

BAR BULLETIN

October 28, 2020 • Volume 59, No. 20



Oaxaca by Kathleen Frank (see page 3)

www.kathleenfrankart.com

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CLE Planner

*Upcoming programming
from the
Center for Legal Education*

A professional portrait of Gretchen Walther, a woman with blonde hair and blue eyes, wearing a black blazer over a blue top. She is standing with her arms crossed, looking directly at the camera with a slight smile. The background is a blurred indoor setting with wood paneling.

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Meetings

October

28
Natural Resources, Energy and Environmental Law Section Board
Noon, teleconference

29
Trial Practice Section Board
Noon, teleconference

30
Cannabis Law Section Board
9 a.m., teleconference

November

3
Health Law Section Board
9 a.m., teleconference

4
Animal Law Section Board
11:30 a.m., teleconference

4
Employment and Labor 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

About Cover Image and Artist: Santa Fe landscape artist Kathleen Frank, raised in Northern California, has a BA Design/San Jose State University, an Masters of Art/Penn State and has studied woodcarving and printing. In Pennsylvania, she taught printmaking and costume design and co-founded the Printmakers Studio Workshop of Central Pennsylvania. Frank shifted to painting, seeking light and pattern in Pennsylvania farms, California scenery from mountains to sea and now the unique landscapes of the Southwest. Publications include Southwest Art, Western Art Collector and The Santa Fe Travel Insider and exhibitions include Jane Hamilton Fine Art, Desert Caballeros Western Museum and the Susquehanna Art Museum. Collections: Desert Caballeros Western Museum, Pattee and Paterno Library at Penn State.

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 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

Professionalism Tip

With respect to the public and to other persons involved in the legal system:
I will be mindful of my commitment to the public good.

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

Announcement of Applicants

Seven applications have been received in the Judicial Selection Office as of 5 p.m., Oct. 13 due to the retirement of the Honorable Supreme Court 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. The New Mexico Supreme Court Judicial Nominating Commission will convene beginning at 9:00 a.m. on Thursday, November 19 2020, and will occur exclusively by Zoom. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the applicants 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.

The names of the applicants in alphabetical order are: **Judge James Waylon Counts, Judge Jennifer Ellen DeLaney, Frank Victor Crociata, Judge Victor S. Lopez, Steven S. Michel, Judge Julie J. Vargas and Judge Briana Hope Zamora.**

Topic: New Mexico Supreme Court Judicial Nominating Commission Meeting

Time: Nov. 19 at 9 am

Join Zoom Meeting

<https://unm.zoom.us/j/379615447?pwd=M3lSVGxUSEkrSjd4cExlVXYwK3MzQT09>

Meeting ID: 379 615 447

Password: 72146

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, Nov. 3 by 5 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

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

2021 Budget Disclosure Deadline to Challenge Expenditures

The State Bar of New Mexico Board of Bar Commissioners (BBC) has completed its budgeting process and finalized the 2021 Budget Disclosure, pursuant to the State Bar Bylaws, Article VII, Section 7.2, Budget Procedures. The budget disclosure will be available in its entirety by Oct. 28, 2020, on the State Bar website at www.nmbar.org on the financial information page under the About Us tab. **The deadline for submitting a budget challenge is on or before 5 p.m., Nov. 30, 2020**, and the form is provided on the last page of the disclosure document.

The BBC will consider any challenges received by the deadline at its Dec. 9, 2020, meeting.

Address challenges to:

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

Challenges may also be delivered in person to the State Bar Center, 5121 Masthead NE, Albuquerque, NM 87109.

— *Featured* —

Member Benefit



Defined Fitness offers State Bar members, their employees and immediate family members a discounted rate. Memberships include access to all five club locations, group fitness classes and free supervised child care. All locations offer aquatics complex (indoor pool, steam room, sauna and hot tub), state-of-the-art equipment, and personal training services. Bring proof of State Bar membership to any Defined Fitness location to sign up.

www.defined.com.

Statement of Ownership, Management, and Circulation as of Sept. 23, 2020.

