

BAR BULLETIN

October 3, 2018 • Volume 57, No. 40



Rancho, by Gwen Wilemon

El Zocalo Gallery

Inside This Issue

Photos from the 2018 Annual Meeting.....	7
Board of Bar Commissioners Election Notice.....	9
A Message from Chief Justice Judith K. Nakamura	11
New Mexico Supreme Court Committees, Boards, and Commissions: Notice of 2018 Year-End Vacancies	12
Clerk Certificates	15

From the New Mexico Court of Appeals

No. 2018-NMCA-054, A-1-CA-35454: Federal Nat'l Mortg. Ass 'n v. Chiulli	18
No. 2018-NMCA-055, A-1-CA-36092: State v. Cummings	22

CLE Planner

*Upcoming programming
from the
Center for Legal Education*



Celebrate Pro Bono in New Mexico!



OCTOBER 2018: The American Bar Association has dedicated an entire week in October to the “National Celebration of Pro Bono.” In New Mexico, the local Judicial District Court Pro Bono Committees have extended this celebration to span the entire month of October (and part of September). The committees are hosting a number of pro bono events across the state, including free legal fairs, clinics, recognition luncheons, Continuing Legal Education classes and more!

To learn more about any of the events below, or to get involved with your local pro bono committee, please contact Aja Brooks at ajab@nmlegalaid.org or (505)814-5033. Thank you for your support of pro bono in New Mexico!

1st Judicial District

Pro Bono Appreciation Luncheon & CLE
October 15, 2018 from 11 AM – 1:15 PM
Hilton of Santa Fe
(100 Sandoval St., Santa Fe, NM 87501)
Luncheon from 11 AM - 12:15 PM (luncheon price TBA)
CLE from 12:15 PM - 1:15 PM: "Personal Income Tax under the Tax Cuts and Jobs Act: What Every New Mexican Needs to Know" presented by Grace Allison, Director of the Low Income Taxpayer Clinic at New Mexico Legal Aid.

Free Legal Fair
October 20, 2018 from 10 AM – 1 PM
Genoveva Chavez Community Center
(3221 Rodeo Rd, Santa Fe, NM 87507)

2nd Judicial District

Law-La-Palooza Free Legal Fair
October 18, 2018 from 3 – 6 PM
Manzano Mesa Multigenerational Center
(501 Elizabeth SE, Albuquerque, NM 87123)

3rd Judicial District

Free Legal Fair
October 26, 2018 from 10 AM – 1 PM
Third Judicial District Court
(201 W. Picacho Avenue, Las Cruces, NM 88005)

5th Judicial District (Chaves)

Pro Bono Appreciation Luncheon & Free Legal Fair
October 19, 2018
Roswell Adult and Senior Center
(807 N. Missouri Ave., Roswell, NM 88201)
Luncheon from 12 noon – 1 PM
Free Legal Fair from 1 – 4 PM

8th Judicial District

CLE & Free Legal Fair
October 11, 2018
CLE from 2:30-3:30 PM: "Real ID and Name Changes: 2018 Updates" (self-study video presentation at Taos District Court)
Free Legal Fair from 4 – 7 PM
Taos Senior Center
(601 Lovato Place, Taos NM 87571)

9th Judicial District

CLE, Pro Bono Appreciation Luncheon, & Free Legal Fair
October 12, 2018
Traci's Greenhouse
(2600 Mabry Dr., Clovis, NM, 88101)
CLE from 11 AM – 12 noon: "Adult Protective Proceedings: Implementation of SB 19" presented by Ruth Pregenzer, program director of the State Bar of New Mexico's Entrepreneurs in Community Lawyering program.
Luncheon from 12 noon – 1:30 PM
Free Legal Fair from 1:30 – 4 PM

12th Judicial District

Free Legal Fair
October 27, 2018 from 10 AM – 2 PM
Otero County Courthouse
(1000 New York Ave., Alamogordo, NM)

13th Judicial District

Pro Bono Appreciation Breakfasts & Legal Clinics
Breakfasts at 8:30 AM; Free Legal Clinics from 10 AM - 2 PM
Thursday, October 11, 2018
13th Judicial District Court in Valencia County
(1835 Hwy. 314 SW, Los Lunas, NM 87031)
Tuesday, October 16, 2018
13th Judicial District Court in Cibola County
(700E Roosevelt Ave Ste. 60, Grants, NM 87020)
Friday, October 19, 2018
13th Judicial District Court in Sandoval County
(1500 Idalia Road, Bernalillo, NM 87004)



STATE BAR of NEW MEXICO

Officers, Board of Bar Commissioners

Wesley O. Pool, President
Gerald G. Dixon, President-elect
Ernestina R. Cruz, Secretary Treasurer
Scotty A. Holloman, Immediate Past President

Board of Editors

Gabrielle Dorian, Chair Taylor V. Bui
Curtis G. Hayes C. James Kalm
Anne E. Minard Matthew Ramirez
Andrew Sefzik Michael Sievers
Nancy Vincent Carolyn A. Wolf

State Bar Staff

Executive Director Richard Spinello
Director of Communications
Evann Kleinschmidt
505-797-6087 • notices@nmbar.org
Graphic Designer Julie Schwartz
jschwartz@nmbar.org
Account Executive Marcia C. Ulibarri
505-797-6058 • mulibarri@nmbar.org
Communications Assistant Jaime Hernandez
505-797-6040 • jhernandez@nmbar.org
Digital Print Center
Manager Brian Sanchez
Assistant Michael Rizzo

©2018, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmbar.org.

The *Bar Bulletin* (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
address@nmbar.org • www.nmbar.org

October 3, 2018 • Volume 57, No. 40

Table of Contents

Notices 4
Calendar of Continuing Legal Education..... 13
Court of Appeals Opinions List..... 14
Clerk Certificates..... 15
Rule Making Activity 17

From the New Mexico Court of Appeals

No. 2018-NMCA-054, A-1-CA-35454: Federal Nat'l Mortg. Ass 'n v. Chiulli 18
No. 2018-NMCA-055, A-1-CA-36092: State v. Cummings..... 22
Advertising 25

Meetings

October

- 3**
Health Law Section Board
Noon, teleconference
- 9**
Appellate Practice Section Board
Noon, teleconference
- 9**
Bankruptcy Law Section Board
Noon, United States Bankruptcy Court
- 9**
Trust and Estate Division Board
Noon, teleconference
- 10**
Tax Section Board
11 a.m., teleconference
- 11**
Business Law Section Board
4 p.m., teleconference

Workshops and Legal Clinics

October

- 3**
Divorce Options Workshop
6–8 p.m., State Bar Center, Albuquerque,
505-797-6022
- 3**
Civil Legal Clinic
10 a.m.–1 p.m., Second Judicial District
Court, Albuquerque, 1-877-266-9861
- 5**
Civil Legal Clinic
10 a.m.–1 p.m., First Judicial District Court,
Santa Fe, 1-877-266-9861
- 11**
**Common Legal Issues for Senior Citizens
Workshop Presentation**
10–11:15 a.m., San Jose Senior Center,
Carlsbad, 1-800-876-6657
- 12**
Civil Legal Clinic
10 a.m.–1 p.m., Bernalillo County
Metropolitan Court, Albuquerque,
505-841-9817

About Cover Image and Artist: Although Gwen Wilemon had been sketching and drawing her whole life, it wasn't until she became an adult that she began exploring color through acrylics, oils, pastels, and watercolor. Since then, Wilemon has studied under several artists including Fred Miller, Bud Edmondson, Clive Tyler, Albert Handel and Lorenzo Chavez among others. Wilmon's work has hung in the Sumner and Dene Gallery in Albuquerque, the Wilder Nightingale Fine Art Gallery in Taos, Purple Sage Galeria in Old Town Albuquerque and El Zocalo in Las Vegas, N.M. as well as other galleries and museums around the state. She has also had the honor of having works included in juried shows of the Plein Air Painters of N.M., Masterworks, Miniatures, the Pastel Society of N.M. Small Works, PSNM National Pastel Show, and IAPS Show (International Association of Pastel Societies) and has received awards for watercolor, miniatures, and pastels. Wilmon is a member of the Pastel Society of New Mexico, the Plein Air Painters of New Mexico and is a member of the Camino Real 8, a group of artists in central New Mexico. She is currently represented by El Zocalo Gallery in Las Vegas, N.M.

Notices

COURT NEWS

US District Court, District of New Mexico

U.S. Magistrate Judge Vacancy

The Judicial Conference of the U.S. has authorized the appointment of a full-time U.S. Magistrate Judge for the District of New Mexico at Albuquerque. The current annual salary of the position is \$191,360. The term of office is eight years. The U.S. Magistrate Judge application form and the full public notice with application instructions are available from the Court's website at www.nmd.uscourts.gov or by calling 575-528-1439. Applications must be submitted no later than Oct. 15.

Office of the Attorney General Notice of Disabilities Summit

The Office of New Mexico Attorney General Hector Balderas invites members of SBNM to a day-long opportunity for networking and outreach for organizations that work with the community of people with disabilities. The event is set from 9 a.m.-5 p.m., Oct. 4, on the east side of the Albuquerque Convention Center. The conference is sponsored by the Office of Attorney General, and use of the convention center is arranged through the co-sponsorship of Albuquerque city councilors Isaac Benton and Clarissa Pena. For information, visit www.nmag.gov or email Amira Rasheed at arasheed@nmag.gov.

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

The Second Judicial District Court Children's Court Abuse and Neglect Brown Bag will be held on Oct. 19, at noon in the Chama Conference Room at the Juvenile Justice Center, 5100 2nd Street NW, Albuquerque, NM 87107. Attorneys and practitioners working with families involved in child protective custody are welcome to attend. Call 505-841-7644 for more information.

Sixth Judicial District Court Notice of Right to Excuse Judge

The Gov. Susana Martinez appointed William J. Perkins to fill the vacant position and to take office on October 9, 2018, in Division I of the Sixth Judicial District Court. All pending and reopened civil, domestic, domestic violence, guardianship,

Professionalism Tip

With respect to the courts and other tribunals:

I will be respectful toward and candid with the court.

lower court appeals, abuse, and neglect and adoption cases (CV, DM, DV, PQ, LR, JQ and SA) previously assigned to Timothy L. Aldrich, former District Judge for Division I, shall be assigned to the Hon. William J. Perkins. Pursuant to Supreme Court Rule 1.088.1, parties who have not yet exercised a peremptory excusal will have 10 days to excuse Judge Perkins.

Investiture Ceremony of The Honorable William J. Perkins

The Sixth Judicial District Court invites members to attend the Investiture Ceremony of Hon. William J. Perkins on Oct. 12, 10 a.m. at the Sixth Judicial District Court Grant County Courthouse, 201 N. Cooper Street, 2nd Floor Silver City, N.M. reception will immediately follow on the first floor lobby of the Grant County Courthouse. Attending justices and judges are asked to bring their robe and report to the second Floor Jury Room before 9:45 a.m.

STATE BAR NEWS

Animal Law Section

Section Annual Meeting: "Why Animals Need Zoos"

Join the Animal Law Section and ABQ BioPark Deputy Chief Executive Dr. Baird Fleming at the Section's annual meeting of membership from 5-7 p.m., Oct. 5, at the State Bar Center. Owned and operated by the City of Albuquerque, the ABQ BioPark is approximately 150 acres and includes the Aquarium and Botanic Gardens (54 acres), Tingley Beach (33 acres) and the Zoo (64 acres). Dr. Fleming will discuss why animals need zoos and the ABQ BioPark's high level of animal welfare and conservation mission. The Section looks forward to this opportunity to develop a relationship with the ABQ BioPark and we hope you can join us! Appetizers and beverages will be served. R.S.V.P. with Breanna Henley at bhenley@nmbar.org.

Appellate Practice Section

Court of Appeals Candidate Forum

The Appellate Practice Section will host a candidate forum for the eight candidates running for the New Mexico Court of Appeals this November Save the date for 4-6 p.m., Oct. 18, at the State Bar Center in Albuquerque. The event will be live streamed at www.nmbar.org/AppellatePractice for those who cannot attend in person. Thank you to the New Mexico Trial Lawyers Association, New Mexico Defense Lawyers Association and Albuquerque Bar Association for their co-sponsorship of the event.

Board of Bar Commissioners Meeting Agenda

The next meeting of the Board of Bar Commissioners will be held on Oct. 12 at the State Bar Center. For a copy of the agenda, visit www.nmbar.org/nmbar-docs/aboutus/governance/meetings/BBCAgenda-1018.pdf. For more information, contact Kris Becker at 505-797-6038 or kbecker@nmbar.org.

New Mexico Judges and Lawyers Assistance Program ABA Law Mental Health Day

The ABA Law Student Division officially moved Law School Mental Health Day to Oct. 10. American University Washington College of Law will host a YouTube live event featuring Laurie Besden, Pennsylvania Lawyers Concerned for Lawyers executive director, who is in recovery with an incredible story to share. The session will run live from 2-3 p.m. E.T. and then will be available for replay. The YouTube link is <http://auw.cl/tohellandback>. Besden's event is titled To Hell and Back: One Lawyer's Path to Recovery. A YouTube Live Presentation. Besden had a privileged upbringing. She graduated college with a 3.97 GPA, and was in the top 15% of her law school class. On paper, Besden is the definition of success. Besden is also a drug addict. Listen as Besden candidly shares her story of crippling addiction, and ultimately, redemption. Learn how the district attorney approached the case and her current thoughts about it. Understand what it is like to be approached by a caring

individual, with their experience strength and hope, even when you are not ready to accept your state of affairs. It is never too early or late to plant "the seed of hope."

Committee Meeting

The NMJLAP will be having its fourth quarter, Committee Meeting on Oct. 6, 10 a.m.-noon at the State Bar Center. All J LAP Committee members are encouraged to attend. For those that cannot be there in person, a meeting bridge will be provided. Coffee and breakfast will be provided. R.S.V.P. with Erica Candelaria at ecandelaria@nmbar.org. For questions, contact Pam Moore at 505-797-6003 or pmoore@nmbar.org

Attorney Support Groups

- Oct. 8, 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 available. Dial 1-866-640-4044 and enter code 7976003#.
- Oct. 15, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- Nov. 3, 5:30 p.m.
First United Methodist Church, 4th and Lead SW, Albuquerque (The group normally 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.

