

BAR BULLETIN

October 14, 2020 • Volume 59, No. 19



She Had an Idea by Natalie Christensen (see page 3)

www.nataliechristensenphoto.com

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Natural Resources, Energy and
Environmental Law Section
and Animal Law Section



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CLE programming from the Center for Legal Education

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

Upcoming Webinars

Immigration Law: Public Benefits & Public Charge Concerns

Thursday, October 15 • Noon–1 p.m.

1.0 G

\$49 Standard Fee

Administrative Law Institute

Friday, October 16 • 8:15 a.m.–4 p.m.

Morning Session 8:15–11:50 a.m.

3.0 G

\$141 Standard Fee

Afternoon Session 12:30–4 p.m.

1.0 G

2.0 EP

\$141 Standard Fee

Family Law Institute: Mandatory CYFD Report and Other Hot Topics in Ethics

Tuesday, October 20 • 9–11 a.m.

2.0 EP

\$80 Standard Fee

Outlook Power Hour

Wednesday, October 21 • Noon–1 p.m.

1.0 G

\$49 Standard Fee

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

Wednesday, October 21 • 9–10 a.m.

1.0 EP

\$55 Standard Fee

Revealing Unconscious Prejudice: How You Can Benefit

Thursday, October 22 • 9–11 a.m.

2.0 EP

\$98 Standard Fee

Upcoming Teleseminars

The Ethics of Bad Facts and Bad Law

Friday, October 16 • 11 a.m.–Noon

1.0 EP

\$79 Standard Fee

Governance and Management Agreements for Nonprofit Organizations

Monday, October 19 • 11 a.m.–Noon

1.0 G

\$79 Standard Fee

Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 1

Tuesday, October 27 • 11 a.m.–Noon

1.0 G

\$79 Standard Fee



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Meetings

October

14

Business Law Section Board

4 p.m., teleconference

14

Children's Law Section Board

Noon, Children's Court, Albuquerque

14

Tax Section Board

9 a.m., teleconference

15

Public Law Section Board

Noon, Legislative Finance Committee, Santa Fe

16

Family Law Section Board

9 a.m., teleconference

20

Solo and Small Firm Section Board

10:30 a.m., State Bar Center

23

Immigration Law Section Board

Noon, teleconference

Workshops and Legal Clinics

October

28

Consumer Debt/Bankruptcy Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6094

November

4

Divorce Options Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6022

December

2

Divorce Options Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6022

9

Consumer Debt/Bankruptcy Workshop

6-8 p.m., Video Conference

For more details and to register, call

505-797-6094

Editor's Note: Publication of N.M. Supreme Court and Court of Appeals opinions will resume in the next issue. For a link to opinions in the meantime, visit www.nmbar.org/barbulletin and click on "Opinions".

About Cover Image and Artist: Santa Fe, New Mexico photographer Natalie Christensen's enchanting focus is on banal peripheral settings. Influenced by 25 years as a psychotherapist, her photos favor psychological metaphors. She deconstructs to color fields, geometry and shadow. "Sometimes I get a glimpse of the sublime in these ordinary places." Christensen has exhibited in the U.S. and internationally, and recently was a guest of the United Arab Emirates Embassy on a UAE cultural tour. She led photography workshops at The Royal Photographic Society, London and Meow Wolf, Santa Fe and participated in site-specific projects in the U.S and U.K. The recipient of several prestigious photography awards, Christensen's work is in the permanent collections of the Fort Wayne Museum of Art, Indiana and the University of Texas, Tyler. Her photography has been featured in noted fine art publications.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1 p.m.-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Supreme Court of New Mexico

Announcement of Vacancy

A vacancy on the Supreme Court will exist as of Dec. 1 due to the retirement of the Honorable Supreme Court Chief Justice Judith K. Nakamura, effective Dec. 1. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Sergio Pareja, chair of the Supreme 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: <https://lawschool.unm.edu/judsel/application.html>, or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Oct. 13 by 5 p.m. All applications and letters of references are to be emailed to akin@law.unm.edu. Applications received after 5 p.m. will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The New Mexico Supreme Court Judicial Nominating Commission will convene beginning at 9 a.m. on Nov. 19 and will occur exclusively by Zoom. The commission meeting is open

Professionalism Tip

With respect to the courts and other tribunals:

I will avoid the appearance of impropriety at all times.

to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. If you would like the Zoom invitation emailed to you, please contact Beverly Akin by email at akin@law.unm.edu. Alternatively, you may find the Zoom information for this hearing below:

Topic: New Mexico Supreme Court Judicial Nominating Commission Meeting
Time: Nov. 19 at 9 a.m.

Join Zoom Meeting: <https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>

Meeting ID: 379 615 447

Password: 72146

Second Judicial District Court Notice to Attorneys

In accordance with 1.17.230 NMAC, Section 1.17.230.502, taped proceedings on domestic matters cases in the range of cases filed in 1972 through 1999 will be destroyed. To review a comprehensive list of case numbers and party names or attorneys who have cases with proceedings on tape and wish to have duplicates made should verify tape information with the Special Services Division 505-841-6717 from 8 a.m.-4 p.m. Monday through Friday. Aforementioned tapes will be destroyed after Oct. 21.

Fourth Judicial District Court Announcement of Vacancy

A vacancy on the Fourth Judicial District Court will exist on Jan. 1, 2021. Inquiries regarding more specific details of this judicial vacancy should be directed to the chief judge or the administrator of the court. The dean of the UNM School of Law, designated by the New Mexico Constitution to chair the District Court Nominating Committee, solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14, of the New Mexico Constitution. Applications, as well as information related to qualifications for the position, may be obtained from the judicial selection website: <https://lawschool.unm.edu/judsel/application.html>, or by contacting Beverly Akin at akin@law.unm.edu. The deadline for applications has been set for

Tuesday, November 3, 2020, by 5:00 pm. All applications and letters of references are to be emailed to akin@law.unm.edu. Applications received after the 5 p.m. deadline that day will not be considered. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Judicial Nominating Committee will meet at 9 a.m. on Dec. 3, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to make comments about any of the candidates will have an opportunity to be heard. If you would like the Zoom invitation emailed to you, please contact Beverly Akin by email at akin@law.unm.edu. Alternatively, you may find the Zoom information for this hearing here:

Topic: New Mexico Supreme Court Judicial Nominating Commission Meeting.
Time: Dec. 3 at 9 a.m.

Join Zoom Meeting: <https://unm.zoom.us/j/379615447?pwd=M3lSVGxuSEkrSjd4cExlVXYwK3MzQT09>.

Meeting ID: 379 615 447.

Password: 72146

Twelfth Judicial District Court Notice of Mass Case Reassignment

Effective July 15, a mass reassignment of Division I, II, III and IV family law cases, and Division I and Division IV civil and probate/mental health cases were reassigned to the Honorable Ellen Jessen, Division V, pursuant to Rules 23-109 and 1-088.1, NMRA. Pursuant to New Mexico Supreme Court Order 20-8500-0025, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency.

Bernalillo County Metropolitan Court New Landlord-Tenant Settlement Program

A mediation program specifically for people involved in landlord-tenant disputes was launched earlier this month. The Landlord-Tenant Settlement Program will give landlords and tenants the opportunity to work out business

agreements beneficial to both sides. To be eligible, participants must have an active landlord-tenant case in the Metropolitan Court. The service is free, and parties in a case will work with a volunteer settlement facilitator specially trained in housing matters. Many of the facilitators are retired judges and experienced attorneys who will provide services pro bono. Those interested in participating in the Landlord-Tenant Settlement Program or serving as a volunteer settlement facilitator are asked to contact the court's Mediation Division at: 505-841-8167.

Change of Address

Effective July 1, the Bernalillo County Metropolitan Court discontinued the use of its PO Box. The court's physical address of: 401 Lomas Blvd. NW, Albuquerque, N.M. 87102 should be used for mail purposes.

Notice of E-Filing

E-filing is now available for attorneys in civil cases in the Metropolitan Court for both initial and subsequent filings. It will become mandatory for attorneys on Oct. 15. Attorneys must add themselves as a Service Contact to each case in which they are counsel of record before Oct. 15 in order to receive eFiled documents from the Court. For more information, please visit: <https://www.nmcourts.gov/e-filing.aspx> or call the Metropolitan Court at: 505-841-8151. For technical assistance, contact Tyler Technologies Monday - Friday, from 8 a.m.-7 p.m. Central Time at 1-800-297-5377 or visit <https://tylertech.egain.cloud/kb/nmh5/content/PROD-3132/Contact-Us-3132>.

New Mexico Judicial Performance Evaluation Commission Judge Recommendations

The New Mexico Judicial Performance Evaluation Commission has released its recommendations to voters on 65 judges, one New Mexico Supreme Court justice and 64 District Court judges, who are standing for retention in the upcoming election. JPEC issued 62 "retain" recommendations and three "do not retain" recommendations to voters. The "do not retain" recommendations included judges in the Second and Third Judicial Districts. The Commission issued biographical information on seven judges,

one New Mexico Court of Appeals judge and six District Court judges, who have not served in their current positions for a sufficient amount of time to be evaluated under JPEC rules. For a full list of evaluations, visit www.nmjpec.org.

STATE BAR NEWS COVID-19 Pandemic Updates

The State Bar of New Mexico is committed to helping New Mexico lawyers respond optimally to the developing COVID-19 coronavirus situation. Visit www.nmbar.org/covid-19 for a compilation of resources from national and local health agencies, canceled events and frequently asked questions. This page will be updated regularly during this rapidly evolving situation. Please check back often for the latest information from the State Bar of New Mexico. If you have additional questions or suggestions about the State Bar's response to the coronavirus situation, please email Executive Director Richard Spinello at rspinello@nmbar.org.

Reopening of Building

The State Bar of New Mexico is reopened to members and the public. Availability is limited pursuant to the current State health orders. To book a room, call 505-797-6000 or email sbnm@nmbar.org.

New Mexico Judges and Lawyers Assistance Program

We're now on Facebook! Search "New Mexico Judges and Lawyers Assistance Program" to see the latest research, stories, events and trainings on legal well-being!

Monday Night Support Group

- Oct. 19
- Oct. 26
- Nov. 2

This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam at pmoore@nmbar.org or Briggs Cheney at BCheney@DSC-LAW.com and you will receive an email back with the Zoom link.

— *Featured* —

Member Benefit



Clio's groundbreaking suite combines legal practice management software (Clio Manage) with client intake and legal CRM software (Clio Grow) to help legal professionals run their practices more successfully. Use Clio for client intake, case management, document management, time tracking, invoicing and online payments and a whole lot more.

Clio also provides industry-leading security, 24 hours a day, 5 days a week customer support and more than 200+ integrations with legal professionals' favorite apps and platforms, including Fastcase, Dropbox, Quickbooks and Google apps. Clio is the legal technology solution approved by the State Bar of New Mexico. Members of SBNM receive a 10 percent discount on Clio products.

Learn more at landing.clio.com/nmbar.

Employee Assistance Program Managing Stress Tool for Members

A negative working environment may lead to physical and mental health problems, harmful use of substances or alcohol, absenteeism and lost productivity. Workplaces that promote mental health and support people with mental disorders are more likely to reduce absenteeism, increase productivity and benefit from associated economic gains. Whether in a professional or personal setting, most of us will experience the effects of mental health conditions either directly or indirectly at some point in our lives. The N.M. Judges and Lawyers Assistance Program is available to assist in addition to our contracted Employee Assistance

Program (EAP). No matter what you, a colleague, or family member is going through, The Solutions Group, the State Bar's FREE EAP, can help. Call 866-254-3555 to receive FOUR FREE counseling sessions per issue, per year! Every call is completely confidential and free. For more information, <https://www.nmbar.org/jlap> or <https://www.solutionsbiz.com/Pages/default.aspx>.

State Bar Sections and Divisions

Section's Annual Meeting of the Membership

The sections of the Bar have begun holding annual meetings for their respective membership. You may find your section's annual meeting date either through an eBlast announcement or through the weekly eNews. Although this year has posed many challenges for us all, all of the voluntary groups have stayed active and continue to give back to their members and community at large. Learn of their accomplishments and what plans they have for next year. For further information, email Member Services at memberservices@nmbar.org.

Intellectual Property Law Section

Virtual Pro Bono Fair

The Intellectual Property Law Section seeks volunteer attorneys for its third Pro Bono IP Fair. This year the Fair will take place virtually the week of Nov. 2-7. Many creatives and inventors in our community need our help to get their journey started. Appointment start time any earlier than 9am or later than 4:30pm on any given day of the Fair. Attorneys will provide free consultations (web or teleconference) in all areas of IP law and/or business law. Visit nmbar.org/IPLaw for more information!

Natural Resources, Energy and Environment Law Section

Section Nominations Open for 2020 Lawyer of the Year Award

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 18. 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. Award criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations are due by Nov. 13 to Member Services at memberservices@nmbar.org.

Solo Small Firm October Virtual Lunch Series

Jerry Pacheco, President of the Border Industrial Association

Join the virtual lunch on Tuesday, Oct. 20 at noon. All State Bar members, staff and their guests are welcome to attend. R.S.V.P. to Member Services at memberservices@nmbar.org. Jerry Pacheco, president of the Border Industrial Association, will speak at the October Virtual Lunch Series for the Solo and Small Firm Section. Pacheco is also the executive director of the International Business Accelerator, the only state-wide international trade counseling program, based in Santa Teresa, N.M. He also is an industrial business recruiter based in Santa Teresa, who is responsible for the recruitment and attraction of approximately \$1 billion of investment, and the creation of more than 4,000 jobs to New Mexico's border region. He will present on New Mexico's international trade situation and what is going on at the border.

UNM SCHOOL OF LAW Law Library Hours

Due to COVID-19, UNM School of Law is currently closed to the general public. The building remains open to students, faculty, and staff, and limited in-person classes are in session. All other classes are being taught remotely. The law library is functioning under limited operations, and the facility is closed to the general public until further notice.

Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at UNMLawLibref@gmail.com or voicemail at 505-277-0935. The Law Library's document delivery policy requires specific citation or document titles. Please visit our Library Guide outlining our Limited Operation Policies at: <https://libguides.law.unm.edu/limitedops>.

