I went into private practice for several years, focusing on domestic relations, criminal defense, and abuse and neglect, and I am currently working for the Public

Defender in Roswell. I have been married for 20 years and have three children. I enjoy socializing and a good joke.

### 1. Give your perspective on any important issues that you believe the profession and State Bar should be addressing.

The important issues that the State Bar should be addressing include making sure that membership dues are used wisely, providing support for professionals through effective and cost efficient CLE, supporting pro bono services for the citizens of New Mexico, establishing rules for the profession, and providing a voice for different and diverse areas and viewpoints.

### 2. Do you think the State Bar is fulfilling its mission and objectives?

I do believe that the State Bar is fulfilling its mission and objectives. The State Bar has worked hard to put itself on sound financial footing. The State Bar works hard to provide quality and cost effective CLE that help communicate changes in the law and improve the quality of the profession. The State Bar is also actively engaged in serving the public through its support and encouragement of pro bono efforts throughout the state. Finally, the State Bar effectively advocates for its members in a variety of settings.

### 3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I have been involved with the activities of the State Bar for several years. I served as a Commissioner to the Young Lawyers Division from 2010-2013. I have also served as a Commissioner to the Board of Bar Commissioners for the Sixth District since January 2015. I served on the Chaves County Pro Bono Committee and the 12th District Pro Bono Committee from 2008-2012. I am currently treasurer for the Chaves County Bar Association. In 2012, I was awarded the LaFollette award as Pro Bono Attorney of the Year for the state.

## Jennifer Rose Kletter



*Editor's Note: Ms. Kletter preferred to submit the following statement in lieu of answers to the individual questions.*

Hello Fellow State Bar Members! I would like to be the Sixth Bar Commissioner for the Sixth District. I moved to New Mexico in 2015 to practice abuse and neglect law, and am now an ADA for the Fifth Judicial District. My undergraduate degree is from Trinity University,

Washington DC (2000) and JD/MPA from The University of Pittsburgh School of Law (2005). I have previously worked in pharmaceutical law, criminal defense, family, and juvenile abuse and neglect law. I think attorneys in New Mexico have a unique opportunity to avail themselves of the many benefits of the State Bar due to its small size. I would assist by improving the flow of information to the members of the southeastern part of our state. Additionally, the State Bar could be doing more for our region in terms of CLEs and trainings and roundtables to discuss pressing issues of our Bar and Judiciary at the local level. I hope you all will allow me an opportunity to serve our District!

## Electronic Voting Procedures

A link to the electronic ballot and instructions will be emailed on Nov. 9 to all members in the First and Sixth Bar Commissioner Districts using email addresses on file with the State Bar. To provide an email address if one is not currently on file or to request a mailed ballot, contact Pam Zimmer at [pzimmer@nmbar.org](mailto:pzimmer@nmbar.org).

**The election will close at noon on Nov. 30, at which time the election results will be certified.**



*Fourth Annual  
Senior Lawyers Division*  
**ATTORNEY MEMORIAL  
SCHOLARSHIP PRESENTATION  
AND RECEPTION**

Tuesday, Nov. 14 • 5:30-7:30 p.m.  
State Bar Center



Four 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 Senior Lawyers Division invites all State Bar members and UNM School of law faculty, staff and students 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 R.S.V.P., to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.



# Legal Education

## November

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| <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>           | <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>28   Estate Planning, Current Developments and Hot Topics</b><br/>1.0 G<br/>Live Seminar, Albuquerque<br/>Bessemer Trust<br/>713-803-2843</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   RMD Outside Counsel Seminar and General Counsel annual Meeting</b><br/>4.3 G, 2.0 EP<br/>Live Seminar, Santa Fe<br/>New Mexico General Services Department<br/>505-827-0402</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>9     Thriving or Surviving? Strategies for Well-being and Ethical Practice</b><br/>2.0 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>17   Negotiation, Mediation, and Settlement Seminar</b><br/>5.2 G, 1.0 EP<br/>Live Seminar Albuquerque<br/>New Mexico Trial Lawyers Foundation<br/><a href="http://www.nmtla.org">www.nmtla.org</a></p>   | <p><b>28   Attorney vs. Judicial Discipline (2017)</b><br/>2.0 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>9     Essentials of Music Copyright Law with Ethics</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>Rock N Roll Law<br/><a href="http://www.rocknrolllaw.com">www.rocknrolllaw.com</a></p>   | <p><b>20   2017 Tax Symposium</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>28   Federal and State Tax Updates (2017 Tax Symposium)</b><br/>3.5 G<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>15   2017 Business Law Institute</b><br/>4.5 G, 1.5 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>20   3rd Annual Symposium on Diversity and Inclusion—Diversity Issues Ripped From the Headlines (2017)</b><br/>5.0 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>28   2017 Employment and Labor Law Institute</b><br/>5.0 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,<br/>Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>   | <p><b>27   32nd Annual Bankruptcy Year in Review (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>28   2017 Family Law Institute (Day 1)</b><br/>5.0 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>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>27   Copy That! Copyright Topics Across Diverse Fields (2016 Intellectual Property Law Institute)</b><br/>5.0 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>29   New Mexico Liquor Law for 2017 and Beyond</b><br/>3.5 G<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>17   Municipal Law</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>City of Albuquerque Legal Department<br/>505-768-4500</p>   | <p><b>29   2017 ECL Solo and Small Business Bootcamp Parts I and II</b><br/>3.4 G 2.7 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/><a href="http://www.nmbar.org">www.nmbar.org</a></p>  |  |

## November

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| <p><b>29 Health Law Symposium (2017)</b><br/>6.0 G, 1.0 EP<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>29 Human Trafficking (2016)</b><br/>3.0 G<br/>Live Replay, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</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/>www.nmbar.org</p> |
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## 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/>www.nmbar.org</p> | <p><b>7 Law and Policy for Neighborhoods</b><br/>10.0 G, 1.0 EP<br/>Live Seminar, Santa Fe<br/>Santa Fe Neighborhood Law Center<br/>www.sfnlc.com</p>   | <p><b>20 Speech Recognition: Using Dragon Legal in a Law Practice</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</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/>www.nmbar.org</p>   | <p><b>8 Current Immigration Issues for the Criminal Defense Attorney (2017 Immigration Law Institute)</b><br/>5.0 G, 2.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                                  | <p><b>20 Handling the Sale of a Business</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>NBI, Inc.<br/>www.nbi-sems.com</p>   |
| <p><b>1 Navajo Law Seminar</b><br/>6.0 G, 2.0 EP<br/>Live Seminar, Albuquerque<br/>Sutin Thayer and Browne<br/>www.sutinfirm.com</p>   | <p><b>8 Wage Theft in New Mexico</b><br/>3.0 G, 1.0 WP<br/>Live Seminar, Roswell<br/>New Mexico Hispanic Bar Association<br/>www.nmhba.net</p>  | <p><b>21 60 Legal Tech Tips, Tricks and Websites in 60 Minutes</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                  |
| <p><b>4 Legal Malpractice Potpourri</b><br/>1.5 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>14 Trial Know-How! (The Rush to Judgement) 2017 Trial Practice Section Annual Institute</b><br/>4.0 G, 2.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  | <p><b>21 Negotiation Strategies for Litigators</b><br/>5.0 G, 1.0 EP<br/>Live Seminar, Albuquerque<br/>NBI Inc.<br/>www.nbi-sems.com</p>                                      |
| <p><b>4 Indemnity and Insurance in Real Estate</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>15 Emerging Problems and Solutions in Environmental Enforcement (2017 Natural Resources, Energy and Environmental Law Institute)</b><br/>5.5 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p> | <p><b>22 Ethics in Drafting Claims</b><br/>1.0 EP<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   |
| <p><b>5 “HEMS”—Defining Distribution Standards in Trusts</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>19 Eight Things Killing Your Law Firm and How to Stop Them</b><br/>1.0 G<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>   | <p><b>28 How to Protect Yourself and Preserve Confidentiality</b><br/>1.0 EP<br/>Live Webinar<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>                   |
| <p><b>6 2017 Real Property Institute</b><br/>6.0 G, 1.0 EP<br/>Live Webcast/Live Seminar, Albuquerque<br/>Center for Legal Education of NMSBF<br/>www.nmbar.org</p>  |   | <p><b>29 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> |



# 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 27, 2017**

## **PUBLISHED OPINIONS**

A-1-CA-34773	State v. P Simmons	Affirm/Vacate/Remand	10/25/2017
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## **UNPUBLISHED OPINIONS**

A-1-CA-35961	State v. W Johnson	Affirm	10/24/2017
A-1-CA-36218	State v. R Holguin	Affirm	10/24/2017
A-1-CA-36358	State v. T Wolf	Affirm	10/24/2017
A-1-CA-36359	State v. T. Wolf	Affirm	10/24/2017
A-1-CA-35510	D Gaudet v. T Drew	Affirm	10/25/2017
A-1-CA-35907	Y Young v. N Gandara	Affirm	10/25/2017
A-1-CA-36066	R Castro v. D Jones	Affirm	10/25/2017
A-1-CA-36104	V Bales v. Titan Development	Affirm	10/25/2017
A-1-CA-36249	State v. K Whelchel	Affirm	10/25/2017
A-1-CA-36320	State v. L Seonia	Affirm	10/25/2017
A-1-CA-36330	J Papineau v. S Papineau	Affirm	10/25/2017
A-1-CA-36357	B Price v. JP Morgan	Affirm	10/25/2017
A-1-CA-36389	City of Aztec v. A Sisneroz	Affirm	10/25/2017
A-1-CA-34739	State v. M Tapia	Affirm	10/26/2017
A-1-CA-35177	M Romero v. Lovelace Health	Affirm	10/26/2017
A-1-CA-35218	State v. R Jackson	Affirm	10/26/2017
A-1-CA-36029	CYFD v. Melody M	Affirm	10/27/2017

**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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## IN MEMORIAM

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As of July 1, 2017:  
**Kirsten J. Anderson**  
PO Box 81935  
Albuquerque, NM 87198