Solo and Small Firm Section Fall Speaker Features Mike Stout

On Oct. 16, the Solo and Small Firm monthly speaker series featured speaker is nationally-respected criminal defense attorney Mike Stout of Las Cruces, who will consider "True Believers and the Road to Hell." Nov. 20 features Robert Huelskamp, who will share his insights from almost 40 years working with nuclear weaponry, non-proliferation, and counter terrorism, in "Russia, Iran, and North Korea: What Could Possibly Go Wrong?" Each presentation is open to all members of the State Bar and will take place from noon-1 p.m. at the State Bar Center in Albuquerque. Lunch will be provided free for those who R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

Statement of Ownership, Management, and Circulation as of Sept. 19, 2018.

Bar Bulletin, Publication No. 1062-6611. 52 issues annually (weekly). \$125 annual subscription price.
Publisher: State Bar of New Mexico, PO Box 92860 (87199-2860), 5121 Masthead NE, Albuquerque, NM 87109.
Owner: State Bar of New Mexico, PO Box 92860 (87199-2860), 5121 Masthead NE, Albuquerque, NM 87109.
No other known bondholders, mortgages, and/or other security holders.

Printed Circulation	Average	Actual (Vol. 57, No. 38)
Total Number of Copies	6165	6092
Paid Subscriptions Outside-County	3561	3555
Paid Subscriptions In-County	2604	2537
Sales Through Dealers, Carriers, etc.	0	0
Other Classes Mailed Through the USPS	0	0
Total Paid Distribution	6165	6092
Free Distribution by Mail		
Outside-County	0	0
In-County	0	0
Other Classes Mailed Through the USPS	0	0
Free Distribution by Mail	0	0
Total Free Distribution	90	90
Total Distribution	6255	6282
Copies not Distributed	0	0
Total	6255	6282
Electronic Circulation	Average	Actual
Requested Electronic Copies	2664	2926
Total Printed and Electronic Circulation	8829	9018
Percent Paid	98.99%	99.01%

I Certify that the statements made above are true and complete.

Evann Kleinschmidt, *Bar Bulletin* Director of Communications

Prosecutors Section Annual Awards Open

The Prosecutors Section recognizes prosecutorial excellence through its annual awards. For 2018 the Section aims to identify a Prosecutor of the Year awardee representing each of the following regions of New Mexico: Northeast (4th, 8th and 10th judicial districts); Southeast (5th, 9th and 12th judicial districts); Northwest (1st and 11th (Divs. 1 & 2) judicial districts); Southwest (3rd, 6th and 7th judicial districts); and Central (2nd and 13th judicial districts). For detailed award criteria and nomination procedures, visit www.nmbar.org/prosecutors. Nominations may be made by anyone and additional letters of support are welcome. Submit nominations to Breanna Henley at bhenley@nmbar.org by noon on Oct. 5.

Trial Practice Section Get-Together Open to State Bar Members

The Trial Practice Section invites members of the State Bar to get to know the Section at a get together on Oct. 11 from 5:30-7:30 p.m. on the rooftop patio at the Hotel Parq Central's Apothecary Lounge, 806 Central Ave, Albuquerque. Hors d'oeuvres and a cash bar will be available. The Section hopes to get to know more members and build a supportive legal community. R.S.V.P. to Breanna Henley at bhenley@nmbar.org.

UNM SCHOOL OF LAW Law Library Fall 2018 Hours

Mon. Aug. 20, – Sat., Dec. 15

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.
Saturday & Sunday	No reference

Distinguished Achievement Awards Dinner

An evening to remember. Join the school of UNM Law to honor Distinguished Honorees Justice Edward L. Chavez (ret.), Jill L. Marron, Steve Scholl and Alumni Promise Honoree Aja N. Brooks. The event will take place on Oct. 19, at UNM Student Union Ballrooms, reception starts at 6 p.m., followed by dinner and ceremony at 7 p.m. Register online at goto.unm.edu/daad or call 505-277-1457.

OTHER BARS

N.M. Association of Legal Administrators

Effective Client Representation Presentation

The Disciplinary Board and the N.M. Judges and Lawyers Assistance Program have seen ethical violations in law firms in two main areas: competence and diligence as a result of lawyers taking cases not in their areas of expertise, experiencing cognitive impairment and/or mental health or substance abuse issues. Learn how to prevent these issues, both as an individual lawyer and as a responsible member of your firm. The presenters will be Bill Slease and Pamela Moore. Join NMALA on Oct. 11 from 8:45-11:15 a.m., at the State Bar Center for 2.0 EP credits. The cost is \$80. For more information contact kknapp@pbwslaw.com or visit www.nmala.org.

New Mexico Criminal Defense Lawyers Association Little Cases, Big Consequences

Learn how to defend misdemeanors as if they're felonies in this powerful seminar on DWIs and Domestic Violence. Featuring experienced attorneys and a segment by retired N.M. Court of Appeals Judge Roderick Kennedy, this advanced CLE is packed with the latest information you need to step up your misdemeanor practice. This seminar will be held in Albuquerque on Oct. 26 and includes 6.0 G, 0.5 EP CLE credits. Please visit nmcdla.org to join NMCDLA and register for this seminar.

Litigating for Accountability and Freedom

Rick Raemis, director of the Colorado Corrections Department, will share the details of Colorado's successful move to reform solitary confinement at NMCDLA's upcoming "Litigating for Accountability & Freedom" CLE on Sept. 28. Also NMCLA will have special guest Dr. Stuart Grassian, who will speak on the psychiatric effects of solitary confinement on inmates, as well as working with mentally disabled clients. Also included on the schedule are navigating the PLRA and PREA, litigating sexual abuse cases in prisons and jails, and more. This seminar is open to both criminal defense and civil rights plaintiffs' attorneys, and is worth 6.2 CLE credits, including 1.0 ethics credit. Visit www.nmcdla.org to register.

The Defender's Role in Trial Advocacy

NMCDLA is coming to Roswell this Fall with an information-packed seminar to help you become a stronger advocate for your clients. Join NMCDLA Nov. 9, for "The Defender's Role in Trial Advocacy" CLE, and get the latest updates on pre-trial detention, technology, search and seizure, immigration and more. This seminar is worth 6.0 total CLE credits, including 1.0 ethics credit. Visit nmcdla.org to register today!

Albuquerque Lawyers Club Monthly Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its Oct. lunch meeting. DA Raul Torrez will present "The Future of the Criminal Justice System." The lunch meeting will be held on Wednesday, Oct. 3, at noon at Seasons Restaurant, located at 2031 Mountain Road, NW, Albuquerque. Cost: Free to members/ \$30 non-members. For more information, e-mail ydennig@Sandia.gov

OTHER NEWS

Environmental Law Institute 27th Annual Eastern Boot Camp on Environmental Law

Join ELI for a stimulating three-day immersion in environmental law at Eastern Boot Camp. Designed for both new and seasoned professionals, this intensive course explores the substance and practice of environmental law. The faculty members are highly respected practitioners who bring environmental law, practice, and emerging issues to life through concrete examples, cases and practice concerns in this three-day intensive course for ELI members. The Boot Camp is a great deal, offering up to 20

hours of CLE credit for \$1,100 or less, with special discounts provided to government, academic, public interest employees and students. Designed originally for attorneys, the course is highly useful for environmental professionals such as consultants, environmental managers, policy and advocacy experts, paralegals and technicians seeking deeper knowledge of environmental law. The registration deadline is Oct. 19. Visit <https://www.eli.org/boot-camp/eastern-bootcamp-environmental-law> for more details.

Albuquerque Academy Inaugural Constitution Lecture Features Former Chief Justice Margaret Marshall

The Albuquerque Academy will host Margaret Marshall, former chief justice of the Massachusetts Supreme Judicial Court and the first woman to hold that position. Marshall will be the inaugural guest for an annual presentation at Albuquerque Academy about the importance of understanding the history of the Constitution of the United States, the Constitution itself, and the obligations of being an American citizen. The lecture series, established by Albuquerque Lawyer Roberta Cooper Ramo, will be funded by a gift in honor of Cooper Ramo from the ECMC Group, a family of companies that provide financial tools and services, nonprofit career education, and job placement services to help students succeed and achieve their academic and professional goals. The event, free and open to the community, is Oct. 4 at 6:30 p.m. in Simms Auditorium. Reserve tickets online at www.aa.edu/community/community-academy/lecture-series/ <<https://www.aa.edu/community/community-academy/lecture-series/>.

Christian Legal Aid Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a Training Seminar on Friday, October 26th, from 12:00-5:00 at 4700 Lincoln Road NE Albuquerque, NM 87109. Join them for free lunch, free CLE credits, and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 243-4419 or Jen Meisner at 610-8800 christianlegalaid@hotmail.com.

-STATE BAR OF NEW MEXICO-
2018
 ANNUAL MEETING

The **2018 Annual Meeting** was one for the books! Thank you to all of our attendees for joining us for this special event. We're looking forward to next year's event which will be Aug. 1-3, 2019, at Hotel Albuquerque and Hotel Chaco in Old Town. For more photos, visit www.nmbar.org/annualmeeting.



State Bar President Wesley Pool welcomed attendees of the 2018 Annual Meeting and provided an update of the state of the State Bar of New Mexico.



Speaker Michael Morton with Wesley Pool. Morton was sentenced to life in prison for the murder of his wife and spent 25 years in prison before being exonerated. Morton shared his incredible and moving story with the attendees in one of the clear highlights of the weekend.



Justice Barbara J. Vigil (right) of the New Mexico Supreme Court and Judges Jennifer Attrep, Miles Hanisee, and Linda Vanzi of the New Mexico Court of Appeals spoke about the state of the judiciary and mentioned goals the courts have for the coming years.





Dr. Dan Duhigg (left) of Presbyterian Healthcare Services and David Johnson of Montgomery & Andrews PA spoke about the opioid crisis in New Mexico and how it intersects with health law, trial practice and other areas of practice.



Newly sworn in American Bar Association President Bob Carlson (left) made his first official appearance at the Annual Meeting. He's joined by Shasta Inman and Tomás García.

Thank you to our Sponsors and Exhibitors!

For a full list of our generous sponsors and exhibitors this year and for information on packages for future years, visit www.nmbar.org/annualmeeting.



Pictured are members of Presenting Sponsor, the Spence Law Firm: Robert Krause, Dennis Wallin, R. Daniel Fleck, Alisa Lauer, Noah Drew, Amy Winn



The New Mexico Judges and Lawyers Assistance Program hosted a "mocktail bar" for attendees to enjoy.



This year's exhibitors really brought their A-game! We asked attendees to vote for the booths with best decorations (Bean & Associates) and the best game (Empire Trust). Congratulations!



Thank you to the Texas Tech University School of Law for sponsoring the Hospitality Lounge for the third year in a row! Texas Tech School of Law Dean Jack Nowlin (second from left) joins State Bar President-Elect Jerry Dixon, Past President Scotty Holloman and New Mexico Supreme Court Justice Gary Clingman – all Texas Tech alumni!

BOARD OF BAR COMMISSIONERS ELECTION NOTICE 2018



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

Duties and Requirements for Board of Bar Commissioner Members:

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

Notice is hereby given that the 2018 election of six (6) commissioners for the State Bar of New Mexico will close at noon, Nov. 30. Nominations to the office of bar commissioner shall be by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice is in the respective district. Members of the State Bar may nominate and sign for more than one candidate. **(See the nomination petition on the next page.) The following terms will expire Dec. 31, and need to be filled in the upcoming election. All of the positions are three-year terms and run from Jan. 1, 2019–Dec. 31, 2021.**

First Bar Commissioner District

Bernalillo County

Three positions currently held by:

- Kevin L. Fitzwater
- Clara Moran
- Benjamin I. Sherman

Second Bar Commissioner District

Cibola, McKinley, San Juan and Valencia Counties

One position currently held by:

- Joseph F. Sawyer

Third Bar Commissioner District

Los Alamos, Rio Arriba, Sandoval and Santa Fe counties

One position currently held by:

- Constance G. Tatham

Sixth Bar Commissioner District

Chaves, Eddy, Lea, Lincoln and Otero counties

One position currently held by:

- Scotty A. Holloman*

*Ineligible to seek re-election

Send nomination petitions to:

Executive Director Richard Spinello
State Bar of New Mexico
PO Box 92860
Albuquerque, NM 87199-2860
rspinello@nmbar.org

Petitions must be received by 5 p.m., Oct. 19

Direct inquiries to 505-797-6038 or kbecker@nmbar.org.

NOMINATION PETITION FOR BOARD OF BAR COMMISSIONERS

We, the undersigned, members in good standing and who have a principal place of practice in the respective district of the nominee, nominate _____, whose principal place of practice is in the _____ Bar Commissioner District, State of New Mexico, for the position of commissioner of the State Bar of New Mexico, representing the _____ Bar Commissioner District. Date Submitted _____

(1) _____
Signature

Type or Print Name Address

(2) _____
Signature

Type or Print Name Address

(3) _____
Signature

Type or Print Name Address

(4) _____
Signature

Type or Print Name Address

(5) _____
Signature

Type or Print Name Address

(6) _____
Signature

Type or Print Name Address

(7) _____
Signature

Type or Print Name Address

(8) _____
Signature

Type or Print Name Address

(9) _____
Signature

Type or Print Name Address

(10) _____
Signature

Type or Print Name Address



A Message from Chief Justice Judith K. Nakamura

Dear Colleagues:

As you may have read in recent editions of the *Bar Bulletin*, the Supreme Court must fill several vacancies on a variety of Supreme Court boards, commissions, and committees. Our boards, commissions, and committees play a critical role by assisting the Supreme Court with regulating the practice and procedure within our courts and the broader legal community. Anyone who has ever served on one of these groups can attest to how challenging and rewarding the work can be.

So in filling these vacancies, the Court strives to appoint attorneys and judges who are able to regularly attend committee meetings and who are committed to generously volunteering of their time, talent and energy to this important work.

Because we rely on volunteer attorneys, the Court strives to solicit volunteers from throughout the state who will bring geographical balance to our boards, commissions, and committees. In making our appointments, the Court also seeks to ensure that each board, commission, and committee contains a balanced representation from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of our great state.

