

BAR BULLETIN

July 10, 2019 • Volume 58, No. 14



Found, by Pauline Ziegen (see page 3)

Owen Contemporary

Inside This Issue

U.S. District Court for the District of New Mexico	4
Investiture of U.S. Magistrate Judge John F. Robbenhaar	
U.S. Magistrate Judge Vacancy	
Employee Assistance Program:	
Managing Stress Tool for Members	4

Clerks Certificates.....	9
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From the New Mexico Court of Appeals

2019-NMCA-017, A-1-CA-35203:	
Lujan v. Acequia Mesa Del Medio	12



2019 ANNUAL MEETING

Aug. 1-3, 2019 • HOTEL ALBUQUERQUE at Old Town *and* HOTEL CHACO

Registration Now Open!

To register and for a preliminary schedule, visit
www.nmbar.org/AnnualMeeting



WE ARE PROUD TO WELCOME OUR
Keynote Speaker

**Dan Abrams, Chief Legal Affairs Anchor at ABC News
and Founder of Abrams Media**

Abrams will present "Covering the Courts: The Convergence of Law and Media in Today's Highest Profile Cases." Don't miss his fascinating discussion of the media's impact on how we view the legal system and today's headline cases.

Sponsorships and Exhibitor Booths are available!

Learn how you can support the Annual Meeting and promote your firm and company to our attendees.

Lodging: Rooms start at \$159 at Hotel Albuquerque and \$179 at Hotel Chaco. Reserve your room by July 10.

*Note: We have secured room blocks at both hotels,
but Annual Meeting events will take place at Hotel Albuquerque.*

For more information on speakers, sponsorships/exhibitor booths, lodging and more, visit www.nmbar.org/AnnualMeeting



RED RAIDER HOSPITALITY LOUNGE

The Texas Tech University School of Law continues to show their support for the State Bar of New Mexico as the proud sponsor of the 2019 Red Raider Hospitality Lounge!



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July 10, 2019 • Vol. 58, No. 14

Table of Contents

Notices 4
 Calendar of Continuing Legal Education..... 6
 Court of Appeals Opinions List..... 8
 Clerks Certificates 9
 Rule Making Activity 11

From the New Mexico Court of Appeals

2019-NMCA-017, A-1-CA-35203: Lujan v. Acequia Mesa Del Medio..... 12
 Advertising 16

Meetings

July

- 10 Children's Law Section Board**
Noon, Children's Court, Albuquerque
- 10 Real Property, Trust and Estate Section Real Property Division**
Noon, State Bar Center
- 10 Real Property, Trust and Estate Section Trust and Estate Division**
Noon, State Bar Center
- 10 Tax Section Board**
11 a.m., teleconference
- 11 Business Law Section**
4 p.m., teleconference
- 12 Prosecutors Section Board**
Noon, teleconference
- 18 Elder Law Section Board**
Noon, State Bar Center
- 18 Public Law Section Board**
Noon, Legislative Finance Committee, Santa Fe
- 19 Family Law Section Board**
9 a.m., teleconference
- 23 Intellectual Property Law Section Board**
Noon, JAlbright Law LLC, Albuquerque

Workshops and Legal Clinics

July

- 10 Divorce Options Workshop**
6-8 p.m., State Bar Center, Albuquerque, 505-797-6000
 - 10 Legal Workshop for Seniors**
Neighborhood Senior Center, Gallup, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
 - 12 Free Legal Clinic**
10 a.m.-1 p.m., Bernalillo County Metropolitan Court, Albuquerque
 - 18 Legal Workshop for Seniors**
Chaves County J.O.Y. Center, Roswell, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
 - 19 Legal Workshop for Seniors**
Bonnie Dallas Senior Center, Farmington, 10-11:15 a.m., presentation; 11:30 a.m.-1 p.m., POA/AHCD Workshop
 - 24 Consumer Debt/Bankruptcy Workshop**
6-8 p.m., State Bar Center, Albuquerque, 505-797-6000
- ### August
- 7 Divorce Options Workshop**
6-8 p.m., State Bar Center, Albuquerque, 505-797-6000
 - 9 Free Legal Clinic**
10 a.m.-1 p.m., Bernalillo County Metropolitan Court, Albuquerque

About Cover Image and Artist: Pauline Ziegen's earliest landscape paintings were done outdoors in Kansas where vast stretches of prairie lead to distant horizons. At the time, Ziegen's landscapes were representational; however, the plein-air process of capturing elusive light effects was one of the keys to what she does today. Ziegen has been "editing" ever since, creating suggestive abstractions inspired by the landscapes she views from a ridge-top home and studio on the outskirts of Santa Fe, New Mexico. View more at Owen Contemporary, a Santa Fe fine art gallery.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

For a summary of recent Supreme Court rule-making activity, visit www.nmbar.org/notices and select the "Courts" tab.

Fifth Judicial District Court Notice of Mass Reassignment

Gov. Michelle Lujan Grisham has appointed Thomas E. Lilley to fill the judgeship vacancy in the Fifth Judicial District Court, Chaves County, Division II. Effective June 14 a mass reassignment of cases occurred pursuant to NMSC Rule 1-088.1. Judge Thomas E. Lilley was assigned all cases previously assigned to Judge Freddie J. Romero and/or Division II of Chaves County. Pursuant to Supreme Court Rule 1-088.1, parties who are allowed by the rule will have 10 days from July 10 to excuse Judge Thomas E. Lilley.