As of August 17, 2017:  
**Peter P. Decker**  
520 Lomas Blvd. NW  
Albuquerque, NM 87102

As of July 14, 2017:  
**Deborah B. DePalo**  
4009 Shenandoah Place NE  
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As of October 8, 2017:  
**Christian E. Eaby**  
PO Box 126  
New Holland, PA 17557

As of August 21, 2017:  
**Shane A. Henderson**  
PO Box 1099  
Socorro, NM 87801

As of June 25, 2017:  
**C. Clement Koogler**  
10501 Lagrima de Oro NE  
Albuquerque, NM 87111

As of March 6, 2017:  
**Barbara Lynn Welz**  
PO Box 924  
Red River, NM 87558

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## CLERK'S CERTIFICATE OF ADMISSION

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On October 24, 2017:  
**William Maurice Demlong**  
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1850 N. Central Avenue,  
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## CLERK'S CERTIFICATE OF WITHDRAWAL

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Effective October 18, 2017:  
**John Edward Kosky**  
300 E. Randolph Street  
Chicago, IL 60601

Effective October 18, 2017:  
**Jennifer A. Siletti**  
Legal Aid Society of New York  
49 Thomas Street

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## CLERK'S CERTIFICATE OF NAME CHANGE

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As of October 18, 2017:  
**Anna Casey Martin f/k/a  
Anna Casey Rains**  
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## CLERK'S CERTIFICATE OF ADMISSION

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On October 16, 2017:  
**Charles William Aldrete**  
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**Editor's Note:** Due to space constraints, more Clerk's Certificates of Admission from Oct. 16, 2017, will be published in the Nov. 15, 2017, issue of the *Bar Bulletin* (Vol. 56, No. 46).



November–  
December  
2017

# CLE Planner

Your Guide to Continuing Legal Education

Registration  
form included  
in this insert!

## The Center for Legal Education at the State Bar of New Mexico — *Your preferred CLE provider for this fall and beyond!*

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**REGISTER EARLY!** Advance registration is recommended to guarantee admittance and course materials. If space and materials are available, paid registration will be accepted at the door.

**CLE Cancellations & Refunds:** We understand that plans change. If you find you can no longer attend a program, please contact the CLE Department. We are happy to assist you by transferring your registration to a colleague or applying your payment toward a future CLE event. A full refund will be given to registrants who cancel two or more business days before the program date. A 3 percent processing fee will be withheld from a refund for credit and debit card payments. Cancellation requests received within one business day of the program will not be eligible for a refund, but the fees may be applied to a future CLE program offered in the same compliance year.

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**Financial Assistance:** Not available.

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# Featured CLEs



Presented live at the State Bar Center in Albuquerque.



Some courses can also be attended remotely by Live Webcast.



## Thriving or Surviving: Strategies for Well-Being and Ethical Practice

Thursday, Nov. 9 • 10:15 a.m.–12:15 p.m.

*\$89 Lawyers and Judges Assistance Program Committee members, Government and legal services attorneys and Paralegal Division members*

*\$109 Standard fee*

*\$125 Webcast fee*

**Co-sponsor:** *Lawyers and Judges Assistance Program*

2.0 EP



Legal professionals experience much higher rates of depression, anxiety and substance abuse than the general population. Building a toolbox of effective strategies for coping with stress and knowing how to access outside resources is essential to reducing the incidence of mental health and substance abuse problems among our members. This session examines how the high-stress nature of the legal profession can lead to personal and professional issues and explores science-based strategies for improving well-being and professionalism.



## 2017 Business Law Institute

Wednesday, Nov. 15 • 9 a.m.–4:30 p.m.

*\$249 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members*

*\$279 Standard and Webcast fee*

**Co-sponsor:** *Business Law Section*

4.5 G

1.5 EP



Topics of the 2017 Business Law Institute include protection from cybersecurity threats; commercial lease negotiations; developments in New Mexico employment law; UCC financing statements and security agreements; and helping non-party/non-target business clients respond to civil subpoenas and criminal investigations.



## 2017 Probate Institute

Thursday, Nov. 16 • 8:30 a.m.–5:15 p.m.

*\$279 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members*

*\$309 Standard and Webcast fee*

**Co-sponsor:** *Real Property, Trust and Estate Section*

6.3 G

1.0 EP



This CLE includes a panel discussion on potential impact of the UGCPAA on New Mexico Guardianship practice, surety bonds, New Mexico's Uniform Power of Appointment Act, legislative updates, ethics/professionalism and much more! *The Real Property, Trust and Estate Section will hold its Annual Meeting at 8 a.m. over breakfast.*



## New Mexico Liquor Law for 2017 and Beyond

Wednesday, Nov. 29 • 9 a.m.–1:15 p.m.

*\$155 Government and legal services attorneys and Paralegal Division members*

*\$195 Standard and webcast fee*

3.5 G



This new CLE program will include a discussion on the New Mexico Liquor Control Act, the new Alcohol and Gaming Division rules for internet sales, tasting permits and amended rules covering restrictions on alcohol sales and minors on premises. The program will also discuss liquor service in New Mexico and offer tips on how to beat the Alcohol and Gaming Division prosecutor at a hearing.



## The Basics of Family Law

Thursday, Nov. 30 • 8:30 a.m.–5 p.m.

\$239 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members  
\$295 Standard and webcast fee

**Co-sponsor:** Family Law Section

5.2 G

1.0 EP



Basics of Family Law will cover in-depth practical information for attorneys embarking on a family law practice, currently practicing in the area of family law or looking to add family law to their current practice. The program will discuss the family law case process, relevant statutes and rules, check lists to ensure all steps are being followed in the case, forms, billing models, and much more. This program is designed to refine, enhance or offer new skills in the practice of family law. **This CLE qualifies for a total possible 5.2 general and 2.0 EP credits. In order to receive 2.0 EP credits, you must attend 4 p.m. session "Complying with Disciplinary Board Rule 17-204." Attendees that have taken the Disciplinary Board Trust Accounting course separately will not be eligible to receive additional ethics/professionalism credit during this program and attendance is optional.**



## Specialized Areas of Law for Lawyers and Paralegals—Annual Paralegal Division CLE

Friday, Dec. 1 • 8:30 a.m.–4:15 p.m.

\$189 Paralegal Division members  
\$249 Government and legal services attorneys  
\$279 Standard and Webcast Fee

**Co-sponsor:** Paralegal Division

5.0 G

1.0 EP



Brought to you by the Paralegal Division, this year's annual institute is for paralegals and attorneys alike! Topics include family law matters, immigration law, intellectual property, eDiscovery and much more.



## Legal Malpractice Potpourri

Monday, Dec. 4 • 9:30–10:30 a.m.

\$80 Standard fee  
\$95 Webcast fee

**Co-sponsor:** Lawyers Professional Liability and Insurance Committee

1.5 EP



This CLE program will include a rousing panel discussion with audience participation regarding the following topics: 1) Don't Do It Yourself: Responding to a Disciplinary Complaint; 2) PAC-MAN Policies and the Duty to Settle Within Limits; 3) Proposed Changes to Rule 16-101 Regarding Social Media; and 4) Recent Developments.



## Trials of the Century III

Tuesday, Dec. 5

Todd Winegar continues his Trials of the Century series with new trials! Todd is a dynamic speaker, insightful researcher and author, and practicing attorney who has taught CLE courses in most major U. S. cities, Canada and abroad. His practice has emphasized civil trial litigation, including a Minuteman missile accident case, professional malpractice, products liability, and record-setting verdicts.

4.0 G

2.0 EP



## 2017 Real Property Institute

Wednesday, Dec. 6 • 8:30 a.m.–5 p.m.

\$279 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members  
\$309 Standard and Webcast fee

**Co-sponsor:** Real Property, Trust and Estate Section

6.0 G

1.0 EP



Topics include insurance for transactional attorneys, ethics and malpractice, bankruptcy law and more!





## Current Immigration Issues for the Criminal Defense Attorney— 2017 Immigration Law Institute

Friday, Dec. 8 • 8:30 a.m.–5 p.m.

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

\$309 Standard and Webcast fee

**Co-sponsor:** Immigration Law Section

5.0 G

2.0 EP



This year's Immigration Law Section annual program will focus on issues relating to immigration, for criminal defense attorneys, or "cimmigration". This program is designed to help non-immigration attorneys better serve clients and the immigrant community, and bring seasoned immigration attorneys up to speed on recent changes in the practice area. Topics will include an update on the current state of immigration enforcement, analyzing convictions, ethical duties post-conviction, and what to do if your client is detained by ICE. The program will conclude with a discussion on ethical obligations to the immigrant community and issues such as confidentiality and legal access.



## 2017 Ethicspalooza

Monday, Dec. 11 • 9 a.m.–4:45 p.m.

\$209 Early bird rate (in-person attendance only; registration must be received by Nov. 14)

\$249 Government and legal services attorneys and Paralegal Division members

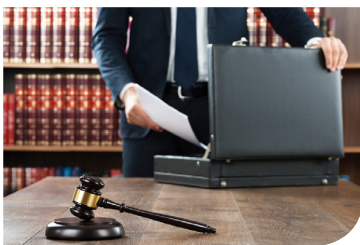
\$279 Standard and Webcast fee

Possible

6.0 EP



This series of ethics courses taught by members of the Disciplinary Board of the New Mexico Supreme Court, Office of Disciplinary Counsel will provide concise, informative, practical and useful information for the ethical practice of law. Each session you attend will include at least one hour of ethics credit; take one, two, three, four, or all five. **This CLE qualifies for a total possible 6.0 EP and includes the course, "Complying with Disciplinary Board Rule 17-204." Attendees that have taken the Disciplinary Board Trust Accounting course separately will not be eligible to receive additional ethics/professionalism credit during this program and attendance is optional. There will be a separate sign-in sheet for above-mentioned session.**



## Where the Rubber Meets the Road: The Intersection of the Rules of Civil and the Rules of Professional Conduct

Thursday, Dec. 12

Join us for this morning CLE on the rules of civil procedure, with William D. Slease of the Disciplinary Board of the New Mexico Supreme Court and Ruth Pregenzer of Pregenzer Baysinger Wideman Sale PC. **Exact times coming soon!**



1.0 G

1.0 EP



## Trial Know-How! (The Rush to Judgment)— 2017 Trial Practice Section Annual Institute

Thursday, Dec. 14 • 9:30 a.m.–4:30 p.m.