I encourage you to consider applying for one or more of the many upcoming vacancies that the Court must fill this year. Please visit the Court's website or refer to recent editions of the *Bar Bulletin* for a complete listing of the existing vacancies that the Court must fill by the end of the year. In your letter of interest, please prioritize up to three boards or committees on which you would like to serve and discuss your qualifications for serving on those boards or committees. Letters of interest and resumes should be submitted by the October 12th deadline to Joey D. Moya, Chief Clerk, by mail to P.O. Box 848, Santa Fe, NM 87504, by email to nmsupremecourtclerk@nmcourts.gov, or by fax to 505-827-4837.

On behalf of the entire Supreme Court I extend my sincere appreciation to all of you who are willing to volunteer to be a part of this important function within our legal system.

Sincerely,

Judith K. Nakamura
Chief Justice

Flip to the next page for a list of Vacancies

New Mexico Supreme Court Committees, Boards, and Commissions Notice of 2018 Year-End Vacancies

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on the many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

- Appellate Rules Committee** (2 general member positions, 1 Court of Appeals representative)
- Board Governing Recording of Judicial Proceedings** (1 reporter position, 2 judge positions)
- Board of Bar Examiners** (1 general member position)
- Classification Committee** (5 judicial employee positions)
- Client Protection Fund** (1 general member Supreme Court designee)
- Code of Professional Conduct Committee** (1 general member position)
- Commission on Access to Justice** (1 district judge position, 1 general member position, 1 State Bar designee, 1 legislative liaison)
- Committee for Improvement of Jury Service** (3 magistrate judge position, 1 medium-sized district court employee position, 1 magistrate court employee position, 1 Senate member position, 1 House member position)
- Disciplinary Board** (1 attorney position, 1 lay member position)
- Domestic Relations Rules Committee** (2 general member positions)
- Drug Court Advisory Committee** (1 program coordinator position, 1 Corrections Dept. representative, 1 magistrate judge position)
- Judicial Branch Personnel Grievance Board** (1 judicial supervisory employee position)
- Judicial Branch Personnel Rules Committee** (3 judicial employee positions)
- Judicial Education & Training Advisory Committee** (1 district court administrator position, 1 probate judge position, 1 municipal judge position)
- Judicial Information Systems Council** (1 municipal judge position)
- Language Access Advisory Committee** (1 district judge position; 1 spoken language interpreter currently working in NM state courts; 1 signed language interpreter with credentials recognized by NM AOC & currently working in NM state courts; 1 Access to Justice Commission representative)
- Proactive Attorney Regulation Committee** (1 attorney member position)
- Rules of Civil Procedure for State Courts Committee** (1 general member position)
- Rules of Evidence Committee** (2 general member positions)
- Statewide ADR Commission** (1 district judge position, 1 district court ADR/SRL employee position, 1 general member position)
- State Bar ATJ Fund Grant Commission** (1 general member position designated by the Supreme Court)
- Statewide ADR Commission** (1 district judge position, 1 district court ADR/SRL employee position, 1 general member position)
- Tribal-State Judicial Consortium** (3 State judge positions, 2 Tribal judge positions)
- UJI-Civil Committee** (2 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by sending a letter of interest and resume to Joey D. Moya, Chief Clerk, by mail to P.O. Box 848, Santa Fe, New Mexico 87504, by email to nmsupremecourtclerk@nmcourts.gov, or by fax to 505-827-4837. The letter of interest should describe the applicant's qualifications and may prioritize no more than 3 committees of interest.

The deadline for applications is Friday, Oct. 12.



Legal Education

October

- | | | |
|--|---|--|
| <p>4 The Ins-and-Out of Licensing Technology, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>5 The Ins-and-Out of Licensing Technology, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>5 2018 Employment and Labor Law Institute (Full Day)
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>11 Effective Client Representation
2.0 EP
Live Seminar, Albuquerque
New Mexico Association of Legal Administrators
www.nmala.org</p> <p>12 2018 Health Law Symposium
5.5 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>15 Basic Practical Regulatory Training for the Natural Gas Local Distribution Industry
25.2 G
Live Seminar, Albuquerque
Center for Public Utilities, New Mexico State University
business.nmsu.edu</p> <p>15 Basic Practical Regulatory Training for the Electric Industry
25.2 G
Live Seminar, Albuquerque
Center for Public Utilities, New Mexico State University
business.nmsu.edu</p> | <p>15 How to Comply with Disciplinary Board Rule 17-204: Basics of Trust Accounting
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>17 Cybersleuth Investigative Series: Using Free Public Records and Publicly Available Information for Investigative Research
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Ethics for Government Attorneys (2017)
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Trust and Estate Update: Recent Statutory Changes that are Overlooked and Underutilized
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Reforming the Criminal Justice System (2017)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>18 Fourth Annual Symposium on Diversity and Inclusion-Diversity Issues Ripped from the Headlines, II (2018)
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 2018 Administrative Law Institute (Full Day)
5.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>23 Boilplate Provisions in Contracts: Overlooked Traps in Every Agreement
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>23 Immigration Law: Assisting Human Trafficking Survivors
2.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>24 Practice Management Skills for Success (2018)
5.0 G, 1.0 EP
Webcast/Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>24 Oil and Gas: From the Basics to In-Depth Topics
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> <p>25 Children's Code: Delinquency Rules, Procedures and the Child's Best Interest
1.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
|--|---|--|

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location/course type, course provider and registration instructions.

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 September 21, 2018

PUBLISHED OPINIONS

A-1-CA-35500	State v. M Flores	Reverse/Remand	09/17/2018
--------------	-------------------	----------------	------------

UNPUBLISHED OPINIONS

A-1-CA-36580	State v. M Acosta	Affirm	09/17/2018
A-1-CA-37018	State v. L Garcia	Affirm	09/17/2018
A-1-CA-37078	CYFD v. Alfredo D	Affirm	09/17/2018
A-1-CA-37167	Federal National v. R Carrell	Reverse	09/17/2018
A-1-CA-37198	A Cook v. C Cook	Reverse	09/17/2018
A-1-CA-35353	State v. M Rodriguez	Affirm/Reverse/Remand	09/18/2018
A-1-CA-35421	Bank of NY v. S Richesin	Reverse/Remand	09/18/2018
A-1-CA-35867	State v. S Malouff	Affirm	09/18/2018
A-1-CA-36052	J Gold v. Armand Hammer United	Affirm	09/18/2018
A-1-CA-36888	State v. T Lujan	Dismiss	09/18/2018
A-1-CA-36933	BAC Home Loans v. P Wilson	Dismiss	09/19/2018
A-1-CA-36946	Wells Fargo v. K Kline	Affirm	09/19/2018
A-1-CA-37217	CYFD v. LoryAnn R	Affirm	09/19/2018
A-1-CA-37301	CYFD v. Usbaldo P	Affirm	09/19/2018
A-1-CA-35318	State v. S Walton	Reverse/Remand	09/20/2018

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

CLERK'S CERTIFICATE OF ADMISSION

On September 18, 2018:
James Altamirano
10801 San Antonio Drive, NE
Albuquerque, NM 87122
505-440-8752
james.lee.altamirano
@gmail.com

On September 18, 2018:
Derek Berg
12844 Lomas Blvd., NE,
Apt. C2
Albuquerque, NM 87112
845-461-4965
dbergggu@gmail.com

On September 17, 2018:
Michael P. Bischoff
Meehan Roberts Turret &
Rosenbaum
108 Leigus Road
Wallingford, CT 06492
203-294-7800
michael.bischoff
@libertymutual.com

On September 18, 2018:
Michael C. Compo
NMSURF
1308 Apache Avenue
Santa Fe, NM 87505
786-266-2937
mcompo@hotmail.com

On September 18, 2018:
Dustin R. Johnson
Office of the City Attorney
1376 E. Ninth Street
Alamogordo, NM 88310
575-439-4210
djohnson@ci.alamogordo.
nm.us

On September 18, 2018:
Toni Zeller Kohlbeck
2210 E. Kimberlys Way
Rimrock, AZ 86335
928-607-6544
928-773-0896 (fax)
naslsp@netscape.net

On September 17, 2018:
Katherine L. McCarthy
Bendett & McHugh, PC
270 Farmington Avenue,
Suite 151
Farmington, CT 06032
860-480-4242
860-760-6820 (fax)
kmccarthy@bmpc-law.com

On September 18, 2018:
Roger J. Schwarz
628 Gomez Road
Santa Fe, NM 87505
646-300-4444
rjscounsel@gmail.com

CLERK'S CERTIFICATE OF NAME AND ADDRESS CHANGE

As of September 12, 2018:
Stephanie Caraway
F/K/A **Stephanie Brooke**
3201 Citadel Drive
Plano, TX 75023
209-329-0330
sbcaraway@gmail.com

CLERK'S CERTIFICATE OF CHANGE TO I NACTIVE STATUS

Effective September 14, 2018:
Hon. Sandra A. Grisham
(ret.)
Grisham Law, PC
1109 Ohio Avenue
Alamogordo, NM 88310
575-430-2701
jordons2002@msn.com

Effective September 10, 2018:
Mary Kate LaMothe
828 Truman Street, NE
Albuquerque, NM 87110
505-469-7779
lamothe@lamothe.com

CLERK'S CERTIFICATE OF NAME CHANGE

As of September 11, 2018:
Katherine E. McKinney
F/K/A **Katherine M. Creagan**
Modrall, Sperling, Roehl,
Harris & Sisk, PA
PO Box 2168
500 Fourth Street, NW,
Suite 1000 (87102)
Albuquerque, NM 87103
505-848-1814
505-848-9710 (fax)
kem@modrall.com

CLERK'S CERTIFICATE OF CORRECTION

Dated September 11, 2018:
Richard Bruce Pener
NM Department of Taxation
and Revenue
PO Box 630
1100 S. St. Francis Drive,
Suite 1100 (87505)
Santa Fe, NM 87504
505-827-0048
505-827-0684 (fax)
richard.pener@state.nm.us

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective September 11, 2018:
Teresa Marie Johnson
Pfender
Social Security Administration,
Office of Hearings Operations
555 Broadway, NE,
Suite 200
Albuquerque, NM 87102
866-731-3998 Ext. 11936
teresa.j.pfender@ssa.gov

CLERK'S CERTIFICATE OF INDEFINITE SUSPENSION FROM MEMBERSHIP IN THE STATE BAR OF NEW MEXICO

Effective **September 13**:
Rosanna C. Vazquez
P.O. Box 2435
Santa Fe, NM 87504
505-670-8484
877-879-2434 (fax)
rosanna@rvazquezlaw.com

**CLERK'S CERTIFICATE
OF PLACEMENT ON
INACTIVE STATUS**

Effective September 6, 2018
Michael Romeo Demarco
PO Box 390
McIntosh, NM 87032
505-550-0601
m1demarco@hotmail.com
or
PO Box 826
Mountainair, NM 87036
505-301-7992
m.demarco.law@gmail.com

IN MEMORIAM

As of April 6, 2018:
William V. Kastler
2900 Calle del Rio
Albuquerque, NM 87104


As of March 26, 2018:
Marcia Jane Wilson
112 Del Rio Drive
Santa Fe, NM 87501

**CLERK'S CERTIFICATE
OF NAME CHANGE**

As of September 20, 2018:
Adam Leuschel
F/K/A Katherine Leuschel
City of Albuquerque
PO Box 2248
One Civic Plaza, NW (87102)
Albuquerque, NM 87103
505-768-4667
aleuschel@cabq.gov

CLERK'S CERTIFICATE

As of June 7, 2018, **William J. Mounce** will be shown on the Roll of Attorneys as deceased.



It's time for
CLE Season!

Welcome
to your one-stop
shop for all your
CLE needs for the
remainder of 2018.

Inside this issue

- Mark your calendars for upcoming programs through December.
- Webinars—attend from your office or home.
- Missed a live program? Catch up with live replays and 24/7 on-demand courses anytime.

*Your Choice.
Your Program.
Your Bar Foundation.*



505-797-6020 • www.nmbar.org/cle

5121 Masthead NE • PO Box 92860, Albuquerque, NM 87199



The Center for Legal Education offers many ways to fulfil your 2018 CLE requirements. Look no further for live courses than at the State Bar Center. We offer remote-access courses which can be viewed from your computer, special events and conferences! Many programs at the Center for Legal Education include breakfast, lunch, materials and free WiFi access. Visit www.nmbar.org for all program offerings.

Featured CLEs

Register online at www.nmbar.org/CLE or call 505-797-6020

2018 Employment and Labor Law Institute



Friday, Oct. 5, 2018

9 a.m.–4:30 p.m.

5.0 G 1.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$251 Employment and Labor Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$279 Standard/Webcast Fee



2018 Health Law Symposium



Friday, Oct. 12, 2018

8:30 a.m.–5:10 p.m.

5.5 G 2.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$292 Health Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$325 Standard/Webcast Fee

2018 Administrative Law Institute



Friday, Oct. 19, 2018

9 a.m.–4:30 p.m.

Live at the State Bar Center
Also available via Live Webcast!

\$251 Public Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$279 Standard/Webcast Fee

Children's Code: Delinquency Rules, Procedures and the Child's Best Interest



Thursday, Oct. 25, 2018

1:30–4:15 p.m.

1.5 G 1.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$121.50 Children's Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$135 Standard/Webcast Fee



2018 Elder Law Institute: Navigating Changes to the Probate Code: Adult Guardianship and Conservatorship Laws Effective July 1, 2018



Friday, Oct. 26, 2018

8:30 a.m.–4:15 p.m.

5.5 G 1.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$265 Elder Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$295 Standard/Webcast Fee

A Practical Approach to Indian Law: Legal Writing, 2018 Update, and the Ethics of Practicing Indian Law



Monday, Dec. 10, 2018

9 a.m.–12:15 p.m.

2.0 G 1.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$39 Non-member not seeking CLE credit
\$143 Indian Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$159 Standard Fee/Webcast Fee

The Indian Law Section's annual program will focus on topics that will help the Indian law practitioner on a daily basis. This program will include updates on legal developments in 2018, covering case law, statutes, regulations and executive actions. The program will also include a presentation on effective legal writing strategies and tips and cover legal ethics involved in practicing Indian law.

