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BAR BULLETIN

October 24, 2018 • Volume 57, No. 43



Snowy Sky by Rachel Rankin

Weyrich Gallery, Albuquerque

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- The Ethical Use of E-Evidence: A Judge's Perspective

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Meetings

October

Trial Practice Section Board

Noon, State Bar Center

Immigration Law Section Board

Noon, teleconference

November

2

Legal Service and Programs Committee

10:30 a.m., State Bar Center

Health Law Section Board

9 a.m., teleconference

Employment and Labor Law Section Board

Cancelled

Real Property Division Section Board

Noon, teleconference

Business Law Section Board

4 p.m., teleconference

Workshops and Legal Clinics

November

Divorce Options Workshop

6-8 p.m., State Bar Center, Albuquerque, 505-797-6022

Civil Legal Clinic

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

Common Legal Issues for Senior Citizens Workshop Presentation

10-11:15 a.m., Community Services Center, Portales, 1-800-876-6657

Civil Legal Clinic

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

Family Law Clinic

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

Common Legal Issues for Senior Citizens Workshop Presentation

10-11:15 a.m., Moriarty Senior Center, Moriarty, 1-800-876-6657

About Cover Image and Artist: Rachel Rankin grew up under the big skies and beautiful mountains in Albuquerque. These influences have been an inspiration all of her life. Rankin's technique utilizes a palette knife to create the layered texture in her plein air paintings. View more of her work at rachelrankinart.com.

COURT NEWS New Mexico Supreme Court Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has a comprehensive legal research collection of print and online resources, and law librarians are available to assist. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building Hours:

Building Hours: Mon.-Fri. 8: a.m.-5 p.m. Reference & Circulation Hours: Mon.-Fri. 8 a.m.-4:45 p.m. For more information: Call 505-827-4850 Visit https://lawlibrary.nmcourts.gov Email libref@nmcourts.gov

Commission on Access to Justice

The next meeting of the Commission is from noon-4 p.m., Nov. 2, at the State Bar of New Mexico. Commission goals include expanding resources for civil legal assistance to New Mexicans living in poverty, increasing public awareness and encouraging and supporting probono work by attorneys. Interested parties from the private bar and the public are welcome to attend. More information about the Commission is available at www. accesstojustice.nmcourts.gov

Bernalillo County Metropolitan Court Announcement of Vacancy

A vacancy on the Bernalillo County Metropolitan Court will exist as of January 1, 2019, due to the retirement of the Hon. Judge Sharon Walton, effective Dec. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Sergio Pareja, chair of the Bernalillo County Metropolitan Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: http://lawschool.unm. edu/judsel/application.php. The deadline for applications has been set for 5 p.m. Dec. 13. Applications received after that time will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the

Professionalism Tip

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

I will keep current in my practice areas, and, when necessary, will associate with or refer my client to other more knowledgeable or experienced counsel.

Secretary of State. The Bernalillo County Metropolitan Court Nominating Commission will meet beginning at 9 a.m. on Jan. 18, 2019, to interview applicants for the position at the Metropolitan Courthouse, located at 401 Lomas NE, Albuquerque. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

STATE BAR NEWS Appellate Practice Section Luncheon with Justice Charles W. Daniels

Join the Appellate Practice Section for a brown bag luncheon at noon, Nov. 16, at the State Bar Center with guest Justice Charles W. Daniels of the New Mexico Supreme Court. Justice Daniels will reflect on his time on the bench as he prepares to retire in January 2019. The lunch is informal and is intended to create an opportunity for appellate practitioners to learn more about the work of the Court. Those attending are encouraged to bring their own "brown bag" lunch. R.S.V.P. to Carmela Starace at cstarace@icloud.com.

Business Law Section 2018 Business Lawyer of the Year

The Business Law Section has opened nominations for its annual Business Lawyer of the Year Award, to be presented on Nov. 14 after the Section's Business Law Institute CLE. Nominees should demonstrate professionalism and integrity, superior legal service, exemplary service to the Section or to business law in general, and service to the public. Self-nominations are welcome. A complete description of the award and selection criteria are available at www.nmbar.org/BusinessLaw. The deadline for nominations is Nov. 2. Send nominations to Breanna Henley at bhenley@nmbar.org. Recent recipients include Jay D. Rosenblum, David Buchholz, Leonard Sanchez, John Salazar and Dylan O'Reilly.

Board of Bar Commissioners Client Protection Fund Commission

The Board of Bar Commissioners will make two appointments to the Client Protection Fund Commission for three-year terms. Active status attorneys in New Mexico who would like to serve on the Commission should send a letter of interest and brief résumé by Nov. 26 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

New Mexico Access to Justice Commission

The Board of Bar Commissioners will make one appointment to the N.M. Access to Justice Commission for a three-year term. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico who would like to serve on the Commission should send a letter of interest and brief resume by Nov. 26 to Kris Becker at kbecker@nmbar. org or fax to 505-828-3765.

Historical Committee Rio Arriba Raid: Lonesome Dave and the Tiger of the North

Join the Historical Committee for its annual historical presentation from noon-1 p.m., Nov. 14, at the State Bar Center. Deputy State Historian Rob Martinez will present "Lonesome Dave and the Tiger of the North," an intriguing account of the professional and public relationship between then Governor of New Mexico Dave Cargo and land activist Reies Lopez Tijerina who went on to defend himself in trial. At the heart of the dynamic interaction was the dramatic 1967 Courthouse Raid at Tierra Amarilla. Those nostalgic, curious and with personal memories are encouraged to attend. Lunch will be provided. R.S.VP. to Breanna Henley at bhenley@nmbar.org.

Indian Law Section 2018 Indian Law Section Attorney Achievement Award

The Indian Law Section has opened nominations for its annual Attorney Achievement Award. The Attorney Achievement Award gives the Section an opportunity to recognize the amazing accomplishments of its members. Section membership includes some of the foremost Indian law practitioners in the country who have made important contributions to our profession and to our communities. The nominee for the Attorney Achievement Award must be a member of the Indian Law Section and the nomination must explain, in one page or less, the nature of the nominee's extraordinary achievements in Indian law and the nominee's contributions to the community. The deadline for nominations is 5 p.m., Nov. 2. Send nominations to Breanna Henley at bhenley@nmbar. org. Visit www.nmbar.org/IndianLaw to view a roster of Section members. Recent recipients include Rosalie "Lisa" Chavez, Michael P. Grossman and C. Bryant Rogers.

Intellectual Property Law Section **Volunteers Needed for IP Pro Bono Fair**

The Intellectual Property Law Section seeks volunteer attorneys for its first Pro Bono IP Fair from 9 a.m.-1 p.m. on Nov. 10, at the UNM School of Law. Many creatives and inventors in our community need our help to get their journey started. Attorneys will provide free consultations (limited to the time spent at the Fair) in all areas of IP law and/or business law. To volunteer, email Justin Muehlmeyer at JRM@ PeacockLaw.com with 1) the time you are available and 2) the type of subject matter you want to receive (e.g., "Trademark and Copyright only," "all IP including Patent," "corporate formation," etc.). Even an hour of your time may make a difference in the success of a fellow New Mexican's endeavor and your time will count towards your annual pro bono hours. Malpractice insurance is provided by the State Bar and continental breakfast and parking is free. Direct inquiries from creatives to https:// form.jotform.com/sbnm/IPprobonofair to register.

New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- Nov. 5, 5:30 p.m. First United Methodist Church, 4th and Lead SW, Albuquerque (The group normally meets the first Monday of the month.)
- Nov. 19, 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#.
- Dec. 10, 5:30 p.m. UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

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

Natural Resources, Energy and Environmental Law Section

Nominations Open for 2018 Lawyer of the Year Award

The NREEL Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 21. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. More detailed criteria and nomination instructions are available at www.nmbar. org/NREEL. Nominations are due by Nov. 16 to Breanna Henley, bhenley@nmbar.org.

RPTE Section: Real Property Division

Seeking the Best and Brightest: 2018 Real Property Attorney of the Year

The Real Property, Trust and Estate Section's Real Property Division is seeking nominations for an outstanding lawyer who has demonstrated professionalism, exemplary contributions and made a difference in their legal community. The Division Board will select the honoree to be presented with a plaque and awarded free registration for the 2019 Real Property Institute during a special lunch at the 2018 Real Property Institute on Dec. 5. Nominations should be no more than 350 words and submitted by email to Division Chair Denise Archuleta Snyder at dasnyder@aldridgepite.com by 5p.m. on Nov. 6 with "Nomination for Best Real Property Lawyer" in the subject line. Nominees must be lawyers in good standing, based in New Mexico and be a Real Property, Trust and Estate Section member.

Senior Lawyers Division Attorney Memorial Scholarship Reception

Three UNM School of Law third-year students will be awarded a \$2,500 scholarship in memory of New Mexico attorneys who have passed away over the last year. The deceased attorneys and their families will be recognized during the presentation. The reception will be held from 5:30-7:30 p.m., Nov. 13, at the State Bar Center. All State Bar members, UNM School of Law faculty, staff and students and family and colleagues of the deceased are welcome to attend. A list of attorneys being honored can be found at www.nmbar.org/SLD under "Attorney Memorial Scholarship." Contact Breanna Henley at bhenley@nmbar.org to notify the SLD of a member's passing and to provide current contact information for surviving family members and colleagues.