Bernalillo County Metropolitan Court Volunteers are Needed for Legal Clinics

The Legal Services and Programs Committee of the State Bar and the Bernalillo County Metropolitan Court hold a free legal clinic the second Friday of every month from 10 a.m. until 1 p.m. Attorneys answer legal questions and provide free consultations at the Bernalillo County Metropolitan Court, 9th Floor, 401 Lomas Blvd NW, Albuquerque, in the following areas of law: landlord/tenant, consumer rights, emndployee wage disputes, debts/bankruptcy, trial discovery preparation. Clients will be seen on a first come, first served basis and attendance is limited to the first 25 persons.

U.S. District Court for the District Of New Mexico Investiture of U.S. Magistrate Judge John F. Robbenhaar

The Hon. John F. Robbenhaar will be sworn in as U.S. Magistrate Judge for the United States District Court for the District of New Mexico at 4 p.m. on Aug. 16 at the Pete V. Domenici U.S. Courthouse, 333 Lomas Boulevard NW. A reception will follow from 6-8:30 p.m. All members of the bench and bar are cordially invited to attend; however, reservations will be requested. Additional information, includ-

Professionalism Tip

With respect to my clients:

I will be loyal and committed to my client's cause, and I will provide my client with objective and independent advice.

ing how to R.S.V.P., will be announced at a later date.

U.S. District Court, District of New Mexico

U.S. Magistrate Judge Vacancy

The President of the U.S. has nominated current U.S. Magistrate Judge Kevin R. Sweazea to fill a vacancy on the U.S. District Court in Las Cruces. Upon the anticipated confirmation of Judge Sweazea's nomination to be a district judge, the District of New Mexico will have a full-time magistrate judge vacancy in Las Cruces. In order to begin the process of filling the anticipated magistrate judge vacancy, the U.S. District Court for the District of New Mexico announces this notice of availability for a full-time U.S. Magistrate Judge for the District of New Mexico at Las Cruces, New Mexico. This authorization is contingent upon the appointment of incumbent U.S. Magistrate Judge Kevin Sweazea as a District Judge for the District of New Mexico and is contingent upon approval to fill this anticipated magistrate judge vacancy by the Judicial Conference of the U.S. The current annual salary for this position is \$194,028. The term of office is eight years. The U.S. Magistrate Judge Application form and the full public notice with application instructions are available from the Court's website at www.nmd.uscourts.gov/employment or by calling 575-528-1439. Applications must be submitted no later than Aug. 9.

STATE BAR NEWS New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- July 15, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

- Aug. 5, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (the Group meets the first Monday of the month.)
- Aug. 12, 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.

Employee Assistance Program: Managing Stress Tool for Members

The Solutions Group, the State Bar's free Employee Assistance Program, announces a new platform for managing stress. My Stress Tools is an online suite of stress management and resilience-building resources which includes: training videos, relaxation music, meditation, stress tests, a journaling feature and much more. My Stress Tools helps you understand the root causes of your stress and gives you the help you need to dramatically reduce your stress and build your resilience. Your Employee Assistance Program is available to help you, 24/7. Call at 866-254-3555.

Young Lawyers Division Free Baseball Game: Santa Fe Fuegos vs. Trinidad Triggers

Join the Young Lawyers Division and the First Judicial District Bar Association as the Santa Fe Fuego take on the Trinidad Triggers at 6 p.m., July 11, at Fort Mercy Ballpark in Santa Fe. Friends and family are invited to enjoy the game for free. Come to see which member will sing the national anthem and which member will throw the first pitch. R.S.V.P. and tickets will be emailed before the game (or provided at the gate). Learn more about the Santa Fe Fuego at www.santafefuego.com. To R.S.V.P. and request tickets visit <https://forms.gle/n82Fb7nU5EwgyRr29>.

UNM SCHOOL OF LAW Alumni/ae Association UNM Law School Santa Fe Area Alumni and Friends Gathering

Join UNM School of Law alumni and friends for a gathering from 5:30–7 p.m., July 19, at the Rio Chama Steakhouse in Santa Fe. There will be food, beer and wine and a silent auction featuring local artists Jesse Blanchard, Elizabeth Henry, Peter Ogilvie, Barbara Shapiro & Kate Joyce. Register at https://forms.unm.edu/forms/santa_fe_gathering. Contact Melissa Lobato at lobato@law.unm.edu for more information.

Spanish for Lawyers I

The UNM School of Law presents "Spanish for Lawyers I" (20.0 G CLE credits) this fall. This course will teach the basic legal terminology that is used in our judicial system in a variety of practice settings, including criminal law, domestic relations, and minor civil disputes. Practical aspects of language usage will be emphasized, and active participation is required. Lawyers must be conversant in Spanish, as the course is taught entirely in Spanish. All students will be tested prior to the start of class. Classes will be 4:30–6:30 p.m. on Thursdays, from Aug. 22–Nov. 21. To register or for more information, visit <http://lawschool.unm.edu/spanishforlawyers/>.

Law Library Hours Summer 2019

Through Aug. 18

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	Closed.