Mexican American Law Student Association

Seeking to Reconnect with Alumni

The Mexican American Law Student Association of UNM has since lost their list of alumni and wish to recreate it. Please email unmmalsa@gmail.com with your name, class year, board positions you may have held, email, MALSA pictures and anything other information you would like to provide. Please share this information with fellow MALSEROS.

OTHER NEWS

Christian Legal Aid Training Seminar

New Mexico Christian Legal Aid invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. They will be hosting a training seminar on Nov. 1, from noon-5 p.m. at State Bar of New Mexico, located at 5121 Masthead St NE, Albuquerque. Join them for free lunch, free CLE credits, and training as they update skills on how to provide legal aid. For more information or to register, contact Jim Roach at 243-4419 or Jen Meisner at 610-8800 (christianlegalaids@hotmail.com).

Legal Education

October

- | | | |
|--|--|---|
| <p>14 iPhone Forensics: An Update On Capabilities From the Trenches
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>16 2020 Administrative Law Institute: Full Day
4.0 G, 2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Outlook Power Hour
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 Recent Trends in Workers' Compensation
1.0 G
Webcast
CEU Institute
407-324-0500</p> | <p>19 Governance and Management Agreements for Nonprofit Organizations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 Juvenile Defender Leadership Summit
12.0 G
Webcast
National Juvenile Defender Center
202-452-0010</p> | <p>20 Annual School Law Practice Seminar
14.0 G, 4.0 EP
Webcast
NSBA Council of School Attorneys
www.nsba.org</p> | <p>22 Revealing Unconscious Prejudice: How You Can Benefit
2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 The Ethics of Bad Facts and Bad Law
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Family Law Institute: Mandatory CYFD Report and Other Hot Topics in Ethics
2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Annual Meeting
17.5 G, 1.0 EP
Webcast
Council on State Taxation
202-484-5220</p> |
| <p>16 2020 Administrative Law Institute: Morning Session
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Contemporary Challenges in Trust Administration
1.5 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>27 Family Law Institute: Unsubstantiated Allegations of Abuse
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>16 2020 Administrative Law Institute: Afternoon Session
1.0 G, 2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 Trust Protectors and Directors
1.0 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>27 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

Notice of Possible Event Cancellations or Changes:

Due to the rapidly changing coronavirus situation, some events listed in this issue of the Bar Bulletin may have changed or been cancelled after the issue went to press. Please contact event providers or visit www.nmbar.org/eventchanges for updates.

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.

- | | | |
|---|---|---|
| <p>24 Fall Conference
5.0 G, 3.5 EP
Webcast
Litigation Counsel of America
www.litcounsel.org</p> | <p>28 Construction Contracts: Drafting Issues, Spotting Red Flags and Allocating Risk, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 6th Annual Symposium on Diversity & Inclusion: Latest Diversity Data for the New Mexico Bar and Other Hot Topics
5.0 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
|---|---|---|

November

- | | | |
|--|--|--|
| <p>3 Rights of First Offer, First Refusal in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>10 Family Law Institute: Assessing and Understanding Children's Preferences
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Ethics of Beginning and Ending Client Relationships
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>3 Family Law Institute: The 50/50 Presumption and Parenting Plans in Special Circumstances
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 2020 Probate Institute
6.8 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Word Master Class on Styles
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>4 2020 Business Law Institute
3.2 G, 2.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 Parenting Coordinator Training
11.5 G, 1.0 EP
Webcast
Comallie-Caplan
575-526-4222</p> | <p>18 Document Analysis: How to Read a Will or Trust
1.0 G
Webcast
Cannon Financial Institute
706-389-7645</p> |
| <p>4 Releasing Employees & Drafting Separation Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 2020 Cannabis Law Institute: Wake and Bake – Cannabis Law in New Mexico
5.0 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 The Competency Process in the Criminal Justice System
2.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>5 Annual Review Seminar
12.0 G, 3.0 EP
Webcast
Tennessee Law Institute
800-827-6716</p> | <p>16 Holding Business Interests in Trust
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Annual Review Seminar
12.0 G, 3.0 EP
Webcast
Tennessee Law Institute
800-827-6716</p> |
| <p>6 Ethics and Changing Law Firm Affiliation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Essential Asset Protection Planning
1.5 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>20 Ethics and Dishonest Clients
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

23 Practice Risk Management Assessment Part 1 and Part 2
2.0 G
Webcast
American Educational Institute
www.aeiseminars.com

30 Ethics for Business Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

December

1 Business Divorce, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 Business Divorce, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 Guarantees in Real Estate Transactions
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 Employee v. Independent Contractors: Tax and Employment Law Considerations
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 Ethics and Virtual Law Offices
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 Trust and Estate Planning for Pets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 PowerPoint Power Hour
1.0 G
Live Webinar
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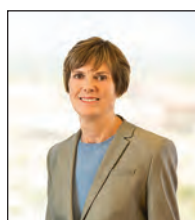
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Keleher & McLeod, P.A., one of the leading law firms in New Mexico, is pleased to welcome **Ryan M. Walters** as an of counsel attorney to the firm. Walters regularly handles defense and prosecution of a variety of commercial disputes, including disputes between businesses, internal disputes among business owners, employ-

ment disputes, and construction defect claims. He also represents clients in real estate and collection cases, such as commercial real estate disputes, contested business collection suits, and contested residential foreclosures. Walters has assisted many businesses over the years with their outside general counsel and local counsel needs, including employment advice and contract negotiation matters. After graduating from law school, Walters clerked for U.S. District Court Judge James O. Browning of the District of New Mexico. Prior to joining Keleher & McLeod, Walters was a litigation associate with a national Am Law 100 firm and a regional Am Law 200 firm. He has experience with all levels of litigation, including trials and arbitration hearings. He received his B.A. from the University of Texas at Austin in 2008 and his law degree *magna cum laude* from Baylor Law School in 2011. He also was the technical editor, *Baylor Law Review* 2010-11.



Best Lawyers in America has named Rodey lawyers "Best Lawyers of the Year" for 2021. *Best Lawyers* designates "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer, in each specialty and in each community, is honored as the "Lawyer of the Year." *Best Lawyers* compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers evaluate their peers. Lawyers honored as "Lawyers of the Year" receive the highest ratings in surveys for their abilities, professionalism, and integrity. The following Rodey lawyers have been named Best Lawyers of the year for 2021: **Scott Gordon** (top left) - Albuquerque litigation-labor and employment "Lawyer of the Year". **Paul Koller** (top middle) - Albuquerque personal injury litigation-defendants "Lawyer of the Year". **Theresa Parrish** (top right) - Albuquerque litigation - real estate "Lawyer of the Year". **Charles (Kip) Purcell** (bottom left) - Albuquerque litigation - first amendment "Lawyer of the Year". **Andrew Schultz** (middle bottom) - Albuquerque bet-the-company litigation "Lawyer of the Year". **Thomas Stahl** (bottom right) - Albuquerque labor law - management "Lawyer of the Year".

Holland & Hart is pleased to announce that five of the firm's Santa Fe attorneys have been recognized in the 2021 Edition of *The Best Lawyers in America*® and two attorneys were named to the inaugural edition of *Best Lawyers: Ones to Watch*. In addition, three attorneys received Best Lawyers "Lawyer of the Year" recognition in their respective practice area in Santa Fe. Only a single lawyer in each practice area and designated market area is honored as the "Lawyer of the Year," making this accolade particularly significant. *Best Lawyers* has published its list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals. Lawyers on *The Best Lawyers in America* list are reviewed by their peers based on professional expertise and undergo an authentication process to make sure they are in good standing. *Best Lawyers: Ones to Watch* recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence. 2021 *Best Lawyers* "Lawyer of the Year": **Bradford Berge** was named the *Best Lawyers*® 2021 natural resources law "Lawyer of the Year" in Santa Fe; **Timothy Crisp** was named the *Best Lawyers*® 2021 banking and finance law "Lawyer of the Year" in Santa Fe; **Michael Feldewert** was named the *Best Lawyers*® 2021 oil and gas law "Lawyer of the Year" in Santa Fe. 2021 *Best Lawyers in Santa Fe*: **Bradford Berge**: litigation - environmental; natural resources law; personal injury litigation - defendants; product liability litigation - defendants; **Timothy Crisp**: banking and finance law; commercial litigation; corporate law; equipment finance law; litigation - banking and finance; **Michael Feldewert**: natural resources law; oil and gas law; **Larry Montaño**: commercial litigation; **Robert Sutphin, Jr.**: commercial litigation. 2021 *Best Lawyers: Ones to Watch in Santa Fe*: **Kaitlyn Luck**: oil and gas law; **Adam Rankin**: environmental law; oil and gas law.



Gina T. Constant has been elected to serve as Treasurer of the Lawyer-Pilots Bar Association, as of Sept. 1. Constant has been a member of the LPBA since 2014 and a Board member since 2017. The LPBA is an International, non-profit bar association that promotes aviation law and safety. Constant, of Constant Law, LLC, practices in the areas of aviation, litigation, and intellectual property law in Albuquerque.



Daniel T. Montoya has been appointed president of Heritage Trust Company of New Mexico effective Oct. 1. Montoya, a graduate of Columbia University School of Law and an attorney licensed in both New York and New Mexico, moved home to New Mexico in 1997. At that time he was working long distance for Citibank, N.A. and their WorldWide Securities Services Legal Department, which included their Trust and Custody departments. In 1999, he learned of a group of people looking to start a community foundation, and he was quickly hired as the first executive director of Taos Community Foundation. In 2002, he joined the Heritage Trust team and was appointed executive vice president in 2007. Heritage Trust is an independent trust company licensed by the New Mexico Financial Institutions Division since 1994, with headquarters in Taos.

BOARD OF BAR COMMISSIONERS ELECTION NOTICE 2020



Pursuant to Supreme Court Rule 24-101, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico. NOTE: Rule 24-101 NMRA, Sections C and D, is in the process of being amended by the Supreme Court to reflect that the Bar Commissioner Districts shall follow the established State Judicial Districts. A copy of the proposed rule is included on page 13.

Candidates must consider that voting members of the Board of Bar Commissioners are required to do the following:

Duties and Requirements for Board of Bar Commissioner Members:

- Advance the organization's mission and purposes.
- Attend Board meetings (up to six per year), including the Annual Meeting of the State Bar.
- Represent the State Bar at local bar-related meetings and events.
- Communicate regularly with constituents regarding State Bar activities.
- Promote the programs and activities of the State Bar.
- Participate on Board and Supreme Court committees.
- Evaluate the State Bar's programs and operations in line with the strategic plan and budget.
- Ensure financial accountability for the organization.
- Support and participate in State Bar referral programs.
- Establish and enforce bylaws and policies.

Notice is hereby given that the 2020 election of nine (9) commissioners for the State Bar of New Mexico will close at noon, Nov. 30. Nominations to the office of bar commissioner shall be by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice (address of record) is in the respective district. Members of the State Bar may nominate and sign for more than one candidate. **(See the nomination petition on the next page.) All of the positions are three-year terms and run from Jan. 1, 2021–Dec. 31, 2023. The following terms will expire Dec. 31 and need to be filled in the upcoming election, along with the newly created positions.**

First Judicial District – One Position

Los Alamos, Rio Arriba, and Santa Fe counties

- Currently held by Elizabeth J. Travis

Second Judicial District – Two Positions

Bernalillo County

- One currently held by Aja N. Brooks
- One currently held by Tomas J. Garcia

Third and Sixth Judicial Districts – New Position

Dona Ana, Grant, Hidalgo and Luna counties

Pursuant to the redistricting rule changes, a new position has been

created in this district. Members whose principal place of practice (address of record) is in El Paso County, Texas, shall also be represented by and vote in this district.

- Vacant

Seventh and Thirteenth Judicial Districts – Two New Positions

Catron, Sierra, Socorro, Torrance, Cibola, Sandoval, and Valencia counties

Pursuant to the redistricting rule changes, two new positions have been created in this district.

- Vacant
- Vacant

Ninth and Tenth Judicial Districts – One Position

Curry, Roosevelt, DeBaca, Harding, and Quay counties

- Currently held by Mitchell Mender

Twelfth Judicial District – One Position

Lincoln and Otero counties

Pursuant to the redistricting rule changes, one of the positions in this district has been eliminated.

The current commissioners holding seats are:

- Erinna M. Atkins
- Michael Eshleman

Out-of-State District – One Position

Pursuant to the redistricting rule changes, a new position has been created for a bar commissioner whose principal place of practice (address of record) is in New Mexico and shall represent the interests of out-of-state members. The commissioner for the out-of-state district shall be a full commissioner of the Board and entitled to hold office, vote, participate in committees and seek reimbursement as any commissioner. Members whose principal place of practice (address of record) is in El Paso County, Texas, shall be represented by and vote in the third and sixth Judicial Districts.

Send nomination petitions to:

Executive Director Richard B. Spinello, Esq.
State Bar of New Mexico
PO Box 92860, Albuquerque, NM 87199-2860
5121 Masthead St. NE, Albuquerque, NM 87109
sbnm@nmbar.org

Petitions must be received by 5 p.m., Oct. 22.

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

NOMINATION PETITION FOR BOARD OF BAR COMMISSIONERS

We, the undersigned, members in good standing and who have a principal place of practice (address of record) in the respective district of the nominee, nominate _____, with a principal place of practice (address of record) in and representing the _____ Judicial District.
Date Submitted _____

(1) _____
Signature

Type or Print Name Address

(2) _____
Signature

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(3) _____
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(4) _____
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(7) _____
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(9) _____
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(10) _____
Signature

Type or Print Name Address

PROPOSED CHANGES TO RULE 24-101 NMRA - SECTIONS C AND D

C. Board membership and powers. The Board of Bar Commissioners shall be the governing board of the state bar. Each commissioner shall have one (1) vote. Except as otherwise provided by Paragraph J, the board shall consist of twenty-two (22) bar commissioners, consisting of those district bar commissioners elected under Paragraph D, and the chair of the young lawyers division and the elected delegate of the senior lawyers division. The board has perpetual succession and may use a common seal. The board may employ an executive director. The board may adopt bylaws applicable to the state bar and the board; provided, however, any bylaws inconsistent with these rules shall be invalid.