Annual Meeting of Membership

The Senior Lawyers Division invites Division members to its annual meeting of membership to be held at 4:30 p.m., Nov. 13, at the State Bar Center. Members of the SLD include members of the State Bar of New Mexico in good standing who are 55 years of age or older and who have practiced law for twenty-five years or more. During the annual meeting of membership, members will have the opportunity to meet with members of the SLD Board of Directors and learn more about the activities of the Division. The meeting will last an hour and attendees are welcome to stay for the Attorney Memorial Scholarship Reception following the annual meeting.

Solo and Small Firm Section Fall Speaker Features Robert Huelskamp

Robert Huelskamp 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?" from noon-1 p.m. on Nov. 20 at the State Bar Center in Albuquerque. The presentation is open to all State Bar members and lunch will be provided free by the section to those who 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

OTHER BARS New Mexico Criminal Defense Lawyers Association The Defender's Role in Trial Advocacy

NMCDLA is coming to Roswell this fall with an information-packed seminar to help lawyers become a stronger advocates for their clients. Join NMCDLA on 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.

New Mexico Defense Lawyers Association Mindfulness Based Stress Reduction for Lawyers

New Mexico Defense Lawyers Association is pleased to bring a day retreat in Mindfulness Based Stress Reduction for Lawyers on Nov. 9, at the Norbertine Community. This day retreat offers the perfect opportunity to learn not only the fundamentals of mindfulness and meditation, but also the science behind it. Understand what mindfulness is all about, and how to bring the practices into daily life for real stress reduction. Contact NMDLA with questions at nmdefense@nmdla.org or by phone 505-797-6021.

New Mexico Black Lawyers Association

Cyber Security, Social Media and Cell Phones: How to Use Technology in Business and Practice

The New Mexico Black Lawyers Association invites members of the legal community to attend its annual CLE, "Cyber Security, Social Media and Cell Phones: How to Use Technology in Business and Practice." (5.0 G, 1.0 EP pending) on Nov. 16, from 8 a.m. - 4:30 p.m. at the State Bar of New Mexico (5121 Masthead NE, Albuquerque). Registration is \$199 and the deadline to request a refund is Nov. 9. For more information, or to register online, visit:

www.newmexicoblack lawyersassociation.org.

Albuquerque Lawyers Club Monthly Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its November meeting. Chris Orwoll, executive director of the New Mexico Museum of Space History is the featured speaker. The title of his presentation is "Fun and Frivolity on the way to the Moon: Anecdotes from Apollo." The museum houses the International Space Hall of Fame, and highlights the history of space exploration, and N.M.'s pivotal role since the very beginning. The museum is one of Lonely Planet's "50 Museums to Blow Your Mind!"The lunch meeting will be held on Wednesday, Nov. 7 at noon at Seasons Restaurant, located at 2031 Mountain Road, NW, Albuquerque. Cost is free to members/\$30 non-members in advance/\$35 at the door

For more information, email ydennig@yahoo.com or call 505-844-3558.

OTHER NEWS The Department of Labor New Payroll Audit Independent Determination (PAID) Program

The U.S. Department of Labor's Wage and Hour Division has announced a new nationwide pilot, the Payroll Audit Independent Determination program, which facilitates resolution of potential overtime and minimum wage violations under the Fair Labor Standards Act. The program's primary objectives are to resolve such claims quickly and without litigation, to improve employers' compliance with overtime and minimum wage obligations. Under the PAID program, employers are encouraged to conduct audits and, if they discover overtime or minimum wage violations, to share this information with WHD, work with us in good faith to correct their mistakes, and provide due compensation to their employees in an expedited manner. Employers that voluntarily self-report and work with the department in good faith to take corrective action under the PAID program will not be subject to liquidated damages or civil money penalties as a condition to finalize settlements.For more information about the program, please visit www.dol.gov/ whd/paid/ or call the WHD office at 505-248-6100.

Thank You For Your Feedback

The staff of the State Bar of New Mexico and the *Bar Bulletin* would like to extend our sincere thanks to all those who participated in the readership survey in September. We received a large number and wide range of responses. We are currently considering opportunities to take action on the recommendations made in the survey. It is our goal to provide a relevant and useful publication for our members to read. You may direct feedback and suggestions at any time to notices@nmbar.org or *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

REPORT BY DISCIPLINARY COUNSEL

DISCIPLINARY QUARTERLY REPORT

Final Decisions

Final Decisions of the NM Supreme Court5

Matter of Arash Kashanian, Esq., (No. S-1-SC-37007). The New Mexico Supreme Court issued an Order on July 9, 2018 indefinitely suspending Respondent from the practice of law for a minimum of one (1) year for filing frivolous claims. The Court ordered other requirements that Respondent must meet before petitioning for reinstatement. The Court also required Respondent to pay costs to the Disciplinary Board.

Matter of Ron Sanchez, Esq., (No. S-1-SC-37044). The New Mexico Supreme Court issued an Order on July 24, 2018 reinstating Respondent to the practice of law.

Matter of Marcos A. Gonzalez, Esq., (No. S-1-SC-35687). The New Mexico Supreme Court issued an order on September 13, 2018 reinstating Respondent to the practice of law on a probationary status for thirty (30) months.

Matter of Rosanna Vazquez, Esq., (No. S-1-SC-37130). The New Mexico Supreme Court issued an order on September 13, 2018 indefinitely suspending Respondent from the practice of law for a minimum of one (1) year for violations of failure to maintain an accurate IOLTA, general incompetence, and general neglect. The Court issued other requirements that Respondent must meet before petitioning for reinstatement. The Court also required Respondent to pay costs to the Disciplinary Board.

Matter of Les W. Sandoval, Esq., (No. S-1-SC-37161). The New Mexico Supreme Court issued an order on September 13, 2018 indefinitely suspending Respondent from the practice of law for a minimum of eighteen (18) months commencing on November 29, 2018, consecutive to the suspension imposed in cause number S-1-SC-36675, for violations of general neglect and failure to maintain and keep an IOLTA correctly. The Court issued other requirements Respondent must meet before petitioning for reinstatement. The Court also required Respondent to pay costs to the Disciplinary Board.

Summary Suspensions

statement.

Total number of attorneys summarily suspended
Administrative Suspensions Total number of attorneys administratively suspended
Disability Suspensions Total number of attorneys placed on disability suspension
Matter of
Matter of (Sealed matter) New Mexico Su-

preme Court entered an order placing Respondent on disability

inactive status effective September 6, 2018. Pending disciplinary

matters, if any, were stayed until Respondent is eligible for rein-

Matter of (Sealed matter) New Mexico Supreme Court entered an order placing Respondent on disability inactive status effective September 28, 2018. Pending disciplinary matters, if any, were stayed until Respondent is eligible for reinstatement.

Charges Filed

Charges were filed against an attorney for allegedly charging unreasonable fees/costs; failing to maintain client's funds in trust; failing to maintain complete records of all client funds; failing to maintain a written trust account plan; and failing to hold client funds separate from the lawyers' own property.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to represent a client diligently; failing to adequately communicate with a client; failing to expedite litigation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to provide competent representation to a client; failing to represent a client diligently; failing to adequately communicate with a client; failing to expedite litigation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegedly failing to deposit unearned fees into trust and by failing to keep complete records of the property being held; and engaging in conduct that is prejudicial to the administration of justice.

Petition for Injunctive Relief Filed

Petitions for injunctive relief filed0		
Patitions for Pacinrocal Discipling Filed		

Petitions for Reciprocal Discipline Filed

Petitions for reciprocal discipline filed0

Reinstatement from Probation

Formal Reprimands

Total number of attorneys formally reprimanded4

Matter of Rozan Cruz, Esq. (Disciplinary No. 03-2017-758) a Formal Reprimand was issued at the Disciplinary Board meeting of September 14, 2018. The Formal Reprimand was published in the State Bar Bulletin issued September 26, 2018.

Matter of Jane Rocha de Gandara, Esq. (Disciplinary No. 08-2017-768) a Formal Reprimand was issued at the Disciplinary Board meeting of September 14, 2018. The Formal Reprimand was published in the State Bar Bulletin issued September 26, 2018.

Matter of James Klipstine, Esq. (Disciplinary No. 02-2018-776) a Formal Reprimand was issued at the Disciplinary Board meeting of September 14, 2018. The Formal Reprimand was published in the State Bar Bulletin issued September 26, 2018.

Matter of Roderick Juarez, Esq. (Disciplinary No. 04-2018-781) a Formal Reprimand was issued at the Disciplinary Board meeting of September 14, 2018. The Formal Reprimand was published in the State Bar Bulletin issued September 26, 2018.

Informal Admonitions

Total number of attorneys admon	ished6
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An attorney was informally admonished for failing to provide competent representation to a client and failing to act with reasonable diligence and promptness in representing a client in violation of Rules 16-101 and 16-103 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client and failing to act with reasonable diligence and promptness in representing a client in violation of Rule 16-103 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client; failing to make meritorious claims and contentions; making a false statement of fact or law to a tribunal; and making false statements of material fact or law to a third person; in violation of Rules 16-101, 16-301, 16-303(A), and 16-401 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client in violation of Rule 16-101 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client and failing to act with reasonable diligence and promptness in representing a client in violation of Rules 16-101 and 16-103 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to make reasonable efforts to expedite litigation consistent with the interests of the client; and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-101, 16-103, 16-302, and 16-804(D) of the Rules of Professional Conduct.