Reference

Monday–Friday	9 a.m.–6 p.m.
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Closures

OTHER BARS National Association of Patent Practitioners Annual Membership Conference in Seattle

The National Association of Patent Practitioners will be holding their Annual Conference at the University of Washington School of Law in Seattle on July

21–24. This is a great opportunity to gain insight on current issues from IP leaders, including William LaMarca, Prof. Martin Adelman, Robert Stall, Christopher Carani, Marc Scott, Carl Hermanns, Lindsay Calkins, Tom Wong, Priya Cloutier, Louis Hoffman, John Whitaker, and others. On Monday, July 22, NAPP and University of Washington School of Law will hold a joint program on global IP issues, focusing on cross-border strategies with Asia. Networking breaks and social events enable attendees to interact with other patent professionals within NAPP and Seattle IP community. More than 17 hours of Continuing Legal Education (CLE) credit, including 1 hour of Ethics, is available. View the agenda, find more information and register at napp.org.

New Mexico Defense Lawyers Association

Insurance Bad Faith Seminar

Join the New Mexico Defense Lawyers Association for "Insurance Bad Faith Seminar" on Aug. 23. This full-day seminar will cover the latest trends and developments in bad faith litigation including post-litigation "continuing" bad faith, "defense within limits" ("burning limits" policies), bad faith from the policyholder's perspective, responding to time-limited policy limit demands, and effective trial strategies for defending insurers. This program is designed to benefit practitioners who represent insurers in bad faith litigation as well as insurance claims professionals, in-house counsel, and outside defense counsel who defend policyholders. A solid understanding of extra-contractual liability is essential for all who work in the insurance defense arena.

The Federalist Society U.S. Supreme Court Round Up

The Federalist Society, New Mexico Lawyers Chapter, will be hosting a "U.S. Supreme Court Round Up (2018-2019)" presented by Prof. John Eastman of Chapman University School of Law. The talk will begin at noon on July 11, at Seasons Rotisserie & Grill, 2031 Mountain Road NW, Albuquerque. The event, which includes lunch, is free for members of the Federalist Society, and \$20 for non-members. Space is limited. To R.S.V.P., contact Emil J. Kiehne at ejk@modrall.com.

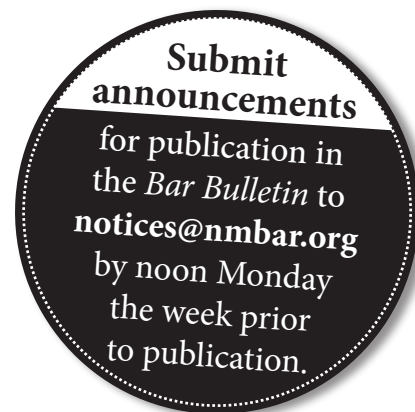
—Featured—

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Learn more at landing.clio.com/nmbar.



Legal Education

July

- | | | |
|--|---|--|
| <p>10 Your Client Wants to Sell on the Web: What You Need to Know Pt 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Best Practices Before the PERLB
2.5 G
Live Seminar, Albuquerque
New Mexico Public Employer Labor Relations Association
505-831-5422</p> | <p>18 Natural Resource Damages
10.2 G
Live Seminar, Albuquerque
Law Seminars International
www.lawseminars.com</p> |
| <p>11 Eight Mistakes Experienced Contract Drafters Usually Make
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Local Public Employee Labor Relations Boards
2.0 G, 0.5 EP
Live Seminar, Albuquerque
New Mexico Public Employer Labor Relations Association
505-831-5422</p> | <p>19 Surviving White Collar Cases-Prosecution and Defense Perspectives (2019)
5.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>11 Rocky Mountain Public Employer Labor Relations Association Annual Conference
10 G
Live Seminar, Albuquerque
Rocky Mountain Public Employer
505-831-0440</p> | <p>16 The Paperless Law Firm—A Digital Dream
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 2018 Business Law Institute
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>12 How to Practice Series: Estate Planning (2019)
5.0 G, 2.0EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 What Robin Hood, John Adams, and Aldo Leopold Can Teach Us About Ethics
1.0 EP
Live Seminar, Alamogordo
12 Judicial District Court
575-257-1010</p> | <p>22 Water Resource/Groundwater Annual Conference
2.2 G
Live Seminar, Albuquerque
American Ground Water Trust
603-228-5444</p> |
| <p>12 Avoid Lawsuits by Cultivating Respect in the Workplace (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Hydrology in Water Law Proceedings
6.5 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com</p> | <p>23 Bad Review? Bad Response? Bad Idea! Ethically Managing Your Online Reputation
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>12 Employment and Labor Law Legislative Update (2019)
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Top Challenges in Family Law
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI, Inc.
www.nbi-sems.com</p> | <p>23 How to Make Stress Work for You
1.0 G
Live Seminar, Santa Fe
Holland and Hart
www.hollandhart.com</p> |
| <p>15 Electric Power in the Southwest
12.0 G
Live Seminar, Santa Fe
Law Seminars International
www.lawseminars.com</p> | <p>18 Ethics and New Clients: Inadvertent Clients, Intake and More
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 Employee Leave Law
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| | | <p>25 Mediating the Political Divide
2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

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

August

- | | | |
|---|---|---|
| <p>1-3 2019 Annual Meeting
14.0 CLE Credits (maximum)
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 Children's Code: Delinquency Rules, Procedure and the Child's Rights (2019)
1.5 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Trust and Estate Planning for Cabins, Boats and Other Family Recreational Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>1 Introduction to the Practice of Law in New Mexico (Reciprocity)
4.5 G, 2.5 EP
Live Seminar, Albuquerque
New Mexico Board of Bar Examiners
www.nmexam.org</p> | <p>21 IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Easements in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 Lawyer Ethics in Employment Law
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Spanish for Lawyers I
20.0 G
Live Seminar, Albuquerque
UNM School of Law
lawschool.unm.edu/
spanishforlawyers/</p> | <p>28 Making your Case with a Better Memory (2019)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 2019's Best Law Office Technology, Software and Tools—Improve Client Service, Increase Speed and Lower Your Costs
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 12th Annual Legal Service Providers Conference: Legal Service Providers in Action (Two Day Conference)
10.0 G, 2.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Advanced Mediation Skills Workshop (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 2018 Mock Meeting of the Ethics Advisory Committee
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | | <p>28 Health Law Legislative Update (2019)
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |

September

- | | | |
|--|---|---|
| <p>6 How to Practice Series: Parentage and Issues in Domestic Violence
5.5 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Trust and Estate Planning for Collectibles, Art and Other Unusual Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>24 The Ethics of Representing Two Parties in a Transaction
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>6 Ethics, Disqualification and Sanctions in Litigation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Retail Leases: Restructurings, Subleases and Insolvency
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>25 Civil Trial—Everything You Need to Know
11.0 G
Live Seminar, Albuquerque
NBI, Inc.
www.nbi-sems.com</p> |
| <p>9 Your Title Tool Kit
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com</p> | | <p>26 Volunteer Attorney Program Orientation
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
www.lawaccess.org</p> |

Opinions

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

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

Effective June 21, 2019

PUBLISHED OPINIONS

A-1-CA-36455	State v. T Willyard	Reverse/Remand	06/17/2019
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UNPUBLISHED OPINIONS

A-1-CA-35876	State v. J Anderson	Affirm	06/17/2019
A-1-CA-36685	State v. R Cervantes	Affirm	06/17/2019
A-1-CA-37510	J R Polk v. JPMorgan Chase Bank	Dismiss	06/18/2019
A-1-CA-35745	J Martinez v. R Montoya	Reverse/Remand	06/19/2019
A-1-CA-37821	J Carrillo v. B Aguirre Hernandez	Reverse	06/19/2019
A-1-CA-33697	State v. O Arvizo	Affirm	06/20/2019

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

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

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On June 17, 2019:
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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective June 17, 2019

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT:

	Deadline
Proposal 2019-021 – Grievance about guardian or conservator New Form 4-999.1 NMRA]	06/24/19

RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2019 NMRA:

	Effective Date
Rules of Civil Procedure for the District Courts	
1-004.1 Guardianship and conservatorship proceedings; process	01/14/2019
1-140 Guardianship and conservatorship proceedings; mandatory use forms	01/14/2019
1-142 Guardianship and conservatorship proceedings; proof of certification of professional guardians and conservators	07/01/2019
Rules of Civil Procedure for the Magistrate Courts	
2-103 Rules and forms	07/01/2019
Civil Forms	
4-999 Notice of hearing and rights	01/14/2019

Rules of Criminal Procedure for the District Courts

5-829 Withdrawn	06/14/19
5-830 Withdrawn	06/14/19
5-831 Withdrawn	06/14.19

Rules of Criminal Procedure for the Magistrate Courts

6-103 Rules and forms	07/01/2019
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Supreme Court General Rules

23-109 Chief judges	07/01/2019
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Local Rules for the Sixth Judicial District Court

LR6-213 Electronic filing authorized	09/01/2019
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Local Rules for the Twelfth Judicial District Court

LR12-201 Electronic filing authorized	09/01/2019
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Local Rules for the Thirteenth Judicial District Court

LR13-208 Electronic filing authorized	09/01/2019
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To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's Web Site at <https://supremecourt.nmcourts.gov>. To view current New Mexico Rules Annotated and recently approved rule changes, visit the New Mexico OneSource website at <https://nmosource.com/nmos/en/nav.do>.

From the New Mexico Supreme Court and Court of Appeals

Certiorari Granted, March 11, 2019, S-1-SC-37425

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-017

No. A-1-CA-35203 (filed October 25, 2018)

CORLINDA H. LUJAN,
IDA M. LUJAN, and PABLO LUJAN,
Plaintiffs-Appellants,

v.

ACEQUIA MESA DEL MEDIO, A NEW
MEXICO COMMUNITY DITCH
ASSOCIATION, et al.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY

FRANCIS J. MATHEW, District Judge

RANDY S. BARTELL
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Santa Fe, New Mexico

MARY E. HUMPHREY
HUMPHREY & ODÉ, P.C.
El Prado, New Mexico

IDA M. LUJAN
Santa Fe, New Mexico
for Appellants

PETER B. SHOENFELD, P.A.
Santa Fe, New Mexico
for Appellees

Opinion

Stephen G. French, Judge

{1} Corlinda Lujan appeals from the dismissal of her second amended complaint (Complaint) in which she sought declaratory relief, injunctive relief, and monetary damages. Her Complaint alleges, among other things, that she is entitled to the use of water appurtenant to 42.2 acres of land from the Rio Puerco de Chama based upon a decree issued by the district court in Rio Arriba County in 1962 (the *Chacon* Decree), and that the Acequia Mesa Del Medio (the Acequia) has consistently refused to distribute water according to the terms of the *Chacon* Decree. The district court dismissed Lujan's Complaint for lack of subject matter jurisdiction, concluding that the federal district court adjudicating all water rights of the Rio Chama stream system (the adjudication court), which includes the Rio Puerco de

Chama, has exclusive jurisdiction over Plaintiff's claims. See *State ex rel. State Engineer v. Aragon*, United States District Court Cause No. 69cv07941 BB (mem. op. and order) (D.N.M. Jan. 31, 2011). We reverse, concluding that the district court has jurisdiction over the subject matter of Lujan's Complaint.