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Paid Subscriptions In-County	2623	2649
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Other Classes Mailed Through the USPS	0	0
Total Paid Distribution	7702	7996
Free Distribution by Mail		
Outside-County	0	0
In-County	0	0
Other Classes Mailed Through the USPS	0	0
Free Distribution by Mail	0	0
Total Free Distribution	90	90
Total Distribution	7702	7996
Copies not Distributed	0	0
Total	7702	7996
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Requested Electronic Copies	3100	3596
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Percent Paid	100%	100%

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

Evann Laird, *Bar Bulletin* Director of Communications and Member Services

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 (JPEC) has released its recommendations to voters on District Court judges who are standing for retention in the upcoming election. JPEC issued 61 "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 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 Legal Aid

The Board of Bar Commissioners will make four appointments to the New Mexico Legal Aid Board for three-year terms, with two members from the First and Second Congressional Districts and one member of and recommended by the Indian Law Section. Active status members admitted to practice in New Mexico interested in serving on the Board should send a letter of interest and

brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

New Mexico Access to Justice Commission

The Board of Bar Commissioners will make two appointments to the N.M. Access to Justice Commission for three-year terms. The Commission is dedicated to expanding and improving civil legal assistance by increasing pro bono and other support to indigent people in New Mexico. Active status attorneys in New Mexico interested in serving on the Commission should send a letter of interest and brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

State Bar of New Mexico Access to Justice Fund Grant Commission

The Board of Bar Commissioners will one appointment to the State Bar of New Mexico ATJ Fund Grant Commission for a three-year term. The ATJ Fund Grant Commission solicits and reviews grant applications and awards grants to civil legal services organizations consistent with the State Plan for the Provision of Civil Legal Services to Low Income New Mexicans. Active status attorneys in New Mexico, not affiliated with a civil legal service organization which would be eligible for grant funding from the ATJ Fund, interested in serving on the Commission should send a letter of interest and brief resume by Nov. 25 to Kris Becker at sbnm@nmbar.org.

Appointments to Newly Created New Mexico State Bar Foundation Board

The Board of Bar Commissioners of the State Bar of New Mexico will appoint four directors to the newly created New Mexico State Bar Foundation Board, three of which shall be active members of the State Bar and one member of the public who is a non-attorney. The term of the at-large directors shall be established by lot at the first meeting of the new board, with one director having a term of one year, one director having a term of two years, and two directors each having

a term of three years. Thereafter, the term of office of at-large directors shall be three years. The New Mexico State Bar Foundation is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the Foundation are to: enhance access to legal services for underserved populations; promote innovation in the delivery of legal services; and provide legal education to members and the public. Members interested in serving on the Board should submit a letter of interest and a resume to sbnm@nmbar.org by Dec. 4.

Board of Bar Commissioners Meeting Summary

The Board of Bar Commissioners for the State Bar and the New Mexico State Bar Foundation met virtually on Sept. 23 and 24 with certain members of Senior Staff participating from the State Bar Center in Albuquerque, N.M. Action taken at the meeting follows:

- Approved the June 19 meeting minutes as submitted;
- Approved the 2021 Budgets for the State Bar and the N.M. State Bar Foundation;
- Accepted the August 2020 State Bar and N.M. State Bar Foundation financials;
- Approved a request to pursue a new credit card provider for the State Bar and the N.M. State Bar Foundation with no fees or interest;
- Approved a blanket carryover for all sections of their funds at year end to next year due to the circumstances encountered this year with COVID-19;
- Reviewed the Client Protection Fund, Access to Justice Fund and the Judges and Lawyers Assistance Program second quarter 2020 financials;
- Received an update on the PPP Loan for the N.M. State Bar Foundation;
- Approved the amended bylaws for the N.M. State Bar Foundation regarding the creation of a separate bar foundation board composed of a majority of Board of Bar Commissioners members and that all members be appointed by the Board of Bar Commissioners; a notice will be published for the active members and a public member, and the new board will be appointed at the December meeting;
- Discussed a repayment plan for the inter-company debt owed to the State Bar by the Bar Foundation, and the Board will discuss additional options at a future meeting;
- Discussed the next steps with EAJ regarding a proposal and will notify them

of the new Bar Foundation bylaw amendments and board composition;

- Approved a co-sponsorship of the Judicial Clerkship Program by the N.M. State Bar Foundation, provided that the State Bar's tax advisor at Clifton Larson Allen confirms that it does not create a risk to the Foundation's 501(c)(3) status;