\$209 Early bird rate (in-person attendance only; registration must be received by Nov. 14)

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

\$279 Standard and Webcast fee

**Co-sponsor:** Trial Practice Section

4.0 G

2.0 EP



At this CLE, attendees will learn how to fine tune their courtroom strategy, how to employ effective cross examination techniques and how to best handle litigation issues including discovery, voir dire and pro se litigants. Attendees will also learn about a litigator's ethical obligations and hear from a panel comprised of state and federal judges who will be sharing insight about what litigators should know before appearing in their courtroom.



## Emerging Problems and Solutions in Environmental Enforcement

Friday, Dec. 15 • 9 a.m.–5 p.m.

\$225 Early bird rate (in-person attendance only; registration must be received by Nov. 15)

\$265 Co-sponsoring section members, government and legal services attorneys and Paralegal Division members

\$295 Standard and Webcast fee

**Co-sponsor:** Natural Resources, Energy and Environmental Law Section

5.5 G

1.0 EP



This course will include an overview of recent statutory and regulatory changes in the area of environmental law, and the implications of such changes for state and federal enforcement. It will also discuss options available to agencies for enforcement of the law, including administrative actions, civil litigation and criminal prosecution. In addition to examining two local natural resources disasters, there will be a panel discussion on the role of citizen suits as an enforcement mechanism in the face of changing government enforcement priorities under the current administration. This year's annual Natural Resources, Energy and Environmental Law Section CLE will close with an ethics panel exploring the attorney role in enforcement.

*Registration and payment must be received prior to the program date. A \$20 late fee will be incurred when registering the day of the program. This fee applies to live registrations and does not apply to live webcasts, webinars or live replays.*



*Do you know someone who might be interested in these courses?*

Non-State Bar Members and non-attorneys are encouraged to attend! Reduced rates of \$99 are available on most programs, for those not seeking CLE credit.



Whether you are a solo and small firm, part of a large practice, or a government agency, it's more affordable than ever to take your yearly CLE classes! The Center for Legal Education is now offering group rates for most CLEs, with a minimum of five registrants. For more information about this pricing option, please contact CLE at **505-797-6020**. All group registrants must pay together in one transaction. Payment must be received prior to the program.

## On-Demand Courses



### Earn CLE credits on your schedule!

These pre-recorded videos are some of our most popular programs; purchase an on-demand today and view online, at your convenience before the end of the year! Visit [www.nmbar.org/CLE24-7](http://www.nmbar.org/CLE24-7) for the full on-demand library – member favorites include:

**Add a Little Fiction to Your Legal Writing (2017)** 2.0 G

**Gender and Justice (2016 Annual Meeting)** 1.0 EP

**Attorney vs. Judicial Discipline** 2.0 EP

**Lawyers Duties in Fairness and Honesty – Fair or Foul 2016** 2.0 EP

**New Mexico DWI Cases from the Initial Stop to Sentencing; Evaluating your Case (2016)** 3.0 G

**Best and Worst Practices and Ethics in Mediation (2016)** 3.0 G 1.0 EP

**Keynote Address by Justice Ruth Bader Ginsburg (2016 Annual Meeting)** 1.0 G

**Trial Skills for Young Lawyers: Effective Depositions (2017 Mountain West YLD Summit)** 1.5 G

## More Opportunities to Attend the Disciplinary Board's Required Trust Accounting CLE



### Complying with the Disciplinary Board Rule 17-204

\$55 Standard Fee

\$65 Webcast Fee

1.0 EP



Topics include:

- Proper operation of trust accounts
- Identification of records that must be maintained
- Best and prohibited practices for operating a trust account and accepting retainers
- Recording trust transactions in general and client ledgers
- Reconciling trust account ledgers with bank statements

Effective December 31, 2016, the New Mexico Supreme Court adopted modifications to Rule 17-204 NMRA, which is the rule pertaining to attorney trust accounts. Among other things, the rule requires that once every three years, all licensed NM attorneys, with very limited exceptions as set forth in the Rule, take a one-hour trust accounting course approved by the New Mexico Disciplinary Board. Currently, the State Bar of New Mexico Center for Legal Education is the only approved course provider. Please see below for upcoming opportunities to attend the required ethics course. For more information, lawyers should carefully read Rule 17-204 NMRA.

#### Upcoming dates and times:

Nov. 9 • 9–10 a.m.  
Nov. 28 • 9–10 a.m.

Monday, Dec. 11 • 9–10 a.m.  
Friday, Dec. 29 • 9–10 a.m.

## Live Replay Courses



**Missed a class earlier this year, or last fall? Get caught up at the State Bar Center with Live Replays!**

These programs are in person at the State Bar Center and qualify for live credits. Browse the full list of offerings on our website!

**Nov. 20**

#### 2017 Tax Symposium

6.0 G 1.0 EP

(Recommended 7.0 Technical, 1.0 Ethics CPE Credits)

8:25 a.m. – 4:30 p.m.

\$309

#### 3rd Annual Symposium on Diversity and

5.0 G 1.0 EP

#### Inclusion: Diversity Issues Ripped from the Headlines (2017)

8:55 a.m.–4:05 p.m.

\$279

**Nov. 27**

#### 32nd Annual Bankruptcy Year in Review (2017)

6.0 G 1.0 EP

8:30 a.m.–4:25 p.m.

\$275

#### Copy That! Copyright Topics Across Diverse Fields (2016 IP Institute)

5.0 G 1.0 EP

9 a.m.–4:45 p.m.

\$249

**Nov. 28**

#### Attorney vs. Judicial Discipline (2017)

2.0 EP

10:30 a.m.–12:30 p.m.

\$109

#### Federal and State Tax Updates (2017 Tax Symposium)

3.5 G

1–4:40 p.m.

\$185

#### 2017 Employment and Labor Law Institute

5.0 G 1.0 EP

9 a.m.–4 p.m.

\$279

#### 2017 Family Law Institute (Day 1)

5.0 G 1.0 EP

8:30 a.m.–3:25 p.m.

\$279

**Nov. 29**

#### 2017 ECL Solo and Small Business Bootcamp Parts I and II

3.4 G 2.7 EP

9 a.m.–4:10 p.m.

\$279

#### Health Law Symposium (2017)

6.0 G 1.0 EP

9 a.m.–4:45 p.m.

\$309

#### Human Trafficking (2016)

3.0 G

1 p.m.–4 p.m.

\$145



# Mark Your Calendar

Save the date for these exciting programs down in your calendar and stay tuned for further details including credit hours, presenters and prices.

## Back by Popular Demand!

### Mock Meeting of the Ethics Advisory Committee

Dec. 18

### The Cyborgs are Coming! The Cyborgs are Coming! Ethical Concerns with the Latest Technology Disruptions

with Stuart I. Teicher

Dec. 19

### Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics

with Stuart I. Teicher

Dec. 19

### The Lifecycle of a Trial, from a Technology Perspective

Dec. 21

### Administrative Law Update

Dec. 22

## Back by Popular Demand!

### Social Media as Investigative Research and Evidence

Presented by Carol Levitt, Esq. and Mark Rosch

Dec. 27

### Oil and Gas: From Basics to In Depth Topics

Dec. 28

### Supreme Court Case Update

Dec. 29

### The Ethics of Lawyer Advertisements Using Social Media

Dec. 29



## CLE REGISTRATION FORM

For more information about our programs visit [www.nmbar.org](http://www.nmbar.org)

### Four Ways to Register:

**Online:** [www.nmbar.org](http://www.nmbar.org) **Fax:** 505-797-6071, 24-hour access **Phone:** 505-797-6020

**Mail:** Center for Legal Education, PO Box 92860, Albuquerque, NM 87199

Name \_\_\_\_\_ NMBar# \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Program Title \_\_\_\_\_ Date of Program \_\_\_\_\_

Program Format ☐ Live ☐ Telecast/Teleseminar ☐ Webcast ☐ Video Replay ☐ Online/ On Demand

Program Cost \_\_\_\_\_ IMIS Code \_\_\_\_\_

### Payment

☐ Check or P.O. # \_\_\_\_\_ (Payable to Center for Legal Education)

☐ VISA ☐ MC ☐ American Express ☐ Discover \*Payment by credit and debit card will incur a 3% service charge.

Name on card if different from above: \_\_\_\_\_

Credit Card # \_\_\_\_\_

Exp. Date \_\_\_\_\_ Billing ZIP Code \_\_\_\_\_ CVV# \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**REGISTER EARLY!** Advance registration is recommended to guarantee admittance and course materials. If space and materials are available, paid registration will be accepted at the door. **CLE Cancellations & Refunds:** We understand that plans change. If you find you can no longer attend a program, please contact the CLE Department. We are happy to assist you by transferring your registration to a colleague or applying your payment toward a future CLE event. A full refund will be given to registrants who cancel two or more business days before the program date. A 3 percent processing fee will be withheld from a refund for credit and debit card payments. Cancellation requests received within one business day of the program will not be eligible for a refund, but the fees may be applied to a future CLE program offered in the same compliance year. **MCLE Credit Information:** NMSBF is an accredited CLE provider. **Recording of programs is NOT permitted.** **Financial Assistance:** A 50% discount on registration fees is available to practicing attorneys who qualify. **Note: Programs subject to change without notice.**

# Rules/Orders

From the New Mexico Supreme Court

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

## THE SUPREME COURT OF NEW MEXICO ANNOUNCES 2017 YEAR-END RULE AMENDMENTS

Under Rule 23-106.1 NMRA, the Supreme Court adopts most rule changes once per year in the fall. Because of the large number of year-end rule amendments for 2017, the actual text of the rule amendments will not be published in the *Bar Bulletin* due to space constraints. Instead, what follows is a summary of the new rule amendments that the Court recently approved, which go into effect on Dec. 31, 2017, unless otherwise noted in the history note at the end of each approved rule. The full text of the new rule amendments can be viewed on the New Mexico Compilation Commission's website at <http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx>.