D. Bar commissioner districts. Bar Commissioner Districts shall follow the established State Judicial Districts and each district shall be represented by the indicated number of district bar commissioners, each of whom shall have their principal place of practice in the judicial district(s) represented and shall be nominated and elected by the members of the bar in accordance with this rule and the bylaws of the state bar:

- (1) the first judicial district, which consists of Rio Arriba, Los Alamos, and Santa Fe counties, shall be represented by three bar commissioners;
- (2) the second judicial district, which consists of Bernalillo county, shall be represented by six (6) bar commissioners;
- (3) the third and sixth judicial districts, which consist of Dona Ana, Grant, Hidalgo and Luna counties, shall be represented by three (3) bar commissioners;
- (4) the fourth and eighth judicial districts, which consist of Taos, Colfax, Union, Mora, San Miguel, and Guadalupe counties, shall be represented by one (1) bar commissioner;
- (5) the fifth judicial district, which consists of Chaves, Eddy and Lee counties, shall be represented by one (1) bar commissioner;
- (6) the seventh and thirteenth judicial districts, which consist of Catron, Sierra, Socorro, Torrance, Cibola, Sandoval and Valencia counties, shall be represented by two (2) bar commissioners; and
- (7) the ninth and tenth judicial districts, which consist of Curry, Roosevelt, De Baca, Harding and Quay counties, shall be represented by one (1) bar commissioner.
- (8) the eleventh judicial district, which consists of McKinley and San Juan counties, shall be represented by one (1) bar commissioner.
- (9) the twelfth judicial district which consists of Lincoln, and Otero counties, shall be represented by one (1) bar commissioner.
- (10) Out-of-state district. There shall be one bar commissioner whose principal place of practice is in New Mexico and shall represent the interests of all out-of-state members except for those members who reside in El Paso county, Texas who shall be represented by the commissioners of the third and sixth Judicial Districts. The commissioner for the out-of-state district shall be a full commissioner of the Board and entitled to hold office, vote, participate in committees and seek reimbursement as any commissioner.

NEW MEXICO'S DIVERSITY CLERKSHIP PROGRAM

and Lessons From the ABA Judicial Clerkship Program Graduates



By Justice David K. Thomson, Associate Justice, New Mexico Supreme Court, ABA/Judicial Division/Appellate Judges Conference

When I joined the ABA's Judicial Division as a Trial Court Judge, one of the first programs I participated in was the Judicial Clerkship Program (JCP). Now, as a Justice on the New Mexico Supreme Court, and inspired by my experience with the JCP, I have begun an initiative that mentors, educates, and creates externship opportunities for minority and disadvantaged students. Information on the program can be found at: www.nmbar.org/judicial-clerkship.

The New Mexico Judicial Clerkship Program provides opportunities to students who are members of traditionally underrepresented groups in the legal profession, particularly in the judiciary. These groups include, but are not limited to, members of racial or ethnic minorities, women, those who identify as LGBTQIA+, students with disabilities, and students who are economically disadvantaged.

I work with two talented lawyers, who are both graduates of the ABA program. I sat down with them to discuss how their experiences informed their life decisions, and how New Mexico's program might improve diversity in clerking, appellate practice and the judiciary. I interviewed Ms. Denise Chanez, who continues her work with the State Bar's Committee on Diversity in the Legal Profession and Ms. Roshanna Toya who is a law clerk with our Court of Appeals.

Justice David Thomson: Ms. Chanez and Ms. Toya, thank you for sharing your experience with me today. Let's start with an introduction. When did you participate in the ABA's Judicial Clerkship Program and what are you doing now?

Denise Chanez: I participated in the ABA Judicial Clerkship Program in February 2005 in Salt Lake City, Utah. I was in my second year of law school. After graduating from law school, I clerked for Justice Ed Chavez at the New Mexico Supreme Court. Fifteen years after attending the clerkship program, I am now a director/shareholder at the Rodey Law Firm. My practice is primarily focused on defending healthcare providers in medical malpractice cases. I am also the co-chair of the State Bar of New Mexico's Committee on Diversity in the Legal Profession.

Roshanna Toya: Although the ABA typically invites only ABA-accredited law schools and students to participate in the JCP, the ABA has extended the opportunity to the Pre-Law Summer Institute for American Indians and Alaska Natives (PLSI) and its students. Housed at the University of New Mexico School of Law, PLSI prepares Indian law students for the rigors of law school by simulating the first year in an eight-week program. PLSI annually invites about three Indian students to participate in the JCP. During my 2L year, in 2018, I was selected by the PLSI Judicial Clerkship Committee to attend.

In addition to raising a family, I am currently clerking at the New Mexico Court of Appeals with Judge Shammara H. Henderson. I also serve as an Appellate Judge for the Pueblo of Isleta Appellate Court. I keep busy with volunteering on various boards, including the Task Force on Research on Violence Against American Indian and Alaska Native Women for the U.S. Department of Justice; the Juvenile Justice Advisory Committee of New Mexico, and; this year, I serve as President of the New Mexico Chapter of the Federal Bar Association.

JDT: Ms. Chanez, tell me what you learned through the ABA program that helped you or made you prepared for your clerkship with Justice Chavez.

DC: More than anything, the ABA program erased any doubt in my mind about applying for a clerkship. I remember listening to law clerks of color speaking about their experiences and encouraging us to apply. While I was already interested in clerking, hearing them speak solidified my desire to pursue a clerkship. Being the first in my family to graduate from college, and then, of course, law school, I had never known anyone who had clerked before. Seeing lawyers of color who were clerking for state and federal judges helped me see that I could do it, too. I was also really inspired by the fact that there was an entire program dedicated to increasing the number of diverse students applying for clerkships.

JDT: Ms. Toya, you are a more recent graduate. In fact, you and I met at this program. Can you tell members of the Judicial Division how you benefited from the ABA program and what prepared you for your clerkship?

RT: I benefited from the ABA JCP by interacting with judges representing different courts and geographic areas across the country. A main learning point was that judges do care about strengthening diversity in the courts. Judges encouraged each of us—representing very diverse backgrounds—to apply to a clerkship position. The JCP facilitated opportunities for students to connect in small groups with judges. We worked through exercises designed to challenge our research and writing skills and were able to receive feedback on our work from the judges.

The program ultimately energized my clerkship application because multiple judges directly reviewed and commented on my cover letter and resume. The process pushed me to highlight or reframe aspects of my life or credentials.

Also, forming and maintaining meaningful connections with judges across the federal and state judiciaries is a key part of the JCP, just like the one you and I formed, Justice Thomson. We had to travel all the way to Chicago, Illinois, from New Mexico, to be able to meet in person. Without the JCP, I'm not sure I would have had the opportunity to reach out to a New Mexico Supreme Court Justice to serve as a mentor.

JDT: This summer we are starting our state program described at the beginning of the article. I would benefit from your thoughts about what parts of this program you think are essential to increasing opportunities for minority and disadvantaged students.

DC: My husband is an appellate lawyer, and we have often talked about the lack of diversity in the appellate bar. Having a program that is specifically designed to offer opportunities to diverse law students to get exposure to appellate courts is a fantastic way to encourage more diversity in the appellate bar both in terms of lawyers and judges. The program is special in that it does not consider students' grades in the selection process. Applicants have to submit a written statement that will provide insight into their writing ability, but grades are not a factor. I think this is crucial because some students might otherwise weed themselves out based on a false belief that their grades are not good enough. The point of the program is to give diverse and disadvantaged students an opportunity that they might not otherwise have had, regardless of their academic achievement. This really opens up the opportunity for more students to get exposure to the appellate courts, boost their confidence and inspire them to pursue clerkships.

RT: I think that the very existence of the program is fundamental to unlocking opportunities for minority and disadvantaged students. We are often the first ones to self-eliminate from prestigious positions like clerkships because we don't think we fit the mold for those opportunities. Carving out an opportunity like this for people of color really pushes us to strive toward the opportunity, because it is a special place reserved and intended for us. So many people of color and disadvantaged students have such important life experiences that can benefit any chambers we may be selected for. Incorporating the talent of those students will benefit the judiciary and the nation as a whole, because the result will be diverse contributions to shaping and upholding the law.

In my experience, it has often been just one person, or one program, that really pushed me to set aside the instinct to stop self-eliminating and apply! I am so happy that this program can be one of those programs that unlocks so many opportunities for students. This program can also partner with existing programs such as the PLSI Judicial Clerkship Program, to combine resources and make sure there are strong candidates who apply, that might not otherwise do so.

JDT: Do you see any benefit to broader diversity goals including a pipeline to the judiciary?

DC: Absolutely! There are a lot of different paths to the judiciary, and clerking is certainly one of them. The more that diverse students get started on the clerkship path, the more they will consider judicial positions as they progress in their careers. Just being exposed to the appellate courts, working with judges and sharing ideas with them helps to build confidence in young lawyers, and it helps them to see that being a judge is something that is actually attainable for them. I have mentored several diverse women attorneys whose confidence grew immeasurably after they clerked and who have aspirations of becoming judges someday.

RT: I definitely see clerking as a pipeline to the judiciary. I think having a clerkship humanizes the people of the judiciary, and especially the bench, when you get a glimpse of what happens "behind the scenes." It helped me to realize that all the judges I've worked with were once in my shoes and are still people just like me. They have families, hobbies, and get things wrong once in a while, just like the rest of us. Humanizing the judges and the role of the judiciary is an important step in being able to envision opportunities for ourselves as people of color. In the court that I clerk for—the New Mexico Court of Appeals—four of the ten judges are women of color. Being able to see that and work among these accomplished women help me to set similar career ambitions for myself. In fact, it makes me even more motivated to reach for those levels, because in a state where American Indians so significantly shape the culture of our state, there has never been one who has served on a high state court. A similar sentiment is true for federal courts. So few American Indian men, and only one American Indian woman have sat on a federal district court.

In addition to humanizing the judiciary, clerking creates a set of skills in attorneys that will last a lifetime. Clerking greatly increases the confidence and competence of attorneys. It builds confidence when you know that you have done diligent research, sifted through the hundreds or thousands of pages of briefing and records proper, and then carefully crafted written pieces which the judges can use in their final opinions. Clerkships also build competence because they expose you to such high levels of written and oral advocacy that you can't help but be pushed to interpreting and articulating the law and analyses in a similarly competent way.

I think those three things combined, a humanized view of the judiciary, confidence, and competence, will lead more people of color back to serve as judges in the future. A judgeship, like a clerkship, is also an attainable career ambition, but will never be such if we self-eliminate.

JDT: You are speaking to hundreds of judges and justices across this country at all levels, areas of jurisdiction, and experience. What would each of you tell them is the most important thing to consider when evaluating a law student's clerkship application.

DC: As with any legal job, I think it is easy to get caught up in GPAs, class rank, law-school ranking, and other data points that do not always reflect the full picture of what an applicant brings to the table. Of course, these metrics can be helpful in getting a sense of how well a student performed in law school and of a student's writing ability. However, I respectfully submit that clerkships are not just about writing opinions and analyzing facts and law. When I encourage law students to apply for clerkships, I do so because I think they will gain an invaluable experience seeing how the justice system works from the inside and also developing a lifelong bond with the judge for whom they clerked. I do not remember all of the opinions that I helped write as a law clerk, but I absolutely cherish the memories I have of working through those opinions with Justice Chavez and learning from him. My admiration for him has only grown over the years, and I am really blessed to know that I can still call him to this day for advice and support. So, I would encourage judges to look beyond the GPAs and class rank to see the story behind the students' applications, particularly those who have overcome adversity, who have demonstrated a commitment to hard work, and those who show a passion for growing and learning. I suspect that those are the clerks who will never let you down, and the ones who will be your friends for years to come.

RT: The most important thing to consider is an applicant's reason for seeking a clerkship. I believe that if judges inquire into the reason an applicant is seeking a clerkship as part of their selection process, they will be enlightened by the answers. There are many reasons why people chose clerkships. Oftentimes when it comes to people of color, we seek clerkships as a way to develop our skills so that we may work toward being the most competent and confident attorney, before going on to serve our communities and people of color. American Indian people often have public service at the heart of our mission as attorneys.

JDT: You are speaking to law students across this country, what would you tell them about participating in the ABA program or the program started by the New Mexico Bar:

DC: I would encourage diverse law students to keep an open mind about their legal careers. Even if a law student already knows what he or she wants to do, sometimes special opportunities come your way, and it opens up a whole new door to something that he or she may not have known would inspire them. If a diverse law student has an opportunity to participate in one of these programs, I say take it! It will only give them a chance to see another side of the law and develop great relationships with judges. Whether or not the law student ends up clerking or becoming a judge, having the experience is well worth it.

RT: Participating in the ABA Judicial Clerkship Program provides the opportunity to open doors that you did not even realize were worth opening. If you are curious about a clerkship, or think you may have an interest in a clerkship, it would be worth your time to attend. If you weren't convinced before you entered the program, you will be convinced that you want a clerkship before you leave. And further, you will have connections, resources, and a polished resume and cover letter to take home with you to begin the process of submitting to courts across the country. You will, most importantly, leave revitalized, knowing that there are judges throughout the country who are committed to seeing diversity in the judiciary, and that it is worth your while to just apply.

JDT: Thank you both for taking the time. I think you are a tribute to the ABA Judicial Clerkship Program and to the New Mexico Bar. And thank you for your help in our local efforts to expand opportunity and diversity in our profession. Be safe.

Stay tuned for a corresponding October episode on the *SBNM is Hear* podcast series! Justice David K. Thomson will be chatting further with Roshanna Toya and the YLD Chair, Allison Block-Chavez about their clerkship experience and the value it has had on their careers!