- Received the Communications Plan to be used by bar commissioners in talking with constituents; proposed new logo designs and will provide additional options for consideration;

- Pursuant to the pending bar commissioner redistricting rules before the New Mexico Supreme Court, approved providing notice of only the positions that are going to be filled and not including those which will be eliminated in the Second Judicial District and the Third and Sixth Judicial Districts for the 2020 Board of Bar Commissioners election;

- Held an executive session to discuss the Executive Director Evaluation and Compensation Committee's report;

- Pursuant to Article IX, Section 9.4, of the State Bar Bylaws, Annual Review of Sections and Committees, approved continuing the sections and committees that were up for sunset this year and those which had not submitted an annual report for last year;

- Received reports and recommendations on the Minorities in the Legal Profession decennial survey from the Committee on Diversity in the Legal Profession and the Committee on Women and the Legal Profession and accepted the reports; the recommendations will be considered and reviewed for the next steps;

- Reported that the executive committee met to review the meeting agenda and discuss the intercompany repayment plan;

- Received a report from the Policy and Bylaws Committee and approved revisions to the following: 1) Section Bylaw template regarding Purpose; 2) various Sections' Bylaws; 3) the State Bar Bylaws regarding (a) Section 4.2a to remove "or serve more than ten (10) consecutive years"; and (b) Section 5.2 to add after President-Elect "who is also elected to become President in the following year"; and pursuant to the pending redistricting rule changes to 24-101 before the Supreme Court, approved Section 4.1 to update the number of commissioners from 21 to 22, Section 4.2e regarding voting, and 5.5 regarding extension of commissioner terms pursuant to Rule 24-101(J); the committee also reported that it will finalize the reserve policies for a rainy day fund and a building improvement fund for consideration at the December meeting;

- Received a report from the Regulatory Committee on the following: 1) reviewed the proposed rule changes to streamline and merge the MCLE and licensing requirements and approved for staff to work with the Supreme Court on the joint project; 2) received an update on the self-study rule, which was published for comment; members requested clarification and specificity; changes were made and they were sent back to the Supreme Court for approval; and 3) approved appointments to the new Legal Specialization Commission;

- Received a report from the Member Services Committee which reviewed the Strategic Plan and brainstormed on ways members can get involved in the State Bar;

- Received a report on the Supreme Court Ad Hoc Committee on Attorney Recruitment which is looking at options for attracting attorneys to the rural areas;

- Received a report from the Special Committee on Sections which discussed the purpose of the committee to learn from the section leadership and members how the State Bar can meet their needs;

- Received a report and update on the activities of the Wellness Committee and approved changing the name to the Well-Being Committee; and

- Received an update on the Association Management Software; the new system will be online early next year.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Dec. 9 meeting.

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

- Nov. 2
- Nov. 9
- Nov. 16

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.

Employee Assistance Program

Managing Stress Tool for Members

NMJLAP contracts with The Solutions Group, The State Bar's EAP service, to bring you the following: A variety of resources surrounding some of the complex issues we are facing today such as managing conversations when you disagree politically, dealing with challenging people during COVID, civil unrest, Zoom exhaustion and speaking up about physical distancing. All of these can be found under the 'Additional Resources' tab when selecting the EAP option on the Solutions Group Website. Webinars are FREE, and have a wide range of topics such as mindfulness during Covid-19, bias in the work-place, managing stress, and many more. The Solutions Group offers Work-Life Services. The Work-Life Services is a free, confidential access to professional consultants and online resources. All resources topics, webinars, and the Work-Life Service can be found at www.solutionsbiz.com The Solutions Group can help with any life situation. Call 505.254.3555, or 866-254-3555 to receive FOUR FREE counseling sessions. Every call is completely confidential and free!

State Bar Sections and Divisions

Sections' Annual Meeting of 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.