### Children's Court Rules and Forms

#### *Designation of Children's Court Judge* [Rule 10-161 NMRA]

The Supreme Court has approved amendments to the rule governing the designation of judges to eliminate the ten-day period after all judges have been automatically recused because a judge or court employee is a party to the litigation, during which time the parties could have agreed to a replacement judge. Under the new provision, the case is immediately reassigned to a judge from another district as directed by the Chief Justice.

#### *Public Inspection and Sealing of Court Records* [Rule 10-166 NMRA]

The Supreme Court has approved a recommendation from the Children's Court Rules Committee to amend Rule 10-166 NMRA to require the automatic sealing of all court records in proceedings under the Delinquency Act, NMSA 1978, Chapter 32A, Article 2. The amended rule includes exceptions to automatic sealing for the following: (1) the persons and entities identified in NMSA 1978, Section 32A-2-32(C); (2) a facility, organization, or person providing care, treatment, or shelter to the child, including a detention facility; and (3) the Children, Youth, and Families Department, as governed by Section 32A-2-32. The committee commentary also has been amended to highlight the amendments to the rule.

#### *Criminal Contempt* [Rule 10-169 NMRA]

The Supreme Court has approved a recommendation from the Children's Court Rules Committee to adopt new Rule 10-169 NMRA to govern criminal contempt proceedings in children's court. The new rule treats adults and children differently for the purposes of criminal contempt. Under the new rule, adults are subject to criminal contempt as provided in Rule 1-093 NMRA, while children are not subject to criminal contempt at all. The committee commentary to the rule explains that, in the committee's view, the punitive focus of criminal contempt is inconsistent with the rehabilitative purposes of the Children's Code.

#### *Notice of Child's Advisement of Right to Attend Hearing* [Rule 10-325 NMRA]

The Supreme Court has approved a recommendation from the Children's Court Rules Committee to amend the committee commentary to Rule 10-325 NMRA. The amended commentary clarifies the rule's intent to permit counsel for a child, once the written notice required under the rule has been filed, to notify

the court orally or in writing of any changes about whether the child will attend the hearing.

#### *Guardian Ad Litem Notice of Whether Child Will Attend Hearing* [New Rule 10-325.1 NMRA and new Form 10-570l.1 NMRA]

The Supreme Court has approved a recommendation from the Children's Court Rules Committee to adopt new Rule 10-325.1 NMRA and new Form 10-570.1 NMRA. The new rule requires a guardian *ad litem*, before each hearing in an abuse and neglect proceeding, to provide written notice of the following: (1) whether the child has been advised of the right to attend the hearing; (2) whether the child wishes to attend the hearing; and (3) whether the guardian *ad litem* believes that attendance is in the child's best interests. The new form is used to provide the notice required under new Rule 10-325.1 of whether the child will attend a hearing in an abuse and neglect proceeding.

#### *Court Interpreter Forms*

[Form 10-611 NMRA, recompiled from Form 10-440 NMRA; Form 10-612 NMRA, recompiled from Form 10-441 NMRA; Form 10-613 NMRA, recompiled from Form 10-442 NMRA; Form 10-614 NMRA, recompiled from Form 10-443 NMRA]

The Supreme Court has approved the recompilation of Forms 10-611, -612, -613, and -614 NMRA from Forms 10-440, -441, -442, and -443 NMRA. The forms have been recompiled without amendment.

### Code of Judicial Conduct

#### *Application* [Rule 21-004 NMRA]

The Supreme Court has approved a recommendation from the Code of Judicial Conduct Committee to amend Rule 21-004(B) NMRA. Subparagraphs (B)(1) and (B)(2) pertaining to part-time probate and municipal judges have been combined. Paragraph B has also been revised to state that elected part-time probate and municipal judges, and judges appointed to a vacant seat on a part-time probate or municipal court, as well as other judges serving by contract or appointment on a part-time basis, are not required to comply with Rule 21-315 NMRA (reporting requirements), "unless the extrajudicial compensation, expense reimbursement, or waiver of fees or charges to be reported relates to the judge's judicial duties." A new Comment 3 provides illustrative examples.

### Domestic Relations Rules and Forms

#### *Domestic Violence Special Commissioners and Domestic Relations Hearing Officers; Duties* [Rules 1-053.1 and 1-053.2 NMRA]

The Supreme Court has approved a recommendation from the Rules of Civil Procedure Committee to amend Rules 1-053.1(J) and 1-053.2(K) NMRA to correct outdated references to the Code of Judicial Conduct and add to the commentary of both rules a new reference to Rule 21-004(C) NMRA.

#### *Guardians Ad Litem; Domestic Relations Appointments* [Rule 1-053.3 NMRA and Form 4-402 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to amend Rule 1-053.3

NMRA and Form 4-402 NMRA, the rule and form that govern the appointment of a guardian *ad litem* (GAL) in a domestic relations proceeding. The amendments clarify various aspects of a GAL's authority and of proceedings in which a GAL is a participant, including the following: (1) formally authorizing a GAL to communicate with mental health and medical professionals; (2) providing a GAL with discretion to interview a child under six years of age outside the presence of the parties and counsel; (3) refining the process for filing objections to a GAL's recommendations and holding a hearing on the objections; and (4) clarifying in the rule and commentary that a GAL may provide a verbal report and recommendations at a hearing without violating Rule 16-307 NMRA. The amended rule also provides greater protections for communications between the child and the GAL and for information in the GAL's files. The former are privileged as provided in Rule 11-503 NMRA, and the latter are confidential except as provided in Rule 1-026(B)(5) NMRA. The amendments to the form substantially mirror the amendments to the rule.

## *Temporary Domestic Orders*

[Rule 1-121 NMRA and Form 4A-201 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to amend Form 4A-201 NMRA, the Temporary Domestic Order (TDO), and corresponding Rule 1-121 NMRA. The amendments to the TDO and the rule make the order binding on the respondent immediately upon service. The amended TDO also prohibits the parties from engaging in conduct that would adversely affect their retirement accounts.

## *Domestic Relations Mediation Act Programs*

[Rule 1-125 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to amend Rule 1-125 NMRA, the rule that governs court-operated programs under the Domestic Relations Mediation Act. The amendments affect the rule in two ways. First, the amended rule permits the parties to jointly interview a consultant who submits contested recommendations to the court after a priority or advisory consultation. Second, the amended rule provides that information obtained during a priority consultation, advisory consultation, or similar service conducted by a court-operated program is confidential and may be disclosed only under the limited circumstances set forth in the rule.

## *Proceedings Under the Family Violence Protection Act*

[New Rule 1-129 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to adopt new Rule 1-129 NMRA to govern the assignment of cases under the Family Violence Protection Act. The new rule distinguishes between the first domestic violence petition filed between two parties and subsequent petitions filed between the same two parties. The former shall be opened and assigned to a judge in the same manner as any other case subject to the Rules of Civil Procedure for the District Courts. The latter shall be filed as part of the original proceeding to ensure continuity, whenever possible, in domestic violence proceedings involving the same two parties.

## *Instructions for Stage Two (2) Forms; Motion to Enforce Order; and Order To Appear and Show Cause*

[Forms 4A-200 and 4A-209 NMRA and withdrawn Form 4A-210]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to amend Forms 4A-200 and

4A-209 NMRA and to withdraw Form 4A-210 NMRA. Amended Form 4A-209 replaces the current motion and order to appear and show cause, Forms 4A-209 and 4A-210 NMRA, with a single motion to enforce a court order, and Form 4A-210 therefore is withdrawn. Amended Form 4A-200 incorporates revisions to the Stage 2 Instructions that correspond with the amendments to Form 4A-209 and the withdrawal of Form 4A-210. Taken together, the amended and withdrawn forms are intended to avoid any conflict with criminal contempt proceedings under Rule 1-093 NMRA, while still allowing a party to seek the enforcement of a court order.

## *Motion to Modify Final Order*

[Form 4A-321 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to adopt new Form 4A-321 NMRA. The new form is used to ask a court to modify the conditions of a final order in a domestic relations proceeding, including a custody plan and order, a child support obligation and order, or a spousal support provision in a final decree of dissolution of marriage.

## *Order for Service of Process by Publication in a Newspaper*

[Form 4A-504 NMRA]

The Supreme Court has approved a recommendation from the Domestic Relations Rules Committee to amend Form 4A-504 NMRA, the form used in kinship guardianship proceedings to order service of process by publication in a newspaper. The amended form requires service by publication once a week for three consecutive weeks, consistent with the 2016 amendments to NMSA 1978, Section 45-1-401(A)(3) (2016). *See also* NMSA 1978, § 40-10B-6(C) (2015) (providing that notice in kinship guardianship proceedings shall be given in accordance with the requirements of Section 45-1-401).

## ***Rules Governing the New Mexico Bar***

### *"Bridge the Gap: Transitioning into the Profession" Program*

[Rule 24-110 NMRA]

The Supreme Court has approved a recommendation from the Commission on Professionalism to amend Rule 24-110 NMRA, governing the State Bar's Bridge the Gap Mentorship Program, to clarify the exemption available to new attorneys who reside outside of New Mexico and new lawyers admitted under a limited law license.

## ***Rules of Appellate Procedure***

### *Calendar Assignments for Direct Appeals*

[Rule 12-210 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-210 NMRA. Rule 12-210 controls the use of the calendaring process in the screening of direct appeals and the procedure followed in their disposition. The amendments are intended to clarify the screening function of the rule and to reflect more accurately the actual practices of the appellate courts in the use of the calendaring system.