AN IMPORTANT CONVERSATION: Suicide Awareness

**Help Is Always
Available
24/7 Confidential
Helplines**

**National Suicide
Prevention Lifeline**
800-273-8255

**New Mexico Crisis
and Access Line**
855-NMCrisis (622-7474)

**New Mexico Judges and
Lawyers Assistance Program**
Judges: 888-502-1289
Lawyers and Law Students:
800-860-4914

**The Solutions Group
(Employee Assistance Program)**
866-254-3555

Recently, the State Bar of New Mexico Judges and Lawyers Assistance Program learned of several suicides that have occurred amongst our legal community. The information below is in an effort to educate and start the process of healing through these tragedies. In these unprecedented times in our world, we know countless many are suffering from anxiety, depression and addiction.

There is one death by suicide in the world every 40 seconds, and suicide is the second leading cause of death for 15-29 year olds.

The N.M. Judges and Lawyers Assistance Program have been in contact with Dr. Avi Kriechman, the Principal Investigator for ASPYR (Alliance-building for Suicide Prevention & Youth Resilience) at the UNM HSC Department of Psychiatry and Behavioral Sciences. Dr. Kriechman is an expert in his field and educates many on the topic of suicide, what those left grieving may be experiencing, and the process of healing through such tragedies.

Below is a video of Dr. Kriechman's presentation on Keeping Young People Safe: How We Can All Help Prevent Suicide. We are also sharing some more resources provided by Dr. Kriechman and his department.

Learn about the grieving process and how it can be different for everyone when the loss is due to suicide. Know what to say to your friend, colleagues, or community group who may have recently lost someone. If you are thinking about suicide, or are worried a friend may be contemplating suicide, immediate action is critical.

Suicide Resources

Survivors of Suicide, Albuquerque, N.M.

As survivors of suicide SOS believes that sharing personal stories will begin the journey to a place of healing and helping others to heal. www.sosabq.org

Keeping Young People Safe: How We Can All Help Prevent Suicide, UNM Community LectureSeries (2020)

This substantive presentation covers the many myths that get in the way of reaching out to young people who may need our help; tools to identify those at risk of harming themselves; and how to increase their safety at home, school and in the community. Dr. Kriechman will discuss resources we can use and how to support friends and family who have been left behind to cope with loss. <https://bit.ly/3kMRF0u>

Friends for Survival: Pathways to Purpose and Hope

A guide for creating a sustainable grief support organization for families and friends after a suicide death. <https://friendsforsurvival.org/helpful-links>

American Association of Suicidology

The AAS' mission is to promote the understanding and prevention of suicide and support those who have been affected by it. <https://suicidology.org/resources/suicide-loss-survivors/>





Statement on the Passing of **JUSTICE RUTH BADER GINSBURG**



THE NEW MEXICO SUPREME COURT is saddened by the passing of one of the great jurists of our time and a national treasure. Throughout her career, Justice Ruth Bader Ginsburg opened doors for gender equality across this country, including New Mexico. She dedicated her life to the principle of equal justice under the law. She was recognized by the National Constitution Center on the day before she passed, which was Constitution Day, for advancing liberty and equality for all. Justice Ginsburg will always be remembered as a champion of the rule of law.

A handwritten signature in black ink, appearing to read "Michael E. Vigil".

Michael E. Vigil
Chief Justice
New Mexico Supreme Court

Opinions

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

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

Effective September 4, 2020

PUBLISHED OPINIONS

A-1-CA-37055	State v. I Marquez	Reverse/Remand	09/01/2020
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UNPUBLISHED OPINIONS

A-1-CA-38487	R Tast v. County of San Juan	Affirm	08/31/2020
A-1-CA-38535	CYFD v. Charlie F	Affirm	08/31/2020
A-1-CA-38550	CYFD v. Tia M.	Affirm	08/31/2020
A-1-CA-38723	S Sabin v. Western Refining	Affirm	08/31/2020
A-1-CA-38630	State v. L Scott	Affirm	09/01/2020
A-1-CA-38158	State v. M Price	Affirm	09/02/2020
A-1-CA-38363	CYFD v. Joseph T	Affirm	09/02/2020
A-1-CA-38506	State v. R Arroyo	Affirm	09/02/2020
A-1-CA-37739	State v. L Word	Affirm	09/03/2020

Effective September 11, 2020

UNPUBLISHED OPINIONS

A-1-CA-37806	M Estep v. M Estep	Affirm	09/08/2020
A-1-CA-38580	L Mungia v. Ringing Bells, LLC	Affirm	09/08/2020
A-1-CA-38123	RBS Citizens v. C Allen	Affirm	09/09/2020
A-1-CA-38387	State v. R Shukshin	Affirm	09/10/2020
A-1-CA-38555	City of Roswell v. J Monafo	Affirm	09/10/2020
A-1-CA-38556	City of Roswell v. J Monafo	Affirm	09/10/2020

Effective September 18, 2020

PUBLISHED OPINIONS

A-1-CA-34272	State v. R Widmer	Affirm	09/15/2020
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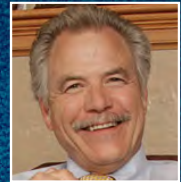
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WILDLIFE AND FEDERAL REGULATORY ROLLBACKS

Under the Trump Administration

By Nicholas Arrivo and Bruce Wagman

Even with few legislative victories since inauguration, the Trump Administration demonstrated how deregulation can lead to significant changes in wildlife policy through its strategy of repeal of federal regulations and substantial changes to agency rules. This approach has been wide-ranging and loudly publicized: Executive Order 13,771, one of the first issued, directed federal agencies that “for every new regulation issued, at least two prior regulations [shall] be identified for elimination.” 82 Fed. Reg. 9339 Environmental (and animal protection) regulations have been targeted “for elimination” with particular zeal. One environmental “regulatory rollback” database tallies more than ninety such actions as of September 2020. Wildlife and their habitat have been among the most consistent victims of this deregulatory agenda. The repeal of the Refuge Rule and the reinterpretation of the Endangered Species Act illustrate the dramatic weakening of federal wildlife policy under the Trump Administration.

The deregulation began with a campaign to wipe out Obama-era regulations using the Congressional Review Act of 1996 (“CRA”). 5 U.S.C. §§ 801-808 (2006). The CRA enacts a special procedure by which Congress, with the assent of the President, may override a recently promulgated agency regulation using an expedited and filibuster-proof joint resolution. From March through May 2017, fifteen Obama administration regulations were repealed using the CRA’s fast-track procedure. In contrast, only *one* regulation had previously been repealed using the CRA in the twenty-one years since it was adopted.

Among the casualties of this CRA-enabled blitz was a 2016 U.S. Fish and Wildlife Service regulation that protected native carnivores on the 76 million acres of national wildlife refuges administered by the Service in Alaska (the “Refuge Rule”), Fed. Reg. 52,247 (Aug. 5, 2016). The Refuge Rule was adopted in response to Alaska’s aggressive “predator control” mandate. Under Alaska’s Intensive Management statute, Alaska Statutes § 16.05.255, the state Board of Game is directed to suppress predator populations for the express purpose of inflating big game populations to provide increased numbers of animals for hunters. The Board of Game authorized state agents and the general public to kill wolves, black bears, brown (grizzly) bears, and coyotes using cruel, controversial, and ruthlessly efficient methods including aerial gunning, snaring, steel-jawed leghold trapping, and baiting (where animals are lured with piles of food and shot while they eat). In an especially offensive move, the Alaska agency even allows hunters to kill mother bears who are with cubs in their winter dens.

The Refuge Rule prohibited these practices on national wildlife refuges, recognizing that Alaska’s state-sponsored massacre of native predators was fundamentally incompatible with Congress’ mandate to administer the National Wildlife Refuge System to “ensure that the biological integrity, diversity, and environmental

health of the System are maintained for the benefit of present and future generations of Americans.”¹ The National Park Service adopted a parallel rule prohibiting these practices on Alaska’s National Preserves (another type of federally owned and protected land, distinct from national wildlife refuges).² Collectively, these rules protected predators on about 100 million acres of federal land in Alaska. Both agencies emphasized the fundamental conflict between the *purpose* of Alaska’s intensive management program – suppressing predator populations to artificially inflate big game populations – and their mandates to manage for natural ecosystem diversity.

Both federal rules were killed in the first term of the Trump administration. The Refuge Rule was effective for less than a year before it was repealed using the CRA in early 2017. Pub. L. 115-20. The National Park Service’s Preserve rule survived longer because it was insulated from fast-track override under the CRA due to its earlier date of adoption. Although appointed officials directed NPS to reverse the rule during the first year of the administration, the substantially slower mechanism of an administrative rulemaking finalized the repeal in June 2020.³ With both rules repealed, the practices authorized by Alaska’s Board of Game are now allowed on an additional 100 million acres of federal land. The administration’s official policy of deference to states has since been invoked to dramatically expand state-regulated hunting programs on National Wildlife Refuges across the country. U.S. Fish and Wildlife Service rules adopted each year from 2017-2020 opened new federal refuges to hunting – in some cases, for the first time – in consecutive years.⁴

The administration has even taken aim at the long-standing and popular Endangered Species Act (“ESA”), which the Supreme Court, in *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978), praised as “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” The ESA seeks to conserve and recover imperiled species by listing them as “threatened” or “endangered” based on an objective assessment of threats to their survival using the “best scientific and commercial data available.” 16 U.S.C. § 1533. Once a species is listed, the ESA provides powerful protections. For example, ESA Section 7, 16 U.S.C. § 1536(a)(2), requires biological consultation to ensure that activities authorized, funded, or carried out by the federal government do not jeopardize listed species or their habitat. Further, ESA Section 9, 16 U.S.C. §§ 1538 strictly prohibits the direct or incidental “take” of listed species, defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

In 2019, the Trump administration finalized a sweeping set of amendments to the regulations implementing the ESA.⁵ This package of regulatory rollbacks, which are being challenged in federal court by a coalition of conservation organizations

and a group of more than twenty states and municipalities, collectively represents the most significant change to the ESA's implementation since the 1970s. While these changes affect a wide swath of the listing, delisting, and Section 7 consultation processes, two provisions stand out as particularly harmful to imperiled wildlife.

First, the new rules rescinded a decades-old regulation that automatically extended the ESA's prohibition on taking to all threatened species, unless a "special rule" for a particular species had been adopted by the relevant federal agency, for example the U.S. Fish and Wildlife Service under 16 U.S.C. § 1533(d). "Take" is a broadly defined term, which includes virtually any disturbance of an animal, and protects listed animals from both direct harm (whether intentional or not) as well as indirect harm through the destruction of habitat. While the ESA only expressly prohibits taking of *endangered* species, the former rule automatically extended those same protections to *threatened* species. Now, species added to threatened list (like the wolverine, which is expected soon) will no longer presumptively receive the most fundamental protections afforded by the ESA.⁶ Protections by special regulation on a species-by-species basis is not a substitute: less than one quarter of the 300 species listed have received a species-specific regulation, and the Service's has a regulatory backlog of over 500 species awaiting consideration for ESA listing. Default protections ensure that threatened species are not irreparably harmed while waiting for species-specific regulations that may take years to arrive (or never arrive at all). Because of the administration's rollback, additional listed species threatened with extinction could be exposed to human-caused injury, harassment, and killing while waiting for more focused regulatory consideration.

Second, the new rules put forward a new interpretation of a statutory term ("foreseeable future") that is key to assessing whether a species should be listed as endangered on the basis of long-term threats such as habitat loss due to climate change. The ESA, 16 U.S.C. § 1532(6), (20), defines "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," and "threatened species" as "any species which is likely to become an endangered species *within the foreseeable future* throughout all or a significant portion of its range." While the ESA does not define "foreseeable future," a 2009 Department of Interior Solicitor's memo, M-37021, at 13 (Jan. 16, 2009), advised the agency to interpret the term based on "the best available data that allow predictions into the future...so far as those predictions are reliable." Departing significantly from both the text of the ESA and this guidance, the new rules require that "both the future threats and the species' responses to those threats are *likely*," meaning "more likely than not."⁷

This interpretation effectively raises the evidentiary bar required to list a species as threatened on the basis of projected future threats from "reliable" to "likely." It carries potentially grave consequences in an era when scientific projections of the impact of climate change on species and their habitat, though necessarily uncertain, must motivate conservation decisions. Under the new rules, climate-sensitive species like the sea ice-dwelling Pacific walrus, or the snowpack-reliant wolverine, may not be eligible for

ESA listing status until it is too late to pull them back from the brink of extinction. Indeed, it is not even clear that the polar bear – universally recognized as a symbol for the habitat-destroying effects of climate change, and listed as "threatened" on the basis of projected sea ice loss over a 45-year time horizon⁸ – would qualify for listing today.

While the 2019 ESA rollbacks are the clearest example of the administration working to weaken or circumvent this formidable law, they are not the only ones. A recent executive order has directed the entire federal government to circumvent mandatory ESA consultation provisions in the interest of expediting economic recovery from the COVID-19 pandemic.⁹ The pending rule to strip ESA protections from gray wolves across the continental United States (where they occupy less than 10% of their historic range) reflects the administration's constrained view of the ESA's mandate to conserve and recover the country's most imperiled (and most iconic) wildlife species.¹⁰ Another wave of rollbacks weakening ESA implementation by making it more difficult to designate and protect "critical habitat" for listed species have already been proposed.¹¹ This administration has amply demonstrated how deregulation can lead to significant changes in wildlife policy, and additional rollbacks before the election are all but certain.

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Endnotes

¹ 81 Fed. Reg. at 52,250; 16 U.S.C. § 668dd(a)(4)(B) (National Wildlife Refuge System Improvement Act).

² National Park Service, "Final Rule: Alaska; Hunting and Trapping in National Preserves," 80 Fed. Reg. 64,325 (Oct. 23, 2015).

³ National Park Service, "Final Rule: Alaska; Hunting and Trapping in National Preserves," 85 Fed. Reg. 35,181 (June 9, 2020).

⁴ 82 Fed. Reg. 37,398 (Aug. 10, 2017); 83 Fed. Reg. 45,758 (Sept. 10, 2018); 84 Fed. Reg. 47,640 (Sept. 10, 2019); 85 Fed. Reg. 54,076 (Aug. 31, 2020).

⁵ 84 Fed. Reg. 44,753 (Aug. 27, 2019) (ESA Section 4(d) regulation); 84 Fed. Reg. 44,976 (Aug. 27, 2019) (ESA Section 7 regulations); 84 Fed. Reg. 45,020 (Aug. 27, 2019) (ESA Section 4 regulations).