Letters of Caution

Total number of attorne	ys cautioned1	13

Attorneys were cautioned for the following conduct: (1) overreaching excessive fees; (2) trust account violations (2 letters of caution issued); (3) lack of competence; (4) prosecutorial misconduct; (5) improper means (2 letters of caution issued); (6) improper withdrawal; (7) lack of competence; (8) lack of diligence (2 letters of caution issued); (9) conflict of interest; and (10) ex parte communication.

Complaints Received

Allegations	. No. of Complaints
Trust Account Violations	4
Conflict of Interest	7
Neglect and/or Incompetence	59
Misrepresentation or Fraud	11
Relationship with Client or Court	
Fees	4
Improper Communications	5
Criminal Activity	
Personal Behavior	
Other	33
Total number of complaints received	148

Legal Education

October

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

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

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

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

1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

26 **Cybersleuth Investigative Series:** How to be Your Own Private **Investigator With Pay Investigative Research Databases**

1.0 G

Live Webinar

Center for Legal Education of NMSBF www.nmbar.org

Navigating Changes to the Adult 26 Guardianship and Conservatorship **Statutes and Rules**

5.5 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Social Media as Investigative 30 Research and Evidence

10G

Live Webinar

Center for Legal Education of NMSBF www.nmbar.org

The Ethics of Social Media Research 31

1.0 EP

Live Webinar

Center for Legal Education of NMSBF www.nmbar.org

November

2 ADR Across the Spectrum

4.5 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

6 **Releasing Employees & Drafting Separation Agreements**

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

2018 Employment and Labor Law Institute

5.0 G, 1.0 EP

Webcast/Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Bankruptcy Fundamentals for the 8 Non-Bankruptcy Attorney (2018)

3.0 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Where the Rubber Meets the Road: The Intersection of the Rules of Civil Procedure and the Rules of Professional Conduct (2017)

1.0 G, 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Basic Guide to Appeals for Busy Trial Lawyers (2018)

3.0 G

8

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

What Starbucks Teaches Us about 8 **Attracting Clients the Ethical Way** (2018 Annual Meeting)

1.5 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

Webcast/Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

9 Legal Malpractice Potpourri (2018 **Annual Meeting)**

1.0 EP

Webcast/Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Speaking to Win: The Art of 9 **Effective Speaking for Lawyers** (2018)

5.0 G, 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

3.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

1.5 G, 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

9 Ethics and Changing Law Firm Affiliation

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

9 The Defender's Role in Trial Advocacy

5.0 G,1.0 EP

Live Seminar, Roswell New Mexico Criminal Defense Lawyers Association www.nmcdla.org

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

1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

9 Mindfulness Based Stress Reduction for Lawyers

2.0 EP

Live Seminar, Roswell New Mexico Defense Lawyers Association

nmdefense@nmdla.org

13 Estate Planning for MDs, JDs, CPAs & Other Professionals, Part 1

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

14 Estate Planning for MDs, JDs, CPAs & Other Professionals, Part 2

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

14 2018 Business Law Institute

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

15 2018 Probate Institute

6.5 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 Ethics of Beginning and Ending Client Relationships

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

26 Secured Transactions Practice: Security Agreements to Foreclosures, Part 1

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

27 Secured Transactions Practice: Security Agreements to Foreclosures, Part 2

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

27 2018 Family Law Institute: Hot Topics in Family Law Day 1

5.0 G, 1.5 EP

Webcast/Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

27 29th Annual Appellate Practice Institute (2018)

5.5 G, 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

Zen Under Fire: Mindfulness for the Busy Trial Lawyer (2018 Annual Meeting)

1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

27 Add a Little Fiction to Your Legal Writing (2017)

2.0 G

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

27 Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics (2017)

3.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

28 Ethics and Dishonest Clients

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

28 2018 Family Law Institute: Hot Topics in Family Law Day 2

6.0 G

Webcast/Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

28 Litigation and Argument Writing in the Smartphone Age (2017)

5.0 G, 1.0 EP

Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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

6.0 G

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

30 Law Practice Potpourri for Lawyers and Paralegals

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

December

5 Business Divorce, Part 1

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

5 2018 Real Property Institute

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

6 Business Divorce, Part 2

10G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

6 Attorney Orientation and the Ethics of Pro Bono

2.0 EP

Live Seminar, Albuquerque New Mexico Legal Aid 505-814-6719

6 Intellectual Property in Tech Transfer, Estate and Business Opportunities

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

7 2018 Ethics and Social Media Update

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

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

2.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

11 Guarantees in Real Estate Transactions

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

11 2018 Ethicspalooza (Full Day)

6.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

12 Employee v. Independent Contractor: Tax and Employment Law Considerations

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

12 Advanced Mediation Skills Workshop

3.0 G

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

12 Criminal Rules Hot Topics

2.5 G, 0.5 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

13 Drafting Client Letters in Trust and Estate Planning

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

14 Ethics and Virtual Law Offices

1.0 EP

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

14 Trial Know-How! Presentation and Expertise

5.2 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

17 Trust and Estate Planning for Pets

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

17 Practice Management Skills for Success

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

18 Rights of First Offer, First Refusal in Real Estate

1.0 G

Teleseminar

Center for Legal Education of NMSBF www.nmbar.org

19 Ethical Puzzles: The Wrongful Death Act, Negligent Settlement Claims, and the Search for the Silver Bullets

3.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

20 Gain the Edge! Negotiation Strategies for Lawyers

5.0 G, 1.0 EP

Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org

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 October 12, 2018

PUBLISHED OPINIONS			
A-1-CA-35602	State v. R Montano	Affirm	10/11/2018
UNPUBLISHED OPINIONS			
A-1-CA-34995	A Lucero v. M Tachias	Affirm	10/09/2018
A-1-CA-35324	State v. J Moten	Affirm	10/09/2018
A-1-CA-37014	State v. H Ness	Affirm	10/09/2018
A-1-CA-37165	J Wilson v. City of Albuquerque	Dismiss	10/09/2018
A-1-CA-37211	State v. C McClure	Affirm	10/09/2018
A-1-CA-37221	State v. J Axe	Affirm	10/09/2018

Dismiss

10/11/2018

R Sartori v. Townsend Realty

Slip Opinions for Published Opinions may be read on the Court's website: http://coa.nmcourts.gov/documents/index.htm

A-1-CA-37128

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 ADDRESS AND/OR TELEPHONE CHANGES

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CLERK'S CERTIFICATE OF ADMISSION

On October 9, 2018: Paul J. Atencio Babst Calland Two Gateway Center 603 Stanwix Street Pittsburgh, PA 15222 412-253-8816 412-253-8871 (fax) patencio@babstcalland.com

On October 9, 2018: Christopher J. Hall

Babst Calland Two Gateway Center 603 Stanwix Street Pittsburgh, PA 15222 412-253-8820 412-253-8871 (fax) chall@babstcalland.com

On October 9, 2018: Scott Kenneth McKernan Babst Calland Two Gateway Center 603 Stanwix Street Pittsburgh, PA 15222 412-253-8819

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS AND CHANGE OF **ADDRESS**

smckernan@babstcalland.com

Effective October 1, 2018: Alexia Constantaras PO Box 1347 Corrales, NM 87048 505-231-3025 alexiac10@aol.com

Effective October 1, 2018: Chelsea R. Seaton 608 Virginia Avenue Lynn Haven, FL 32444 575-626-0716 chelsea.seaton@yahoo.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective October 1, 2018: Hon. Robert M. Doughty II (ret.) PO Box 1569 Alamogordo, NM 88311 575-430-9458 rmdlaw48@gmail.com

Effective August 30, 2018: **Doris Duhigg** PO Box 527 Albuquerque, NM 87103 505-980-8004 d.duhigg@mac.com

CLERK'S CERTIFICATE **OF NAME CHANGE**

As of October 9, 2018: Brana Lee Meech F/K/A Brana Lee Hardway Sutin, Thayer & Browne, PC PO Box 1945 6100 Uptown Blvd., NE, Suite 400 (87110) Albuquerque, NM 87103 505-883-3436 505-855-9521 (fax) blh@sutinfirm.com

As of October 3, 2018: Kimberly Ann Norvell F/K/A Kimberly Ann Norvell Miller Hicks & Llamas, PC 124 W. Castellano Drive, Suite 100 El Paso, TX 79912 915-834-8400 915-587-8401 (fax) norvell@handllaw.com

CLERK'S CERTIFICATE OF WITHDRAWAL

Effective October 11, 2018: **Robert Michael Rohr** The Southeastern Permanente Medical Group 3495 Piedmont Road, NE Atlanta, GA 30305

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

NOTICE OF OUT-OF-CYCLE PUBLICATION FOR

COMMENT

PROPOSED AMENDMENTS TO SUPREME COURT RULES OF PRACTICE AND PROCEDURE

In accordance with Rule 23-106.1(C), the Supreme Court has approved out-of-cycle publication for comment of proposed amendments to the rules of practice and procedure summarized below. If you would like to view and comment on the proposed amendments summarized below before they are submitted to the Court for final consideration, you may do so by submitting your comment electronically through the Supreme Court's website at http://supremecourt.nmcourts.gov/openforcomment.aspx, by email to nmsupremecourtclerk@nmcourts.gov, by fax to 505-827-4837, or by mail to

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

Your comments must be received by the Clerk on or before Nov. 29, 2018, to be considered by the Court.

Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Ad hoc Guardianship and Conservatorship Rules and Forms Committee

Proposal 2018-032 - Certification of Professional Guardians and Conservators

[New Rule 1-142 NMRA]

The Ad hoc Guardianship and Conservatorship Rules and Forms Committee proposes to adopt new Rule 1-142 NMRA in response to the recommendation of the New Mexico Adult Guardianship Study Commission to require certification of professional guardians and conservators. The proposed rule sets forth a definition of a "professional guardian or conservator" and requires proof of certification by the Center for Guardianship Certification as a mandatory qualification of a professional guardian or conservator appointed by a court. The proposed rule requires proof within ninety days of the appointment of a professional guardian or conservator that the individual who has been assigned the duties of guardian or conservator is certified. The proposed rule further requires a professional guardian or conservator appointed before the rule takes effect to submit proof of certification within six months of the rule's effective date.

Proposal 2018-033 - Notice of Hearing and Rights of Alleged Incapacitated Person

[New Form 4-999 NMRA and Rule 1-140 NMRA]

The Supreme Court has provisionally approved new Form 4-999 NMRA and amendments to Rule 1-140 NMRA, effective October 15, 2018. The provisionally approved rule and form are intended to address the new notice requirements under the 2018 amendments to NMSA 1978, Sections 45-5-309 and -405. The amended statutes prescribe the contents of the notice that must be personally served on the alleged incapacitated person when the court sets a hearing on a petition to appoint a guardian or conservator. The statutes also prohibit the district court from granting a petition if the prescribed notice is not served on the alleged incapacitated person. New Form 4-999 is the form provisionally approved by the Supreme Court to meet these new statutory requirements, and amended Rule 1-140 mandates the use of Form 4-999 in guardianship and conservatorship proceedings.

The Supreme Court provisionally approved the rule and form on an emergency basis to comply with the new requirements of Sections 45-5-309 and -405, which took effect on July 1, 2018. *Accord* Rule 23-106.1(C) NMRA (providing for out-of-cycle rule-making under "emergency circumstances," including a change in statute). Due to the expedited approval process, the Court is now publishing the rule and form for comment and has ordered the Ad hoc Guardianship and Conservator-ship Rules and Forms Committee to review any comments submitted during the comment period and to recommend any necessary revisions before the rule and form are approved on a non-provisional basis.



CLE Planner

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Oct. 24, 2018



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- (\$720 value) and **Unlimited Audit** (\$99 value each)
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- Concierge service (invaluable)
- Credits filed (invaluable)

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 - (\$550 value) and **Unlimited Audit** (\$99 value each)
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- Credits filed (invaluable)

For more information, contact cleonline@nmbar.org or 505-797-6020.

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

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



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

Thursday, Nov. 1

5:30-7 p.m.

ADR Pre-Show: Mindfulness in ADR Practices (Optional and not for CLE credit)

Abby Foster, Magistrate Court Mediation Program

Join the ADR Committee for their pre-show, at the State Bar Center. Please contact Breanna Henley at bhenley@nmbar.org if you are interested in attending. The pre-show is not for CLE credit and is complimentary to anyone who wishes to attend.

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

\$251 Business Law Section members, government and legal services attorneys, Young Lawyers and Paralegal division members

\$279 Standard Fee/Webcast Fee

2018 Probate Institute

Thursday, Nov. 15, 2018

8:30 a.m.-5:15 p.m.

6.5 G 1.0 EP

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

\$99 Non-member not seeking CLE credit

\$292 Real Property, Trust and Estate Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$325 Standard/Webcast Fee



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







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. 29)

\$251 Animal Law section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$279 Standard/Webcast Fee

Law Practice Potpourri for Lawyers and Paralegals



Friday, Nov. 30, 2018

8:30 a.m.-4 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. 30)

\$251 Government and legal services attorneys, and Young Lawyers Division members

\$279 Standard/Webcast Fee

\$199 Paralegal Division Members

2018 Real Property Institute





Wednesday, Dec. 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!

\$99 Non-member not seeking CLE credit

\$228 Early bird fee (Registration must be received by Nov. 5.)

\$251 Real Property, Trust and Estate Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$279 Standard/Webcast Fee



Intellectual Property in Tech Transfer, Estate and Business Opportunities





Thursday, Dec. 6, 2018

8:30 a.m.-4:45 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

\$229 Early bird fee (Registration must be received by Nov. 6)

\$251 Intellectual Property Law Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$279 Standard/Webcast Fee

Get Your **10 2**—

Just want to get those CLE credits and call it a year? Here are a variety combinations that can help get your 10.0 G and 2.0 EP all in one week!

10.0 G 2.0 EP

Combo A

Live Credit In-Person CLEs—For those who prefer to attend at the State Bar Center

- Nov. 8 **2018 Employment and Labor Law Institute (Replay)** 5.0 G, 1.0 EP
- Nov. 9 Speaking to Win: The Art of Effective Speaking for Lawyers (2018 Replay) 5.0 G, 1.0 EP

Combo B with Trust Accounting

Remote Access CLEs—Get your credits at the office, home and via telephone

- Releasing Employees & Drafting Separation Agreements Teleseminar 1.0 G Nov. 6
- Nov. 8 2018 Employment and Labor Law Institute (Replay Webcast) 5.0 G, 1.0 EP
- Nov. 9 Abuse and Neglect Case in Children's Court (2018 Replay Webcast) 3.0 G
- Nov. 9 **Legal Malpractice Potpourri (2018 Replay Webcast)** 1.0 EP
- Nov. 9 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 Webcast 1.0 EP

Combo C

Live Credit In-Person CLEs—For those who prefer to attend at the State Bar Center

- Nov. 27 29th Annual Appellate Practice Institute (2018 Replay) 5.5 G, 1.0 EP
- Nov. 28 Litigation and Argument Writing in the Smartphone Age (2017 Replay) 5.0 G, 1.0 EP

Family Combo

Remote Access CLEs—*Get your credits at the office, home and via telephone*

- Nov. 20 Ethics of Beginning and Ending Client Relationships Teleseminar 1.0 EP
- Nov. 27 2018 Family Law Institute: Hot Topics in Family Law Day 1 (Replay Webcast) 5.0 G, 1.5 EP
- Nov. 28 2018 Family law Institute: Hot Topics in Family Law Day 2 (Replay Webcast) 6.0 G

Writing and Ethics Combo

Live Credit In-Person CLEs—For those who prefer to attend at the State Bar Center

- Nov. 27 Zen Under Fire: Mindfulness for the Busy Trial Lawyer (2018 Replay) 1.0 EP
- Nov. 27 Add a Little Fiction to Your Legal Writing (2017 Replay) 2.0 G
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1.0 G 1.0 EP

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Nov. 9

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

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

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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

Nov. 27

2018 Family Law Institute: Hot Topics in Family Law Day 1

5.0 G 1.5 EP

8:30 a.m.-4:15 p.m. \$295 Standard/Webcast Fee Also available via Webcast

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Note: Programs subject to change without notice.

Proposal 2018-041 – Service of process in guardianship and conservatorship proceedings

[New Rule 1-004.1 NMRA]

The Ad hoc Guardianship and Conservatorship Rules and Forms Committee has recommended adoption of new Rule 1-004.1 NMRA for the Supreme Court's consideration.

If approved, new Rule 1-004.1 would govern the issuance and service of process in guardianship and conservatorship proceedings. The rule draws from NMSA 1978, Sections 45-5-309 and -405 (2018), which sets forth the notice required in guardianship and conservatorship proceedings. The rule reinforces and clarifies the statutory requirement for the alleged incapacitated person to be "served personally" with the notice of hearing and rights (Form 4-999 NMRA) and a copy of the petition. The rule also addresses and clarifies the notice and service requirements for persons listed in the petition, who "shall be given" notice of the proceeding under Sections 45-5-309(C) and -405(C).

Children's Court Rules and Forms Committee

Proposal 2018-034 - Sealing of Records in Proceedings Commenced Under the Delinquency Act [Rule 10-166 NMRA]

The Children's Court Rules and Forms Committee proposes to amend Rule 10-166 NMRA to require the automatic sealing of court records in proceedings commenced under the Delinquency Act. The proposed amendments incorporate and supplement the amendments to Rule 10-166 that were adopted on November 1, 2017 and suspended pending further review on January 9, 2018. See Supreme Court Order No. 18-8300-002.

Code of Professional Conduct Committee

Proposal 2018-035 - Succession Planning Requirements for Practicing Lawyers

[New Rule 16-119 NMRA]

The Code of Professional Conduct Committee proposes to adopt new Rule 16-119 NMRA, which would require a practicing lawyer to create a succession plan to protect the interests of clients in the event of sudden, unexpected circumstances, such as death or incapacity, that would prevent the lawyer from continuing the practice of law. A prior rule proposal for lawyer succession planning was published for comment in March 2018, and the current proposal was revised by the committee in light of the comments received. At the recommendation of the committee, the Court is publishing the revised proposal for additional public comment.