### *Appellate Mediation*

[Rule 12-313 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to replace existing Rule 12-313 NMRA, which recognizes the possible use of settlement conferences to

resolve appeals, with a comprehensive rule describing the existing appellate mediation procedures.

## *Petition for Writ of Certiorari* [Rule 12-502 NMRA]

The Supreme Court has approved a recommendation from the Appellate Rules Committee to amend Rule 12-502 NMRA, as follows: (1) the addition of a new Subparagraph (C)(2)(f), requiring the petitioner to alert the Supreme Court to any related or prior appeals, consistent with a similar obligation contained in Rules 12-202 and 12-208 NMRA; (2) the addition of a new Paragraph F, clarifying how parties should be denominated when opposing parties file separate petitions for writ of certiorari; (3) the addition of a new Paragraph I, addressing replies; (4) amendments to Paragraph K to provide more detailed information about the typical briefing schedule, depending on whether the petition for writ of certiorari has been granted from a case on the Court of Appeals' general calendar, summary calendar, or legal calendar; (5) amendments to Paragraph L to reflect that the Supreme Court may order oral argument at its discretion, as set forth in Rule 12-319 NMRA; and (6) the addition of a new Paragraph M, regarding the Supreme Court's expedited process for briefing and oral argument in time-sensitive cases. The Supreme Court has also approved updates and revisions to the committee commentary.

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

### *Amended and Supplemental Pleadings* [Rule 1-015 NMRA]

The Supreme Court has approved a recommendation from the Rules of Civil Procedure Committee to amend Rule 1-015(C) NMRA to incorporate the "deeming" rule adopted by the Court in *Snow v. Warren Power & Mach., Inc.*, 2015-NMSC-026, 354 P.3d 1285, where a party files a motion to amend a pleading prior to the running of the statute of limitations seeking to change the party against whom a claim is asserted. The Supreme Court has also approved the committee's recommendation to incorporate the language of Federal Rule of Civil Procedure 15(c) and the Court's decision in *Galion v. Conmaco Int'l, Inc.*, 1983-NMSC-006, 99 N.M. 403, 658 P.2d 1130, where a party files a motion to amend a pleading after the statute of limitations has run seeking to change the party against whom a claim is asserted.

### *Designation of Judge* [Rule 1-088 NMRA]

The Supreme Court has approved amendments to the procedures governing the designation of judges to eliminate the ten-day period after a judge has recused or been excused, during which time the parties could have agreed to a replacement judge. Under the new provisions, the case may be immediately reassigned to a new judge by the court. The rule was similarly amended to eliminate the ten-day period after all judges have recused or been excused, during which time the parties could have agreed to a replacement judge. Under the new provisions when all judges in a district have recused or been excused, the case may be immediately reassigned as directed by the Chief Justice.

### *Notice to Statutory Beneficiaries in Wrongful Death Cases* [New Rule 1-105 NMRA]

The Supreme Court has approved a new rule governing the timing of notice to statutory beneficiaries and the required contents of the notice in wrongful death cases.

## **Rules of Civil Procedure for the Limited Jurisdiction Courts**

Because the rules of procedure for the magistrate and metropolitan courts often overlap, amendments to the civil rules for the magistrate and metropolitan courts are summarized together in this section. In some instances, the Court has amended similar rules in similar ways for both courts. In other instances, the Court has approved amendments to only one set of rules.

### *Assignment and Designation of Judges* [Rules 2-105 and 3-105 NMRA]

The Supreme Court has approved amendments to the procedures governing the designation of judges in the magistrate and metropolitan courts to eliminate any ten-day waiting periods that allowed the parties to agree to a replacement judge. Under the new provisions, a case may be immediately reassigned to a new judge by the court regardless of the reasons for excusal or recusal and without waiting for any action by the parties.

### *Affirmation in Lieu of Notarization* [Rules 2-301 and 3-301 NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee and Metropolitan Courts Rules Committee to amend Rules 2-301 and 3-301 NMRA to add a new Paragraph I, titled "Unsworn affirmations under penalty of perjury." Paragraph I provides that a written statement has the same effect as a notarized statement if the statement includes a date, a signature, and a "written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct." The new paragraph mirrors Rule 23-115 NMRA of the Supreme Court General Rules and Rule 1-011(B) NMRA of the Rules of Civil Procedure for the District Courts, which were adopted in 2014.

## **Civil Forms**

Because the civil forms for the district, magistrate, and metropolitan courts often overlap, amendments to the civil forms for all courts are summarized together in this section. A form may be designated for use in one or more courts.

### *Juror Summons, Qualification, and Questionnaire Forms* [Withdrawn Form 4-602 NMRA; New Forms 4-602A, 4-602B, and 4-602C NMRA]

The Supreme Court has withdrawn Form 4-602 NMRA, the juror summons, qualification, and questionnaire form used in civil cases in the district, magistrate, and metropolitan courts, and has replaced the form with three new forms: Form 4-602A NMRA, juror summons; Form 4-602B NMRA, juror qualification; and Form 4-602C NMRA, juror questionnaire. The existing form is being broken into three separate forms to implement the new automated jury management system, which treats the three sections of the form as three separate documents. The Supreme Court also approved amendments to the substance of the forms. The summons form is being updated for consistency with the summons that is currently sent to prospective jurors. Several amendments are being made to the qualification form, including the addition of an advisement in Spanish regarding the availability of translated forms, the addition of a line for the juror's home address if different than the mailing address, and revisions to the bottom of the form, regarding requests for postponement, excusal,



or exemption. Finally, minor amendments are being made to the top and bottom of the questionnaire form to reflect the way that the questionnaire is now processed.

## *Motion to Restore Right to Possess or Receive a Firearm or Ammunition*

[Form 4-941 NMRA]

The Supreme Court has approved amendments to Form 4-941 NMRA, formerly the petition to restore right to possess or receive a firearm or ammunition. The amended form is denominated as a motion and is filed in the original proceeding that resulted in a mental health order limiting the respondent's Second Amendment rights under NMSA 1978, Section 34-9-19 and 18 U.S.C. § 922(g) (4). The amended form also is limited to civil proceedings. New Form 9-810 NMRA, described below, has been approved for use in criminal proceedings.

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

### *Designation of Judge*

[Rule 5-105 NMRA]

The Supreme Court has approved amendments to the procedures governing the designation of judges to eliminate the ten-day period after a judge has recused or been excused, during which time the parties could have agreed to a replacement judge. Under the new provisions, the case may be immediately reassigned to a new judge by the court. The rule was similarly amended to eliminate the ten-day period after all judges have recused or been excused, during which time the parties could have agreed to a replacement judge. Under the new provisions, when all judges in a district have recused or been excused the case may be immediately reassigned as directed by the Chief Justice.

### *Search Warrants*

[Rule 5-211 NMRA]

The Supreme Court has approved amendments to the search warrant rule for district court, Rule 5-111 NMRA, to clarify that a request for a search warrant "should be made in writing whenever possible." Corresponding amendments are being made to the search warrant rules for magistrate, metropolitan, and municipal courts, Rules 6-208, 7-208 and 8-207 NMRA.

### *Preliminary Examination*

[Rule 5-302 NMRA]

The Supreme Court has approved amendments to the rule addressing preliminary examinations in the district court, Rule 5-302 NMRA. The amendments to Subparagraph (A)(1) address how certain interrupting events affect the ten- and sixty-day deadlines for holding a preliminary examination. The amendments to Subparagraph (A)(2) provide that if the defendant does not consent to a time extension, the court may extend the time "only upon a showing on the record that exceptional circumstances exist and justice requires the delay." Corresponding amendments have been made to the preliminary examination rules for the magistrate and metropolitan courts, Rules 6-202 and 7-202 NMRA.

### *Habeas Corpus*

[Rule 5-802 NMRA]

The Supreme Court has approved a recommendation from the Rules of Criminal Procedure for the District Courts Committee to amend Rule 5-802 NMRA to address implementation issues with regard to the 2014 amendments to Rule 5-802. The amend-

ments eliminate the thirty-day review and acceptance period and instead require that all petitions for a writ of habeas corpus be filed immediately upon receipt by the district court. The amendments provide guidance to the district court as to how petitions should be classified and assigned upon filing. The amendments also clarify how the various deadlines in Rule 5-802 should be calculated. Finally, the amendments to Rule 5-802 address the transportation of incarcerated petitioners.

## ***Rules of Criminal Procedure for the Limited Jurisdiction Courts and Criminal Forms***

Because the rules of procedure for the magistrate, metropolitan, and municipal courts often overlap, amendments to the criminal rules and forms for the magistrate, metropolitan, and municipal courts are summarized together in this section. In some instances, the Court has amended similar rules in similar ways for all courts. In other instances, the Court has approved amendments to only one or two particular sets of rules.

### *Assignment and Designation of Judges*

[Rules 6-105 and 7-105 NMRA]

The Supreme Court has approved amendments to the procedures governing the designation of judges in the magistrate and metropolitan courts to eliminate any ten-day waiting periods that allowed the parties to agree to a replacement judge. Under the new provisions, a case may be immediately reassigned to a new judge by the court regardless of the reasons for excusal or recusal and without waiting for any action by the parties.

### *Preliminary Examination*

[Rules 6-202 and 7-202 NMRA]

The Supreme Court has approved amendments to the rules addressing preliminary examinations in the magistrate and metropolitan courts, Rules 6-202 and 7-202 NMRA. The amendments to Subparagraph (A)(1) address how certain interrupting events affect the ten- and sixty-day deadlines for holding a preliminary examination. The amendments to Subparagraph (A)(2) provide that if the defendant does not consent to a time extension, the court may extend the time "only upon a showing on the record that exceptional circumstances exist and justice requires the delay." Corresponding amendments have been made to Paragraph A of the district court rule, Rule 5-302 NMRA. Finally, the amendments to Rules 6-202(D) (2) and 7-202(D)(2) clarify the deadline for the magistrate or metropolitan court to arraign the defendant in a case involving both felony and misdemeanor charges when the court has determined that there is no probable cause to support the felony charges.