⁶ 84 Fed. Reg. 44,753.

⁷ 84 Fed. Reg. 45,052 (emphasis added).

⁸ 73 Fed. Reg. 28,212 at 253-54 (May 15, 2008) (polar bear listing rule).

⁹ Executive Order on Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities (June 4, 2020) (available at: <https://www.whitehouse.gov/presidential-actions/accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>).

¹⁰ 84 Fed. Reg. 9648 (Mar. 15, 2019).

¹¹ 85 Fed. Reg. 47,333 (Aug. 5, 2020); 85 Fed. Reg. 55,398 (Sep. 8, 2020).



The Migratory Bird Treaty Act: *Intentional vs. Incidental*¹

By Guy Dicharry

Woodrow Wilson signed the Migratory Bird Treaty Act (“MBTA”) in 1918. The MBTA followed the devastation of migratory bird populations during the late 19th and early 20th centuries from commercial demands for plumage to adorn ladies’ hats and meat for fine dining. The law implemented a treaty with Great Britain, signed on behalf of Canada, then a British colony. MBTA today protects 1,000 species of migratory birds.

This article explores the tension between two mutually exclusive interpretations of MBTA’s Section 2, which makes it unlawful for persons “at any time, by any means or manner to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess . . . any migratory bird.” One question pits wildlife advocates against industry lobbyists, is an issue in MBTA prosecutions, and divides the appellate circuits. Does MBTA prohibit incidental take of protected species?

Pre-2017: A Difference of Opinion in the Federal Courts

Three decisions preceding the Interior Solicitor opinions discussed below illustrate the divergent approaches by the federal courts to interpreting Section 2 of the MBTA.

Moon Lake Electric Association, an electric coop in Colorado, was charged in 1998 with violating MBTA. Moon Lake had poles used by raptors scouring the land for food. The government alleged that birds were injured or killed because Moon Lake did not install “inexpensive” electrocution prevention measures on its poles. Moon Lake argued MBTA did not apply to the unintentional electrocutions because the law targets hunting and poaching. The trial court held intent was irrelevant because MBTA imposes a strict liability standard by “proscribing taking and killing ‘by any means or in any manner.’”

Apollo Energies and another oil drilling operator were convicted of taking or possessing migratory birds after dead birds were discovered in their equipment. On appeal the Tenth Circuit in 2010 held the MBTA take provision is a strict liability offense and rejected defendants’ position that an intent to kill is an element of the offence.

Citgo was indicted for using uncovered oil-water separators which caused the deaths of birds. The trial court convicted. The Fifth Circuit in 2015 reversed, comparing the take provisions of the Endangered Species Act, the Marine Mammal Protection Act, and MBTA. The Fifth Circuit reasoned that because the other laws included “harm” and “harass” they prohibited acts MBTA did not as it lacked those terms. It concluded MBTA prohibited only intentional acts leading to injury to migratory birds.

The Tompkins Opinion

Ten days before the end of the Obama Administration, Hilary Tompkins, solicitor (i.e., general counsel) of the Interior Department issued Opinion M37041, concluding that incidental take violated MBTA.

Tompkins’s conclusion was backed by these facts:

- The original version of MBTA prohibited the taking of birds without reference to mental state, thus creating a strict liability offense.
- The original MBTA prohibited hunting and used terms such as “take,” “kill,” and “possess.”
- Congress amended MBTA, placing “by any means or in any manner” at the beginning of Section 2 as a modifier to all prohibited acts.
- After a district court enjoined military training, Congress in 2002 exempted military training from the law but gave the Fish and Wildlife Service authority to suspend or incidental take. The need to carve out a military exception showed MBTA already prohibited incidental take.
- Fish and Wildlife interpreted MBTA as applying to incidental take as demonstrated in enforcement cases arising out of open oil pits, power line electrocutions, contaminated waste pools, pesticide applications, and oil spills and by implementing a program to authorize incidental take for activities outside the scope of permits,
- The United States government affirmed to international bodies that MBTA is a strict-liability statute that applies to incidental take.

The Jorjani Opinion

Daniel Jorjani, Principal Deputy Interior Solicitor, in December 2017 issued Opinion M37050 that argued incidental take did not violate MBTA. Jorjani concluded that MBTA prohibitions on pursuing, hunting, taking, capturing, and killing, applied only to actions that have as their purpose taking or killing birds.

Jorjani emphasized these points from legislative history:

- The Weeks-McLean Act of 1913 attempted to protect birds through federal legislation regulating hunting seasons. Courts found that law unconstitutional as Congress had no power to regulate hunting.
- Conservationists then used the Constitution’s treaty power to achieve the same goal. Once the treaty was signed, Congress could fulfill the terms of a treaty even though it lacked constitutional authority to legislate upon the same subject. Thus the United States signed a treaty requiring it to establish closed seasons and to prohibit taking of nests and eggs.
- In 1936, Congress amended Section 2 of by adding “pursue,” moving “by any means” to the beginning of the operative clause, and placing “at any time or in any manner” was after “by any means.”

- Congress adopted legislation allowing incidental taking during military training.
- “Incidental take” does not appear in either MBTA or in the implementing regulations.

After the Tompkins opinion was published, the Fish and Wildlife Service issued a definition of “incidental take” as “take of migratory birds that directly and foreseeably results from, but is not the purpose of an activity.” Federal courts have held MBTA includes prohibitions on incidental take with the requirement the government establish proximate cause in order to convict. “Proximate cause” is something “which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened.” In two cases where migratory birds died after exposure to pesticides, courts analogized the duty to protect birds from toxic chemicals to state tort laws imposing strict liability on exposure to ultrahazardous or abnormally dangerous materials.



Jorjani designated the “relevant portion” of MBTA as “it shall be unlawful at any time, by any means, or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird, [or] any part, nest, or egg of any such bird.” His analysis begins with the operative verbs without first addressing the statutory predicate “by any means or in any manner.” Parsing the operative verbs of Section 2, Jorjani divides them into two groups: three (pursue, hunt, capture) which “unambiguously require affirmative and purposeful action” and two (kill, take) which “may refer to active or passive conduct.” Jorjani combines all five of the “operative” verbs together without any further analysis of how “take” and “kill” need not be affirmative acts. The opinion quotes from a dissent by Justice Scalia in support of the opinion that the five operative verbs in Section 2 are “all affirmative acts.”

A Brief Comment on Construing the MBTA

The plain language of Section 2 prohibits a broad range of conduct that results in the killing or taking of migratory birds. Jorjani limits the application of the MBTA by employing an unnecessarily narrow reading of both the statutory predicate and the operative verbs of Section 2.

According to the general terms canon, “General terms are to be given a general meaning.” The U.S. Supreme Court tells us “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” Viewing the words “at any time, by any means or manner” through the general terms canon gives an expansive view of what constitutes taking or

killing “by any means or manner.” A literal reading of “any” would include any means that intentionally or incidentally kills or takes a migratory bird in any manner. The words “at any time, by any means or manner” cannot simply be a reference to hunting and poaching.

Post-2017

A number of state attorneys general challenged the Jorjani opinion in a 2018 federal lawsuit, alleging violations of the Administrative Procedures Act. In August 2020 the court decided the summary judgment motion and cross motion in favor of the plaintiffs and against the Department of Interior. Judge Valerie Caproni of the Southern District of New York opened the opinion with, “It is not only a sin to kill a mockingbird, it is also a crime.” Judge Caproni evaluated the positions set out by both Tompkins and Jorjani, and concluded, “Section 2’s clear language making it unlawful “at any time, by any means or in any manner, to . . . kill . . . any migratory bird” protected by the conventions is in direct conflict with the Jorjani Opinion.”

Congressman Alan Lowenthal in January 2020 introduced a bill, H.R. 5552, to amend MBTA to prohibit “incidental take” due to commercial activity and mandates Fish and Wildlife Service regulate incidental take through permitting and fees. The Committee on Natural Resources on September 1 sent the bill to the House and recommended its passage.

On February 3, 2020, the Fish and Wildlife Service published a proposed rule to codify the Jorjani opinion by amending 50 C.F.R. §10.14. The proposed rule clarifies that MBTA applies only to intentional injuring or killing of birds and conduct that results in the unintentional and incidental injury or would not be prohibited. On June 5, 2020, the Service published a draft environmental impact statement with a 45-day public comment period ending July 20, 2020. The Service’s preferred alternative in the draft Environmental Impact Statement is to “promulgate regulations defining the scope of the MBTA to not prohibit incidental take”.

Conclusion

All of us — and all of the MBTA activity described above — must await the results of November 3, 2020. As we have seen, elections have consequences, and the future of the MBTA depends greatly upon the individuals we elect this fall.

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Endnotes

¹ For version with endnote citations, see the electronic version at *Animal Law Section State Bar of New Mexico web page* <https://nmba.org/animallaw> click on “Articles and Resources” link for document.

A New Federal Scorched Earth Approach to Rare Earth Production

By Logan Glasenapp

Hardrock mining, as a practice and an industry, has always embodied the Old West. In fact, to this day the regulatory apparatus applied to the hardrock mining industry still allows for the kind of “gung ho” individualism and cut-throat resource accumulation that characterized that time period.¹ Of the extractive industries, hardrock mining is one of the least regulated;² and with few exceptions, federal land managers have no choice but to allow hardrock mineral extraction on the public lands they oversee.³ Land managers can, of course, establish guardrails to protect other resources on the land, but they cannot bar access, prospecting, and extraction. Additionally, it is still possible for anyone, from a curious citizen to a multinational corporation, to go onto our public lands with a few stakes and a rubber mallet and essentially proclaim that “any hardrock mineral under this square is now mine to exploit.”⁴

Hardrock mining law at the federal level has been virtually unchanged since 1872.⁵ To put into perspective how long ago that was: the Great Mining Act of 1872 was signed by President Ulysses S. Grant; the most recent state admitted to the Union was Nebraska, the 37th state; and women did not yet have the right to vote.

There have been attempts to modernize federal mining law but these efforts have largely failed in the face of massive pressure from the lucrative—and, thus, influential—hardrock mining industry. The lack of federal royalties is one of the reasons the hardrock mining industry remains so lucrative to this day. Indeed, valuable hardrock minerals, the rights to which have been withheld by the federal government in most land transactions, are essentially free for the taking under federal mining law.⁶ No other extractive industry operates within a free-for-all framework quite like the hardrock mining industry.

Executive Order 13817

Recently, there was one notable move to revolutionize the hardrock mining industry from the executive branch of the United States federal government, and that is where



this article now turns its attention. Since inauguration day, the Trump Administration has taken steps that have made and continue to make public lands advocates and environmental watchdogs nervous, disappointed, and ultimately angry. These steps include withdrawing the United States from the Paris climate accord scaling back National Monument designations made by the previous administration,

eliminating regulations meant to protect the environment, and making it easier for extractive industry to operate and profit. This article cannot delve into the rationale and practical impacts of all such activities and policies, nor can it discuss the substance of the hundreds of lawsuits brought in response. This article, however, can provide background, rationale, and discuss potential impacts of one new policy intended to streamline and restrict the public’s voice from the National Environmental Policy Act (NEPA) process to facilitate the mining of so-called “critical minerals.”

Ordered in the name of national security, Executive Order 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals (Critical Mineral order), “streamlin[es] leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals.”⁷ To achieve this bold new policy, the Trump Administration directed the “Secretary of the Interior, in coordination with the Secretary of Defense and in consultation with the heads of other relevant executive departments and agencies” to “publish a list of critical minerals[.]”⁸ The Critical Minerals order defined a critical mineral as:

a mineral identified by the Secretary of the Interior . . . to be (i) a non-fuel mineral or mineral material essential to the economic and national security of the United States, (ii) the supply chain of which is vulnerable to disruption, and (iii) that serves an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security.⁹

The final list of critical minerals, as of March 30, 2018, included:

Aluminum (bauxite), antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluor spar, gallium, germanium, graphite (natural), hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium.¹⁰

According to the New Mexico Bureau of Geology and Mineral Resources, housed at the New Mexico Institute of Mining and Technology, barite, beryllium, helium, potash, rare earth elements, tellurium, and uranium are all mined in New Mexico. In fact, “New Mexico leads the U.S. in production of potash[.]”¹¹

As of this writing, federal land management agencies are still working on administrative rulemakings to apply the policy changes of the Critical Mineral order into their permitting processes.¹² The Forest Service, for example, is presently in a rulemaking process to “provide a more efficient process for approving exploration activities for locatable minerals,” in order to “enhance operators’ interest in, and willingness to, conduct exploratory operations on National Forest System lands and ultimately increase the production of critical minerals[.]”¹³ As directed by EO 13817, the Forest Service is actively looking for strategies to not only streamline permitting processes but also to make mining *more appealing* to industry.

Federal Mining Reform on Capitol Hill

It is worth noting one more potential update to hardrock mining law in the United States, possibly spurred by the issuance of EO 13817. Senator Tom Udall (D-NM) and Representative Raul Grijalva (D-AZ) have both introduced legislation to reform the outdated Mining Act in their respective houses of Congress.¹⁴ Senator Udall’s bill would introduce federal royalties for new hardrock mines between 5% and 8%, and would put an end to the free-for-all that is the current claim-staking and patenting system,¹⁵ while Representative Grijalva’s bill would set the royalty rate at 12.5%.¹⁶ These bills propose common sense reforms that would begin to address the inequity that stems from the current scheme of federal mining law, one in which industry steals the people’s minerals out the back door while charging exorbitant amounts for those same minerals at the front door.

Conclusion

America’s national security cannot stand or fall based simply on where these critical minerals come from. Rather, it must stand or fall based on how we as a society value our natural resources and care for our land. For what, truly, are we protecting if our magnificent vistas and pristine streams fall by the wayside in the name of uranium production and sickeningly large profits for the hardrock mining industry.