Proposal 2018-036 - Attorney Misconduct to Include Harassment or Discrimination

[Rule 16-804 NMRA and Withdrawn Rule 16-300 NMRA]

The Code of Professional Conduct Committee proposes to amend Rule 16-804 NMRA to recognize that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law." The proposal follows the ABA's 2016 amendment to the Model Rules of Professional Conduct and would also withdraw Rule 16-300 NMRA to broaden the scope of the prohibited conduct beyond that which may occur before a tribunal as currently provided in Rule 16-300.

Rules for Cameras in the Courts

Proposal 2018-031 - Cameras in Magistrate Courts [Rule 23-107 NMRA and Rules 2-114 and 6-116 NMRA

The Supreme Court is considering amendments to Rules 23-107, 2-114, and 6-116 NMRA, which would authorize the broadcasting, televising, photographing, and recording of proceedings in the magistrate courts subject to the same procedures and conditions that currently govern the appellate, district, and metropolitan courts.

Rules and Forms Governing Pretrial Release and Detention

Proposal 2018-037 - Pretrial Detention [Rule 5-409 NMRA]

The Supreme Court is considering a variety of proposed amendments to Rule 5-409 NMRA, which governs pretrial detention proceedings in the district courts. First, proposed new Subparagraph (B)(3) addresses a motion for pretrial detention that fails to allege sufficient facts. Subparagraph (B)(3) gives the court discretion either to require the prosecution to supplement the motion within twenty-four hours or to deny the motion without prejudice. Second, proposed amendments to Paragraph F provide that upon the request of the prosecution, a preliminary examination shall be held concurrently with the pretrial detention hearing. If the prosecution elects this procedure, the court may grant a three-day extension to hold the hearing. Third, proposed new Subparagraph (F)(1)(c) requires the court to promptly schedule the pretrial detention hearing and to notify the parties of the setting within one business day after the filing of the motion. Fourth, revisions are proposed to the discovery provisions set forth in Subparagraph (F)(2). Fifth, proposed new Subparagraph (F)(6) describes the factors that the court must consider at a pretrial detention hearing. Sixth, amendments to Paragraphs G and H would extend the court's deadline for filing a written order from two days to three days

after the conclusion of the pretrial detention hearing. Seventh, proposed amendments to Paragraph K would permit the court to reopen the detention hearing based on changed circumstances that have a material bearing on the court's previous ruling. And finally, proposed amendments to the commentary (1) affirm the court's inherent authority to regulate its docket, promote judicial efficiency, and deter frivolous filings; and (2) summarize some of the legal principles set forth in recent precedential opinions issued by the Supreme Court.

Proposal 2018-038 - Revocation of Pretrial Release [Rules 5-403, 6-403, 7-403, and 8-403 NMRA]

Amendments are proposed for Rules 5-403, 6-403, 7-403, and 8-403 NMRA, which address violations of conditions of pretrial release and the revocation of pretrial release. First, amendments to Subparagraph (D)(1) would extend the time limit for holding an initial hearing from three days to five days if the defendant is not being held in the local detention center. The proposed amendments to Subparagraph (D)(1) are modeled on the rules governing the time limits for arraignment in the limited jurisdiction courts. See, e.g., Rules 6-401(A)(1)(a) and 6-506(A)(2) NMRA. And second, amendments to Subparagraph (F)(3) would restructure and revise the standard that must be met for revocation of pretrial release. The structure of the proposed new revocation standard is based on the federal revocation statute, 18 U.S.C. § 3148.

Proposal 2018-039 - Pretrial Release by Designee [Rules 5-301, 5-408, 6-203, 6-408, 7-203, 7-408, 8-202, and 8-408 NMRA]

The Ad hoc Pretrial Release Committee proposes amendments to Rules 5-301, 5-408, 6-203, 6-408, 7-203, 7-408, 8-202, and 8-408 NMRA. The amendments are intended to facilitate early release under the -408 rules in jurisdictions that lack a designee to implement the rules. The amendments provide that, in the absence of a designated person, the judge determining probable cause under Rule 5-301, 6-203, 7-203, or 8-202 shall act as the designee under the applicable -408 rule and shall release an eligible defendant pending the defendant's first appearance in court.

Proposal 2018-040 - Bench Warrant Forms [Forms 9-212, 9-212A, and 9-212C NMRA]

Amendments are proposed for the bench warrant form for district court, Form 9-212 NMRA; the bench warrant form for metropolitan court, Form 9-212A NMRA; and the bench warrant form for magistrate and municipal courts, Form 9-212C NMRA. The proposed amendments provide checkboxes for the court to direct the arresting officer either to book and release the defendant on recognizance, unsecured bond, or secured bond; or to book and hold the defendant pending further order of the court.

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

Certiorari Denied, September 20, 2018, No. S-1-SC-37207 From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-058

No. A-1-CA-35285 (filed July 19, 2018)

MAURA SCHMIERER, Plaintiff-Appellant,

THE TRIBAL TRUST, JIM M. GREEN a/k/a BRIGADIER GENERAL JIM M. GREEN, LILA GREEN a/k/a BRIGADIER GENERAL LILA GREEN, FREE LOVE MINISTRIES a/k/a AGGRESSIVE CHRISTIANITY MISSION TRAINING CORPS., BERNARD BANDARAS a/k/a ANDREW EDWARDS, STEVEN SCHMIERER a/k/a PHILIP JORDAN, and DAVE GANE, Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF CIBOLA COUNTY

Pedro G. Rael, District Judge

Mel B. O'Reilly Law Offices of Mel B. O'Reilly, LLC Albuquerque, New Mexico

> Alice T. Lorenz Lorenz Law Albuquerque, New Mexico for Appellant

Derek Garcia Law Office of Derek V. Garcia, LLC Albuquerque, New Mexico for Appellees Jim and Lila Green

Michael Allison The Allison Law Firm, PC Albuquerque, New Mexico for Appellees Banderas, Gain, Schmierer, Free Love Ministries and Tribal Trust

Opinion Henry M. Bohnhoff, Judge

{1} Plaintiff Maura Schmierer (Schmierer) appeals from the district court's dismissal of her 2004 petition1 seeking domestication and enforcement of a California state court judgment that she obtained in 1989. Notwithstanding the fact that Schmierer had revived the California judgment in 1999, the district court determined that enforcement of the judgment was timebarred pursuant to NMSA 1978, § 37-1-2 (1983), New Mexico's fourteen-year statute of limitations for enforcing judgments. For the reasons discussed below, we hold that the California judgment was not timebarred. We therefore reverse and remand to the district court for further proceedings.

FACTUAL BACKGROUND

{2} This dispute has a lengthy history. According to Schmierer, she and her thenhusband, Defendant Steven Schmierer, a/k/a Philip Jordan, became members of Defendant Free Love Ministries, a/k/a Aggressive Christianity Mission Training Corps, sometime in the 1980s. Defendants Jim and Lila Green (the Greens), who are married and are both referred to as "Brigadier Generals," control Free Love Ministries, which Schmierer characterizes as a cult. At some point before 1989, Schmierer fell out of favor with the Greens. Lila Green accused Schmierer of "spiritual adultery," "excommunicated" her, and confined her and two other women to a shed on property the Greens owned in Sacramento, California.

- {3} Schmierer claims that, after three months of confinement in the shed, she escaped. She subsequently filed suit in the Sacramento County Superior Court in California, claiming false imprisonment. She named as defendants Free Love Ministries, the Greens, Steven Schmierer, and two other Free Love Ministries members. Bernard Bandaras a/k/a Andrew Edwards, and Dave Gane (collectively, the California Defendants). On March 10, 1989, the California court entered a default judgment against the California Defendants in the amount of \$1,020,046.
- {4} Schmierer claims that, following entry of the California judgment, the California Defendants undertook a series of actions to obstruct her efforts to satisfy the judgment. They first deliberately damaged, to the point of unhabitability, the Greens' Sacramento property. They then fled to Gridley, California, where the Greens purchased more property. After Schmierer located the California Defendants in Gridley, they fled to Oregon and purchased property under the names of other people and paid for all of the property in cash. Although Schmierer was able to seize the Greens' property in Sacramento and Gridley, the proceeds were not sufficient to satisfy the judgment.
- {5} Schmierer claims that in 1993, the California Defendants moved to New Mexico, again to frustrate her efforts to satisfy her judgment. In June 1995 they acquired a parcel of property in the vicinity of Fence Lake in Cibola County and titled the parcel in the name of "Confianza Trust." They acquired another, larger parcel in the same vicinity in July 1997 and titled that parcel in the name of "the Tribal Trust," an entity

Schmeierer denominated her pleading as a "petition" as opposed to a complaint, and referred to herself and the adverse parties as "petitioner" and "respondents" as opposed to "plaintiff" and "defendants," respectively. Elsewhere in the record, however, the parties are referred to as "plaintiff" and "defendants." To avoid confusion, we will continue the use of the "plaintiff" and "defendants" terminology.

that they had created earlier that month. On March 22, 2004, after Schmierer had tracked the California Defendants to New Mexico and discovered the Fence Lake real estate transactions, she filed the present suit in the Thirteenth Judicial District Court in Cibola County, naming as defendants the California Defendants as well as the Tribal Trust. The following month, Cassandra M. Cuaron, as trustee of the Confianza Trust, conveyed the first parcel to "River of Life Trust," and the Greens, as trustees of the Tribal Trust, conveyed the second parcel to "Cheptsi-Bah Trust."