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 BARS

New Mexico Women's Bar Association

Announcement of Annual Meeting & Request for Nominations to the Board of Directors

The New Mexico Women's Bar Association announces its 2020 Annual Meeting, which be held remotely Monday, Nov. 16 at noon. All are invited. Please R.S.V.P. to nmwba1990@gmail.com to receive your Zoom invitation and the meeting materials. The Women's Bar also announces four openings on its board of directors; directors will serve two-year terms beginning January 2021. The board invites interested members to apply by sending a short letter of interest and a resume to nmwba1990@gmail.com. Nominations will close Nov. 16. Elections for board members will be held electronically from Nov. 23-30. Directors are expected to attend a retreat in late January (which is generally a weekend, in-person event, but will likely be of shorter duration and via Zoom this year) and also to attend bi-monthly meetings. All members of the board actively participate on one or more committees and support events sponsored by the Women's Bar Association. The New Mexico Women's Bar does not discriminate on the basis of sex or gender and encourages all licensed attorneys to become members and apply to be on the board. For more information about the Women's Bar Association, or to become a member, please go to our website, www.nmwba.org.



Supreme Court of New Mexico

CHIEF JUSTICE
MICHAEL E. VIGIL
JUSTICES
BARBARA J. VIGIL
JUDITH K. NAKAMURA
C. SHANNON BACON
DAVID K. THOMSON

P.O. BOX 848
SANTA FE, NEW MEXICO
87504-0848
(505) 827-4860

CLERK OF COURT
JOEY D. MOYA, ESQ.

September 29, 2020

Sophie Martin
Executive Director
New Mexico Board of Bar Examiners

Dear Ms. Martin:

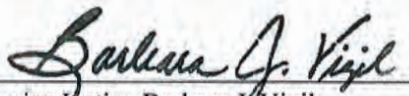
The Supreme Court congratulates the Board of Bar Examiners for successfully conducting a COVID-safe, properly proctored in-person bar examination for 377 examinees on September 9-10, 2020.


The COVID-19 public health emergency does not allow for administering the bar examination to hundreds of examinees in a single room. This would potentially endanger the test takers, staff administering the test, and the public at large. Alternatives were discussed ranging from cancelling the bar exam altogether to provisional licenses allowing law school graduates to practice under a licensed lawyer's supervision.


The Board of Bar Examiners started bar examination safety planning in March, and it quickly established requirements for the examination to be given in full compliance with all State and local COVID-19 restrictions, such as physical distancing, mask-wearing, group size, and quarantine, and New Mexico courts' requirements for court facilities, including temperature and symptom checks prior to entering examination buildings. The detailed plans were subsequently approved by the Supreme Court, and the examination was administered in person by 157 individual proctors to 377 examinees, in multiple classrooms spread throughout the Central New Mexico Community College campus with no more than four examinees in each classroom, and not a single positive case of COVID-19 has been reported.

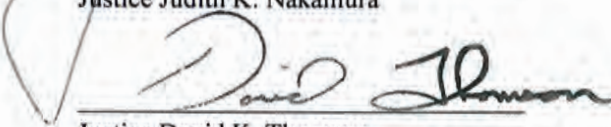
The Supreme Court greatly appreciates the hard work you and the Board did to make the bar examination a success. New Mexico has led the way in showing how an in-person COVID-safe bar examination can be safely administered to hundreds of examinees. Thank you.


Chief Justice Michael E. Vigil


Senior Justice Barbara J. Vigil


Justice C. Shannon Bacon


Justice Judith K. Nakamura

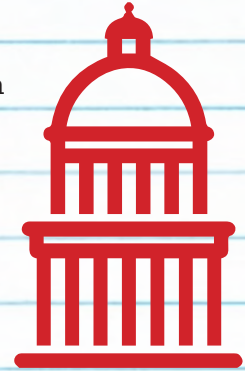

Justice David K. Thomson



Student Loan Know Your Rights

Federal Student Loans

- The CARES Act has suspended all student loan payments and interest from March 13 to Sept. 30, 2020
 - Your loan servicer should have done this. You do not need to take any action.
- The CARES Act does not keep you from making payments if you are financially able. Any payments you made or make after March 13 will be applied directly to principal. This will help you pay off your loans faster.
- On August 8, the President issued an Executive Memorandum extending some provisions of the CARES Act! <https://bit.ly/30t6UUJ>
 - On August 21, the Department of Education announced that, under the authority of the Executive Memorandum, they intend to extend the full borrower relief benefits of the CARES Act through Dec. 31, 2020. Through 2020, all federally-held student loans will continue to have a 0% interest rate and payments will be automatically suspended. (Non-payments through 2020 will count as qualifying payments for Public Service Loan Forgiveness [PSLF]).
<https://bit.ly/34hlvn6>
- If you are working towards PSLF, you should make sure that your automatic payments are turned off and that you do NOT get into paid-ahead status by paying more than what's due (\$0 through 2020).
 - To avoid getting into paid ahead status, you should either manually select that you do not want to be put into paid ahead status or advance your due date when making a payment, opt out of the suspension/forbearance, or contact your loan servicer to permanently remove paid ahead status.