BACKGROUND

Procedural History Concerning the Chama General Stream System Adjudication

{2} In 1948, the Acequia, two other acequias, and members of the acequias initiated a water rights adjudication for the Rio Puerco in the district court in Rio Arriba County, (hereinafter the *Chacon* lawsuit). *Chacon v. Chacon*, Rio Arriba County Cause No. 4922. By 1961, Lujan came to own a tract of land that is irrigated by the water diverted by the Acequia from the Rio Puerco. The *Chacon* court issued the *Chacon* Decree one year later, which "determine[d] the rights of the respective

claimants to divert and beneficially use the waters of the Rio Puerco de Chama and its tributaries[.]" The *Chacon* Decree provides the names of the claimants entitled to the use of the water who are members of the Acequia, the legal description of the land they own, and the number of acres of land they own, and thereby fixes and determines the rights to the water that is appurtenant to the described land. It lists Lujan as owning 42.2 acres of land as mapped by the hydrographic survey prepared by the State Engineer during the first phase of the adjudication (Map 19).

{3} Several years after the issuance of the *Chacon* Decree, the State Engineer moved to consolidate the ongoing *Chacon* lawsuit with another suit, *State of New Mexico v. Ramon Aragon*, Rio Arriba County Cause No. 8294, to determine the claims to all water rights of the Rio Chama stream system because the Rio Puerco is a tributary of the Rio Chama. Accordingly, *Chacon* was consolidated with *Aragon* and one year later, the *Aragon* court ordered that all of the preliminary, interlocutory, and final orders entered in *Chacon* be "confirmed and adopted as if originally entered herein[.]" The order specifically addresses the *Chacon* Decree, referring to it as "the Partial Final Decree in the Rio Puerco de Chama section[.]" The order states that the *Chacon* Decree is a final and appealable order that "defin[es] the rights of the [claimants] as against the State of New Mexico" and "as between and among all [claimants] *inter se*, in the various sub-files in this cause[.]" The *Chacon* Decree was renamed and entitled "Partial Final Judgment and Decree Relating to the Public Waters of the Rio Puerco de Chama." *Aragon* was then removed to federal court (adjudication court), where it continues as an active general stream system adjudication. See *Aragon*, United States District Court Cause No. 69cv7941 BB (mem. op. and order) (D.N.M. Jan. 31, 2011).

Background Pertaining To This Appeal

{4} In 2011 Lujan sued the Acequia, the mayordomo, and the officers and commissioners of the Acequia, alleging that they have not been distributing water for irrigation according to the terms of the *Chacon* Decree and that the method of distribution unfairly diminishes her right to water appurtenant to her 42.2 acres of land as described in the *Chacon* Decree. Lujan's original complaint sought: (1) a declaratory judgment recognizing her

adjudicated water rights and requiring fair and equal water distribution to all Acequia members in accordance with the *Chacon* Decree; (2) declarations that the Acequia must comply with statutory provisions relating to acequias and ditches, NMSA 1978, Sections 73-2-1 to 73-2-68 (1851-52, as amended through 2006); and (3) an injunction preventing the Acequia and its officers and commissioners from otherwise harassing Lujan at Acequia meetings.

{5} The Acequia and other named defendants moved to dismiss the complaint for failure to join necessary parties, arguing that Lujan sought relief under the Declaratory Judgment Act, which requires that all persons “who have or claim any interest which would be affected by the declaration” shall be made parties. NMSA 1978, Section 44-6-12 (1975). They argued that the rights of a member to water diverted by the acequia are not proportional to the number of acres of land a member owns as listed in the *Chacon* Decree. They contended that Lujan asked the district court to enter a declaration that would change the rights of the acequia members to be proportional to the number of acres adjudicated to the tracts of land they own. According to the Acequia, the changes sought by Lujan would affect the rights of all members of the Acequia, and possibly adjacent acequias, as they have or may claim to have an interest that would be affected by such a declaration. The Acequia also argued that in order for Lujan to have water rights, she must be the owner of the land to which the water rights are appurtenant, and that other persons, namely Jose and Magdalena Martinez, now claim an interest in Lujan’s original acreage.

{6} The district court granted the Acequia’s motion (the June 2012 order) despite Lujan’s opposition to it based upon its finding that Lujan’s original complaint sought several declarations pursuant to the Declaratory Judgment Act. The court found that all acequia members, the commissioners of two adjacent acequias, and the Martinez’s “have or claim an interest that would be affected by the declarations” sought in her complaint, and she “shall have the opportunity to amend her complaint to join” them. The court allowed her ninety days to amend her complaint and serve the parties joined.

{7} Lujan amended the original complaint to include the parties provided in the district court’s order (first amended complaint). The first amended complaint also contained additional allegations. One

of those allegations claimed that the Acequia held a special meeting to discuss the Acequia’s response to the lawsuit, during which it modified its irrigation schedule “for the sole purpose of reducing [Lujan]’s historic irrigation time from [forty-two] hours to [twenty-four] hours,” and assigning the eighteen-hour difference to the newly-named Martinez defendants.