PROCEDURAL BACKGROUND

{6} A California statute, Cal. Civ. Proc. Code § 683.020 (West 1982), establishes a ten-year limit for enforcing judgments. However, Cal. Civ. Proc. Code §§ 683.110 to .150 (West 1982, as amended through 2013) permit and establish a procedure for "extend[ing] by renewal" a judgment for another ten years. Under California law, the renewal "does not create a new judgment or modify the present judgment, but merely extends the enforceability of the judgment—in effect, it resets the [ten]year enforcement clock." OCM Principal Opportunities Fund v. CIBC World Mkts. Corp., 85 Cal. Rptr. 3d 350, 353 (Ct. App. 2008) (internal quotation marks and citation omitted).

{7} Schmierer had renewed her California judgment on March 9, 1999, extending its enforceability for ten years. As renewed, and after accounting for the amounts recovered in partial satisfaction of the judgment as well as accrued interest, the amount of the judgment was \$1,580,198.26. Thus, Schmierer could have enforced her judgment in California at any time through March 9, 2009.

{8} Schmierer's 2004 New Mexico petition contained two counts. In Count I, she sought to domesticate the 1989 California judgment, that is, she requested that "full faith and credit [be given] to the judgment pursuant to the laws of the United States of America." In Count II, Schmierer sought to enforce the judgment. She alleged that the California Defendants had fraudulently transferred their assets in violation of the Uniform Fraudulent Transfer Act, n/k/a the Uniform Voidable Transactions Act (UVTA), NMSA 1978, §\$ 56-10-14 to -29 (1989, as amended through 2015), and that the assets had been transferred to entities, including the Tribal Trust, that

were the California Defendants' alter egos. She asked that the district court impose a constructive trust on those assets, among other relief.

{9} Following service of process on Defendants, Lila Green filed a pro se response to summons that asserted, among other points, that the California judgment was stale under New Mexico law. None of the other Defendants filed any documents that might be characterized as an answer to Schmierer's petition. However, between 2004 and 2007, the Greens, Edwards, and the Tribal Trust filed several motions to dismiss, generally arguing that enforcement of Schmierer's judgment was barred by Section 37-1-2. Schmierer, in turn, moved for judgment on the pleadings, arguing that her renewed judgment was not untimely and was entitled to be given full faith and credit; Schmierer sought judgment on both counts of her petition. By orders entered on July 28, 2004, and April 17, 2007, the district court denied Defendants' motions, granted judgment on Count I of Schmierer's petition, but denied her motion as it related to Count

{10} Beginning in 2004, Schmierer also sought to take the depositions of the Greens and inspect the Fence Lake properties. Following the Greens' failure to appear for their depositions and Defendants' refusal to permit the inspection of the properties, on December 6, 2006, the district court granted Schmierer's motion to compel the requested discovery. The record reflects, however, that the Greens apparently continued to refuse to appear for depositions and permit inspection of the properties.²

{11} The district court held a one-day bench trial on February 1, 2012. None of the individual defendants appeared, although they were represented by counsel. Schmierer presented four witnesses. Schmierer along with Julie Gudino, another former member of Free Love Ministries, and Schmierer's son, Nathan Schmierer, also a former member, essentially corroborated Schmierer's allegations about her experience as a member of Free Love Ministries and Defendants' actions to obstruct collection of the 1989 judgment. Donald Sanchez, an employee of a local title company, testified about the 1997 acquisition of the Fence Lake parcel that was titled in the name of the Tribal Trust.

Schmierer testified about her efforts to collect on the judgment in California and Oregon.

{12} The district court entered findings of fact and conclusions of law on December 30, 2014. The court determined that the 1999 renewal of the 1989 judgment "renew[ed] the effectiveness of the California [j]udgment for an additional period and did not create a new judgment at the time." As a result, "[t]he California judgment is time-barred and is not properly subject to domestication in New Mexico. New Mexico's fourteen[-]year statute for enforcement of a judgment runs from the date of the California judgment in 1989." Thus, the court effectively reversed its earlier grant of judgment on Count I of the petition. Notwithstanding the dismissal on statute of limitations grounds, the district court nevertheless also made findings that relate to Schmierer's request in Count II of her petition to enforce the judgment. First, the court found that the acquisition of the second Fence Lake property in the name of the Tribal Trust "was accomplished as the alter ego of Jim Green and Lila Green." Second, "Confianza Trust and Cheptsi-Bah Trust have not been joined as defendants and the [c]ourt is without jurisdiction to set aside those transfers." On December 3, 2015, the district court entered its judgment, dismissing Schmierer's petition. Schmierer's appeal followed. Defendants have not cross-appealed.

DISCUSSION

{13} On appeal, Schmierer advances the same arguments she made below in rebuttal to Defendants' statute of limitations defense: (1) the court erred in not entering a default judgment against Defendants, or alternatively barring them from asserting the statute of limitations defense, as a sanction for violating their discovery obligations and the court's order compelling discovery; (2) the court erred in not determining that the limitations period was equitably tolled based on Defendants' actions to conceal their assets and otherwise obstruct Schmierer's efforts to satisfy her judgment; (3) the court erred in failing to give full faith and credit to the 1999 renewal of the 1989 judgment and, consistent with such action, determine that the 2004 petition was timely under Section 37-1-2. Schmierer also urges that the district court erred in not disregarding Defendants' transfers of real property

²The record reflects no activity between early 2007 and early 2011. On March 9, 2011, the district court dismissed the case for lack of prosecution but then reinstated it on Schmierer's motion.

to fictitious trusts or alternatively voiding the transfers pursuant to the UVTA, and otherwise permitting her to execute her judgment against those assets. Because we conclude that Section 37-1-2 did not bar enforcement of the 1999 renewed judgment, it is unnecessary to address Schmierer's other arguments pertaining to the statute of limitations affirmative defense or whether Schmierer preserved her argument that the district court erred in not entering a default judgment against the Defendants for failure to answer and appear for trial.

{14} "In cases where the facts relevant to a statute of limitation issue are not in dispute," we review de novo whether the district court correctly applied the law to the facts. See N.M. Pub. Schs. Ins. Auth. v. Arthur J. Gallagher & Co., 2008-NMSC-067, ¶ 12, 145 N.M. 316, 198 P.3d 342; State *v. Kerby*, 2007-NMSC-014, ¶ 11, 141 N.M. 413, 156 P.3d 704.

{15} Schmierer's claim against the Defendants involves a request for a New Mexico court to recognize and enforce a California judgment. We therefore look to Article IV, Section 1 of the United States Constitution, commonly known as the Full Faith and Credit Clause, which provides that "Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State." The clause generally requires that:

the judgment of a [s]tate court which had jurisdiction of the parties and the subject-matter in suit, shall be given in the courts of every other [s]tate the same credit, validity and effect which it has in the [s]tate where it was rendered, and be equally conclusive upon the merits; and that only such defenses as would be good to a suit thereon in that [s]tate can be relied on in the courts of any other [s]tate.

Roche v. McDonald, 275 U.S. 449, 451-52 (1928); see also Willis v. Willis, 1986-NMSC-035, ¶ 6, 104 N.M. 233, 719 P.2d 811 (stating that in the absence of a basis for concluding that a foreign judgment is void or not entitled to enforcement in the state in which it is rendered, New Mexico courts must give the judgment full faith and credit).

{16} The first step in our full faith and credit analysis is to consider whether application of New Mexico law would bar Schmierer's enforcement action. If it would, then, given that California courts have enforced the judgment in that state's courts in 2004, the second step is to address whether full faith and credit requires a New Mexico court to recognize the judgment notwithstanding the New Mexico law that otherwise would prohibit enforcement.

A. Section 37-1-2

Section 37-1-2 provides: Actions founded upon any judgment of any court of the state may be brought within fourteen years from the date of the judgment, and not afterward. Actions founded upon any judgment of any court of record of any other state or territory of the United States, or of the federal courts, may be brought within the applicable period of limitation within that jurisdiction, not to exceed fourteen years from the date of the judgment, and not afterward.

(Emphasis added.)

{17} Fischoff v. Tometich, 1991-NMCA-144, 113 N.M. 271, 824 P.2d 1073, involved revival of a New Mexico judgment. There, the plaintiff obtained a money judgment against the defendant in 1980. Section 37-1-2 had been amended in 1983 to extend the limitations period from seven to fourteen years. In 1989, the judgment creditor had obtained a writ of execution from the district court pursuant to NMSA 1978, Section 39-1-20, which authorizes execution on a judgment "at any time . . . within seven years after rendition or revival of a judgment." Our Court reversed. We held that the proceeding whereby the judgment creditor had obtained the writ of execution was not an action founded upon a judgment that was governed by Section 37-1-2, and therefore Section 37-1-20 permitted a judgment creditor to obtain a writ of execution only within seven years after entry of judgment unless the judgment was revived. Fischoff, 1991-NMCA-144, ¶¶ 8-9, 11. However, we also noted that the judgment creditor was free to file a common law action to revive the judgment, which would be governed by Section 37-1-2, within that statute's fourteen-year limitation period and, following revival, execution could be pursued for another seven years. Fischoff, 1991-NMCA-144, ¶¶ 4, 11, 15, 17.