### *Release on Recognizance Due to Lack of Probable Cause*

[Rules 6-203, 7-203, and 8-202 NMRA]

The Supreme Court has approved amendments to Rules 6-203, 7-203, and 8-202 NMRA, which address probable cause determinations following warrantless arrests. The amendments affect Subparagraph (C)(1) of the rules and clarify that if the court does not find probable cause, the court must release the defendant on personal recognizance "pending further proceedings . . . subject only to the conditions that the defendant shall appear before the court as directed and shall not violate any federal, state, or local law."

## *Search Warrants*

[Rules 6-208, 7-208, and 8-207 NMRA]

The Supreme Court has approved amendments to the search warrant rules for magistrate, metropolitan, and municipal courts, Rules 6-208, 7-208, and 8-207 NMRA, to clarify that a request for a search warrant “should be made in writing whenever possible.” Corresponding amendments are being made to the search warrant rule for district court, Rule 5-211 NMRA.

## *Motions to Suppress Evidence*

[Rules 6-304 and 8-304 NMRA]

The Supreme Court has approved amendments to the provisions in Rules 6-304 and 8-304 NMRA that address motions to suppress evidence in magistrate and municipal courts. The suppression provisions are being moved from Paragraph B to Paragraph F of the rule. Paragraph F, as amended, (1) clarifies the scope of the rule; (2) requires the defendant to file a suppression motion twenty days before trial or the time specified for a motion hearing, whichever is earlier; (3) requires the prosecution to file a written response within fifteen days after service of a motion to suppress; and (4) permits the court to rule on a suppression motion without a hearing if the prosecution fails to file a timely written response. The Court also approved new committee commentary. The amendments make Rules 6-304 and 8-304 consistent with Rule 7-304 NMRA of the Rules of Criminal Procedure for the Metropolitan Courts.

## *Voluntary Dismissal and Refiled Proceedings*

[Rules 6-506.1, recompiled as amended from Rule 6-506A; 7-506.1, recompiled as amended from Rule 7-506A; and 8-506.1, recompiled as amended from 8-506A NMRA]

The Supreme Court has approved amendments to Rules 6-506A, 7-506A, and 8-506A NMRA, which address voluntary dismissal and refiled proceedings, and has recompiled the rules as Rules 6-506.1, 7-506.1, and 8-506.1 NMRA. The magistrate court rule, Rule 6-506.1, has been revised to omit most of the references to felony cases to avoid any conflicts or confusion with the preliminary examination rule, Rule 6-202 NMRA. The metropolitan court rule, Rule 7-506.1 NMRA, is being revised for consistency with the magistrate and municipal court rules to provide that if the prosecution dismisses and later refiles a case, the time between dismissal and refile does not count as part of the unexpired time for trial under Rule 7-506 NMRA. Amendments to Paragraph B of all three rules clarify that voluntary dismissal results in the automatic exoneration of bond only as provided in Rules 6-406, 7-406, and 8-406 NMRA. Finally, a new Paragraph E and new committee commentary are being added to Rules 6-506.1 and 7-506.1 to address the situation where the prosecution files a complaint, information, or indictment in the district court that contains one or more charges pending before the magistrate or metropolitan court.

## *Witness Interviews in Metropolitan Court*

[Rules 7-504 and 7-606 NMRA]

The Supreme Court has approved a recommendation from the Metropolitan Courts Rules Committee to amend Rule 7-504 NMRA (discovery) and Rule 7-606 NMRA (subpoena) to more accurately reflect the existing procedures in the metropolitan court for obtaining a witness interview in a criminal case, including the process for obtaining a subpoena for a witness interview when good faith efforts to schedule an interview have failed. The proposed amendments consolidate all of the subpoena provisions in Rule 7-606 and clarify that a subpoena for a witness

statement is valid only if signed by the trial judge. Additionally, the amendments to Rule 7-504(F) give the judge discretion to determine whether a party's failure to comply with the discovery rule should be deemed a waiver of the party's right to conduct a witness interview or deposition.

## *Criminal Forms*

Because the criminal forms for the district, magistrate, metropolitan, and municipal courts often overlap, amendments to the criminal forms for all courts are summarized together in this section. A form may be designated for use in one or more courts.

### *Untimely Probable Cause Determination*

[Rule 9-207A NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee to amend Form 9-207A NMRA to add a new checkbox, as follows: “A probable cause determination has not been made within 48 hours of the defendant's arrest. It is ordered that the defendant be released on personal recognizance.” This checkbox would be used in circumstances where a probable cause determination has not been made within the forty-eight hour deadline set forth in Rules 6-203 and 7-203 NMRA.

### *Juror Summons, Qualification, and Questionnaire Forms*

[Withdrawn Form 9-513 NMRA; New Forms 9-513A, 9-513B, and 9-513C NMRA]

The Supreme Court has withdrawn Form 9-513 NMRA, the juror summons, qualification, and questionnaire form used in criminal cases in the district, magistrate, and metropolitan courts, and has replaced the form with three new forms: Form 9-513A NMRA, juror summons; Form 9-513B NMRA, juror qualification; and Form 9-513C NMRA, juror questionnaire. The existing form is being broken into three separate forms to implement the new automated jury management system, which treats the three sections of the form as three separate documents. The Supreme Court also approved amendments to the substance of the forms. The summons form is being updated for consistency with the summons that is currently sent to prospective jurors. Several amendments are being made to the qualification form, including the addition of an advisement in Spanish regarding the availability of translated forms, the addition of a line for the juror's home address if different than the mailing address, and revisions to the bottom of the form, regarding requests for postponement, excusal, or exemption. Finally, minor amendments are being made to the top and bottom of the questionnaire form to reflect the way that the questionnaire is now processed.

### *Petition for Writ of Habeas Corpus*

[Form 9-701 NMRA]

The Supreme Court has approved a recommendation from the Rules of Criminal Procedure for the District Courts Rules Committee to amend Form 9-701 NMRA to be consistent with the approved amendments to Rule 5-802 NMRA. The amendments clarify the venue where the petition for a writ of habeas corpus should be filed and direct petitioners to file separate petitions if they wish to challenge both the underlying conviction and their conditions of confinement. The Court removed the certificate of service as Rule 5-802 already requires the district court to forward a copy of the petition to the appropriate respondent.

## *Petition for Writ of Certiorari to the \_\_\_\_\_ District Court of New Mexico* [Form 9-702 NMRA]

The Supreme Court has approved a recommendation from the Rules of Criminal Procedure for the District Courts Rules Committee to amend Form 9-702 to address recent amendments Rule 12-307 (Service and filing of papers). The amendments allow the petitioner to utilize the prison mailbox rule in seeking review of the denial of a petition for a writ of habeas corpus by the district court.

## *Order of Transfer to Children's Court* [New Rule 9-809 NMRA]

The Supreme Court has approved a recommendation from the Courts of Limited Jurisdiction Rules Committee and the Metropolitan Courts Rules Committee to adopt a new criminal form, Form 9-809 NMRA, Order of Transfer to Children's Court. The form reflects the procedure set forth NMSA 1978, Section 32A-2-6, which requires the limited jurisdiction courts to transfer juvenile delinquency cases to the district court. See NMSA 1978, § 32A-1-8(A)(1) (providing that the children's court has exclusive original jurisdiction over all proceedings in which a child is alleged to be delinquent).

## *Motion to Restore Right to Possess or Receive a Firearm or Ammunition* [New Form 9-810 NMRA]

The Supreme Court has approved new Form 9-810 NMRA, the motion to restore right to possess or receive a firearm or ammunition. The new form is substantially similar to amended Form 4-941 NMRA, except that new Form 9-810 is intended for use in criminal proceedings.

## **Rules of Professional Conduct**

### *Social Media* [Rules 16-100, 16-101, 16-106, 16-304, 16-305, 16-402, 16-403, and 16-701 NMRA]

The Supreme Court has approved a recommendation from the Code of Professional Conduct Committee to amend several of the Rules of Professional Conduct to provide guidance to lawyers on the use of social media. The proposed amendments stem from research indicating that a lawyer's interface with social media could implicate a number of important areas of professional responsibility, including a lawyer's competency, client confidentiality, the ethical solicitation of clients, forthright and complete discovery, the privacy of potential and seated jurors, and the control the court maintains over the information received by the jury.

### *Conflict of Interest; Current Clients; Specific Rules* [Rule 16-108 NMRA]

The Supreme Court has approved a recommendation from the Code of Professional Conduct Committee to amend Comment 14 of Rule 16-108 NMRA in light of *Castillo v. Arrieta*, 2016-NMCA-040, ¶¶ 22-23, 368 P.3d 1249, which states that a lawyer is permitted to enter into an agreement with a client to arbitrate legal malpractice claims provided that the client is fully informed of the scope and effect of the agreement and gives informed consent.

### *Reporting Professional Misconduct* [Rule 16-803 NMRA]

The Supreme Court has approved a recommendation from the Code of Professional Conduct Committee to amend Rule

16-803(E) NMRA to exempt not only impairments from alcohol, drugs, or other addiction disorders from the reporting requirement, but also impairments caused by mental, emotional, or other physical conditions not related to substance abuse.

## **Supreme Court General Rules**

### *Supreme Court Rules Committees* [Rule 23-106 NMRA]

The Supreme Court has approved amendments to create two new standing rules committees to oversee the Rules of Civil Procedure and the Rules of Criminal Procedure for all state courts. These two committees will replace six committees that have assisted the Court with this oversight responsibility in the past, namely the Rules of Civil Procedure for the District Courts Committee, Rules of Criminal Procedure for the District Courts Committee, Court of Limited Jurisdiction Rules Committee, Metropolitan Courts Rules Committee, Probate Courts Rules Committee, and Joint Committee on Rules of Procedure. The Court also approved amendments to clarify a committee chair's ability to appoint subcommittees and to clarify the extent to which state bar liaisons may participate on certain standing committees.