{8} The Acequia and newly-named defendants (collectively, Defendants) moved to dismiss the first amended complaint for lack of subject matter jurisdiction under Rule 1-012(B)(1) NMRA. They argued that Lujan’s first amended complaint hinged on two declarations that she sought from the court: (1) that she has water rights under the *Chacon* Decree to irrigate 42.2 acres of land, and (2) that her neighbors, the Martinezes, are not the owners of any of the 42.2 acres of water rights decreed in Lujan’s name. Defendants asserted that “such declarations are within the exclusive jurisdiction of the general adjudication court for the Rio Chama stream system.”

They argued that Lujan claims to have irrigated and continues to irrigate land that is not, according to Map 19, shown as irrigated acreage, and that “irrigation water rights are appurtenant to the land on which they are used.” They contended: “Resolution of [Lujan]’s complaint then is entirely dependent upon the determination of her claims to the use of water. [Lujan] has now asserted ‘error’ in the underlying hydrographic survey from the 1950’s; by claiming that the hydrographic survey is in error, she has invoked the jurisdiction of the general adjudication court, which has exclusive jurisdiction to determine the specific place of use of the land to which [Lujan]’s claimed water rights are appurtenant.” In other words, according to Defendants, Lujan sought a re-adjudication of all of the rights to the water of the Rio Puerco.

{9} In a separate motion, Defendants argued that Rule 1-019(A) NMRA required Lujan to join the State Engineer and other private parties, and that her failure to do so deprived the district court of jurisdiction because resolution of her claims requires a change in the location of the adjudicated water rights, which “may only be accomplished after application to and approval of the state engineer.” Again, despite Lujan’s opposition to both motions,—in which she argued that Defendants’ motions are “predicated on their mischaracterization” of her claims as “seeking to re-adjudicate her water rights” and that her claims are

“isolated in nature, involve interpretation of her pre-existing legal rights, and do not concern any issue involved in the Rio Chama water rights adjudication”—the district court agreed with Defendants, finding that the State Engineer and other named persons were necessary parties. The district court concluded that Lujan “shall have sixty (60) days to amend her complaint to join the necessary parties[,]” and that her first amended complaint “shall be dismissed if [she] fail[s] to join the necessary parties” within the time allotted. Thereafter, Lujan named the State Engineer as a defendant in her Complaint, and again sought declaratory relief, injunctive relief, and monetary damages.

{10} Defendants moved to dismiss again, continuing to argue that the adjudication court has exclusive jurisdiction over Lujan’s claims. The State Engineer also separately moved to dismiss for failure to state a claim upon which relief can be granted and to be dismissed as a party because the State Engineer has no interest in the suit. In response, Lujan maintained that Defendants mischaracterized her claims and that she was “not asking th[e] court to adjudicate any water rights at all.” Rather, she sought “declarations recognizing rights already determined in the [*Chacon* Decree] entered” over fifty years ago, and her “sole purpose in seeking such declarations is to ensure the Acequia’s fair treatment of her in accordance with the law.” In support of the State Engineer’s motion to be dismissed from the suit, Lujan agreed that her “claims involve personal disputes between members of the Acequia and the legal recognition of water rights adjudicated in the [*Chacon*] Decree,” and she urged the district court to grant the State Engineer’s motion.

{11} After a hearing, the district court granted both the State Engineer’s motion, dismissing it as a defendant in the suit, and Defendants’ motion to dismiss for lack of subject matter jurisdiction (October 2015 order) It found that resolving the issues surrounding Lujan’s water rights would require interpretation of the *Chacon* Decree. The district court relied upon NMSA 1978, Section 72-4-19 (1907), believing that it provides that the adjudication of irrigation water rights calls for the district court to determine the specific tracts of land to which the irrigation water rights are appurtenant, and as it applies to Lujan’s claims, requires dismissal for resolution in the adjudication court. Thus, the district court concluded: “Determination of the

specific location of the lands with water rights should be in the adjudication court of the Rio Chama stream system” because “[t]he adjudication court has exclusive jurisdiction to make determinations regarding the elements of a water right, including the specific tract of land to which an irrigation water right is appurtenant.” The court dismissed Lujan’s Complaint “in all things.”

{12} Lujan appeals all three orders: (1) the June 2012 order requiring Lujan to add parties necessary to the resolution of her Complaint under the Declaratory Judgment Act; (2) the February 2015 order requiring Lujan to join the State Engineer and three other specifically named persons as necessary parties under Rule 1-019; and (3) the October 2015 order dismissing Lujan’s Complaint for lack of subject matter jurisdiction because the adjudication court has exclusive jurisdiction over Lujan’s claims.

DISCUSSION

{13} First, we address Lujan’s argument that the district court, not the adjudication court, has jurisdiction over the subject matter of her Complaint. We then turn to the orders providing leave to join additional parties.

I. The District Court Has Jurisdiction Over Lujan’s Complaint

{14} We review questions of subject matter jurisdiction de novo. *Best v. Marino*, 2017-NMCA-073, ¶ 19, 404 P.3d 450, cert. denied, 2018-NMCERT-___ (No. S-1-SC-36586 (Aug. 31, 2017)). State district courts are courts of general jurisdiction “having the power to hear all matters not excepted by the constitution and those matters conferred by law.” *Id.* ¶ 20 (internal quotation marks and citation omitted). The jurisdiction of adjudication courts with regard to water law, however, is set out in Chapter 72 of our statutes. Adjudication courts have “exclusive jurisdiction to hear and determine all questions necessary for the adjudication of *all* water rights within the stream system involved[.]” NMSA 1978, § 72-4-17 (1965) (emphasis added). Once all of the rights to the use of the water of the entire stream system have been adjudicated among the claimants, the district court issues a decree. *See* § 72-4-19. The decree must declare “as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use,” and for water used for irrigation, the decree must specify the tracts of land to which the right is appurtenant. *Id.* Thus, once a stream system has been adjudicated