What if I have private student loans?

- Federal private student loans not held by the U.S. Department of Education are not covered by the CARES Act.
- However, some private lenders have implemented forbearance options that will allow borrowers to postpone monthly payments. Investigate whether this is an option for you!

What if I graduated this year?

- Typically after you leave school you have a six-month grace period to begin repayment on federal student loans. If your income or employment has been impacted by the pandemic, you may be eligible for zero-dollar income-driven repayment.
- Log in to federal student aid to get started.
<https://studentaid.gov/manage-loans/repayment>



What if I am working towards Public Service Loan Forgiveness (PSLF)?

- Only federal Direct Loans are eligible for PSLF.
- Even though payments on Direct Loans are set to \$0 until the end of 2020, those payments will still count towards loan forgiveness when you apply for PSLF as long as you meet the other program requirements..

What if my loans are in default?

- The federal government has ceased collection of defaulted students loans (including garnishment, tax refund and Social Security offsets).
- If you are rehabilitating a defaulted student loan, missed payments due to the pandemic will not be considered a missed payment against your rehabilitation. Learn more about default
<https://www.consumerfinance.gov/about-us/blog/what-you-need-to-know-about-student-loans-and-coronavirus-pandemic/> and https://protectborrowers.org/wp-content/uploads/2020/04/Repayment-FAQs_Covid-Update_4.2.2020-vF-2.pdf.



Hearing something different about your student loans? Watch out for scams!

- If someone asks you to pay a fee to suspend payments, this is a scam! The federal government will never ask for an additional fee. Notify the FTC if you've been contacted by a scammer
<https://www.ftccomplaintassistant.gov/#crnt&panel1-1>.

This article was put together by the State Bar of New Mexico Young Lawyers Division.



Looking for more resources?

Federal Consumer Financial Protection Bureau – <https://www.consumerfinance.gov/about-us/blog/what-you-need-to-know-about-student-loans-and-coronavirus-pandemic/>

Federal Student Aid - <https://studentaid.gov/manage-loans/repayment>

Student Borrower Protection Center - https://protectborrowers.org/wp-content/uploads/2020/04/Repayment-FAQs_Covid-Update_4.2.2020-vF-2.pdf

Historical Committee : Spain and the Independence of the United States

By Eric Sedillo Jeffries

State Bar of New Mexico Historical Committee

For your Fall reading pleasure, the State Bar of New Mexico Historical Committee recommends Tom Chavez' excellent history on *Spain and the Independence of the United States*. History provides a dispassionate, contemplative perspective on our turbulent present. There is no destiny. Times, weather, circumstances and luck make history. Our nation's creation was but a pawn in the international European politics of the 18th European century.

Nestle back into your reading chair to read about the delicate, touch and go formation of our then fragile country between 1776 and 1783. Throughout the 1700s there were global wars between Britain, Spain and France. In the 1763 Treaty of Paris, the winner, Britain, was the acknowledged most powerful, dominating world power. France lost Canada and India. Spain lost Uruguay and Florida, retaining New Orleans and the Mississippi River. The 13 American colonies grew resentful of imperial taxes imposed to pay for Britain's global wars.

Spain and France, in different ways, equally assisted in our independence for their own selfish monarchical, military, and commercial reasons. Spain's assistance had the longer and more enduring influence. To begin, Spain was the bigger cash banker funding the war of the weak American colonies. Spain's silver was the colonies' original, valuable currency, eventually evolving into our dollar (\$) symbol sign with one vertical bar instead of the original two vertical bars. Spanish citizens, including New Mexico, paid increased taxes to help finance Spain's aid to the colonies. Spain's ownership and domination of New Orleans and the Mississippi River provided a practical alternative western supply route for cash and supplies that avoided the effective British blockades of the colonies' eastern seaports.