{18} Walter E. Heller Western, Inc. v. Ditto, 1998-NMCA-068, 125 N.M. 226, 959 P.2d 560, involved a foreign (federal) judgment but not revival. There, the plaintiff had obtained a money judgment against the defendant in federal bankruptcy court on August 18, 1982. On August 13, 1996, the plaintiff filed an action in state district court to revive the judgment. *Id.* ¶ 1. Significantly, the plaintiff did not ask the court to first domesticate the judgment, i.e., convert the judgment into a New Mexico judgment, and instead sought only to "revive[] the bankruptcy court judgment so that it could file a subsequent lawsuit on the revived judgment in the county and state of [Defendant]'s residence to execute on the revived judgment." *Id.* ¶ 7 (internal quotation marks omitted).

[19] We held that the plaintiff "omitted an essential step." Id. § 8. "To enforce a foreign judgment in New Mexico, a judgment creditor must first domesticate the judgment in a New Mexico district court. *Id.* ¶ 4 (citing *Galef v. Buena Vista Dairy*, 1994-NMCA-068, ¶¶ 1-7, 117 N.M. 701, 875 P.2d 1132). "[W]hen a foreign judgment is domesticated in a district court in New Mexico, that court has jurisdiction to address and resolve issues concerning the judgment, including revival." Heller Western, Inc., 1998-NMCA-068, ¶ 5. A foreign judgment may be domesticated by complying with the filing requirements of the Foreign Judgments Act, NMSA 1978, §§ 39-4A-1 to -6, or by bringing a common law action to enforce the judgment. $Heller\ Western,\ Inc.,\ 1998\text{-}NMCA\text{-}068,\ \P\ 4.$ If the judgment creditor pursued the latter course of action, he would have to file an action to both domesticate and revive the bankruptcy court judgment within Section 37-1-2's fourteen-year limitations period:

Section 37-1-2 sets the period to revive a New Mexico court judgment at fourteen years from the date of the judgment. It also limits actions to revive judgments of courts of record of other states, United States Territories, and federal courts to the applicable period of limitation within the jurisdiction of the court originating the judgments so long as that period does not exceed fourteen years from the date of the judgment.

Heller Western, Inc., 1998-NMCA-068, § 6 (emphasis added).

{20} As construed by *Fischoff* and *Walter* E. Heller Western, Inc., Section 37-1-2 would bar Schmierer's New Mexico action. The language emphasized above suggests that if under the laws of a sister state revival resulted in a new judgment, that new judgment could be domesticated in New

Mexico within fourteen years of the revival date. However, revival under California law resulted only in an extension—beyond fourteen years—of California's limitations period applicable to enforcing a judgment. Therefore, unless full faith and credit mandates a different result given that Schmierer could have enforced her 1989 judgment in a California court in 2004, Walter E. Heller Western, Inc. would require that Schmierer's New Mexico action be brought by no later than 2003.

B. Application of Full Faith and Credit to Revived Judgments

{21} Notwithstanding Roche v. McDonald's facially broad articulation of the scope of full faith and credit set forth above, the clause "does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.' " Sun Oil Co. v. Wortman, 486 U.S. 717, 722 (1988) (quoting Pac. Emp'rs Ins. Co. v. Indus. Accident Comm'n, 306 U.S. 493, 501 (1939)). In particular, a state may apply its own procedural rules, including statutes of limitations, to actions litigated in its courts without running afoul of the Full Faith and Credit Clause. See Sun Oil Co. at 722-29; McElmoyle ex rel. Bailey v. Cohen, 38 U.S. 312, 327-28 (1839) (holding that a Georgia statute of limitations could be asserted as a defense to a suit filed in that state to enforce a judgment rendered in South Carolina and stating that "the effect intended to be given under our Constitution to judgments, is, that they are conclusive only as regards the merits; the common law principle then applies to suits upon them, that they must be brought within the period prescribed by the local law, the lex fori, or the suit will be barred"); Potomac Leasing Co. v. Dasco Tech. Corp., 2000 UT 73, ¶ 9, 10 P.3d 972 (explaining that because statutes of limitations are procedural, the application of the Utah statute of limitations to the enforcement of a foreign judgment does not offend the Full Faith and Credit Clause, even though the judgment would have been enforceable in the rendering state); In re Marriage of Ulm, 693 P.2d 181, 183 (Wash. Ct. App. 1984) (same). The question therefore is whether California's authorization for the period of enforceability of its courts' judgments to be extended past fourteen years is properly characterized as procedural or substantive policy.

{22} Two United States Supreme Court decisions provide guidance. In *Union National Bank v. Lamb*, 337 U.S. 38 (1949), the

plaintiff obtained a judgment in a Colorado state court in 1927 and then revived it in that state in 1945. Id. at 39. Missouri law limited the life of judgments to ten years after their original rendition or ten years after their revival, and did not allow judgments to be revived after ten years from their rendition. Id. Reasoning that the full faith and credit clause did not bar application of the forum state's law governing the limitation of actions, the Missouri Supreme Court concluded that it was not obligated to recognize "Colorado's more lenient policy as respects revival of judgments." Id. It therefore refused to enforce the judgment because, under Missouri law, the original judgment could not have been revived after 1937. Id. at 39-40.

{23} The United States Supreme Court observed that a forum state cannot "defeat the foreign judgment because it was obtained by a procedure hostile to or inconsistent with that of the forum." *Id.* at 42.

Any other result would defeat the aim of the Full Faith and Credit Clause It is when a clash of policies between two states emerges that the need of the Clause is the greatest. It and the statute which implements it are indeed designed to resolve such controversies. There is no room for an exception . . ., where the clash of policies relates to revived judgments rather than to the nature of the underlying claim It is the judgment that must be given full faith and credit. In neither case can its integrity be impaired, save for attacks on the jurisdiction of the court that rendered it.

Cases of statute of limitations against a cause of action on a judgment involve different considerations[.]

Id. at 42-43 (citations and footnote omitted). The Court thus effectively distinguished between enforcement of a forum state's statute of limitations governing judgments and its statutes for reviving a judgment. The former are procedural and can be applied to enforcement of the judgment of a sister state, while the latter, which reflect substantive policy, cannot. Because the Missouri Supreme Court had applied its revival laws instead of those of Colorado, the United States Supreme Court reversed. Id. at 43-45.

{24} In doing so, however, the Court noted that the parties had raised the ques-

tion whether under Colorado law "the 1945 [revived] Colorado judgment is not a new judgment and . . . the revivor did no more than to extend the statutory period in which to enforce the old judgment." Id. at 43. The Court declined to resolve the issue, determining instead that it could be addressed on remand. Id. at 44. However, the Court observed that the Missouri court's holding that "whatever the effect of revivor under Colorado law, the Colorado judgment was not entitled to full faith and credit in Missouri . . . cannot stand if . . . the Colorado judgment had the force and effect of a new one." Id. at 44-45 (emphasis added). This statement would suggest that enforcement of a revived foreign judgment that is otherwise barred by the forum state's statute of limitations may depend on whether the revival results in a new as opposed to a merely extended judgment under the law of the rendering state.

{25} In Watkins v. Conway, 385 U.S. 188 (1966) (per curiam), the plaintiff had obtained a money judgment against the defendant in Florida state court in 1955. Five years and one day later, the plaintiff brought suit in Georgia state court to enforce the Florida judgment. Id. at 188. At that time, Georgia's statutes of limitations for judgments required that suits on a foreign judgment must be brought within five years, see id. at 189-90 (citing Ga. Code Ann. § 3-701 (1855-56) (current version at Ga. Code Ann. § 9-3-20 (1997)), but established a longer limitations period for enforcing domestic judgments. Watkins, 385 U.S. at 188-89. The Georgia court dismissed the plaintiff's petition as untimely. On appeal to the United States Supreme Court, the plaintiff argued that Georgia's different limitations periods for domestic and foreign judgments violated the Constitution's Full Faith and Credit Clause.

{26} The Court disagreed. It pointed out that, as construed by the Georgia courts, the Georgia statute of limitations for foreign judgments

bars suits on foreign judgments only if the plaintiff cannot revive his judgment in the state where it was originally obtained. For the relevant date in applying § 3-701 is not the date of the original judgment, but rather it is the date of the latest revival of the judgment. In the case at bar, for example, all appellant need do is return to Florida and revive his

judgment. He can then come back to Georgia within five years and file suit free of the limitations of \$ 3-701.

Watkins, 385 U.S. at 189-90 (emphases added) (citations omitted). So construed, Georgia's statute did not discriminate against the Florida judgment. Instead,

it has focused on the law of [Florida]. If Florida had a statute of limitations of five years or less on its own judgments, the appellant would not be able to recover here. But this disability would flow from the conclusion of the Florida Legislature that suits on Florida judgments should be barred after that period. Georgia's construction of § 3-701 would merely honor and give effect to that conclusion. Thus full faith and credit is insured, rather than denied, the law of the judgment [s]tate.

Watkins, 385 U.S. at 190-91 (footnotes omitted). Watkins thus suggests that the question is simply whether the enforceability of the judgment is effectively extended in the rendering state, and not whether the revival results in a new judgment.