For every effort by the current administration to streamline hardrock mining operations, whether by EO 13817 or any of the other various executive orders stripping NEPA requirements or further shutting the public out of the process, there are dozens of lawsuits and public awareness campaigns working to prevent further exploitation of our public land. Only time will tell, of course, but one only need to look at recent developments such as the creation of New Mexico’s Outdoor Recreation Division to understand that there is a new and growing awareness and fondness for untrammelled outdoor spaces and feel comforted that organizations are working non-stop to protect the last vestiges of true nature left in New Mexico and the country at large.

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Endnotes

¹ Santa Fe Nat’l Forest, *Scoping Notice, Comexico Jones Hill Exploration Project* (Dec. 2, 2019), https://www.fs.usda.gov/nfs/11558/www/nepa/112173_FSPLT3_5076438.pdf (“The General Mining Law of 1872 (as amended) grants individuals and corporations the right to prospect for and develop mineral deposits on federal lands.”).

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⁷ EO 13817, 82 Fed. Reg. 60836, Dec. 26, 2017.

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⁹ *Id.*

¹⁰ Final List of Critical Minerals 2018, 83 Fed. Reg. 23295, May 18, 2018.

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TRUMP ADMINISTRATION ISSUES

Comprehensive Revisions of NEPA Regulations

By Mark F. Rosebrough

On July 16, 2020, the Council on Environmental Quality (CEQ) issued its final rule titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act” (Final Rule).¹ Hailed by CEQ as the first comprehensive update to its National Environmental Policy Act (NEPA) regulations since they were promulgated in 1978, the Final Rule substantially revises what CEQ states has become an “increasingly complicated” process characterized by “excessive paperwork and lengthy delays.”² The Final Rule updates the procedures which Federal agencies are required to follow when undertaking federal projects by streamlining the Environmental Impact Statement and Record of Decision processes, removing the requirement that Federal agencies consider the cumulative impacts of a proposed action, and redefining what constitutes a major Federal action.³

Signed into law by President Richard Nixon on January 1, 1970, NEPA ushered in a new era of environmental law in the United States. NEPA establishes the procedural requirements which Federal agencies must follow when undertaking “major federal actions significantly affecting the quality of the human environment.”⁴ The Final Rule is a comprehensive and far reaching document which will substantially impact how Federal agencies apply the nation’s bedrock environmental law. While each of the revisions contained within the Final Rule are important and will have an impact on the implementation of NEPA, three of the revisions discussed in this article are particularly noteworthy and warrant attention. Nonetheless, New Mexico attorneys whose practices include NEPA compliance should consider reading the Final Rule in its entirety for an understanding of all of the revisions to NEPA’s regulations.

Streamlining the Environmental Impact Statement and Record of Decision Processes

Under Section 102 of NEPA, Federal agencies are required to prepare an Environmental Impact Statement (EIS) on:

- (1) The environmental impact of the proposed action;
- (2) any adverse environmental effect that cannot be avoided;
- (3) alternatives to the proposed action;
- (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity;
- and (5) any irreversible and irretrievable commitments of



resources that would be involved in the proposed action should it be implemented.⁵ NEPA regulations require that “each agency shall prepare a concise public record of decision” at the conclusion of the EIS process known as a Record of Decision (ROD).⁶

According to CEQ’s most recent review of the Federal Government, “the average time for completion of an EIS and issuance of a ROD was 4.5 years and the median was 3.5 years.”⁷ Additionally, CEQ found that the average EIS was 661 pages in length.⁸ In response to these perceived excesses in the NEPA review process, the Final Rule implements two significant revisions to the EIS and ROD issuance process. First, the Final Rule requires that Federal agencies shall complete “Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit.”⁹ Second, the Final Rule now requires that a final EIS be limited to 150 pages or fewer.

Removal of Cumulative Impact Review

Pursuant to NEPA, Federal agencies are required to review the “impacts” and “effects” of a proposed Federal action.¹⁰ The Final Rule removes specific references to “direct, indirect, and cumulative effects” to achieve CEQ’s goal of clarifying and simplifying the scope of NEPA review.¹¹ Accordingly, the Final Rule has revised the definition of “impacts and effects” to mean “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives including those effects that occur at the same time and place as the proposed action or alternatives and

may include effects that are later in time or farther removed in distance from the proposed action or alternatives.”¹² The Final Rule goes on to state that a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the action.”¹³ These changes will significantly impact the scope of what Federal agencies may review in fulfilling their NEPA responsibilities.

New Definition of “Major Federal Action”

In the Final Rule, CEQ argues that the previous definition of “Major Federal action” misconstrued NEPA’s plain language by improperly conflating the definitions of “major” and “significant” in contradiction with the statutory usage of the two terms.¹⁴ Accordingly, the Final Rule now defines “Major Federal action” as an activity or decision subject to Federal control or responsibility” subject to specific enumerated exceptions.¹⁵ The Final Rule goes on to state that Major Federal actions tend to fall within one of the following categories: (1) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act...or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency’s policies which will result in or substantially alter agency programs; (2) Adoption of formal plans, such as official documents prepared or approved by Federal agencies, which proscribe alternative uses of Federal resources, upon which future agency actions will be based; (3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive; (4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities.¹⁶

The Final Rule also lists seven specific categories which do not constitute “Major Federal Action” for the purpose of NEPA review. Those seven categories include extraterritorial activities or decisions whose effects are located outside the jurisdiction of the United States, non-discretionary activities or decisions made in accordance with the agency’s statutory authority, activities or decisions that do not result in final

agency action under the Administrative Procedure Act or other statute that also includes a finality requirement, judicial or administrative civil or criminal enforcement actions, Non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project, and loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effect of such assistance.¹⁷

Possible Challenges

The Final Rule has been designated as a major rule subject to congressional review under the Congressional Review Act (CRA).¹⁸ However, for the Final Rule to be overturned by Congress, the CRA requires a joint resolution disapproving the rule which appears an unlikely prospect with the current makeup of Congress.¹⁹ Additionally, at least one lawsuit challenging the Final Rule has been filed in Federal Court by 17 environmental groups.²⁰ Nonetheless, if the Final Rule withstands these challenges, the changes to how NEPA is applied by New Mexico practitioners will be significant and worthy of deeper review.

Mark F. Rosebrough practices with the US. Department of Agriculture and is the chair-elect of the Natural Resources, Energy and Environmental Law Section.

Endnotes

¹ 85 Fed. Reg. 43304-43376 (July 16, 2020).

² *Id.* at 43305.

³ CEQ’s revisions to NEPA regulations are not limited those discussed in this article. For a comprehensive review of all revisions, a full review of the Final Rule itself is suggested.

⁴ 42 U.S.C. § 4332 (C).

⁵ 42 U.S.C. § 4334 (C)(i-v).

⁶ 40 C.F.R. § 1505.2.

⁷ 85 FR 43304, 43305.

⁸ *Id.*

⁹ *Id.* at 43363.

¹⁰ 42 U.S.C. § 4332(C).

¹¹ 85 Fed. Reg. 43304, 43343.

¹² *Id.* at 43375.

¹³ *Id.*

¹⁴ 85 Fed. Reg. 43304, 43345

¹⁵ *Id.* at 43375.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 433044.

¹⁹ 5 U.S.C. § 801(3)(B).

²⁰ *Wild Virginia, et al. v. Council on Environmental Quality, et al.*, No. 3:20-cv-00045 (W.D. Va., July 29, 2020).

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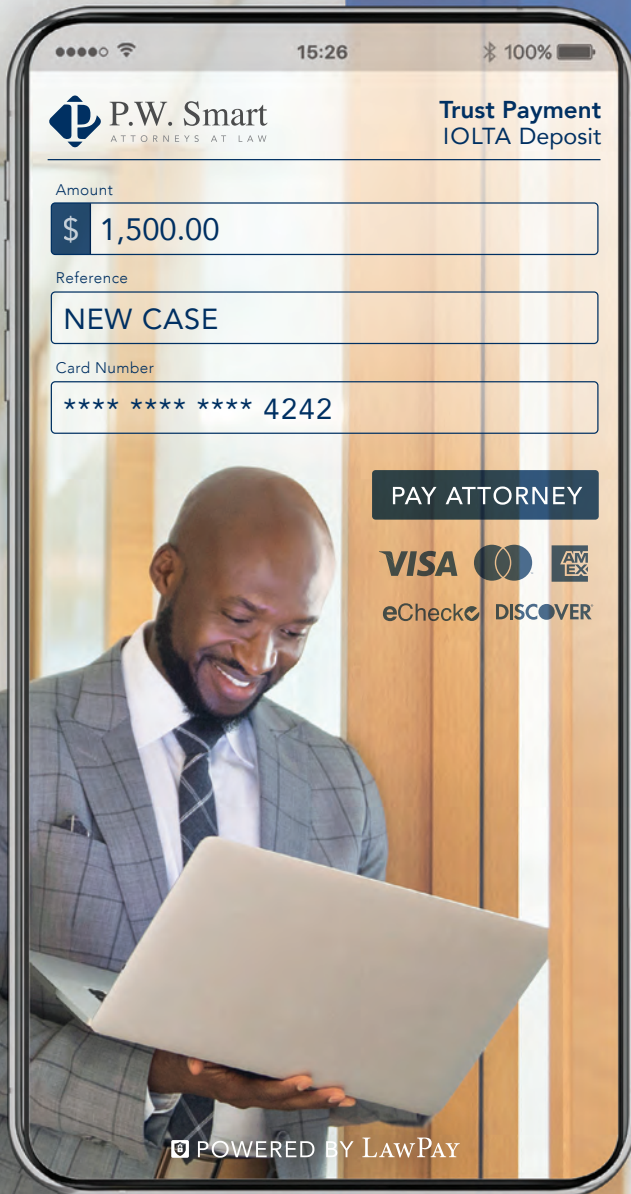
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PNM Resources, Inc.
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Husch Blackwell LLP
111 Congress Avenue,
Suite 1400
Austin, TX 78701
512-479-9724
jameson.sauseda@huschblackwell.com

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William John Sheridan
1421 Berninghaus Road
Taos, NM 87571
575-758-9542
wjlaw@q.com

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f/k/a/ Frieda Simons Burnes
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8124 Ruidoso Road, NE
Albuquerque, NM 87109
505-259-4955
turflers@gmail.com

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Dated June 19, 2020:
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Education: University of Texas at Austin, B.A. 2008;
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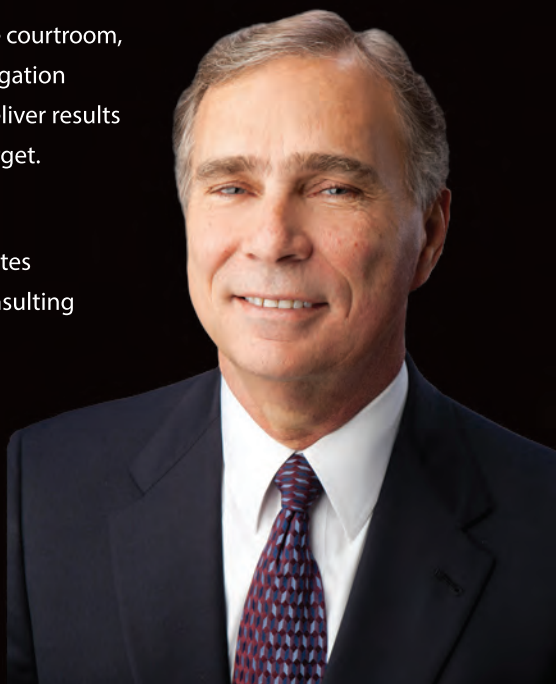
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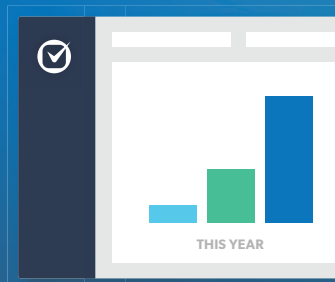
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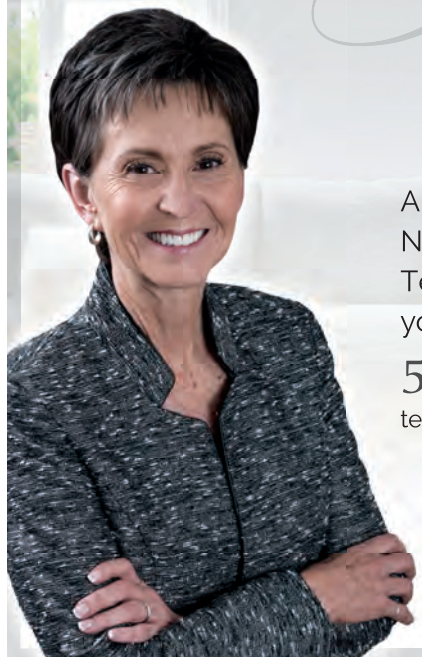


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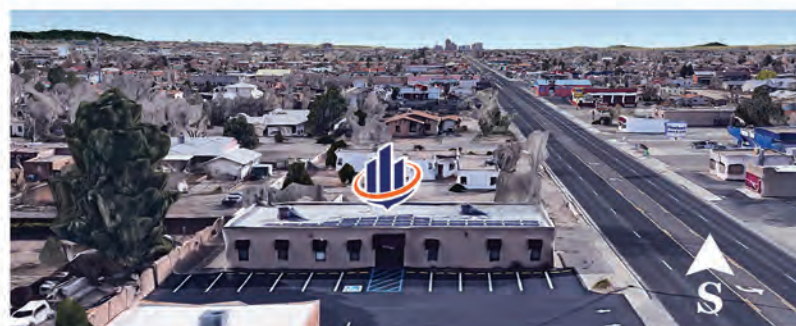


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Jay Goodman and Associates Law Firm, PC is seeking one full-time and one part-time attorney. If you are looking for more fulfilling legal opportunities, read on. Are you passionate about facilitating life changing positive change for your clients while having the flexibility to enjoy your lifestyle? If you are looking for meaningful professional opportunities that provide a healthy balance between your personal and work life, JGA is a great choice. If you are seeking an attorney position at a firm that is committed to your standard of living, and professional development, JGA can provide excellent upward mobile opportunities commensurate with your hopes and ideals. As we are committed to your health, safety, and security during the current health crisis, our offices are fully integrated with cloud based resources and remote access is available during the current Corona Virus Pandemic. Office space and conference facilities are also available at our Albuquerque and Santa Fe Offices. Our ideal candidate must be able to thrive in dynamic team based environment, be highly organized/reliable, possess good judgment/people/communication skills, and have consistent time management abilities. Compensation DOE. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

RFP – Firms or Attorneys Interested in Serving as Contract Personnel Hearing Officer

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at <https://cabq.bonfirehub.com/portal/?tab=openOpportunities>. Proposals are due no later than January 20, 2021 @ 4:00pm Local Time.