The troops and ships of both Spain and France kept the British distracted from crushing the weak colonies. Britain was forced to focus on the defense of its far-flung empire, in the Caribbean Sea, Central America, Gibraltar and around the world. Particularly helpful was Spain's 1780 victory in Mobile followed by its March 1781 victory in Pensacola that effectively recovered Spain's



Florida possessions. The victories helped secure the colonies' southern flank, damaging British confidence and military prestige before the French and American victory at Yorktown on Oct. 18, 1781. The 1783 Treaty of Paris was signed by all the heavily indebted warring countries. The Continental Congress ratified the treaty on Jan. 14, 1784. That ended our war of independence and recognized the borders of our new nation.

Ironically, everything that Spain wanted to avoid in aiding the American colonies came to fruition. France's economic woes increased, leading to the revolution that brought down the French monarchy and replaced it with Napoleon. He invaded Spain and placed his brother Joseph on the Spanish throne. The American and French Revolution inspired rebellion among Spain's many colonies. The Spanish colonialists also wanted freedom from imperial taxation and rules.

In our lucky twists of fate, Napoleon had his brother, Joseph, as king of Spain, give him Louisiana, then in 1803 Napoleon sold it to the United States for \$15 million. Most of the payment was made in the new U.S. currency of \$ with two vertical bars. Our "manifest destiny" to march West to conquest was a lucky break in the chessboard of international politics. It was a defeated Mexico, free from Spain, that ceded California to the then emerging power of the United States.

In the larger picture, our state's enchanting Spanish heritage flowed directly and indirectly, from Spain. Our nation and our state owe much to Spain, even if Spain never intended to be so generous.

If you are interested in joining the historical committee, make sure to check the box on your annual licensing and dues form. All committees are free to join! You can also contact member services at memberservices@nmbar.org for further information.

8 Ways to Cope *After a Suicide Loss*

By Carla Stumpf-Patton

Coping with suicide loss can feel devastating. In its aftermath, it can bring overwhelming, mixed emotions and questions about how and why this happened. More importantly, we wonder how we are going to survive with what feels like an insurmountable level of pain and loss. But, we can and do survive, and there are fellow survivors who offer us hope that our hearts can heal. A group of military survivors who lost a loved one to suicide offered some unique suggestions and creative coping skills, knowing that what works for one may not work for another. They shared what has helped them along the way, hoping to help the next person looking for answers.

1. Basic needs, self-care and emotional wellness are critical for daily living and functioning. It can feel overwhelming just getting through the day, so it helps to be gentle with yourself and patient with the process as to not get discouraged. Grief recovery takes time. Basic needs such as regular sleep, eating well, hydrating and regular medical care are critical. Self-compassion means allowing yourself to go at your own pace, to smile, laugh or feel joy again. It means giving and accepting love from others, knowing you don't have to do everything alone. Keep a "to-do" list and notepad for important details or reminders. Take things one step at a time, one day at a time and, when need be, go back to the basics and just focus on breathing and keeping your stress levels under control.

2. Physical needs are equally important and some people find that "doing" can be a comforting, healthy outlet to channel grief. Physical activity is important to our overall health and can help relieve levels of stress and regulate sleep and mood. Some examples may be walking, biking, hiking, kayaking, yoga, meditating, rock climbing, traveling, gardening, spending time in nature, running and animal-assisted therapy like equine therapy or getting an emotional support animal.

3. Seeking grief supports and professional counseling can offer tremendous help. Many sought out a private therapist to discuss feelings openly and learn new coping skills. This was especially important with high levels of trauma where survivors needed a safe place to discuss the graphic details around the loss. Many shared how grief support groups were helpful to sharing their stories, as was seeing a psychiatrist when medically necessary. Don't get discouraged if you don't find the right fit immediately. Keep searching until you find a therapist you trust. Remember that TAPS can help make these counseling referrals should you need any assistance.

4. Connecting with others who understand can remind you that you aren't alone. It helps to have a safe place to connect with others who won't judge or tell you what to do or how to feel — a place where you can share, listen and be heard. Surviving military loved ones found support through local groups like TAPS Care Groups as well as online forums like the message boards and chat rooms of the TAPS Online Community. For some, it helped to stay connected with battle buddies of the deceased and maintain some connection to the military community.