ADR Across the Spectrum



Friday, Nov. 2, 2018

8:30 a.m. –4 p.m.

4.5 G 1.5 EP

Live at the State Bar Center
Also available via Live Webcast!



\$99 Audit Fee (Not seeking CLE credit)
\$251 ADR committee member, government and legal services attorneys, Young Lawyers and Paralegal division members
\$279 Standard/Webcast Fee

2018 Business Law Institute



Wednesday, Nov. 14, 2018

8:50 a.m.–4:30 p.m.

5.0 G 1.0 EP

Live at the State Bar Center
Also available via Live Webcast!

\$99 Non-member not seeking CLE credit
\$228 Early bird fee (Registration must be received by Oct.14.)
\$251 Business Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members
\$279 Standard Fee/Webcast Fee



Do your business clients bring you issues involving New Mexico gross receipt taxes; minimum wage, overtime, and independent contractor status; insurance coverage, or estate planning strategies? How about recent and upcoming legislation? Have you considered the ethical aspects of representing a marijuana business? All of these topics presented by highly-regarded speakers, are on the agenda for the 2018 Business Law Institute.

Webinars

Earn live CLE credit from your desk!



The CLE format that is gaining popularity! Quick and convenient one hour CLEs that can be viewed from anywhere! Webinars are available online only through your computer, iPad or mobile device with internet capabilities. Attendees will receive live CLE credit after viewing.

Cybersleuth Investigative Series: Using Free Public Records and Publicly Available Information for Investigative Research

Wednesday, Oct. 17, 2018

11 a.m.–Noon

1.0 G

Online only

\$89 Standard Fee



Topics will include how to access free public records on the web, free publicly available information on the web and the use of expensive databases for free to find.

Cybersleuth Investigative Series: How to Be Your Own Private Investigator with Pay Investigative Research Databases

Friday, Oct. 26, 2018

11 a.m.–Noon

1.0 G

Online only

\$89 Standard Fee

When you can't find what you need for free on the Internet, or if searching site-by-site and/or jurisdiction-by-jurisdiction is not worth your time, consider subscribing to a pay investigative research database. These databases collect information not only from public record and "publicly available" sources, but also from credit header and proprietary sources, from as many jurisdictions as possible. The information is then integrated into one large searchable relational database, with results that practically allow you to create a dossier about your subject.

Social Media as Investigative Research and Evidence

Tuesday, Oct. 30, 2018

11 a.m.–Noon

1.0 G

Online only

\$89 Standard Fee

This seminar is partially based on the presenters' 55 page Social Media chapter from their book, *The Cybersleuth's Guide to the Internet*. You will discover how other attorneys are using social media sites for discovery, trial preparation, direct examination, cross-examination, background checks and locating missing persons and learn how to authenticate profiles and get them admitted into evidence. Don't be left behind in exploiting this gold mine of information.

The Ethics of Social Media Research

Wednesday, Oct. 31, 2018

11 a.m.–Noon

1.0 EP

Online only

\$89 Standard Fee

Learn how to avoid potential ethical traps when you research social media profiles for investigative/background purposes and to use as evidence. The seminar is partially based on the speakers' 55 page Social Media chapter from their book, *The Cybersleuth's Guide to the Internet*.

Teleseminars

Earn live CLE credit from your work or personal phone!



Earn CLE credit by attending a teleseminar from your work or mobile phone. Great for learning your relevant practice information that fits with your schedule.

All teleseminars are offered from 11 a.m.–noon MST. Standard price for all teleseminars is \$79.

Boilplate Provisions in Contracts: Overlooked Traps in Every Agreement

Tuesday, Oct. 23, 2018

1.0 G

Liquidation: Legal Issues When a Client Decides to Close a Business

Thursday, Oct. 25, 2018

1.0 G

Releasing Employees & Drafting Separation Agreements

Tuesday, Nov. 6, 2018

1.0 G

Ethics and Changing Law Firm Affiliation

Friday, Nov. 9, 2018

1.0 EP

Estate Planning for MDs, JDS, CPAs & Other Professionals, Part 1

Tuesday, Nov. 13, 2018

1.0 G

Estate Planning for MDs, JDS, CPAs & Other Professionals, Part 2

Wednesday, Nov. 14, 2018

1.0 G

Ethics of Beginning and Ending Client Relationships

Tuesday, Nov. 20, 2018

1.0 EP

Secured Transactions Practice: Security Agreements to Foreclosures, Part 1

Monday, Nov. 26, 2018

1.0 G

Secured Transactions Practice: Security Agreements to Foreclosures, Part 2

Tuesday, Nov. 27, 2018

1.0 G

Ethics and Dishonest Clients

Wednesday, Nov. 28, 2018

1.0 EP

Remaining Opportunities to Attend the

Disciplinary Board's Required Trust Accounting CLE

The Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204



1.0 EP

\$55 Standard Fee

\$65 Webcast Fee

Effective Dec. 31, 2016, the New Mexico Supreme Court adopted modifications to Rule 17-204 NMRA which requires that an attorney must take a trust accounting class at least once every three years, or within the first year of being licensed in New Mexico. This program fulfills the requirement of Rule 17-204 NMRA, and is one of the New Mexico Disciplinary Board's ongoing programs designed to educate attorneys on proper practices and procedures. Currently, the State Bar of New Mexico Center for Legal Education is the only approved course provider. Please see upcoming opportunities to attend the required ethics course. For more information, lawyers should carefully read Rule 17-204 NMRA.

Register online at www.nmbar.org/CLE or call 505-797-6020

Remaining dates and times:

Thursday, Oct. 25, Noon

Friday, Nov. 9, 3:30 p.m.

Friday, Dec. 28, 9 a.m.

More dates to come for 2019!

Live Replays



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

With replays scheduled throughout the year and both full- and half-day programs available, it's easy to catch up on CLEs that didn't line up with your schedule! These programs are in person at the State Bar Center and qualify for live credits. Browse the full list of offerings on our website! www.nmbar.org/CLE.

Nov. 8

2018 Employment and Labor Law Institute

5.0 G 1.0 EP

9 a.m.–4:15 p.m.

Also available via Webcast

\$279 Standard /Webcast Fee

Bankruptcy Fundamentals for the Non-Bankruptcy Attorney (2018)

3.0 G

9 a.m.–Noon

\$159 Standard Fee

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

1.0 G 1.0 EP

1–3 p.m.

\$109 Standard Fee

Basic Guide to Appeals for Busy Trial Lawyers (2018)

3.0 G

9 a.m.–Noon

\$159 Standard Fee

What Starbucks Teaches Us about Attracting Clients the Ethical Way (2018 Annual Meeting)

1.5 EP

1–2:30 p.m.

\$82 Standard Fee

Nov. 9

Abuse and Neglect Case in Children's Court (2018)

3.0 G

9 a.m.–Noon

\$159 Standard/Webcast Fee

Legal Malpractice Potpourri (2018 Annual Meeting)

1.0 EP

1–2 p.m.

\$55 Standard/Webcast Fee

Speaking to Win: The Art of Effective Speaking for Lawyers (2018)

5.0 G 1.0 EP

9 a.m.–4:15 p.m.

\$279 Standard Fee

The Cyborgs are Coming! The Cyborgs are Coming! The Latest Ethical Concerns with the Latest Technology Disruptions (2017)

3.0 EP

9 a.m.–Noon

\$159 Standard Fee

Children's Code: Delinquency Rules, Procedures and the Child's Best Interest (2018)

1.5 G 1.0 EP

1–4 p.m.

\$159 Standard Fee

Professional Development Package

Still buying one CLE class at a time?

BAM!

Get unlimited CLE courses!

Premium Package

\$600 includes the following benefits:

- Up to **15 CLE credits** per year starting on date of payment (\$720 value) and **Unlimited Audit** (\$99 value each)
- One complimentary Annual Meeting registration (\$450 value; attend as part of the 15 credits)
- Concierge service (invaluable)
- Credits filed (invaluable)

Basic Package

\$450 includes the following benefits:

- Up to **12 CLE credits** per year starting on date of payment (\$550 value) and **Unlimited Audit** (\$99 value each)
- 10% discount on Annual Meeting registration (\$45 value; attend as part of the 12 credits)
- Credits filed (invaluable)

For more information, and to purchase the Professional Development Package, contact cleonline@nmbar.org or **505-797-6020**.



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.

November

Probate Institute
Nov. 15

2018 Animal Law Institute: Updates, Causes of Action, and Litigation
Nov. 29

Paralegal Division CLE
Nov. 30

December

Real Property Institute
Dec. 5

Intellectual Property Law CLE
Dec. 6

Immigration Law CLE
Dec. 7

Ethicspalooza
Dec. 11

Advanced Mediation Skills Workshop
Dec. 12

Criminal Rules Hot Topics
Dec. 12

How to Practice Series: Civil Litigation Pt. III: Dispositive Motion Practice and Mediations
Dec. 13

Trial Practice: Presence, Power, Persuasion: Why We Do What We Do in the Courtroom
Dec. 14

Practice Management Skills for Success
Dec. 17

2018 Mock Meeting of the Ethics Advisory Committee
Dec. 18

Preparing for and Conducting a Successful Mediation
Dec. 18

Lawyers Professional Liability and Insurance Committee CLE on Negligent Settlement Lawsuits
Dec. 19

Civil Procedure Update
Dec. 19

Gain the Edge! Negotiation Strategies for Lawyers
Dec. 20

Natural Resources, Energy, and Environmental Law Section CLE
Dec. 21

What Drug Dealers and Celebrities Teach Lawyers about Professional Responsibility
Dec. 26

The Fear Factor – How Good Lawyers Get into Trouble
Dec. 26

Find it Fast and Free (and Ethically) with Google, Fastcase 7, and Social Media Sites
Dec. 27



CLE Registration Form

Four Ways to Register:

Online: www.nmbar.org/cle **Fax:** 866-767-7281, 24-hour access **Phone:** 505-797-6020
Mail: Center for Legal Education, PO Box 92860, Albuquerque, NM 87199

Name _____ NM Bar # _____

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.**

Note: Programs subject to change without notice.

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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

Effective October 3, 2018

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

Comment Deadline

There are no proposed rule changes open for comment.

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2018 NMRA:

Effective Date

Rules of Civil Procedure for the District Courts

1-003.2	Commencement of action; guardianship and conservatorship information sheet	07/01/2018
1-079	Public inspection and sealing of court records	07/01/2018
1-079.1	Public inspection and sealing of court records; guardianship and conservatorship proceedings	07/01/2018
1-088.1	Peremptory excusal of a district judge; recusal; procedure for exercising	03/01/2018
1-104	Courtroom closure	07/01/2018
1-140	Guardianship and conservatorship proceedings; mandatory use forms	07/01/2018
1-141	Guardianship and conservatorship proceedings; determination of persons entitled to notice of proceedings or access to court records	07/01/2018

Civil Forms

4-992	Guardianship and conservatorship information sheet; petition	07/01/2018
4-993	Order identifying persons entitled to notice and access to court records	07/01/2018
4-994	Order to secure or waive bond	07/01/2018
4-995	Conservator's notice of bonding	07/01/2018
4-995.1	Corporate surety statement	07/01/2018
4-996	Guardian's report	07/01/2018
4-997	Conservator's inventory	07/01/2018
4-998	Conservator's report	07/01/2018

Rules of Criminal Procedure for the District Courts

5-302A	Grand jury proceedings	04/23/2018
--------	------------------------	------------

Local Rules for the First Judicial District Court

LR1-404	Family court services and other services for child-related disputes	09/01/2018
LR1-405	Safe exchange and supervised visitation program	09/01/2018

Local Rules for the Second Judicial District Court

LR2-401	Court clinic mediation program and other services for child-related disputes	09/01/2018
LR2-403	Safe exchange and supervised visitation	09/01/2018
LR2-Form 709	Court clinic referral order	09/01/2018

Local Rules for the Third Judicial District Court

LR3-401	Domestic relations mediation and safe exchange and supervised visitation programs	09/01/2018
---------	---	------------

Local Rules for the Fourth Judicial District Court

LR4-401	Safe exchange and supervised visitation, and domestic relations mediation	09/01/2018
---------	---	------------

Local Rules for the Fifth Judicial District Court

LR5-401	Safe exchange and supervised visitation; domestic relations mediation	09/01/2018
---------	---	------------

Local Rules for the Sixth Judicial District Court

LR6-401	Safe exchange and supervised visitation, and domestic relations mediation	09/01/2018
LR6-404	Withdrawn	09/01/2018

Local Rules for the Seventh Judicial District Court

LR7-401	Domestic relations; mediation	09/01/2018
---------	-------------------------------	------------

Local Rules for the Eighth Judicial District Court

LR8-401	Safe exchange and supervised visitation; domestic relations mediation	09/01/2018
---------	---	------------

Local Rules for the Ninth Judicial District Court

LR9-405	Domestic relations mediation	09/01/2018
---------	------------------------------	------------

Local Rules for the Eleventh Judicial District Court

LR11-402	Domestic relations mediation; safe exchange and supervised visitation	09/01/2018
----------	---	------------

Local Rules for the Twelfth Judicial District Court

LR12-401	Domestic relations mediation	09/01/2018
----------	------------------------------	------------

Local Rules for the Thirteenth Judicial District Court

LR13-124	Fees non-refundable	09/01/2018
LR13-401	Domestic relations alternative dispute resolution (ADR); advisory consultation	09/01/2018
LR13-402	Domestic Relations Mediation Act; safe exchange and supervised visitation	09/01/2018

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-054

No. A-1-CA-35454 (filed June 27, 2018)

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Plaintiff-Appellant,
v.
STEPHEN CHIULLI,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Sarah M. Singleton, District Judge

EDWARD RICCO
CHARLES J. VIGIL
CHARLES R. HUGHSON
RODEY, DICKASON, SLOAN, AKIN &
ROBB, P.A.
Albuquerque, New Mexico
for Appellant

DONALD A. WALCOTT
CHARLES V. HENRY, IV
WALCOTT, HENRY & WINSTON, P.C.
Santa Fe, New Mexico
for Appellee

Opinion

Michael E. Vigil, Judge

{1} In this case the district court dismissed the complaint to foreclose on a note and mortgage brought by Sun Trust Mortgage, Inc. (SunTrust) “with prejudice” as a discovery sanction. An appeal from the order of dismissal with prejudice was taken but then abandoned. In subsequent proceedings brought by the borrower, Stephen Chiulli, to enforce the order, the district court explained that when it dismissed the foreclosure complaint “with prejudice” it intended to extinguish all rights SunTrust had under the note and mortgage. The district court therefore ordered that no further action could be taken to enforce the note and mortgage. Federal National Mortgage Association (Fannie Mae), who was substituted for SunTrust as the plaintiff, appeals. Concluding that the district court’s interpretation of its order of dismissal with prejudice was not manifestly unreasonable, we affirm.