Trial Attorneys

The Ninth Judicial District Attorney's Office is seeking entry level and experienced trial attorneys for our Clovis office. Come join an office that is offering immediate jury trial experience, during the COVID-19 crisis, in a jury trial test jurisdiction. In addition, we offer in depth mentoring and an excellent work environment. Salary commensurate with experience starting at \$54,308/yr. Send resume and references to Steve North, snorth@da.state.nm.us.

Ute Indian Tribe Fort Duchesne, Utah Department: Tribal Courts Position: Public Defender

Salary: To Be Negotiated Based on Experience; JOB DESCRIPTION – Public Defender of the Ute Tribal Court; The Ute Indian Tribe of the Uintah and Ouray Reservation is seeking applicants for the position of Public Defender of the Ute Tribal Court. Interested applicants should apply as set forth below. POSITION: The Public Defender is a full-time position with a minimum 32 work week, Monday through Thursday, between 8:00 AM to 4:30 PM, with the understanding that the employee may be required to work extended hours, including weekends/holidays. The successful applicant must be dependable, reliable, responsible, and able to fulfill obligations in a professional manner. This is a tribally-funded position. GENERAL DESCRIPTION: The Public Defender oversees the representation of defendants/respondents in proceedings initiated in the Ute Indian Tribal Court. The applicant must be willing to work within an environment conducive to the position's location and purpose. SUPERVISION: The Public Defender works under the general supervision of Executive Director. RESPONSIBILITIES: Duties include but are not limited to the following: Represent defendants in adult criminal cases; youth in delinquency and status offense cases; parents or other legal custodians in child dependency cases; and Ute Tribal members in contested traffic, housing, and civil regulatory cases; Advise clients on rights and responsibilities, choices and consequences; maintain contact with clients; communicate effectively; respond promptly to questions and messages; Meet with clients in person as necessary, sometimes at off-Reservation locations such as detention facilities; maintain regular office hours and 24-hour availability to address urgent matters; Appear and argue cases in the Ute Indian Tribal Court at all stages of proceedings, including pre-trial, trial, post-trial, and appeal; Assist clients to comply with court orders and to obtain assessments and services related to drug/alcohol, mental health, domestic violence, and other psychosocial issues; Assist in improving the Tribe's justice system, including development of codes and court rules, participation in meetings and trainings, and preparation and implementation of grants; Maintain confidentiality and adhere to all professional and ethical standards required by the bar associations of which the Public Defender is a member. MINIMUM QUALIFICATIONS: Knowledge, Abilities and Skills: ; Knowledge of Federal Indian law and/or criminal law; Ability to maintain professionalism while interacting with a wide variety of people in a fast-paced crisis-oriented environment; – Knowledge of the laws and policies of the Ute Indian Tribe including rules of procedure;

Willingness to learn and respect of the Ute customs and traditions and history of the Ute Tribe; Possess excellent verbal and written communications skills and ability to maintain a positive, non-adversarial working environment. EDUCATION & EXPERIENCE: J.D. from an ABA accredited law school; Utah State Licensed Attorney or eligible; No felony or misdemeanor convictions in the past year; Valid driver's license with the ability to obtain a Utah driver's license; Preference for experience working in Indian Country, particularly in a tribal legal system; Preference for experience working in criminal law and in child dependency matters; Preference for members of federally recognized tribes. HOW TO APPLY: Complete a Tribal Application Form which can be found on our website: www.UTETRIBE.com. For questions or concerns, contact our office at (435) 725-4009. Applicants should mail a completed Tribal Application Form, cover letter, and resume to: Ute Indian Tribe, ATTN: Human Resources, RE: Public Defender, P.O. Box 190, Fort Duchesne, UT 84026. The Ute Indian Tribe practices TRIBAL PREFERENCE in accordance with the Indian Preference Act, Indian Civil Rights Act and Indian Self Determination Act. -Employees must clear a Background Check in compliance with the Indian Child Protection and Family Violence Prevention Act. -Employees must clear pre-employment alcohol/drug screenings in compliance with the Ute Tribe Substance Abuse Policy. Employees must successfully complete a three (3) month's probationary period in accordance with the Ute Tribe Personnel Manual.

Associate Attorney

Lastrapes, Spangler & Pacheco, P.A., a Rio Rancho based law firm, seeks an associate attorney. The firm's primary areas of practice include real property; corporate/business law; probate, trust & estate planning; and civil litigation. The firm would consider a part-time or full-time hire, depending upon candidate qualifications. Please submit a resume and writing sample via email to lw@lsplegal.com. All replies kept confidential. Salary commensurate with applicable experience.

Associate Attorney

Stiff, Keith & Garcia is a successful and growing law firm representing national clients, looking for an experienced lawyer to work in the areas of insurance defense and civil litigation. Flexible work environment available. We are looking for an attorney who can handle complex litigation with minimal supervision. We are a congenial and professional firm. Excellent benefits and salary. Great working environment with opportunity for advancement. Send resume to resume01@swcp.com

Attorney

RMH Lawyers, PA seeks an attorney with at least 3 years of experience to join our firm. We are a Martindale AV-rated firm, with a practice focusing on business advice and transactions, commercial litigation, and employment law. We provide sophisticated services to a long-term client base. Our preferred candidate will have excellent academic credentials, strong research and writing skills, and experience with complex litigation or transactional matters. Candidates will be considered for either an associate position or partner/of counsel position, depending on their book of business and experience level. We offer a competitive salary and benefits package, as well as a collegial work environment. Interested parties should submit a resume and letter of interest to offmgr@rmhlawyers.com. All inquiries will be held in strictest confidence.

Commercial Liability Defense, Coverage Litigation Attorney P/T maybe F/T

Our well-established, regional, law practice seeks a contract or possibly full time attorney with considerable litigation experience, including familiarity with details of pleading, motion practice, and of course legal research and writing. We work in the area of insurance law, defense of tort claims, regulatory matters, and business and corporate support. A successful candidate will have excellent academics and five or more years of experience in these or highly similar areas of practice. Intimate familiarity with state and federal rule of civil procedure. Admission to the NM bar a must; admission to CO, UT, WY a plus. Apply with a resume, salary history, and five-page legal writing sample. Work may be part time 20+ hours per week moving to full time with firm benefits as case load develops. We are open to "of counsel" relationships with independent solo practitioners. We are open to attorneys working from our offices in Durango, CO, or in ABQ or SAF or nearby. Compensation for billable hours at hourly rate to be agreed, generally in the range of \$45 - \$65 per hour. Attorneys with significant seniority and experience may earn more. F/T accrues benefits. Apply with resume, 5-10p legal writing example to revans@evanslawfirm.com with "NM Attorney applicant" in the subject line.

Assistant Attorney General Positions

The Office of the New Mexico Attorney General is recruiting for multiple Assistant Attorney General Positions in the Criminal Appeals Division of Criminal Affairs. The job posting and further details are available at www.nmag.gov/human-resources.aspx.

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney position in the Property and Finance Division of the City Attorney's Office. This position will be the procurement attorney for the Purchasing Division. Duties include contract review, contract negotiation, proposal evaluation, assisting end users in drafting requests for procurement and requests for bids, responding to procurement protests and litigating any resulting suits. Must be able to provide legal advice and guidance to City departments, boards, and City Council on complex purchasing transactions. Attention to detail, timeliness, strong writing skills, and client counseling skills are essential. Must be an active member of the State Bar of New Mexico in good standing or be able to attain bar membership within three months of hire. 5+ years of practice preferred. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample.

Deputy Director of Policy

The City Attorney's Office seeks an individual to work on the evaluation, development and execution of the City's public policy initiatives. The work requires strong writing, analytical and advocacy skills. The successful applicant will work closely with constituents and community agencies with a broad range of interests and positions to shape priorities to positively impact the residents of Albuquerque. The position serves as a liaison to our external partners (which may include governments and nonprofit organizations) and ensures that our advocacy outcomes are effectively identified and achieved. This person will track project status, timelines, deliverables, and project requirements. This role is heavily involved in outreach and works closely with the Chief Administrative Officer and City Attorney to ensure the City continues to address the needs and priorities of Albuquerque communities on an on-going basis. Requirements: Experience with underserved or vulnerable populations. Master's Degree in related field or Juris Doctor. Juris Doctor strongly preferred. If attorney, must be licensed in New Mexico within six months of hire. In-depth understanding of city, state, and federal legislative and budget processes and grant application, administration, and compliance. Strong commitment to social justice, policy advocacy and research. Salary DOE. Please apply on line at the City of Albuquerque's website www.cabq.gov/jobs

Assistant City Attorney

Assistant City Attorney position available with the City of Albuquerque with a main focus on assisting the City of Albuquerque and the Albuquerque Police Department in achieving operational compliance with the Court Approved Settlement Agreement (CASA). The attorney will provide oral and written legal advice, recommendations, and opinions to a variety of levels of Department personnel and City staff on matters regarding the operations and performance of APD. The attorney will regularly interact with and attend meetings with: the parties and monitor; the Civilian Police Oversight Agency and its Board; community policing councils; amici; other stakeholders and members of the community. Applicant must be admitted to the practice of law in New Mexico and be an active member of the Bar in good standing. Preferred qualifications include: knowledge of state and federal laws regarding constitutional policing and police practices; experience in the practice of local or state government; strong organization skills; strong legal research and writing skills; experience in project development and management; experience in business letter writing; and supervisory experience. Experience in report and proposal preparations, developing curricula, and application of adult educational principles is a plus. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please apply on line at www.cabq.gov/jobs

General Counsel

The New Mexico Children, Youth and Families Department (CYFD) is seeking to fill its Chief General Counsel position. The Chief General Counsel represents CYFD in all legal matters and manages the Office of General Counsel. Duties include but are not limited to: supervising the Office of General Counsel attorneys and support staff; overseeing litigation being handled by Risk Management and other outside counsel; negotiating high-level IT and service array contracts; reviewing and approving staff attorneys' legislative analyses; and providing advanced legal counsel to Cabinet Secretary, Deputy Secretary and executive staff. The position requires a broad range of legal experience. Examples of applicable legal experience include civil rights, administrative law, legislative processes, New Mexico Inspection of Public Records Act (IPRA), labor and employment law, immigration law, Native American law, disability rights law, education law, and general civil litigation. Benefits include medical, dental, vision, paid vacation, and a retirement package. The position is located in Santa Fe. New Mexico licensure required. Please send resume and cover letter to CYFD Director of Operations Lisa Fitting at lisam.fitting@state.nm.us.

Ute Indian Tribe
Fort Duchesne, Utah
Department: Tribal Courts
Position: Health and Wellness Court Judge

Salary: To Be Negotiated Based on Experience. **JOB DESCRIPTION** – Health and Wellness Court Judge. The Ute Indian Tribe of the Uintah and Ouray Reservation is seeking applicants for the position of Judge of the Ute Tribal Health and Wellness Court. Interested applicants should apply as set forth below. **POSITION:** The Judge of the Ute Tribal Health and Wellness Court is a full-time position with a minimum 32 work week, Monday through Thursday, between 8:00 AM to 4:30 PM, with the understanding that the employee may be required to work extended hours, including weekends/holidays. The successful applicant must be dependable, reliable, responsible, and able to fulfill obligations in a professional manner. This is a tribally-funded position. **GENERAL DESCRIPTION:** The Judge of the Ute Tribal Health and Wellness Court is responsible for presiding over all alcohol and drug addiction related cases referred by the Ute Tribal Court or other applicable entity. Team. This job description is not an all-inclusive list of the duties and responsibilities of this position and the successful applicant will be expected to perform all duties necessary to meet the objectives of Court. **SUPERVISION:** The Judge of the Ute Health and Wellness Court will work under the general supervision of the Chief Judge of the Ute Tribal Court. **RESPONSIBILITIES:** Duties include but are not limited to the following: Promulgate rules governing the administration, practice, and procedures of the Health and Wellness Court within the bounds of existing Tribal Court rules of procedure; Assist in the development of the Health and Wellness Court, including participation and implementation of court assessments, and the preparation and implementation of grants; Assist in the identification, appointment, and supervision of Health and Wellness Court staff; Schedule and preside over Health and Wellness Court proceedings and monitor appropriate application of disciplines, sanctions, and incentives while maintaining the integrity of the court; Review case status reports, drug test results, cooperation with the treatment provider, and progress towards abstinence and law-abiding behavior; Work in consultation with the Chief Judge of the Tribal Court to facilitate the appropriate transfer of cases between the Tribal Court and Health and Wellness Court; Report annually to the Ute Tribal Business Committee on the status, budget, progress and development, and the day to day business conducted by the Health and Wellness Court. **MINIMUM QUALIFICATIONS:** Knowledge, Abilities and Skills: Knowledge of Federal Indian and criminal law; Knowledge of the general

rules governing the interpretation of laws and the established administrative procedures of the Office of the Judiciary; Ability to maintain professionalism while interacting with a wide variety of people in a fast-paced crisis-oriented environment; Knowledge of the laws and policies of the Ute Indian Tribe including rules of procedure; Willingness to learn and respect of the Ute customs and traditions and history of the Ute Tribe; Possess excellent verbal and written communications skills and ability to maintain a positive, non-adversarial working environment. **EDUCATION & EXPERIENCE** ; J.D. from an ABA accredited law school with minimum the (5) years' experience as a practicing attorney or two (2) years' experience as a Judge; Utah State Licensed Attorney or eligible; No felony or misdemeanor convictions in the past year; Valid driver's license with the ability to obtain a Utah driver's license; Preference for experience working in tribal justice systems and familiarity with PL 638 Contracts and procurement of federal grants. **HOW TO APPLY:** Complete a Tribal Application Form which can be found on our website: www.UTETRIBE.com. For questions or concerns, contact our office at (435) 725-4009. Applicants should mail a completed Tribal Application Form, cover letter, and resume to: Ute Indian Tribe, ATTN: Human Resources, RE: Health and Wellness Court Judge, P.O. Box 190, Fort Duchesne, UT 84026. The Ute Indian Tribe practices TRIBAL PREFERENCE in accordance with the Indian Preference Act, Indian Civil Rights Act and Indian Self Determination Act. Employees must clear a Background Check in compliance with the Indian Child Protection and Family Violence Prevention Act. Employees must clear pre-employment alcohol/drug screenings in compliance with the Ute Tribe Substance Abuse Policy. Employees must successfully complete a three (3) month's probationary period in accordance with the Ute Tribe Personnel Manual.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is an aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm seeking an extremely hardworking and diligent associate attorney with great academic credentials. This is a terrific opportunity for the right lawyer, if you are interested in a long term future with this firm. A new lawyer with up to 3 years of experience is preferred. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

Chief Deputy District Attorney
Deputy District Attorney
Senior Trial Attorney

The Third Judicial District Attorney's Office in Las Cruces is looking for: Chief Deputy District Attorney, Deputy District Attorney, Senior Trial Attorney. Trial Attorney (This is a grant funded position through HIDTA and the position is contingent on continued funds from the grantor). Please see the full position descriptions on our website <http://donaana-countyda.com/>. Interviews will be conducted by the District Attorney Incumbent for 2021. Submit Resume to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us.