### *Supreme Court Rule-Making Procedures* [Rule 23-106.1 NMRA]

The Supreme Court has approved amendments to its rule-making procedures to revise the manner in which rule changes are requested and recommended to the Court. Under the amendments, rule changes requests must be submitted by a petition filed with the Clerk. The petition should include (1) a statement of the reasons why the rule change request is needed, (2) citations to any constitutional provisions, statutes, case law, rules, or regulations supporting the rule change request, as well as any known contrary authority, (3) a draft of the proposed new or amended rule, form, or uniform jury instruction; and (4) any other supporting documentation. When proposed rule changes are recommended to the Court by a rules committee, the new procedures require the sponsoring rules committee to submit the draft amendments with a committee report meeting the requirements in Subparagraphs (D)(3) and (D)(4) of the rule.

## **Uniform Jury Instructions - Civil**

### *Chapter 24, Legal Malpractice* [New UJI Chapter 24, UJI 13-2401 to -2415 NMRA and Appendix]

The Supreme Court has approved a recommendation from the UJI-Civil Committee to adopt a new Chapter 24 for use in legal malpractice cases. The Introduction provides an orientation to the new chapter. Practitioners and judges should pay special attention to the committee commentary to each instruction. Finally, the Appendix contains two examples of how the instructions should be used in an actual case.

## **Uniform Jury Instructions - Criminal**

### *Homicide or Great Bodily Injury by Vehicle* [UJI 14-251 NMRA; new UJIs 14-240B, -240C, and -240D NMRA; withdrawal of UJI 14-240 NMRA]

The Supreme Court has approved a recommendation from the UJI-Criminal Committee to withdraw UJI 14-240 NMRA



(Homicide or great bodily injury by vehicle), and to adopt new UJIs 14-240B (Homicide by vehicle; driving under the influence), -240C (homicide by vehicle; reckless driving), and -240D NMRA (Great bodily injury by vehicle) in response to the recent amendments to NMSA 1978, Section 66-8-101 (Homicide by vehicle; great bodily harm by vehicle) which created greater penalties for death caused by driving under the influence of alcohol or drugs than for death caused by reckless driving. In addition, the amendments clarify the causation requirement for vehicular homicide. Finally, the Court approved the UJI-Criminal Committee's recommendation to amend UJI 14-251 NMRA (Homicide; "proximate cause"; defined) to clarify the State's theory of causation and to further ensure that the jury's findings are consistent with New Mexico's requirement that intoxication or recklessness be the proximate cause of death.

*Possession of Burglary Tools; Essential Elements*  
[UJI 14-1633 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJI 14-1633 NMRA to require a separate finding that the item possessed "is commonly used for the commission of a burglary."

*Accessory Liability*  
[UJIs 14-2820, -2821, and -2822 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJIs 14-2820, -2821, and

-2822 NMRA to expressly state that the jury must find each of the elements listed. The Court also amended the Use Note and commentary to reflect recent developments in the relevant case law.

*Money Laundering*  
[New UJIs 14-4201 to -4205 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to adopt a new set of uniform jury instructions for offenses under the Money Laundering Act, NMSA 1978, Sections 30-51-1 to -5 (1998).

*Duress; Nonhomicide Crimes*  
[UJI 14-5130 NMRA]

The Supreme Court has approved the UJI-Criminal Committee's recommendation to amend UJI 14-5130 NMRA (Duress; non-homicide crimes) to resolve a tension between the instruction and the controlling case law. *See State v. Wyatt B.*, 2015-NMCA-110, ¶ 35, 359 P.3d 165 (noting a difference between the uniform jury instruction and the four-factor test articulated in *State v. Rios*, 1999-NMCA-069, ¶ 25, 127 N.M. 334, 980 P.2d 1068).

The full text of the new rule amendments summarized above can be viewed on the New Mexico Compilation Commission's website at: [www.nmcompcomm.us/nmrules/NMRuleSets.aspx](http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx)

From the New Mexico Court of Appeals

**Opinion Number: 2017-NMCA-065**

No. A-1-CA-33985 (filed June 6, 2017)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.

ZACKARY A. MONTGOMERY,  
Defendant-Appellant.

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

ANGIE K. SCHNEIDER, District Judge

HECTOR H. BALDERAS  
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Santa Fe, New Mexico  
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NANCY L. SIMMONS  
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NANCY L. SIMMONS P.C.  
Albuquerque, New Mexico  
for Appellant

**Opinion**

**Timothy L. Garcia, Judge**

{1} Defendant Zackary Montgomery was tried and convicted of driving while under the influence of intoxicating liquors, child abuse negligently caused, and no seat belts. Defendant argues on appeal that a series of actions by the State during trial constituted prosecutorial misconduct, including the State's injection of facts not supported by the evidence during its closing argument. We agree that the misconduct by the prosecutor during trial and closing argument was sufficiently egregious as to constitute reversible error. We need not reach Defendant's other proffered examples of prosecutorial misconduct or other arguments regarding ineffective assistance of counsel. Defendant was deprived of a fair trial. Therefore we reverse and remand for a new trial.

**BACKGROUND**

{2} On August 4, 2013, at approximately 5:17 p.m., New Mexico State Police Sergeant Marc Davis conducted a traffic stop on Defendant's vehicle after observing that Defendant and the front seat passenger, Defendant's brother, were not wearing seat belts. At trial, Sergeant Davis testified as the arresting officer. He stated that upon approaching the vehicle, he recognized Defendant. After advising Defendant of the reason for the stop, Sergeant Davis

returned to his vehicle to issue the citations and discovered that Defendant had an outstanding warrant for his arrest out of Ruidoso, New Mexico. Sergeant Davis observed Defendant and Defendant's vehicle during the seven minutes he was in his unit writing the citations. Sergeant Davis then issued the citations—first to the passenger, then to Defendant—and advised Defendant of his outstanding warrant. Sergeant Davis further noticed that there were children in the back seat of the van that were not properly restrained for which he issued Defendant a verbal warning. Shortly thereafter, Defendant's grandparents drove up, and Sergeant Davis explained to Defendant's grandmother that Defendant would be placed under arrest. Sergeant Davis then had Defendant get out of the vehicle and placed him under arrest for his outstanding warrant. Defendant became agitated and refused Sergeant Davis's offer to arrest him out of the sight of the children, who were still inside the vehicle.

{3} Sergeant Davis testified that he had concerns about Defendant's behavior so Sergeant Davis quickly patted down Defendant, cuffed him, and put him into the back of his police unit. Sergeant Davis then smelled alcohol coming from the back of his unit. He told Defendant he could smell alcohol, but Defendant made no comment in response. Sergeant Davis further testified that because Defendant was "volatile"

in their prior dealings, he decided to call another officer to conduct field sobriety tests on Defendant at the police station. Officer Hoover administered three standardized field sobriety tests at the station, and Defendant performed poorly on these tests. Defendant consented to take a breath alcohol test, the results of which registered blood alcohol content (BAC) readings of .12 and .13. Defendant was charged with driving while under the influence of intoxicating liquor, fourth offense, pursuant to NMSA 1978, Section 66-8-102(A), (G) (2010, amended 2016), or in the alternative, having an alcohol concentration of eight one-hundredths (.08) or more in his breath or blood within three hours of operating a motor vehicle, pursuant to Section 66-8-102(C), (G). Defendant was also charged with negligent child abuse, no death or great bodily harm, pursuant to NMSA 1978, Section 30-6-1(D) (2009), and not wearing seat belts, pursuant to NMSA 1978, Section 66-7-372(A) (2001).

{4} The following excerpts and arguments are relevant to this appeal. The State elicited testimony from Sergeant Davis regarding the "concept of peak." Sergeant Davis described "peak" as your "maximum level of absorption [of alcohol] at that given time." Defense counsel objected that Sergeant Davis was not qualified as an expert in alcohol absorption rates, and the State responded that it would only ask some "general questions." Sergeant Davis went on to testify as to the factors that would affect a person's BAC. Later, on redirect, the State asked Sergeant Davis, "is it at all possible for someone to drink two shots of liquor and blow .12 forty minutes later?" Defendant again objected, and the district court sustained the objection.

{5} Defendant testified that on the day he was arrested, he was on his way to a birthday party for his daughter but did not have any alcohol to drink prior to being pulled over. Defendant bought alcohol for the party about twenty minutes before the stop, and it was located inside the car. When Sergeant Davis returned to his squad car, Defendant drank two fifty milliliter shots of liquor from the alcohol he had just purchased because he was worried about missing his daughter's birthday and knew he had an outstanding warrant for his arrest. On cross-examination, the State asked Defendant, "you're trying to tell this jury that by taking two shots of alcohol you can manage to get to [a BAC of] .12 forty some minutes later?" Defendant responded, "I'm not educated in that matter," and

the prosecutor commented, “didn’t figure that part out did you?” Defense counsel objected that the prosecutor’s statement was argumentative, and the district court sustained as to the prosecutor’s last comment. Defendant’s brother also testified that Defendant grabbed shots and drank them while they were waiting for Sergeant Davis to return to their vehicle.

{6} In its closing argument, the State urged the jury to consider whether Defendant’s testimony was “believable,” whether he was “truthful or untruthful,” and whether his story was reasonable. When the prosecutor told the jury that Defendant’s theory of the case was that he drank “two shots of alcohol and that led to a BAC of .12 or .13,” defense counsel objected and asked to approach. Defense counsel objected to any argument that would amount to unsworn testimony as to what amount of alcohol would lead to that level of BAC. The district court overruled Defendant’s objection. The prosecutor continued, telling the jury, “Defendant claims [he] had two shots of alcohol and that led [him] to a .12/.13. Absolutely impossible, absolutely a lie, absolutely more than incredible, . . . couldn’t happen under any set of circumstances, that’s his story.”