BACKGROUND

{2} SunTrust filed a complaint for foreclosure on Chiulli’s home. Contemporaneously with the complaint, SunTrust filed notice that Chiulli’s debt under the prom-

issory note was discharged in a Chapter 7 case in the United States Bankruptcy Court of the District of New Mexico. Therefore, no claim was made against Chiulli personally under the note, and the complaint only sought an *in rem* judgment against the property itself to satisfy the amounts claimed under the note and mortgage. See *Kepler v. Slade*, 1995-NMSC-035, ¶¶ 7-8, 119 N.M. 802, 896 P.2d 482 (explaining that in the event of default on an underlying note, the mortgagee has independent remedies to sue on the note or in rem against the mortgaged property to satisfy the indebtedness); *State v. Nunez*, 2000-NMSC-013, ¶ 78, 129 N.M. 63, 2 P.3d 264 (explaining that “[a]n *in rem* action is directed . . . at resolving the interests, claims, titles, and rights in that property[.]” and is in “contradistinction to ‘in personam’ actions which are directed against a person.” (emphasis added)).

{3} SunTrust’s standing was in issue at the outset of the litigation. Although the lender on the note was Attesa Enterprises, Inc., dba Crescent Financial Solutions (Attesa) and the mortgage was in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for the lender, SunTrust alleged it was entitled to enforce the note and mortgage by virtue

of assignments attached to the complaint. Chiulli denied the note and mortgage had been properly assigned, and affirmatively alleged that SunTrust lacked standing to bring the suit. Chiulli also filed counterclaims against SunTrust for slander of title, breach of contract, breach of the covenant of good faith and fair dealing, interference with contractual relations, fraud, violation of the Unfair Practices Act, violation of the Fair Credit Reporting Act, and violation of the Fair Debt Collection Practices Act, which materially relied on his allegations that the alleged assignment of the mortgage to SunTrust was made by SunTrust to itself, was improper and ineffective, and that the promissory note was not indorsed. {4} Chiulli sought discovery from SunTrust seeking information and documentation regarding the note and mortgage as well as the assignment of the loan and mortgage from Attesa to SunTrust. SunTrust objected to these discovery requests and produced no documentation concerning the note and mortgage, or the assignment of the loan from Attesa to SunTrust. Chiulli filed a motion to compel SunTrust to answer the discovery requests, which district court Judge Sarah M. Singleton granted. Judge Singleton ruled that the discovery requests were clearly relevant to the standing of SunTrust to bring the suit, and ordered SunTrust to answer interrogatories and produce documents. Specifically, Judge Singleton ordered SunTrust to answer interrogatories to identify and provide contact information for people with knowledge of the loan and mortgage; to answer the dates of employment of the person who signed the assignment of mortgage and verified the interrogatories; to identify the person responsible for directing and having the assignment of mortgage prepared; to identify the person responsible for filing the assignment of mortgage; to identify the person at the original lender who authorized transfer of the loan; and to provide information about the person at MERS who authorized the transfer of the loan from the original lender. In addition, SunTrust was ordered to produce all of its files on the loan; and all contracts, agreements, correspondence, or communications between Sun Trust and Attesa regarding the loan. {5} After the deadline imposed by Judge Singleton to answer the interrogatories passed, SunTrust filed a motion seeking a sixty-day extension of time to comply. Chiulli’s response included a motion for sanctions, including a dismissal of SunTrust’s

claims with prejudice on the basis that although it had sufficient time to do so, SunTrust had still not provided the discovery in violation of the court's order. SunTrust did not respond to Chiulli's motion, and Judge Singleton granted Chiulli's motion. Ruling that Chiulli's unanswered interrogatories and requests for production "go to the substance" of the claims made by SunTrust, Judge Singleton ordered that the complaint for foreclosure filed by SunTrust "is hereby dismissed with prejudice" and that the affirmative defenses asserted by SunTrust against Chiulli's counterclaims "are hereby dismissed." The order also voided assignments of the mortgage to SunTrust and Fannie Mae. The effect of this order, filed on September 18, 2014, was that SunTrust's claims against Chiulli were dismissed "with prejudice" but SunTrust remained in the case as counter-defendant on Chiulli's counterclaims.

{6} SunTrust through new counsel, filed a motion for relief from the order granting Chiulli's motion for sanctions in dismissing SunTrust's complaint with prejudice and striking its affirmative defenses to Chiulli's counterclaims. After full briefing and a hearing, Judge Singleton entered an order denying SunTrust's motion. Judge Singleton did, however, rule that the original order, should not have voided assignments of the mortgage to SunTrust and Fannie Mae. An amended order making this correction was filed on March 18, 2015.

{7} While SunTrust's motion for relief was pending, SunTrust filed a motion on January 15, 2015, to substitute Seterus, Inc. (Seterus) as the plaintiff in the case. In support of the motion SunTrust stated that when it filed the complaint for foreclosure, it did so as the "servicer" for the owner of the mortgage, Fannie Mae. However, while the suit was pending, Fannie Mae purchased the servicing rights to Chiulli's loan and then transferred the servicing rights to Seterus. As a consequence, SunTrust asserted, "Seterus or Fannie Mae should have substituted" as the plaintiff, which had not occurred. At the hearing on the motion on January 23, 2015, SunTrust orally amended the motion to substitute Fannie Mae as plaintiff. With Fannie Mae's consent, and its agreement to be bound by the earlier order dismissing the complaint with prejudice, the motion was granted in an order filed on March 12, 2015. SunTrust remained in the case as counter-defendant to Chiulli's counterclaims. The parties subsequently stipulated to a dismissal of

Chiulli's counterclaims with prejudice, with the result that all the claims in the case were either resolved or dismissed.

{8} Fannie Mae filed a timely notice of appeal on June 5, 2015, appealing from the order on sanctions dismissing the complaint for foreclosure with prejudice. However, Fannie Mae did not file a docketing statement with this Court and abandoned its appeal.

{9} This was not the end of the case. Chiulli filed a motion for post-judgment relief on September 24, 2015, asserting that Fannie Mae was violating the order dismissing the complaint for foreclosure with prejudice filed on September 18, 2014, and reaffirmed in the amended order filed on March 18, 2015. The motion alleged: (1) that Fannie Mae, through Seterus sent Chiulli past due account statements in February, March, April, May, June, and July, 2015; (2) that the July statement showed a total amount due in the amount of \$87,796.77 as of August 1, 2015; (3) that Chiulli did not know if Fannie Mae or Seterus was reporting a delinquency to credit reporting agencies; (4) that Chiulli attempted to pay taxes on the property, but was told that they were already paid and would not be assessed again until November 2015; (5) that Chiulli received an escrow statement showing that Fannie Mae had paid taxes on the property in May 2015, and according to the statement, Seterus intended to pay the taxes due in November 2015; (6) that Chiulli had obtained his own insurance on the property; and (7) that Chiulli did not know if Fannie Mae intended for Seterus to purchase insurance on the residence. Chiulli asked that the district court enforce its order dismissing the complaint for foreclosure with prejudice and enjoin Fannie Mae from continuing to send him account statements, from attempting to incur escrow charges for taxes and insurance, and from reporting any delinquency charges to credit reporting agencies.

{10} In its written response, Fannie Mae denied that the order of dismissal with prejudice prevented it from acting as it did. In material part, Fannie Mae argued that, notwithstanding the order, it was free to initiate foreclosure proceedings in any court of competent jurisdiction "for defaults under the loan documents other than those in the dismissed complaint[.]" In reply, Chiulli asserted the post-judgment relief he was seeking was based on the order "that [Fannie Mae's] claims pursuant to the promissory note and mortgage

were dismissed with prejudice."

{11} The hearing on Chiulli's motion was held before Judge Singleton, who issued the original as well as the amended order dismissing the complaint for foreclosure with prejudice. After hearing arguments from the respective parties, Judge Singleton ruled:

It was my intention with the prior order to say that [SunTrust] was not going to be allowed to enforce the note through foreclosure or through a suit on the note, and that's why the dismissal was with prejudice. And I did that because the discovery that was withheld went to the heart of [SunTrust's] ability to prove that it had a right to recover. And since it withheld the information on that topic, it was not going to be allowed to pursue the remedy that it sought. And it was my intention that in the future, [SunTrust] should not be allowed to pursue the remedy of foreclosure or sue on the same note.

Fannie Mae is not allowed to bring action for foreclosure or to pursue [a]n action on the note because of the prior plaintiff's conduct in this lawsuit, and that's what was intended as a sanction for the failure to comply with discovery.

Judge Singleton then entered a written order directing: (1) "[Fannie Mae] is enjoined from continuing to attempt to collect a debt from Chiulli regarding the [p]romissory [n]ote and

[m]ortgage . . . including sending Chiulli account statements, sending escrow account statements, and reporting Chiulli to credit agencies"; (2) "[Fannie Mae] is enjoined from continuing to attempt to incur escrow account charges to charge to Chiulli, such as taxes and insurance"; and (3) "Chiulli is to refund payments for taxes" that were made by Fannie Mae after the order of dismissal with prejudice was filed on September 18, 2014. Fannie Mae appeals from this order.

DISCUSSION

{12} Fannie Mae does not, and cannot in this appeal, challenge the discovery sanction order dismissing the complaint for foreclosure action with prejudice or that it is bound by the sanction imposed on its predecessor, SunTrust. Courts have inherent authority to regulate the parties and proceedings before them. *City of Roswell v.*

Holmes, 1939-NMSC-062, ¶ 6, 44 N.M. 1, 96 P.2d 701. At the core of judicial authority is “[a court’s] inherent power to impose a variety of sanctions on both litigants and attorneys in order to regulate their docket, promote judicial efficiency, and deter frivolous filings.” *State ex rel. N.M. Highway & Transp. Dep’t v. Baca*, 1995-NMSC-033, ¶¶ 11, 20, 120 N.M. 1, 896 P.2d 1148 (internal quotation marks and citation omitted). This includes the power and right to dismiss a complaint with prejudice for failing to comply with procedural rules or court orders. See *Lujan v. City of Albuquerque*, 2003-NMCA-104, ¶ 10, 134 N.M. 207, 75 P.3d 423 (recognizing that district courts have such power); *Beverly v. Conquistadores, Inc.*, 1975-NMCA-070, ¶¶ 7, 16, 88 N.M. 119, 537 P.2d 1015 (holding that a district court has the power to dismiss a complaint with prejudice for violating a direct court order to supply the name of a witness). When Fannie Mae abandoned its appeal from the order dismissing the complaint for foreclosure with prejudice, it waived its right to challenge whether the sanction of dismissal with prejudice was an appropriate sanction, its scope or legal effect. See *Brunacini v. Kavanagh*, 1993-NMCA-157, ¶ 28, 117 N.M. 122, 869 P.2d 821 (“[A]n unreversed judgment is final between the parties as to all matters to which the judgment relates.”); see also *Am. Legion Post No. 49 v. Hughes*, 1994-NMCA-153, ¶ 2, 120 N.M. 255, 901 P.2d 186 (concluding that cross-appeal was abandoned for failure to file a docketing statement).

{13} What is before us in this appeal is Judge Singleton’s interpretation of her own order dismissing the complaint for foreclosure with prejudice which was made within the context of a motion seeking to enforce that order. When a district court concludes that a dismissal with prejudice is warranted, particularly a complaint for foreclosure, the order “should clearly define what the dismissal with prejudice means—its impact on particular parties and particular claims, for example—so that the effect of the order is clear to the parties, to us in the event of an appeal, and to a trial court in the event of future litigation.” *Green Tree Servicing, LLC v. Cope*, 2017 ME 68, ¶ 22, 158 A.3d 931 (emphasis omitted). The order here is ambiguous because Judge Singleton did not explain what her intent was in the order itself dismissing the complaint for foreclosure “with prejudice.”

A. Standard of Review

{14} The interpretation of a court order presents a question of law which we review de novo. *Benavidez v. Benavidez*, 2006-NMCA-138, ¶ 7, 140 N.M. 637, 145 P.3d 117. “The same rules of interpretation apply in construing the meaning of a court order or judgment as in ascertaining the meaning of other written instruments. The plain meaning of the language used is the primary indicator of intent.” *Id.* ¶ 8 (internal quotation marks and citation omitted). “Where the language of a judgment or decree is clear and unambiguous, it must stand and be enforced as it speaks.” *Allred v. N.M. Dep’t of Transp.*, 2017-NMCA-019, ¶ 41, 388 P.3d 998 (omission, alterations, internal quotation marks, and citation omitted). However, when an order or judgment has some ambiguity or uncertainty, it may be construed in the light of the pleadings, other portions of the judgment, findings, and conclusions of law. See *Greer v. Johnson*, 1971-NMSC-127, ¶ 8, 83 N.M. 334, 491 P.2d 1145 (noting that where a judgment contains an ambiguity or uncertainty, that language must be construed “in the light of the pleadings, the remaining portions of the judgment, the findings of fact and conclusions of law”); *Dunham v. Stitzberg*, 1948-NMSC-037, ¶ 44, 53 N.M. 81, 201 P.2d 1000 (stating that the “pleadings, findings and conclusions, may be resorted to if necessary to interpret or explain an ambiguous judgment”), overruled on other grounds by *In re Conley’s Will*, 1954-NMSC-112, 58 N.M. 771, 276 P.2d 906. In this regard, the judge who issues the order or judgment is in the best position to clarify any ambiguity in the order because that judge is familiar with the entire record and all the circumstances under which it was issued. See *Bauer v. Bauer*, 60 A.3d 950, 955 (Conn. 2013). “For that reason, substantial deference is accorded to a court’s interpretation of its own order” and “we will not disturb a trial court’s clarification of an ambiguity in its own order unless the court’s interpretation of that order is manifestly unreasonable.” *Id.* (omission, internal quotation marks and citation omitted). See *Pacheco v. Cohen*, 2009-NMCA-070, ¶ 12, 146 N.M. 643, 213 P.3d 793 (agreeing that the district court’s interpretation of its own order was not an abuse of discretion).