or partially adjudicated and a decree issued, jurisdiction over claims related to the enforcement of the decree—as opposed to claims seeking an adjudication of the water rights to be decreed—properly rests with the district court. *See City of Raton v. Vermejo Conservancy Dist.*, 1984-NMSC-037, ¶ 1, 101 N.M. 95, 678 P.2d 1170 (demonstrating the state district court’s exercise of its general jurisdiction over a claim brought by the City of Raton against a water conservancy district alleging improper withholding of water in excess of senior rights set forth in a decree issued decades prior to the suit, and seeking a declaration of water rights based upon that decree); *El Paso & R. I. Ry. Co. v. Dist. Court of Fifth Judicial Dist.*, 1931-NMSC-055, ¶ 21, 28, 36 N.M. 94, 8 P.2d 1064 (holding that a state district court cannot exercise its general jurisdiction over a claim brought by water rights claimants against the operator of a railroad seeking an injunction of the railroad’s use of water where an ongoing general adjudication has already begun and no decree has been issued); *Harkey v. Smith*, 1926-NMSC-011, ¶ 3, 31 N.M. 521, 247 P. 550 (demonstrating the state district court’s exercise of its general jurisdiction over a claim brought by a water rights claimant against another water rights claimant alleging diversion in excess of the amount declared in a decree issued years before).

{15} Lujan argues that the district court has, since entry of the *Chacon* decree in 1962, jurisdiction to interpret and declare the relative water rights of parties in a given ditch or acequia associated with an adjudicated source, such as the Rio Puerco de Chama section. She contends that, in other cases, district courts have interpreted water rights decrees and determined the current rights of parties to a lawsuit based upon such decrees. Defendants, however, characterize the case differently. They maintain that Lujan’s complaint requires the district court to determine the validity of the hydrographic survey and apply it to specific provisions of the *Chacon* Decree. Specifically, Defendants claim that Lujan seeks a declaration that the Martinezes do not own any of the 42.2 acres of land that she claims she possesses according to the *Chacon* Decree and that resolving the land ownership issue forces the court to determine the place of use of the decreed water rights. Defendants believe that the determination Lujan seeks will result in either a correction to Map 19 so that it shows the specific tracts of land

that Lujan claims as her place of use, or a correction to the list of owners in the *Chacon* Decree. Either way, Defendants argue, “New Mexico law is crystal clear that the adjudication court has exclusive jurisdiction to make such determinations.”

{16} The outcome of this issue hinges on what exactly Lujan alleges in her Complaint. *See Best*, 2017-NMCA-073, ¶ 20 (“The only relevant inquiry in determining whether the [district] court has subject matter jurisdiction is to ask whether the kind of claim advanced falls within the general scope of authority conferred upon [it] by the constitution or statute.” (alterations, omission, internal quotation marks, and citations omitted)). Accordingly, we undertake a careful examination of Lujan’s Complaint and conclude that she has not sought an adjudication of the water rights to the entire stream system. Rather, that claim was made decades ago by her predecessors-in-interest when they, several other water users, the Acequia, and two other nearby acequias initiated the *Chacon* lawsuit. Lujan’s Complaint alleges facts pertaining to the ownership of the land identified in the *Chacon* Decree as belonging to her and to the distribution of water to acequia members by the Acequia. Generally, she claims that the Acequia has consistently failed to distribute water in accordance with the *Chacon* Decree. She also alleges that the Acequia called a special meeting to discuss its response to her original complaint, and in retaliation, changed its irrigation schedule in order to reduce Lujan’s irrigation time. Unrelated to her particular claims involving the Martinezes, Lujan also alleges that the Acequia amended its bylaws after she filed her original complaint “purposefully and solely” to discriminate against her, applying its new bylaws and method of calculating irrigation hours in a way that negatively impacts only her right to the use of water, and not any other acequia member. She claims as well that the Acequia engages in other harassing conduct, including removing rocks, wooden structures, and headgates from her property, refusing to provide her with the irrigation schedule until after her irrigation date has passed, and refusing to allow her to speak at Acequia meetings.

{17} Essentially, Lujan seeks to enjoin the conduct of the Acequia that has resulted in her receiving less than the amount of water allotted to her in the *Chacon* Decree, that favors some Acequia members over others, and that she alleges constitutes

harassment and discrimination. Lujan also sets forth numerous grounds potentially meriting declaratory relief. She requests a declaration from the district court that she has water rights appurtenant to 42.2 acres of land as declared in the *Chacon* Decree and that the Acequia must divert and distribute water according to the terms of the *Chacon* Decree. The Complaint also requests several declarations concerning the internal operations of the Acequia, including its holding of biennial meetings as required by Section 73-2-12, its imposition of assessments upon Acequia members based upon their adjudicated acreage, and its issuing of bonds according to Section 73-2-12. She also seeks damages based upon the Acequia's interference with her water rights and her inability to irrigate her property.