{27} Legal commentators have disagreed on what lessons can be drawn from *Union* National Bank and Watkins. Restatement (Second) of Conflicts of Laws § 118 cmt. c (Am. Law Inst. 1971), focuses on the comment in Union Nat'l Bank about whether a renewed judgment has the effect of a new or an extended judgment:

If under the local law of the [s]tate of rendition the effect of this revival is to create a new judgment, then suit on this judgment may not be held barred under full faith and credit in the sister [s]tate. The contrary will be true, however, if the effect of the revival in the [s]tate of rendition is not to create a new judgment but rather to prolong the effective life of the original judgment.

A contrary view is articulated in Peter Hay, Patrick J. Borchers & Symeon C. Symeonides, Conflict of Laws § 24.32, at 1487 (5th ed. 2010), which focuses on the language emphasized above in Watkins:

Some uncertainty exists whether revival of the original judgment in the state of rendition will serve to overcome the recognizing forum's shorter limitation on the original judgment, assuming that the revived judgment itself is not barred by the limitation. One view [citing the foregoing Restatement comment] distinguishes between revival prolonging the original judgment and revival having the effect of creating a new judgment[.] . . . However, the implication in the U.S. Supreme Court's decision in Watkins . . . is that any revival of a judgment is entitled to full faith and credit.

Hay, supra, § 24.32, at 1487 (footnotes omitted).

{28} Courts in other jurisdictions that have considered the question note this debate. A majority, however, favor the latter approach. In Huff v. Pharr, 748 F.2d 1553 (11th Cir. 1984) (per curiam), the plaintiff had obtained a judgment against the defendant in California state court in 1972. Id. at 1554. In 1982 the plaintiff renewed the judgment under California law. Id. He then successfully brought suit in federal court in Florida to enforce the renewed judgment. On appeal, the Eleventh Circuit rejected the defendant's argument that the plaintiff could not "evade" Florida's ten-year statute of limitations for domesticating a foreign judgment by renewing his California judgment: "The Watkins Court noted that all the plaintiff needed to do was return to the state which entered the original judgment, revive his judgment, and then domesticate the new judgment with the five-year statutory period. This is exactly what the plaintiff in [Hay] has done." Huff, 748 F.2d at 1554.

{29} In Durham v. Arkansas Department of Human Services, 912 S.W.2d 412, 413 (Ark. 1995), the plaintiff's ex-wife had obtained a judgment for child support against the plaintiff in Illinois state court in 1975. The judgment was revived under Illinois law in 1992, following which the Arkansas state agency brought proceedings to enforce the judgment against the plaintiff in that state's courts. Id. On appeal, a majority of the Arkansas Supreme Court concluded that Arkansas' ten-year statute of limitations for reviving and enforcing judgments did not bar the claim, id. at 414-15, notwithstanding the dissent's observation that under Illinois law a revival of a judgment does not create a new judgment but is "merely a continuation of that being revived." Id. at 415 (Roaf, J., dissenting) (internal quotation marks and citation omitted).

(30) In Jensen v. Fhima, 731 N.W.2d 876 (Minn. Ct. App. 2007), the plaintiff had

obtained a judgment against the defendant in California state court in 1994. Id. at 877. The plaintiff renewed the judgment under California law in 1999 and again in 2005. In 2006, plaintiff sought to enforce the judgment in Minnesota state court. Id. Without differentiating between revival that results in a new judgment as opposed to an extended judgment, the Minnesota court held that "a renewed or revived judgment is entitled to full faith and credit[,]", and therefore Minnesota's ten-year statute of limitations for enforcing judgments did not bar the plaintiff's claim. Id. at 881. "To conclude otherwise would be inconsistent and against the orderly enforcement of judgments." Id.

{31} In contrast, in Tillinghast v. Tillinghast, 285 F. Supp. 418 (W.D. Tex. 1968), the plaintiff had sought to enforce a 1943 decree that was entered in her California divorce proceeding. Id. at 418-19. In 1965 she obtained an order from the California court that execution issue on the 1943 decree. She then brought suit in federal district court in Texas to enforce the 1965 order. Id. at 419. Without addressing Watkins, the federal court noted that, under Union National Bank, "where a judgment has been revived by a decision which, under the law of the state rendering it, is a new judgment, and does not merely extend the statutory period in which to enforce the old judgment, the judgment of revival is entitled to recognition in any other state under the [F]ull [F]aith and [C]redit [C]lause." Tillinghast, 285 F. Supp. at 419. The court determined, however, that the 1965 order "simply extended the statutory period for the enforcement of the judgment which had been entered in 1943, and did not constitute a new judgment entitled to recognition in this state under the [F] ull [F]aith and [C]redit [C]lause." Id. at 420. On this basis, the Court dismissed the enforcement proceeding.

{32} We resolve this disagreement consistent with the approach taken by the Eleventh Circuit, the Arkansas Supreme Court, and the Minnesota Court of Appeals. Watkins is best understood to teach that, while forum states may apply their own statutes of limitations for the enforcement of judgments, they must treat foreign judgments that are revived in the rendering state in the same manner as the rendering state would treat the revived judgment. Further, Watkins does not differentiate between revival procedures that result in new judgments versus those that result in merely extended judgments: "all

appellant need do is return to Florida and revive his judgment." *Watkins* 385 U.S. at 189-190. Thus, if the rendering state will enforce a judgment that has been revived under that state's laws, then the forum state must do the same.

C. The District Court Erred in Concluding That Schmierer's 2004 New Mexico Action Was Time-Barred

{33} Schmierer's 1989 judgment was renewed in California in 1999 for a period of ten years. As stated above, under California law the renewal did not "create a new judgment or modify the present judgment, but merely extends the enforceability of the judgment—in effect, it resets the [ten]-year enforcement clock." OCM Principal Opportunities Fund, 85 Cal. Rptr. 3d at 353 (Ct. App. 2008) (internal quotation marks and citation omitted). Thus, the judgment remained subject to enforcement in the courts of California. To paraphrase Watkins, Schmierer accomplished "all she needed to do" to revive the enforceability of her judgment under California law. Therefore, under the Full Faith and Credit Clause her judgment was entitled to enforcement in New Mexico as well. To comply with the constitutional requirement, the "date of the judgment" as that term is used in the last sentence of Section 37-1-2 must be construed to be 1999, not 1989. Schmierer thus had until 2009, the deadline under California law, to bring an action in New Mexico to enforce her judgment. Therefore, the district court erred in dismissing Schmierer's 2004 petition on the grounds that it was barred by Section 37-1-2.

{34} Defendants argue that Watkins is distinguishable, because it considered a five-year statute of limitations as opposed to New Mexico's "generous" fourteen-year statute. But nowhere in the opinion is the suggestion made that the analysis hinges on the relative length of the forum state's limitation period for enforcing foreign judgments. Rather, the focus was on giving full faith and credit, that is, upholding, the rendering state's policy decision that underlies its revival statutes. If California permits its judgments upon revival or renewal to be enforced for an additional period of time, then New Mexico must respect that policy and allow the renewed judgment to be enforced within New Mexico's limitation period for enforcing foreign judgments.

{35} Defendants also argue that, because Section 37-1-2 does not discriminate between New Mexico and foreign judgments, and instead establishes a fourteen-year limitations period for both, it should be applied as written. Defendants again miss the point of *Watkins*, that for purposes of applying statutes of limitations for the enforcement of judgments, the effective date of a revived judgment is the date of the revival as opposed to the original date of the judgment. **CONCLUSION**

{36} We reverse the district court's determination that Schmierer's petition to domesticate her foreign judgment was untimely and that it lacked jurisdiction to set aside the transfers of property to Confianza Trust and Cheptsi-Bah Trust. We therefore remand this matter to the district court on Schmierer's claim for enforcement of the California judgment to be decided on the merits.

{37} IT IS SO ORDERED. HENRY M. BOHNHOFF, Judge

WE CONCUR: LINDA M. VANZI, Chief Judge M. MONICA ZAMORA, Judge









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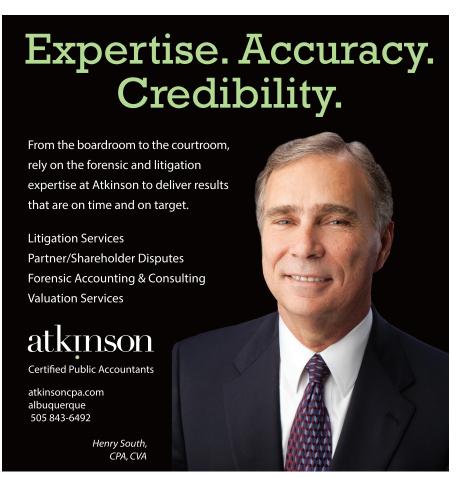
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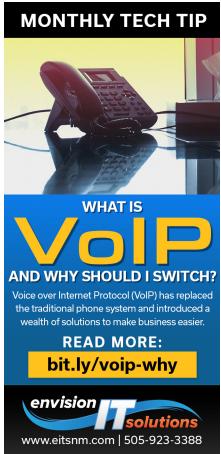
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Paralegal

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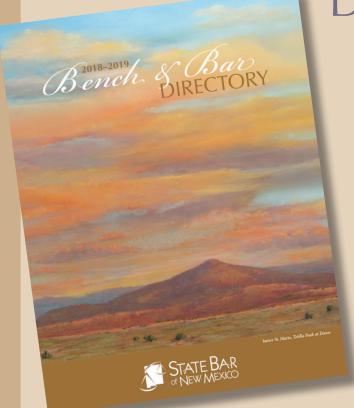
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