B. Analysis

{15} Fannie Mae contends that the post-judgment order improperly enjoins it from enforcing the note and mortgage with respect to breaches or defaults occurring

after those alleged in the original foreclosure action. Specifically, Fannie Mae argues that the dismissal with prejudice “does not bar subsequent enforcement efforts in the event of a future default.” In support of its argument, Fannie Mae refers us to *Singleton v. Greymar Assocs.*, 882 So. 2d 1004 (Fla. 2004).

{16} *Singleton* is a case on the res judicata effect of an order dismissing a mortgage foreclosure complaint with prejudice on a subsequent complaint for foreclosure. Res judicata is also called claim preclusion, and we use both terms interchangeably here. “The doctrine of res judicata is founded on principles of fairness and justice, and ensures finality, advances judicial economy, and avoids piecemeal litigation. To achieve these purposes, res judicata bars litigation of claims that were or could have been advanced in an earlier proceeding.” *Fogelson v. Wallace*, 2017-NMCA-089, ¶ 16, 406 P.3d 1012 (alteration, internal quotation marks, and citations omitted). Res judicata will bar a subsequent action where: “(1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits.” *Id.* ¶ 17 (internal quotation marks and citation omitted).

{17} The res judicata effect of the order of dismissal with prejudice is not before us in this appeal. That is, this appeal does not arise from a dismissal on res judicata grounds of a complaint for foreclosure filed subsequent to the order of dismissal with prejudice. See *Bayview Loan Servicing, LLC v. Bartlett*, 2014 ME 37, ¶¶ 17 n.6-18, 87 A.3d 741 (noting that in an appeal from an order dismissing a complaint for foreclosure with prejudice as a sanction, the res judicata effect of the order is not before the appellate court). We are therefore not required to decide which line of cases to follow where the claim is that an earlier dismissal of a complaint for foreclosure with prejudice precludes, on res judicata grounds, the filing of a second complaint for foreclosure. One line of cases concludes that the dismissal of a complaint for foreclosure with prejudice does not bar the filing of a second complaint based on the failure to make a timely payment after the dismissal, even if both suits seek to accelerate all the payments on the note because they view each failure to make a timely payment on the note as a separate breach. Examples are *Singleton*, 882 So.2d at 1088, and *Afolabi v. Atlantic Mortg. & Inv. Corp.*, 849 N.E.2d 1170, 1175 (Ind. Ct.

App. 2006). See also *In re Rogers Townsend & Thomas, PC*, 773 S.E.2d 101, 104-08 (N.C. Ct. App. 2015) (holding that a rule barring a third action after two voluntary dismissals of the same claims does not bar a third foreclosure action where the periods of claimed defaults are different). A second line of cases concludes that if the mortgagee elects to trigger the acceleration clause of the note, the obligation to pay each installment merges into one obligation to pay the entire balance due under the note, and a dismissal of the complaint for forfeiture with prejudice bars the filing of a second suit seeking the same relief. Examples are *Johnson v. Samson Constr. Corp.*, 1997 ME 220, ¶¶ 3-4, 704 A.2d 866, and *U.S. Bank Nat'l Ass'n v. Gullotta*, 120 Ohio St. 3d 399, 2008-Ohio-6268, ¶¶ 3-5; 30-32, 899 N.E.2d 987. The differing views, public policies, and ramifications are discussed in the majority and dissenting opinions in *Cenlar FSB v. Malenfant*, 2016 VT 93, 203 Vt. 23, 151 A.3d 778.

{18} Again, the appeal before us is from the district court's interpretation and enforcement of its order of dismissal with prejudice. We therefore construe Fannie Mae's reference to *Singleton* as support for its assertion that the district court's interpretation of its own order of dismissal with prejudice is "manifestly unreasonable." See *Bauer*, 60 A.3d at 957. We are not persuaded.

{19} In construing her order, Judge Singleton stated that by her ruling, she intended that SunTrust "was not going to

be allowed to pursue the remedy that it sought." We look to the complaint to determine what the remedy is that SunTrust was seeking. The complaint for foreclosure alleges that Chiulli signed a promissory note promising to pay \$163,200 in equal monthly installments until paid, and that the note was secured by a mortgage. The complaint claims that Chiulli failed to pay pursuant to the note, that a notice of default and demand for cure of the default had been made as required by the note and mortgage, and that Chiulli failed or refused to cure the default. SunTrust further alleged that the unpaid principal balance on the note was \$158,245.21 with interest, and that under the mortgage it had the option of declaring all sums owed under the note immediately due. SunTrust asserted it "hereby exercises this option." The remedy pursued by SunTrust was to foreclose the lien on the property securing the note, that the property be sold, and that SunTrust have a judgment in rem in the total amount of the unpaid principal balance in the amount of \$158,245.21 plus interest until fully paid. Looking to these pleadings to determine what the remedy is that SunTrust was seeking in the complaint for foreclosure, we come to the undeniable conclusion that it was invoking the acceleration clause in the contract documents to obtain an *in rem* judgment for the entire unpaid balance due on the contract, plus interest. *That* is the relief it was seeking, and *that* was the claim that was dismissed with prejudice. There is no further debt

under the note and mortgage, because the claim for the entire amount has already been dismissed with prejudice. SunTrust (and now Fannie Mae) are therefore precluded from seeking any relief under the note and mortgage after entry of the order of dismissal. This interpretation of the pleadings is more consistent with the reasoning of *Johnson*, 704 A.2d 866 and *Gullotta*, 2008-Ohio-6268. In looking to the pleadings to clarify *what* remedy was dismissed "with prejudice" as *Greer*, 1971-NMSC-127, and *Dunham*, 1948-NMSC-037, teach, we cannot conclude that Judge Singleton's interpretation of her order is "manifestly unreasonable."

{20} We hold that Judge Singleton's ruling that the order dismissing SunTrust's complaint for foreclosure "with prejudice" precludes SunTrust (and now Fannie Mae) from pursuing any action on the mortgage and note is not manifestly unreasonable.

CONCLUSION

{21} The post-judgment order enforcing the order of dismissal with prejudice as amended is affirmed.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JULIE J. VARGAS, Judge

STEPHEN G. FRENCH, Judge

Certiorari Denied, August 22, 2018, No. S-1-SC-37167

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-055

No. A-1-CA-36092 (filed June 28, 2018)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
EL RICO CUMMINGS,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

James Waylon Counts, District Judge

HECTOR H. BALDERAS,
Attorney General
ERAN SHARON,
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

BENNETT J. BAUR,
Chief Public Defender
ALLISON H. JARAMILLO,
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

Linda M. Vanzi, Chief Judge

{1} Following entry of a conditional plea, Defendant El Rico Cummings appeals his convictions for possession of a firearm by a felon, contrary to NMSA 1978, Section 30-7-16(A) (2001), and receiving stolen property, contrary to NMSA 1978, Section 30-16-11(A) (2006). Defendant argues that (1) his convictions violate double jeopardy because they are based on the same firearm, and (2) the district court erred in denying his motion to suppress because an officer exceeded the scope of the search warrant when he forcibly opened a locked safe. Because we hold that (1) there was no double jeopardy violation and (2) the district court did not err in denying Defendant's motion to suppress, we affirm.

BACKGROUND

{2} The pertinent facts are undisputed. On June 9, 2013, the Alamogordo Police Department obtained and served an arrest warrant and a search warrant on Defendant at his home as part of an investigation into a shooting. Relevant here, the search warrant—the validity of which is not disputed—authorized police

to search Defendant's home for firearms, ammunition, weapons or tools, cell phones, prescription and illegal narcotics and paraphernalia, documentation of the premises, and records as to the state of mind of the subjects of the warrant, including diaries or journals. The parties agree that the search warrant did not specifically mention a lockbox or a safe.

{3} At the hearing on Defendant's motion to suppress, an officer testified that while searching the house, he found a locked safe that was large enough to hold a firearm. According to the officer, when he was "handling the safe," it sounded like it had a metal object inside and had some weight to it. Neither Defendant nor his sister gave permission to the officers to search the safe, and neither Defendant nor his sister had a key to the safe available. Defendant later testified that he kept private things in his safe, such as bank statements and identity documents, including birth certificates and social security numbers.

{4} The officer removed the safe to the police station for further investigation and opened it there. Although the officer did not obtain a second search warrant, he testified that he could have done so, and he conceded that there were not otherwise any exigent circumstances. The officer did

not find the gun that he was looking for inside the safe, but instead found a different firearm that formed the basis for the two charges against Defendant for possession of a firearm by a felon and receiving stolen property. Defendant entered a no contest plea to both charges, reserving his right to appeal the denial of his motion to suppress.

DISCUSSION

Double Jeopardy

{5} Defendant first argues that, because they are based on the same firearm, his convictions for felon in possession of a firearm and receiving stolen property violate double jeopardy. Defendant did not reserve a double jeopardy argument in his conditional plea. Nevertheless, double jeopardy claims are not subject to waiver and can be raised at any time before or after entry of a judgment. *See* NMSA 1978, § 30-1-10 (1963). Moreover, this Court has held that a guilty plea does not necessarily waive a claim of double jeopardy, although the defendant should reserve the issue in the plea agreement and must present a record capable of review for this Court to engage in a unitary conduct double jeopardy analysis. *See State v. Sanchez*, 1996-NMCA-089, ¶¶ 10-11, 14, 122 N.M. 280, 923 P.2d 1165.

{6} We generally apply a de novo standard of review to the constitutional question of whether there has been a double jeopardy violation. *State v. Andazola*, 2003-NMCA-146, ¶ 14, 134 N.M. 710, 82 P.3d 77. The Double Jeopardy Clause "has been held to incorporate a broad and general collection of protections against several conceptually separate kinds of harm: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense." *State v. Montoya*, 2013-NMSC-020, ¶ 23, 306 P.3d 426 (internal quotation marks and citation omitted). The present case deals with the question of whether Defendant has received multiple punishments for the same offense.

{7} For the double jeopardy prohibition against multiple punishments, there are two types of cases: (1) when a defendant is charged with violations of multiple statutes for the same conduct, referred to as "double description" cases; and (2) when a defendant is charged with multiple violations of the same statute based on a single course of conduct, referred to as "unit of prosecution" cases. *State v. DeGraff*, 2006-NMSC-011, ¶ 25, 139 N.M. 211, 131 P.3d 61 (internal quotation marks omitted). The

present case is a double description case. For such cases, we apply the two-part test set forth in *Swafford v. State*, 1991-NMSC-043, ¶ 9, 112 N.M. 3, 810 P.2d 1223: (1) whether the conduct is unitary, and (2) if so, whether the Legislature intended to punish the offenses separately. *State v. Silvas*, 2015-NMSC-006, ¶ 9, 343 P.3d 616. “Only if the first part of the test is answered in the affirmative, and the second in the negative, will the double jeopardy clause prohibit multiple punishment in the same trial.” *Id.* (internal quotation marks and citation omitted). The State concedes that the conduct is unitary, so we analyze the second part of the *Swafford* test.

{8} Where unitary conduct forms the basis for multiple convictions, we “inquire whether [the d]efendant has been punished twice for the same offense, and if so, whether the Legislature intended that result.” *Id.* ¶ 11. “In analyzing legislative intent, we first look to the language of the statute itself.” *State v. Swick*, 2012-NMSC-018, ¶ 11, 279 P.3d 747. “If the statute does not clearly prescribe multiple punishments, then the rule of statutory construction established in *Blockburger v. United States*, 284 U.S. 299 . . . (1932) applies.” *Swick*, 2012-NMSC-018, ¶ 11. Under *Blockburger*, we look to see whether each statute requires proof of a fact that the other does not. See *Swick*, 2012-NMSC-018, ¶ 12. When interpreting vague and unspecific or multipurpose criminal statutes, we apply a modified *Blockburger* test, which avoids a mechanical application of the elements test in favor of a case-by-case approach that considers the State’s legal theory of the particular case. See *Silvas*, 2015-NMSC-006, ¶ 14; *Swick*, 2012-NMSC-018, ¶ 21; *State v. Gutierrez*, 2011-NMSC-024, ¶ 58, 150 N.M. 232, 258 P.3d 1024.

{9} “If the *Blockburger* test shows that one statute is subsumed within the other, then the analysis ends and the statutes are considered the same for double jeopardy purposes.” *Silvas*, 2015-NMSC-006, ¶ 12. “If one statute requires proof of a fact that the other does not, then the Legislature is presumed to have intended a separate punishment for each statute without offending principles of double jeopardy.” *Id.*

{10} The presumption that the Legislature intended separate punishments is not conclusive, however, and “may be overcome by other indicia of legislative intent.” *Swafford*, 1991-NMSC-043, ¶ 31. “[W]e must turn to traditional means of determining legislative intent: the language,

history, and subject of the statutes[, and we] must identify the particular evil sought to be addressed by each offense.” *Id.* ¶¶ 31-32. “If after examining the relevant indicia the legislative intent remains ambiguous, the rule of lenity requires us to presume that the Legislature did not intend multiple punishments for the same conduct.” *Swick*, 2012-NMSC-018, ¶ 13.

{11} In the present case, Defendant pled to and was convicted of both possession of a firearm by a felon and receiving stolen property based on the single gun found within his locked safe. As indicated above, the State concedes that the conduct was unitary. We therefore turn to whether the Legislature intended that a defendant be punished twice for the same offense. See *Silvas*, 2015-NMSC-006, ¶ 11.