5. Learning about grief and suicide are important starting points to understand what you (and your loved one) may have been experiencing and how important it is to feel and express emotions that come with such a loss. We learn there is no time limit on grief and we all have different paths. This information can come from reading books, doing research on the subject and attending seminars or workshops. After a loved one dies by suicide, it can help to learn more about mental health and how it impacts thoughts and behaviors that can lead to suicide. While it cannot bring back our loved ones who have died, this knowledge can bring forth a new understanding and a hopeful encouragement of how education and prevention efforts can save lives.

6. Tapping into creativity can be healing and gives another outlet for expressions of grief, particularly when you can't find words to express your emotions. Some examples of this might include writing, journaling and blogging, crochet, quilting or knitting, making a memory garden, scrapbooking, making homemade cards, doing puzzles, painting, meditative coloring, baking, cooking and canning. These activities can be calming and therapeutic in nature and can help with feelings of productivity. It also is a unique way to offer handmade, heartfelt gifts to others.

7. Honoring and remembering are important ways to keep the memories alive and a powerful tribute to life that was lived. This can come in many forms, often occurring after there has been some time to process the grief. This may happen when there is a shift in focus to the life lived instead of the death. It may come in the form of giving back or doing things that give a sense of pride around your loved one's life and service, a desire to create a legacy or simply make you feel closer to them. Take flowers to the cemetery, plan a special event on important dates like birthdays or anniversaries, go to a favorite restaurant or make a favorite meal at home. Do something special your loved one would

have enjoyed; go fishing or see their favorite movie. You might even run in an event with Team TAPS as a way to do something in your loved one's memory. As you are honoring and remembering your loved one, know that your TAPS family is here for you. TAPS Together are a wonderful way to bring together surviving military families in local communities by connecting them with others who understand and where survivors can honor their loved ones together.

8. Meaning and purpose are about you moving forward and still living a meaningful life in spite of the grief — when you feel ready. Some survivors feel empowered by the thought of surviving something so painful, which can ironically bring a newfound sense of purpose. You may choose a new path for your life's plan; you may begin a new career, find new hobbies, create new relationships, start traveling or shift your focus to new or different priorities. For some, it might involve advocacy work around mental health or suicide prevention. It might involve giving back and helping others, such as with the TAPS Peer Mentor

Program, which makes connections between bereaved survivors of military loss. Grief can bring new knowledge, which in turn brings new strength, which brings a renewed sense of hope.

No matter what your paths you take to find healing, you are not alone. Others have walked this path and are here to offer encouragement. You can survive. You can even thrive.

Bio

Dr. Carla Stumpf-Patton is the Senior Director of Postvention Programs at TAPS and is a subject matter expert in grief, trauma and suicide. She holds a Bachelor's Degree in Psychology, a Master's Degree in Clinical Mental Health Counseling and a Doctorate of Education in Counseling Psychology. She is a Licensed Mental Health Counselor, National Certified Counselor, Certified Fellow Thanatologist and Certified Clinical Trauma Professional. Dr. Stumpf-Patton is the surviving spouse of Marine Corps Drill Instructor Sgt. Stumpf, who died by suicide in 1994, several days before their only child was born.

About TAPS

The Tragedy Assistance Program for Survivors (TAPS) is the national organization offering compassionate care for all those grieving the death of a military loved one. Since 1994, TAPS has been providing peer-based emotional support, grief and trauma resources, grief seminars for adults, Good Grief Camps for children, case work assistance, connections to community-based care, and a 24/7 resource and information helpline for all who have been affected by a military death. Services are provided free of charge.

TAPS Helpline: 1-202-588-TAPS (8277)

Website: [TAPS.org](https://www.taps.org)

Social Media (Facebook, Instagram, Twitter): [@TAPSOrg](https://www.facebook.com/TAPSOrg)

Originally published via taps.org; September 2017.



MCLE Deadlines Approaching

Dec 31, 2020 is the deadline to complete all 2020 Minimum Continuing Legal Education credits (10 General and 2 Ethics).

Email **mcle@nmbar.org** with questions.