Associatte Attorney

Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 10 years experience). Practice areas include insurance defense, subrogation, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pre-trial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé to paul@kienzlelaw.com.

Director of Office of Children's Rights

The New Mexico Children, Youth and Families Department (CYFD) is recruiting for a person who is deeply committed to making a difference in the lives of New Mexico youth to serve as the Director for the newly-created Office of Children's Rights. The Office of Children's rights is designed to ensure that New Mexico's most vulnerable youth receive the services and supports to which they are entitled. The Director will supervise the Education Rights Director, the Immigration Rights Attorney, and a team of Youth Advocates with lived experience. The position will be responsible for creating a pro bono panel for special education representation for court-involved youth and may provide direct representation of youth in matters such as accessing Least Restrictive Environment (LRE) placements, mental health services, and civil rights enforcement. A Juris Doctorate degree and valid New Mexico law license is required. Benefits include medical, dental, vision, paid vacation, and a retirement package. Please send resume and cover letter to CYFD Director of Operations Lisa Fitting at lisam.fitting@state.nm.us.

Assistant Trial Attorney 1st Judicial District Attorney

The First Judicial District Attorney's Office has an entry level magistrate court attorney position. Salary is based on experience and the District Attorney Personnel and Compensation Plan. Please send resume and letter of interest to: "DA Employment," PO Box 2041, Santa Fe, NM 87504, or via e-mail to 1stDA@da.state.nm.us.

Associate Attorney

BLEUS & ASSOCIATES, LLC, a personal injury law firm located near the Journal Center, is presently accepting resumes for an associate attorney possessing 5+ years of civil litigation experience to join our legal practice. The position requires passionate advocacy, and a knowledgeable, hardworking, detail oriented person. Our primary areas of practice include all aspects of civil litigation with an emphasis on personal injury; insurance bad faith, and complex tort litigation matters. Trial experience preferred, but not required. We offer a great work environment and competitive salary. Please forward letter of interest and resume to Hiring Partner, 6624 Gulton Court, NE, Albuquerque NM 87109, or email: paralegal3.bleuslaw@gmail.com. All responses will remain confidential

Associate Attorney Tucker, Yoder & Associates, LLC Farmington, NM

Must have 3-4 years of attorney experience including litigation. Needed for cases involving injury, domestic relations and criminal charges. Must be licensed in New Mexico. Salary determined upon review of experience. Please email resumes to: sarah@tuckeryoderlaw.com or mail to: Tucker, Yoder & Associates, Attn: Sarah Foust, 105 North Orchard Ave. Farmington, NM 87401

Attorney Advisor and Paralegal Specialist

The U.S. Small Business Administration has an urgent need for Attorneys/Paralegals to review and close SBA Disaster Loans. Real Estate experience is a plus. Individuals waiting on bar results may apply. Attorneys must present a current bar card but may be licensed in any state. Attorney Advisor (Gen): <https://www.usajobs.gov/GetJob/ViewDetails/563879200> (Supersedes previous announcement, EXC-20-057-PDC-10755112, to amend duty location) GS-0301-09/11; Full time (Temp); Office of Disaster Assistance (ODA); Processing and Disbursement Center (PDC); Duty Station Negotiable. Open to United States Citizens. Paralegal Specialist: GS-0950-09/11; <https://www.usajobs.gov/GetJob/ViewDetails/570155500> Full time (Temp); Office of Disaster Assistance (ODA); Processing Disbursement Center (PDC); Fort Worth, TX; Open to United States Citizens

City of Santa Fe Seeks Hearing Officers:

The City of Santa Fe seeks qualified hearing officers to preside over appeals of land use citations, animal services citations, general enforcement actions, and other administrative matters. Interested attorneys should submit a resume and letter of interest, including proposed hourly rates, as soon as possible to Irene Romero, to ikromero@santafenm.gov. Preferred candidates will have excellent communication and writing abilities, a demonstrated ability to be fair and impartial, and experience in municipal law and administrative law. Candidates must be admitted to practice law in the State of New Mexico. The City intends to make appointments as soon as possible and will retain letters of interest for appointment as needed over the next year.

Assistant City Attorney

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Litigation Division. The department's team of attorneys represent the City in litigation matters in New Mexico State and Federal Courts, including trials and appeals, and provide legal advice and guidance to City departments. Attention to detail and strong writing skills are essential. Three (3)+ years' experience is preferred, with additional preference for civil defense litigation experience, and must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$20.69 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$21.71 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Experienced Personal Injury Paralegal

Parnall Law Firm (awarded "Top Places to Work" and "Best Places to Work" in Albuquerque) is hiring an experienced Personal Injury Paralegal. Responsible for the handling of files through trial or settlement disbursement. Litigation experience required. Must be organized; detail-oriented; meticulous, but not to the point of distraction; independent/self-directed; able to work on multiple projects; proactive; someone who takes initiative and ownership; courage to be imperfect, and have humility; willing/unafraid to collaborate; willing to tackle the most unpleasant tasks first; willing to help where needed; willing to ask for help. Required to work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others; to give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible; to make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at www.HurtCallBert.com/paralegalcareers. All inquiries are confidential.

Administrative Assistant

The Office of University Counsel (OUC) at the University of New Mexico has an opportunity for a detail-oriented individual who can work effectively in a fast-paced, multi-task environment. The individual will work under the supervision of, and provide administrative support to, attorneys within the OUC-Health Sciences Center responsible for tort claims and medical malpractice litigation. The will also assist with the credentialing needs of the HSC medical providers. Must have a high level of computer skills, including Word and Excel, and excellent communication and organizational skills. Law firm or law department experience preferred. Minimum requirements are a high school diploma or GED; at least five years of experience directly related to the duties and responsibilities specified; a post-secondary degree from an accredited institution may be substituted for experience on a year-for-year basis. See complete job description and application requirements at <https://hr.unm.edu>. Please refer to Requisition #12567. Best consideration date: October 30, 2020.

Full Time Legal Assistant

Seeking experienced full time Legal Assistant for small firm. Multi-faceted position: reception, transcription, bookkeeping and support for all non-attorney staff. Salary DOE. Excellent Benefits. This is not a remote position. Send resume to bkrzykowski@shha.net

Riley, Shane & Keller, P.A.

New Positions:

Our AV Rated law firm is expanding so we created two (2) new positions. Please come join us for a professional environment, excellent pay, retirement, employee healthcare and other benefits. Paralegal: Full time, work from home position supporting litigation and trials. Five (5) years' experience in insurance defense or civil litigation. We seek a team player with a strong word processing and organizational skills. Candidate should be a member of the Paralegal Division of the State of New Mexico or eligible to join. Construction case experience a plus. Legal Assistant: Full time, in office position supporting shareholders. The position requires five (5) years' experience in insurance defense or civil litigation. Position requires a team player with strong work processing and organizational skills. Send resume to Riley, Shane & Keller, P.A., office manager, 3880 Osuna Road NE, Albuquerque, NM 87109/ mvelasquez@rsk-law.com

Senior Operations Manager

The University of New Mexico seeks a motivated, detail oriented person to manage the operations of the Office of University Counsel (OUC). The Senior Operations Manager is responsible for managing the finances, operations, human resources and information technology needs of the OUC and reports to the General Counsel. Applicants should be familiar with office management and billing, ideally in a legal setting, and have supervisory experience. Minimum qualifications: Bachelor's degree and at least five years of experience directly related to the duties and responsibilities specified; strong interpersonal and communication skills; and the ability to work effectively with a wide range of constituencies. Preferred qualifications: Experience in legal office management and experience working with an electronic legal matter management system and online legal invoice management system. For a full description, visit UNMJobs, Req 13646. Apply online at <http://unmjobs.unm.edu>. Open until filled or withdrawn. UNM is an equal opportunity employer. EEO/AA/Minorities/Females/Vets/Disabled/and other protected classes.

Legal Assistant

Legal Assistant with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, online research, is technologically adept and familiar with use of electronic databases and legal-use software. Seeking organized and detail-oriented professional with excellent computer and word processing skills for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Hartline Barger, LLP Paralegal

Hartline Barger LLP seeks an experienced paralegal to join the close-knit team in our Albuquerque office. Our litigation defense firm offers a collegial environment, competitive compensation, a comprehensive benefits package, and generous PTO. The ideal candidate will have excellent research and writing skills, as well as the ability to exercise sound judgment, think creatively, and work independently. The full-time position requires a Bachelor's degree and five (5) years of experience. Please send resumes to Lanika Doyle at Ldoyle@hartlinebarger.com.

Administrative Assistant/Legal

The University of New Mexico seeks a motivated, organized and detail oriented person to support two to four attorneys within the Office of University Counsel (OUC). The Admin Assistant is responsible for document and case management, calendaring, online research, and overall support of the OUC's operations. Minimum qualifications: High school diploma or GED and at least five years of experience directly related to the duties and responsibilities specified. Preferred qualifications: Current knowledge and familiarity with MS Office and excellent word processing skills; experience supporting a litigation or transactional practice; ability to work in a team environment supporting a variety of personnel; strong written and verbal communication skill; experience with electronic legal matter management systems. For a full description, visit UNMJobs, Req 13660. Apply online at <http://unmjobs.unm.edu>. Open until filled or withdrawn. UNM is an equal opportunity employer. EEO/AA/Minorities/Females/Vets/Disabled/and other protected classes.

Hartline Barger, LLP Legal Assistant

Hartline Barger LLP seeks an energetic and reliable Legal Assistant to join the close-knit team in our Albuquerque office. Our busy litigation defense firm offers a collegial environment, competitive compensation, a comprehensive benefits package, and generous PTO. The ideal candidate is personable, detail-oriented, and well-organized, with experience in one or more of the following areas of law: commercial litigation, product liability, and personal injury defense. The full-time position requires five (5) years of experience. Please send resumes to Lanika Doyle at Ldoyle@hartlinebarger.com.

Legal Assistant

Harvey & Foote Law Firm, a plaintiff's firm specializing in prosecuting cases involving nursing home abuse and neglect, is hiring a full-time legal assistant. Individual must have exceptional organizational skills, be able to multitask, and understand the importance of deadlines and collaborative teamwork. The ideal candidate will be proficient with Microsoft Outlook, Word and Excel. Bilingual preferred, but not required. Please send resume with references, as an attachment, to amanda@harveyfirm.com. Please include "Legal Assistant" in the subject line. No phone calls or walk-ins.

Services

Interpreting/Translating

Peter Katel, NM AOC-certified court interpreter, ATA-certified translator (Spanish to English) is experienced in depositions, mediations, client interviews, including simultaneous and consecutive interpretation by phone and video. Also practiced in transcription/translation of recordings, and translation of legal and other documents. Fluent in French (non-certified). In previous journalism career, worked throughout Mexico and elsewhere in Latin America and Caribbean. 202-431-9022 (Albuquerque-based, despite area code). katelinterpret@gmail.com, www.katelinterpret.com.

Courier Services

Court Filings/Drop-offs, Medical Records, Hand Deliveries. Albuquerque/Santa Fe. Call or text Tim at (505)-450-7709

Office Space

Professional Downtown Location

Executive office suite available on the 5th floor of the prestigious Albuquerque Plaza Building. This Class A office space provides fully furnished offices with IT, dedicated phone line, mail services and full-time receptionist. Parking access and flexible lease terms are available. Please contact Leasing Manager, Cindy Campos at 505-270-4168.

Lawyer-Owned Office Building in Old Town (Albuquerque) Seeking New Tenant In January, 2021

Are you making changes? Two lawyers retiring at year-end have office space in their Old Town Law Office building in Albuquerque. 2,750 sq. ft., including 3 lawyer offices and 2 conference rooms. \$17.00 psf, plus utilities. Includes parking. See www.oldtownlawoffice.com for more information. Or email Jason Kent (jkent@nmlex.com) or Murray Thayer (mthayer@swcp.com).

Sun Valley Executive Office Suites

Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Quick access to Downtown Courthouses. Our all-inclusive executive suites provide simplicity with short term and long-term lease options. Our fully furnished suites offer the best in class in amenities. We offer a move in ready exceptional suite ideal for a small law firm with a secretary station. Visit our website SunValleyABQ.com for more details or call Jaclyn Armijo at 505-343-2016.

Downtown Office Space For Lease:

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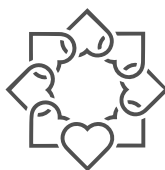
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On behalf of the Board of Bar Commissioners and State Bar staff, I would like to thank all of the attendees, speakers, sponsors, and exhibitors for helping us put on a great event.

We appreciate all your support!

Ernestina R. Cruz

Ernestina R. Cruz,
President
State Bar of New Mexico



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