{12} The statute for possession of a firearm by a felon states that “[i]t is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state.” Section 30-7-16(A). The statute for receiving stolen property states that “[r]eceiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner,” with a separate section setting forth the degree of felony when such property is a firearm. Section 30-16-11(A), (I). The statutes do not clearly prescribe multiple punishments, so we evaluate whether each statute requires proof of a fact that the other does not. See *Swick*, 2012-NMSC-018, ¶¶ 11-12. Possession of a firearm by a felon requires a finding that the defendant be a felon, whereas receiving a stolen firearm does not; and receiving a stolen firearm requires a finding that the firearm received by the defendant be stolen, whereas possession of a firearm by a felon does not. See § 30-7-16(A); § 30-16-11(A), (I). The statutes each contain an element that the other does not, so we would typically presume that the Legislature intended a separate punishment for a violation of each statute. See *Silvas*, 2015-NMSC-006, ¶ 12.

{13} Although the statutes are not vague or unspecific, Defendant nonetheless argues that we should apply the modified *Blockburger* test based on the State’s legal theory and the facts of the present case. Specifically, Defendant argues that the two statutes “share the element that [Defendant] possessed the [specific handgun]” because “the element of proof for both

charges was that he possessed a particular firearm . . . , which was stolen.” Defendant argues, in other words, that even though “[f]elon in possession ‘will not always entail proof’ of possessing a *stolen* firearm, . . . in this case the firearm possessed was stolen.” We are unpersuaded.

{14} Defendant compares the present case to *Gutierrez*, in which our Supreme Court noted that, even though armed robbery may not always entail proof that an *automobile* was taken, in that case, it was required because the property was an automobile, so the elements for armed robbery and the unlawful taking of a motor vehicle were the same. See 2011-NMSC-024, ¶ 58. However, the comparison is inapposite. In *Gutierrez*, a particular object was required to have been stolen in either case, which object was, in both cases, an automobile. See *id.* In the present case, both charges require the existence of a particular object, the firearm, but a *stolen* firearm is required in only one of the charges. In other words, although the handgun in the present case happened to *be* stolen, which finding was required to convict Defendant for receiving stolen property, it does not mean that the handgun’s *stolen characteristic* was thus required in order to convict Defendant of being a felon in possession of a handgun. See § 30-7-16. Indeed, the fact that the handgun was stolen is irrelevant to the felon in possession charge, which is reflected in the grand jury indictment and the State’s theory of the case. The facts of the present case do not require us to conclude differently. As indicated above, we therefore presume that the Legislature intended a separate punishment for each statute. See *Silvas*, 2015-NMSC-006, ¶ 12.

{15} Because this presumption is not conclusive, however, we turn to traditional means of determining legislative intent. See *Swick*, 2012-NMSC-018, ¶ 13. We have previously interpreted legislative intent for both statutes. In *State v. Haddenham*, 1990-NMCA-048, ¶ 14, 110 N.M. 149, 793 P.2d 279, we stated that “[t]he felon in possession statute provides for an enhanced punishment in order to keep firearms out of the hands of persons previously convicted and to deter recidivism.” In *State v. Watkins*, 2008-NMCA-060, ¶ 17, 144 N.M. 66, 183 P.3d 951, we stated that “the [L]egislature’s provision of separate punishment for receiving a stolen firearm as a recognition that the dangers to public safety are heightened when a firearm is kept by a person who has obtained its possession illegally.” Defendant

argues that these underlying policies are the same—to deter the illegal possession of firearms by “higher risk individuals.” We disagree.

{16} As stated, the emphasis of the legislative intent in the felon in possession statute is on deterring recidivism and “keep[ing] firearms out of the hands of persons previously convicted[.]” *Haddenham*, 1990-NMCA-048, ¶ 14. It is not simply a “higher risk” individual that the Legislature identified, but specifically those with prior criminal records *in order to deter recidivism*. See *id.* Conversely, the emphasis of the legislative intent in the receiving a stolen firearm statute is on increasing public safety by highlighting that the danger to the public is heightened when individuals obtain or possess firearms that were obtained illegally. See *Watkins*, 2008-NMCA-060, ¶ 17. The focus there is not in deterring recidivism but in protecting the public from a situation that contains *heightened* danger. We therefore conclude that the Legislature intended to punish possession of a firearm by a felon and receiving a stolen firearm separately, and, as such, Defendant’s convictions do not violate double jeopardy.

Suppression

{17} Defendant also argues that the district court erred in denying his motion to suppress, maintaining that the officer exceeded the scope of the search warrant and forcibly opened a locked safe. “Appellate review of a motion to suppress presents a mixed question of law and fact.” *State v. Paananen*, 2015-NMSC-031, ¶ 10, 357 P.3d 958 (internal quotation marks

and citation omitted). The appellate court “reviews factual matters with deference to the district court’s findings if substantial evidence exists to support them, and it reviews the district court’s application of the law de novo.” *State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183. Because the facts are not in dispute, we review the question de novo. See *id.*

{18} As indicated above, Defendant does not dispute that the search warrant itself was valid—he only argues that the officer impermissibly exceeded the scope of the warrant when he opened the locked safe. Defendant also acknowledges that the Fourth Amendment to the United States Constitution permits the officer’s actions. Instead, he argues that the officer’s actions were impermissible under the greater protections provided by Article II, Section 10 of the New Mexico Constitution.

{19} “In New Mexico, the ultimate question in all cases regarding alleged search and seizure violations is whether the search and seizure was reasonable.” *State v. Attaway*, 1994-NMSC-011, ¶ 20, 117 N.M. 141, 870 P.2d 103. In order to determine whether the officer’s actions were reasonable, we look to the search warrant, which is required to describe with particularity the items to be seized. See *State v. Sabeerin*, 2014-NMCA-110, ¶ 26, 336 P.3d 990; see also *State v. Malloy*, 2001-NMCA-067, ¶ 9, 131 N.M. 222, 34 P.3d 611 (stating that “[a] search warrant is used as a means to establish the reasonableness of an intrusion”).

{20} In the present case, while searching the house for firearms, bullets, and ammunition, which were items specified

in the search warrant for seizure, an officer found a locked safe that, when he handled it, sounded like it had a metal object inside, had some weight to it, and was large enough to hold a firearm. Although the search warrant did not specify that a lockbox or a safe was an item to be seized, it is a container that a reasonable officer could conclude was likely to contain any number of the items described with particularity in the warrant—to wit: firearms, ammunition, weapons or tools, cell phones, prescription and illegal narcotics and paraphernalia, documentation of the premises, and records as to the state of mind of the subjects of the warrant, including diaries or journals. Although the container in the present case was locked, we hold that it was nonetheless reasonable for the officer to open the container to discover whether it contained the items identified with particularity in the search warrant. We therefore conclude that the opening of the safe did not exceed the scope of the search warrant, and, as such, the district court did not err in denying Defendant’s motion to suppress.

CONCLUSION

{21} For the foregoing reasons, we affirm Defendant’s convictions.

{22} **IT IS SO ORDERED.**
LINDA M. VANZI, Chief Judge

WE CONCUR:
EMIL J. KIEHNE, Judge
DANIEL J. GALLEGOS, Judge

Give Your Child A Soaring Start!



Join us for our
Kindergarten Open House
Friday, October 19th

8:45am Registration • 9:00am - 10:00am Information Session
Children's activities will be provided.

K-5 CAMPUS : 3020 MORRIS STREET NE

**Accepting Applications
for 2019-2020**



Sunset Mesa School
Excellence in Preschool & K-5 Education

NORTHEAST HEIGHTS
MORRIS & CANDELARIA
505-298-7626
sunset-mesa.com



SUTIN, THAYER & BROWNE
WELCOMES TO THE FIRM

LILIANA BENITEZ DE LUNA

LILIANA PRACTICES PRIMARILY IN
COMMERCIAL LITIGATION
AND CREDITOR RIGHTS.

6100 UPTOWN BLVD. NE | SUITE 400
ALBUQUERQUE, NM 87110 | 505-883-2500



150 WASHINGTON STREET | SUITE 210
SANTA FE, NM 87501 | 505-988-5521

**SUTIN
THAYER
BROWNE**
L A W Y E R S



Zia Trust, Inc.

The Advisors' Trust Company[®]



Zia's Operations Team

These Are The People That Make Trust Accounting Seamless

- On-time trust statements to clients
- Sophisticated trust software system
- Principal and income tracking
- Over 100 years combined “back office” experience

We work alongside your clients' investment advisor

505.881.3338 | www.ziatrust.com

6301 Indian School Rd. NE Suite 800, Albuquerque, NM 87110

Expertise. Accuracy. Credibility.

From the boardroom to the courtroom, rely on the forensic and litigation expertise at Atkinson to deliver results that are on time and on target.

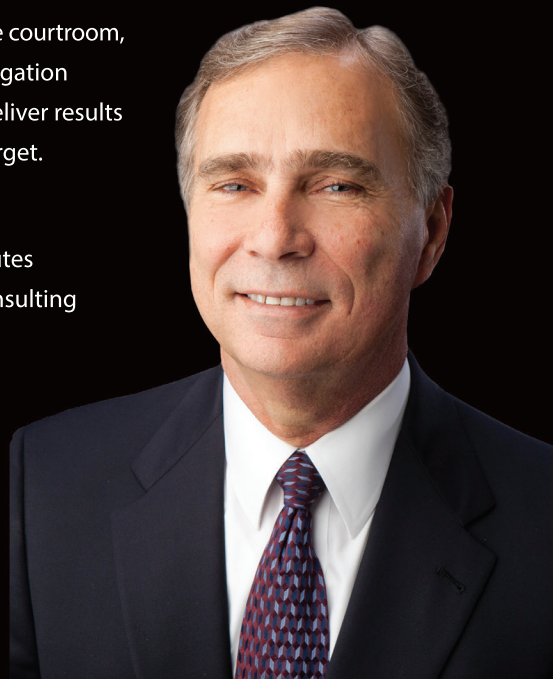
Litigation Services
Partner/Shareholder Disputes
Forensic Accounting & Consulting
Valuation Services

atkinson

Certified Public Accountants

atkinsoncpa.com
albuquerque
505 843-6492

*Henry South,
CPA, CVA*



Get Real

Why try out your case or witness in a hotel conference room?

TrialMetrix, the local leader in mock trials and focus groups, lets you put on your case in a courtroom setting

Our mock courtroom off Osuna south of Journal Center features:

- *Mock jurors selected to meet your desired demographics*
- *Multi-camera courtroom audio and video capability*
- *Jury room audio and video capabilities to capture deliberations*
- *An experienced defense attorney (upon request)*
- *A retired judge to offer a performance critique (upon request)*

Call Russ Kauzlaric at (505) 263-8425

TRIALMETRIX
— THE SCIENCE OF ADVOCACY —

trialmetrixnm.com

Bill Chesnut, MD

Orthopedic Surgeon, Retired



IMEs, EXPERT TESTIMONY,
RECORD REVIEWS
FREE ESTIMATES

www.BillChesnutMD.com
BillChesnutMD@comcast.net
505-501-7556

REDW BUSINESS VALUATION EXPERTS

One team to meet your financial needs:

- Gift and Estate Tax Planning
- Purchase Price Allocations
- Financial Reporting
- Employee Stock Ownership Plans
- Mergers and Acquisitions
- Marital Dissolutions
- Expert Testimony
- Ownership Disputes & Other Litigation

Carl Alongi,
CPA/ABV/CFF, PFS, ASA

Ed Street,
CPA/ABV/CFF, CVA, ASA

Mike Pattengale,
CPA, CGMA, ABV



REDW^{LLC}

CPAs | Business & Financial Advisors

505.998.3200 | redw.com

Albuquerque | Phoenix

JANE YOHALEM

– Appeals –

Fellow of the American
Academy of Appellate Lawyers



(505) 988-2826
jbyohalem@gmail.com

David Stotts

Attorney at Law

Business Litigation
Real Estate Litigation

242-1933

NEIGHBORHOOD LAW CLE CONFERENCE

December 6-7, 2018
at the Santa Fe Convention Center

Featured Speakers:
Santa Fe Mayor Alan Webber &
Supreme Court Justice Charles Daniels

10 General & 2 Ethics/Professional CLE Credits

Tuition: \$475 (\$450 in advance)

2018 Program and Registration available at:
www.sfnlc.com

Contact:
Peter Dwyer: peterdwyer@aol.com

Little Cases, BIG CONSEQUENCES

Defending Misdemeanors Like They're Felonies

FRIDAY, OCTOBER 26
6.6 CLE Credits

1635 University Blvd NE
Albuquerque, NM 87102
www.nmcdla.org

Hon. Roderick Kennedy ★ Nathan Pederson ★ Jason Avery ★ Jenifer Brito-Avery ★ D. Eric Hannum ★ Brett Carter ★ Marc Grano ★ Steve Forsberg ★ Javier Argueta ★ Jeri Barros-Vera ★ Sarah Field ★ Amy Bailey ★ Cynthia Payne ★ Kaitlin Alley ★ Charles Knoblauch

Issue Spotting in Breath & Blood Cases
★ Stepping up your Defense in Preliminary Hearings ★ DV and DWI Case Law Update ★ Non-Adjudicative Resolutions and How to Get There
★ DV Discovery ★ Immigration and Firearms Restrictions: Collateral Consequences for DV and DWI Cases

California Attorney

10+ years of experience in litigation and transactional law in California. Also licensed in New Mexico. Available for associations, referrals and of counsel.

Edward M. Anaya

(415) 300-0871 • edward@anayalawsf.com

Bespoke lawyering for a new millennium

THE BEZPALKO LAW FIRM

Legal Research

Tech Consulting

(505) 341-9353

www.bezpalkolawfirm.com

Classified

Positions

Litigation Attorney

The Litigation Attorney will attend hearings, trials, draft and review pleadings, assist with task and workflow management, and provide professional legal assistance, advice and counsel with respect to collections and creditor's rights. Moreover, the position may require research and analysis of legal questions. The position will also entail court appearances, often on a daily basis. The position has a high level of responsibility within established guidelines, but is encouraged to exercise initiative. The position is part of a growing team of attorneys across several states, and is located in Albuquerque, New Mexico. Please contact Laura Berry for more information, Laura.Berry@mjfirm.com; Main: 303.830.0075 x143; Direct: 303.539.3184

Attorney

Butt Thornton & Baehr PC seeks an attorney with at least 3 years' legal experience. Our growing firm is in its 59th year of practice. We seek an attorney who will continue our tradition of excellence, hard work, and commitment to the enjoyment of the profession. Please send letter of interest, resume, and writing samples to [Ryan T. Sanders at rtsanders@btblaw.com](mailto:Ryan.T.Sanders@btblaw.com).