{18} Based on the foregoing claims and the relief sought, we conclude that the gravamen of Lujan's Complaint concerns the enforcement of an existing and valid court decree. It does not, as the Acequia argues, call for a "re-adjudication" of Lujan's water rights of a nature that affects all users of the Acequia or the Rio Puerco stream system itself. See *United States v. Bluewater-Toltec Irrigation Dist.*, 580 F. Supp. 1434, 1438-41 (D.N.M. 1984) (rejecting the defendant's attempt to recast the plaintiff's complaint in order to achieve removal to federal court, and describing the defendant's characterization of the complaint as being completely in error for having oversimplified the complaint and ignoring the language of the complaint). Rather, the disputes Lujan's Complaint seeks to resolve involve the conduct of private parties governed by a valid court decree and other statutory provisions applicable to acequias and ditch associations. We see nothing within Lujan's Complaint that seeks an adjudication or re-adjudication of water rights that would affect the rights of all claimants to the entire stream system of which the Rio Puerco is a part. See *La Madera Cmty. Ditch Ass'n v. Sandia Peak Ski Co.*, 1995-NMCA-025, ¶ 7, 119 N.M. 591, 893 P.2d

487 (explaining that the plaintiff's cause of action was not "transformed from one based on trespass . . . to one based on an adjudication of water rights against all other appropriators of the water system[]" simply because the defendant disputed the validity of the plaintiff's water rights).

{19} Thus, because Lujan has initiated litigation within a group of users governed as an acequia and under an existing decree, and is not seeking to adjudicate or re-adjudicate water rights of a broader stream system, Lujan's lawsuit falls within the general jurisdiction of the district court, not the adjudication court. Our evaluation in this regard is buttressed by the State Engineer's motion to be dismissed as a party on the basis that it has no interest in the litigation or the outcome of Lujan's claims. In a hearing on the motion, the State Engineer's office explained that acequias, under Chapter 73, "can govern their water rights the way they want to[,] " which is "something the [c]ourt can determine without the presence of the State Engineer." The State Engineer is not involved in disputes concerning the water to be distributed to acequia members by the acequia; it is only concerned with the water that is distributed to the acequia at its headgate. Beyond that, the acequia conducts its business according to Chapter 73. We agree with the State Engineer's characterization of the nature of the dispute in this case.

II. Orders to Join Additional Parties

{20} Lujan also appeals the June 2012 and February 2015 orders, each of which concluded that several unnamed parties were necessary to the litigation and required joinder in order for the case to proceed. Each order permitted Lujan time to amend her complaint to join the parties or else, as expressly stated in the February 2015 order, Lujan's complaint would be dismissed. She argues that the district court abused its discretion in ordering joinder of these parties because her lawsuit "will not prejudice any legal rights" of the parties named in the orders, as "they will not 'gain or lose' anything through this suit other than [the] protection of [their]

already established legal rights[]" set forth in the *Chacon* Decree.

{21} The district court's orders, including its threat of dismissal, were based on the district court's misinterpretation of the nature of the dispute set out in Lujan's initial complaint, specifically, that Lujan sought enforcement of the *Chacon* Decree, rather than its re-adjudication. As this misinterpretation formed the foundation of its decision that the additional parties were necessary to the litigation of Plaintiff's claims, we conclude that the district court abused its discretion in ordering joinder of the parties. See *Harrison v. Bd. of Regents of Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (explaining that a misapprehension of the law constitutes an abuse of discretion); *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 ("An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." (internal quotation marks and citation omitted)).

{22} We therefore remand this case to the district court with instructions to reconsider the necessity of the joined parties based upon Lujan's causes of action and the relief she seeks, including those made pursuant to the Declaratory Judgment Act, her other statutory state law claims, and the requirements of Rule 1-019. On remand, the parties, including Lujan, shall be permitted to file such motions necessary to invoke rulings from the district court, establishing the proper parties to the litigation in light of our opinion.

CONCLUSION

{23} We reverse the district court's orders dismissing the suit for lack of subject matter jurisdiction and ordering the joinder of additional parties, and remand for proceedings consistent with this opinion.

{24} **IT IS SO ORDERED.**
STEPHEN G. FRENCH, Judge

WE CONCUR:
J. MILES HANISSEE, Judge
JULIE J. VARGAS, Judge



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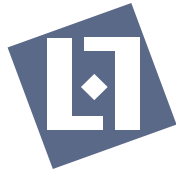


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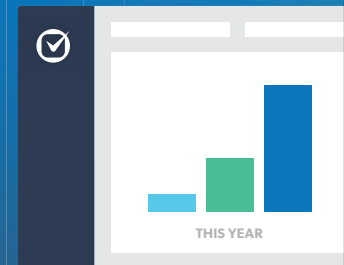
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Guebert Bruckner Gentile P.C. seeks an attorney with up to five years' experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner Gentile P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

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The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Roswell offices. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to 5thDA@da.state.nm.us.

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1st Judicial District Attorney

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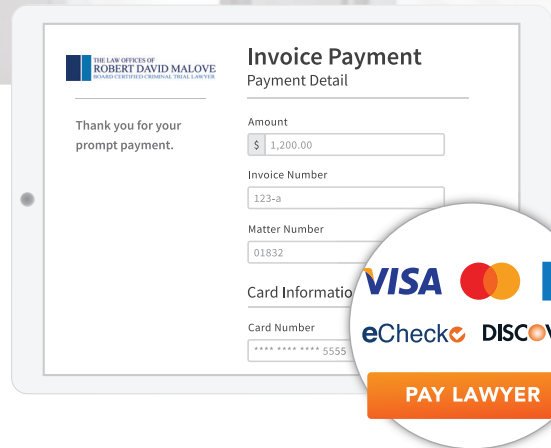
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