{7} The prosecutor then pointed out that 0.12 is 150% higher than the legal limit and went on to ask the jury to analyze Defendant’s behavior and demeanor during the traffic stop as a symptom of “poor judgment” or as a symptom of the fact that he had been “drinking all day.” Defense counsel objected that there was no evidence Defendant had been drinking all day, the prosecutor’s statements were “way outside the record,” and requested that the district court give an instruction to disregard. Again, the district court overruled the objection, stating that the prosecutor’s comments were permissible argument. The prosecutor continued, stating, “two drinks do not equal .12, period. End of story. That suggests quite a bit of consumption of alcohol. End of story.”

{8} The jury found Defendant guilty of: (1) child abuse, (2) driving under the influence of intoxicating liquors and/or drugs, and (3) no seat belts. This appeal followed.

#### DISCUSSION

{9} On appeal, Defendant submits two arguments. First, Defendant argues that a series of questions and statements by the prosecutor constituted prosecutorial misconduct and resulted in cumulative error. Second, Defendant argues that his attorney provided ineffective assistance of

counsel and that the district court’s denial of Defendant’s motion to re-open his case denied him a fair trial. We hold that the State’s injection of facts and argument not supported by the evidence, scientific or otherwise, constituted prosecutorial misconduct warranting reversal. As such, we need not address whether Defendant’s assertions of other specific instances of prosecutorial misconduct also support reversal. Because we reverse and remand for a new trial, we do not address Defendant’s ineffective assistance of counsel argument.

{10} When a defendant has preserved, by a timely objection, an issue of prosecutorial misconduct, we review for “abuse of discretion[.]” *State v. Stills*, 1998-NMSC-009, ¶ 49, 125 N.M. 66, 957 P.2d 51, because the district court is “in the best position to evaluate the significance of any alleged prosecutorial errors.” *State v. Duffy*, 1998-NMSC-014, ¶ 46, 126 N.M. 132, 967 P.2d 807, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110.

{11} “Our ultimate determination of this issue rests on whether the prosecutor’s improprieties had such a persuasive and prejudicial effect on the jury’s verdict that the defendant was deprived of a fair trial.” *Duffy*, 1998-NMSC-014, ¶ 46. Prosecutorial misconduct may be the result of a single incident so egregious that it may, standing alone, rise to the level of fundamental error. *Id.* ¶ 47. “If, during the course of trial, a prosecutor engages in more than one instance of misconduct, it is not necessary for review that the defendant object every time if the cumulative effect of such improper conduct by the prosecutor denies him a fair trial.” *State v. Diaz*, 1983-NMCA-091, ¶ 4, 100 N.M. 210, 668 P.2d 326.

{12} Defendant argues that the cumulative effect of the claimed acts of prosecutorial misconduct ultimately contributed to an unfair trial. Defendant claims that the primary examples of misconduct were: (1) “the State’s injection of facts unsupported by the evidence [at] trial,” (2) “the State’s introduction of Defendant’s post-arrest silence,” and (3) “the State’s characterization of Defendant as [a thug and a liar].”

#### The State’s Arguments and Reliance on Facts Unsupported by the Evidence

{13} During closing arguments, “remarks by the prosecutor must be based upon the evidence or be in response to the defendant’s argument.” *State v. Smith*, 2001-NMSC-004, ¶ 38, 130 N.M. 117, 19 P.3d 254. “It is misconduct for

a prosecutor to make prejudicial statements not supported by evidence.” *Duffy*, 1998-NMSC-014, ¶ 56. However, “[s]tatements having their basis in the evidence, together with reasonable inferences to be drawn therefrom, are permissible and do not warrant reversal.” *State v. Herrera*, 1972-NMCA-068, ¶ 8, 84 N.M. 46, 499 P.2d 364 (internal quotation marks and citation omitted). Our Supreme Court has identified three factors “to consider when reviewing questionable statements made during closing arguments for reversible error: (1) whether the statement invades some distinct constitutional protection; (2) whether the statement was isolated and brief, or repeated and pervasive; and (3) whether the statement was invited by the defense.” *State v. Torres*, 2012-NMSC-016, ¶ 10, 279 P.3d 740 (alterations, internal quotation marks, and citation omitted). These factors are only meant to be useful guidelines and the context in which the statement was made is the paramount consideration. *Id.* “Where evidence of guilt is overwhelming, or an improper statement is corrected by counsel or the court, reversible error is less likely. If a case turns on a crucial fact that is improperly manipulated in closing, or if counsel persists when admonished to desist, the probability of error is greater.” *State v. Sosa*, 2009-NMSC-056, ¶ 34, 147 N.M. 351, 223 P.3d 348. “When these considerations lead to a conclusion that the comments materially altered the trial or likely confused the jury by distorting the evidence, the [s]tate has deprived the defendant of a fair trial, and reversal is warranted.” *Torres*, 2012-NMSC-016, ¶ 10 (internal quotation marks and citation omitted).

{14} Defendant argues that the State improperly relied upon facts unsupported by the evidence admitted at trial and the prosecutor made repetitious improper and unsupported comments in closing as a substitute for non-existent expert testimony. We agree.

{15} At trial, the State was barred from soliciting a response by Sergeant Davis from the question it posed regarding the relationship between Defendant’s BAC and the number of drinks Defendant consumed prior to testing. Nonetheless, the State repeatedly argued this point to the jury during closing argument. The prosecutor made multiple comments in his closing argument that the amount Defendant testified to drinking could not have resulted in the tested BAC of .12/.13 forty minutes



later. Arguments such as “absolutely impossible, . . . couldn’t happen under any set of circumstances, that’s historic” and “two drinks do not equal .12, period” did not have any factual basis in the evidence. {16} The State argues that these statements were merely arguments attacking the veracity of Defendant’s testimony and suggestions from which the jury might draw reasonable inferences. We disagree. The State attempted to inject scientific facts that were not in evidence regarding a subject matter that would have required qualified expert opinion testimony. See Rule 11-703 NMRA (providing foundation requirements for expert testimony in the form of an opinion); *State v. Armijo*, 2014-NMCA-013, ¶¶ 7, 18, 316 P.3d 902 (reversing a driving while intoxicated conviction because the officer was not qualified to give his opinion regarding the amount of alcohol a defendant must have consumed in order to produce breath scores of .06/.05).

{17} In *Armijo*, the officer was asked at trial whether the defendant’s BAC scores of .06 and .05 were consistent with the defendant’s admission of having consumed only one beer—to which the officer responded, “no, sir[.]” 2014-NMCA-013, ¶ 5. This Court determined that the prosecutor’s questioning of the officer was an attempt to elicit an “unqualified and inadmissible opinion” on the defendant’s breath scores. *Id.* ¶ 12. This Court held there was reversible error in *Armijo* due to the improperly admitted evidence. *Id.* ¶ 18. In *Armijo*, although this Court reversed on the issue of prejudice resulting from the improperly admitted evidence, *id.* ¶¶ 7, 12-18, the logic and reasoning we applied is equally applicable to Defendant’s prosecutorial misconduct argument in this case.

{18} The prosecutor’s comments, regard-

ing the correlation between Defendant’s BAC and the amount of alcohol Defendant testified to drinking after the traffic stop, constituted baseless references to an expert opinion that was only compounded by the district court’s prior refusal to admit Sergeant Davis’s unqualified testimony on this specific issue. See *id.* ¶ 7. Whether Defendant consumed only the amount of alcohol stated in testimony or instead had been driving while under the influence of alcohol prior to the stop, was a crucial determination to be made by the jury. The district court specifically rejected the State’s efforts to admit evidence correlating the amount of alcohol consumed by Defendant to a BAC test score. Without a factual basis or other qualified scientific foundation to admit such evidence at trial, we can reasonably conclude that the prosecutor’s numerous comments about the correlation between Defendant’s alcohol consumption and any resulting BAC test results were intentionally made to sway the jury and improperly tip the balance in favor of the State. See *id.* ¶ 12; see also *State v. Marquez*, 2009-NMSC-055, ¶ 23, 147 N.M. 386, 223 P.3d 931 (“In a DWI trial, the improper admission of scientific evidence indicating that [the d]efendant was legally intoxicated at the time of driving will almost certainly tip the balance in favor of the [s]tate.” (omission, internal quotation marks, and citation omitted)), *overruled on other grounds by Tollardo*, 2012-NMSC-008, ¶ 37 n.6. The State’s improper attempt to discredit Defendant’s testimony interfered with the jury’s role to weigh the evidence, determine the credibility of the witnesses, and fairly assess the defense offered at trial. See *Sosa*, 2009-NMSC-056, ¶ 34 (“[T]he common thread running through . . . cases finding reversible error is that the prosecutors’

comments materially altered the trial or likely confused the jury by distorting the evidence, and thereby deprived the accused of a fair trial.”); see also *Duffy*, 1998-NMSC-014, ¶ 56 (“It is misconduct for a prosecutor to make prejudicial statements not supported by evidence.”).

{19} We are persuaded that the prosecutor’s manipulation and repetitive arguments regarding a critical scientific fact not admitted into evidence was so egregious that it denied Defendant a fair trial. See *Armijo*, 2014-NMCA-013, ¶ 16 (recognizing a reasonable probability that the officer’s unqualified opinion testimony “could have induced the jury’s verdict” even where “the admissible evidence . . . could have supported either a conviction or an acquittal, since a reasonable jury could have returned either verdict” (internal quotation marks and citation omitted)); *State v. Garvin*, 2005-NMCA-107, ¶¶ 37-38, 138 N.M. 164, 117 P.3d 970 (reversing and remanding for a new trial where the evidence of guilt was not overwhelming and the prosecutor’s misstatement of the facts and cumulative conduct “rose to a level which deprived [the d]efendant of a fair trial”). As a result, we hold that the district court abused its discretion when it allowed the prosecutor to make critical comments, both during the trial and closing arguments, regarding a correlation between Defendant’s alcohol consumption and resulting BAC test results.

#### CONCLUSION

{20} For the foregoing reasons, we reverse Defendant’s three convictions and remand for a new trial.

{21} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

#### WE CONCUR:

LINDA M. VANZI, Chief Judge

JAMES J. WECHSLER, Judge

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