Attorney

Fast-paced San Juan County law firm looking for attorney with excellent research and writing skills to assist busy litigation team. Experience in criminal defense and/or personal injury helpful, but not required. Position may include advancement opportunities, if interested. Salary negotiable. Send letter of interest, resume, and writing sample to hsmurphy@titusmurphyfirm.com.

Deputy District Attorney

Immediate opening for Deputy District Attorney in Lordsburg. Salary depends on experience, w/benefits. Please send resume to Francesca Estevez, District Attorney FMartinez-Estevez@da.state.nm.us Or call 575-388-1941.

Liquor License Hearing Officer

The City of Santa Fe, New Mexico is requesting letters of interest and resumes from attorneys who are interested in conducting adjudicatory hearings related to liquor license applications and waivers of distance requirements from churches or schools, when applicable, for liquor license applications, special dispenser permits and public celebration permits. The hearing officer will conduct the hearings and submit a written report to the Governing Body. Pursuant to state law, there is a short turnaround time in which to issue the report. The hearings will be conducted at City Hall during early evening hours. The City anticipates an average of six hours of hearings per month at a rate of up to \$150 per hour. The hearing officer does not need to attend the Governing Body meetings. Please send letter of interest and resume to the City Clerk at yvivil@santafenm.gov, no later than 5:00 p.m. on Friday, October 19, 2018 or call (505)955-6521 for additional information.

Assistant District Attorney

The Fifth Judicial District Attorney's office has an immediate position open to a new or experienced attorney. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to DLuce@da.state.nm.us.

Trial Attorney and Senior Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Trial Attorney: Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. Salary Range: \$57,688-\$72,110; Senior Trial Attorney: Requirements: Licensed attorney to practice law in New Mexico plus a minimum of four (4) years as a practicing attorney in criminal law or three (3) years as a prosecuting attorney. Salary Range: \$63,743-\$79,679. Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Submit Resume to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us. Further description of this position is listed on our website <http://donaanacountyda.com/>.

CYFD Attorney

The Children, Youth and Families Department is seeking to fill multiple vacant Children's Court Attorney Senior Positions. Salary range is \$39-\$69K annually, depending on experience and qualifications. The attorneys will represent the department in abuse/neglect and termination proceedings and related matters. The ideal candidates will have experience in the practice of law totaling at least three years and New Mexico licensure is required. Children's Court Attorney Senior positions will be located in Albuquerque, New Mexico. Benefits include medical, dental, vision, paid vacation, and a retirement package. Please contact the following for information on how to apply and to ascertain the closing date for the position. Cynthia Tessman (505) 841-7819 or cynthia.tessman@state.nm.us. The state of New Mexico is an EOE. To apply for this position go to www.state.nm.us/spo/ and click on JOBS, then click on Apply for a Job Online Job order #100831.

Litigation Attorney Positions

DNA-People's Legal Services, Inc. is hiring entry-level and experienced Managing and Staff Attorneys in the State of Arizona and New Mexico. Positions available in Flagstaff, Keams Canyon, AZ and Farmington, NM, where you will enjoy the convenience of working near a metropolitan area while gaining valuable experiences in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices and live the experience on Navajo/Hopi reservation, apply quickly. Salary commensurate with experience. Send resume, cover letter, writing sample, and references to Hresources@dnalegalservices.org. These positions will fill up fast!

Multiple Trial Attorney Positions Available in the Albuquerque Area

The Thirteenth Judicial District Attorney's Office is seeking entry level as well as experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Saavedra ksaavedra@da.state.nm.us or 505-771-7400 for an application. Apply as soon as possible. These positions will fill up fast!

Assistant Trial Attorney

Assistant Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Socorro County (Socorro). Socorro is a short one hour drive from Albuquerque. Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801.

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney to provide legal services to the City's Department of Municipal Development ("DMD"). The area of focus includes, but is not limited to: contract drafting, analysis, and negotiations; regulatory law; procurement; general commercial transaction issues; intergovernmental agreements; dispute resolution; and civil litigation. Attention to detail and strong writing skills are essential. Five (5)+ years' experience is preferred and must be an active member of the State Bar of New Mexico, in good standing. Please submit resume and writing sample to attention of "Legal Department DMD Assistant City Attorney Application" c/o Angela M. Aragon, Executive Assistant/HR Coordinator; P.O. Box 2248, Albuquerque, NM 87103, or amaragon@cabq.gov.

Deputy City Attorney or Assistant City Attorney

The City of Farmington is seeking a Deputy City Attorney or Assistant City Attorney. This is a full-time, salaried position with full benefits. Please note the job duties and requirements of the Deputy City Attorney and Assistant City Attorney does differ. The position an individual is considered for is dependent on qualifications. For an in-depth understanding and description of the available position, please visit our website at <https://fmtn.applicantpro.com/jobs/>. All applications must be submitted online. For any questions, please contact Brooke Tomlinson, City of Farmington HR Business Partner at (505) 599-1134 or btomlinson@fmtn.org.

Join our team at New Mexico Legal Aid!

Check our website for current opportunities: <https://tinyurl.com/NMLAjobs>

Assistant University Counsel

The University of New Mexico, Office of University Counsel, is seeking an attorney to provide legal counsel to the institution on a broad range of health law, higher education and other legal matters. Under the supervision of the Deputy University Counsel for Health Sciences, the attorney's practice areas will include: hospital-physician contractual relationships (including physician professional services agreements); the legal implications of, and compliance with, HIPAA and state health privacy laws, including health information exchanges and population health data management; Stark law and Anti-Kickback Statute issues; legal implications of value-based reimbursement and shared/full risk contracting; hospital and clinic operational issues, including patient healthcare decision-making and surrogate healthcare decision-making; human subjects research and animal research and research compliance including clinical trial agreements, material transfer agreements, and data use and sharing agreements; and, corporate law and advising UNMHSC supporting corporate entities. The attorney will also provide training to University departments and personnel as needed. Salary range: \$5,924 to \$6,250 a month. Best consideration date: October 12, 2018. For complete information including closing dates, minimum requirements, and instructions on how to apply please visit our website at <http://UNMJobs.unm.edu>, or call (505) 277-6947, or visit our HR Service Center at 1700 Lomas NE, Suite 1400, Albuquerque, NM 87131. EEO/AA

Full Time Associate Attorneys

Miller Stratvert PA, with offices in Albuquerque, Santa Fe, Farmington and Las Cruces, is seeking 2 full time associate attorneys with 3-5 years' litigation experience. All qualified candidates should possess strong research and writing skills, have some courtroom experience, and be well-versed in all local, State and Federal civil rules and procedures. Miller Stratvert PA provides competitive compensation, a generous benefits package, and a congenial work-place environment. Please submit a letter of interest and resume to info@mstlaw.com.

Consultant

The New Mexico Public Defender Department (d/b/a The Law Offices of the Public Defender) is seeking a consultant to conduct a special audit to address the New Mexico State Auditor's designation. Interested firms or parties are invited to review and reply to LOPD's Request For Quotes (RFQ), which can be found at [http://www.lopdnm.us/News & Events](http://www.lopdnm.us/News&Events).

Paralegal - IPRA

The University of New Mexico Office of University Counsel (OUC) offers an opportunity for an experienced, detail-oriented paralegal with at least five years of legal experience to join the OUC. Candidates must have experience in document production, as well as strong organizational, communication and computer skills. Prior experience with the New Mexico Inspection of Public Records Act is preferred. At the direction of the Custodian of Public Records, the successful candidate will compile, review and organize records concerning the UNM Health Sciences Center pursuant to the New Mexico Inspection of Public Records Act (IPRA). The position will assist with the daily management of the online public records portal, draft response letters, and work closely with UNM Legal Counsel, HSC faculty, staff and administrators in responding to requests. Best Consideration Date: October 12, 2018. For more information regarding the position and how to apply, please visit our website at <http://unmjobs.unm.edu>, call 505-277-6947, or visit the UNM HR Service Center at 1700 Lomas NE, Suite 1400, Albuquerque, NM 87131. Reference Req. #6589. UNM is an equal opportunity employer. EEO/AA/Minorities/Females/Vets/Disabled/and other protected classes.

Paralegal - HSC Litigation

The University of New Mexico, Office of University Counsel (OUC), is seeking a paralegal to assist its Health Sciences Center practice group. The position entails varied paralegal work involving a moderate level of difficulty assisting UNM counsel and/or higher-level paralegals with medical malpractice litigation, claims against the University, and legal issues concerning hospital operations. Expect to assist with routine aspects of legal process and medical malpractice investigations, data compilation and analysis, drafting legal documents and affidavits, and conveying information to hospital and Health Sciences leadership. Under supervision of UNM counsel, the paralegal may lead the discovery response process for medical malpractice litigation, investigate and analyze medical malpractice claims, and lead or handle other projects as assigned. Best consideration date: October 12, 2018. For more information regarding the position and how to apply, please visit our website at <http://unmjobs.unm.edu>, call 505-277-6947, or visit the UNM HR Service Center at 1700 Lomas NE, Suite 1400, Albuquerque, NM 87131. Reference Req. #6592. EEO/AA/Minorities/Females/Vets/Disabled/and other protected classes.

Seeking Experienced Legal Secretaries

Lewis Brisbois a national firm with 42 offices in 26 states is seeking experienced legal secretaries for our Albuquerque office. Candidates must be proficient in state and federal filing procedures, Word, Excel and have excellent transcription skills. A minimum of two years experience in a legal environment is required. This is a full time position Monday through Friday. We offer a competitive benefits package including medical, dental, life, paid vacation and sick time and a 401K plan. Email your resume to phxrecruiter@lewisbrisbois.com

Legal Secretary

AV rated insurance defense firm seeks full-time legal assistant with five plus years' experience in insurance defense and civil litigation. Position requires a team player with strong word processing and organizational skills. Proficiency with Word and Word Perfect, knowledge of court systems and superior clerical skills are required. Should be skilled transcriptionist, attentive to detail and accurate with a Minimum typing speed of 75 wpm. Excellent work environment, salary and benefits. Please submit resume to mvelasquez@rsk-law.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

New Mexico Counties Opportunity For Experienced Paralegal

The New Mexico Counties Legal Bureau is the in-house legal services division of the New Mexico Counties. The Legal Bureau defends New Mexico's counties in a wide variety of civil litigation matters, including federal civil rights litigation, employment matters, and claims brought under the New Mexico Tort Claims Act. We are currently accepting applications for an experienced litigation paralegal. The best candidates will have 3+ years' experience as a primary civil litigation paralegal. The successful candidate will serve multiple attorneys on a variety of cases in our Albuquerque office. We offer an excellent benefits package, which includes a competitive wage, generous health benefits, employer contribution to a retirement account, and a great working environment. Please email your resume, two references, and your salary requirements to Brandon Huss by October 10, 2018 to bhuss@nmcounties.org. All inquiries will be kept confidential.

Part-time Legal Assistant

Part-time Legal Assistant for insurance defense downtown law firm. Flexible hours (20-25 hrs. per week), comfortable working environment, parking provided. Looking for someone with 3+ years experience, knowledge of e-filing in State and Federal courts, strong organizational skills, cooperative attitude, and attention to detail. Hourly wage DOE. Please e-mail resume to kayserk@civerolo.com, or mail to Civerolo, Gralow & Hill, PA, P.O. Box 887, Albuquerque NM 87103.

Services

Board Certified Orthopedic Surgeon

Board certified orthopedic surgeon available for case review, opinions, exams. Rates quoted per case. Owen C DeWitt, MD, odewitt@alumni.rice.edu

Briefs, Research, Appeals—

Leave the writing to me. Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

Office Space

Shared Uptown Office Space for Rent

Newly renovated executive offices for rent in shared professional office in Uptown area. Support staff work stations available if needed. Furnished options exist. Includes use of 3 conference rooms, reception services to greet guests and accept documents, copier, fax machine, kitchen/break room, utilities, janitorial services, exterior signage, and alarm service. Convenient access to I-40. Plenty of free parking. Starting from \$850/mo. Call Bryan at (505) 268-7000.

Miscellaneous

Want To Purchase

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

Navajo Law CLE on November 16

Sutin, Thayer & Browne law firm will host its annual all-day Navajo Law CLE on November 16 in Albuquerque. The nonprofit CLE offers 8 credits (including 2 ethics credits) applicable to the Navajo Nation Bar and the State Bar of New Mexico. Early bird registration \$175 by October 16. Details at sutinfirm.com/news.



Holiday Cards

Order
early and
save!

*Express yourself and show your gratitude with
fully customizable and affordable holiday cards.*

Cards starting at 99 cents per set*
Set includes folded card and envelope with return address
Custom design or photo card • Create your own greeting

*No additional discounts apply on promotional offer. Order must be placed by Nov. 30



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



Just because your arbitration clause specifies AAA or JAMS doesn't mean that you are stuck with their Arbitrators.

Upgrade to the Best Roster of Arbitrators in the Country

Arbitrators & Mediators in New Mexico



Hon. Michael Bustamante

- Attorney Fee / Malpractice
- Banking / Lender Liability
- Construction / Real Estate
- Employment
- Environmental / CERCLA
- Insurance / Reinsurance
- Oil, Gas, Energy & Water
- Product Liability



Hon. Bruce Black

- Employment
- Environmental / CERCLA
- Insurance / Reinsurance
- Intellectual Property
- Native American
- Oil, Gas, Energy & Water

Highly Responsive Case Management & Extraordinary Client Service

For over a decade, FedArb's group of 50+ former federal judges and Distinguished Neutrals have successfully mediated and arbitrated complex civil cases typically achieving results more efficiently and cost effectively than through litigation. We provide around the clock administrative services, and we require our Neutrals to honor the parties deadlines, thereby saving time and money.

Reach one of our case managers at:
650.328.9500 or **info@FedArb.com**



Search our bench of experienced arbitrators organized by areas of expertise:
www.fedarb.com/specialized-panels