Legal Education

October

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|--|--|--|
| <p>27 31st Annual Appellate Practice Institute
4.2 G, 1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</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>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

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| <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>4 Releasing Employees & Drafting Separation Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 2020 Indian Law Institute: Day 2
2.0 G, 1.0 EP
Live Webinar
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>5 Annual Review Seminar
12.0 G, 3.0 EP
Webcast
Tennessee Law Institute
800-827-6716</p> | <p>6 ADR: Cultural Sensitivity Institute
3.0 EP
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>5 ADR: Cultural Sensitivity Institute
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Ethics and Changing Law Firm Affiliation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| | <p>5 2020 Indian Law Institute: Day 1
3.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | |

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

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|---|--|---|
| <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 Essential Asset Protection Planning
1.5 G
Webcast
Cannon Financial Institute
www.cannonfinancial.com</p> | <p>19 Animal Law Institute: Ethical Consideration for Animal Lobbyist, Litigators (and Lovers)
3.0 EP
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>17 Ethics of Beginning and Ending Client Relationships
1.0 EP
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>13 Parenting Coordinator Training
11.5 G, 1.0 EP
Webcast
Comallie-Caplan
575-526-4222</p> | <p>17 Immigration Law Institute: Ethics and Professionalism
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>20 Ethics and Dishonest Clients
1.0 EP
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>18 Word Master Class on Styles
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Practice Risk Management Assessment Part 1 and Part 2
2.0 G
Webcast
American Educational Institute
www.aeiseminars.com</p> |
| <p>16 Holding Business Interests in Trust
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>18 Document Analysis: How to Read a Will or Trust
1.0 G
Webcast
Cannon Financial Institute
706-389-7645</p> | <p>30 Ethics for Business Lawyers
1.0 EP
Teleseminar
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> | |

December

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|--|--|--|
| <p>1 Business Divorce, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>2 Business Divorce, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>7 Text Messages & Litigation: Discovery and Evidentiary Issues
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
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Opinions

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

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

Effective October 2, 2020

PUBLISHED OPINIONS

A-1-CA-36781	M Velasquez v. Regents of Northern New Mexico College	Affirm/Reverse	09/28/2020
A-1-CA-34784	Premier Trust v. City of ABQ	Affirm	10/01/2020

UNPUBLISHED OPINIONS

A-1-CA-36816	James Hamilton Construction v. T Church	Affirm	09/28/2020
A-1-CA-37775	State v. T Chavez	Affirm	09/28/2020
A-1-CA-38150	R Cano C. v. Hock it to Me Pawn Shop	Affirm	09/28/2020
A-1-CA-38708	State v. N Mascarenas	Affirm	09/28/2020
A-1-CA-38850	State v. N Yazzie	Affirm	09/28/2020
A-1-CA-38961	CFYD v. Kelly R	Affirm	09/28/2020
A-1-CA-38735	T Romig v. University of New Mexico Board of Regents	Affirm	09/29/2020
A-1-CA-38561	State v. S Chadwick	Affirm	09/30/2020
A-1-CA-38152	State v. C Chavira-Madrid	Affirm	10/01/2020
A-1-CA-38547	N Gomez v. Hobbs Operating Company	Reverse/Remand	10/01/2020
A-1-CA-38876	State v. J Lente	Affirm	10/01/2020

Effective October 9, 2020

UNPUBLISHED OPINIONS

A-1-CA-38470	C Eschmann v. R Alford	Affirm	10/06/2020
A-1-CA-38755	CYFD v. Veronica R	Affirm	10/06/2020
A-1-CA-38806	CYFD v. Darylyn C	Affirm	10/06/2020
A-1-CA-37152	L Brown v. C Garcia	Affirm	10/08/2020
A-1-CA-38117	Bayview Loan Servicing v. C Smoley	Affirm	10/08/2020
A-1-CA-38193	State v. R Torres	Affirm	10/08/2020
A-1-CA-38228	J Michaelback v. D Rascon	Affirm	10/08/2020
A-1-CA-38578	CYFD v. Ignacia K	Affirm	10/08/2020

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

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

Ethics Advisory Opinion

From the State Bar of New Mexico's Ethics Advisory Committee

Formal Opinion: 2020-01

Topic: Lawyer's Responsibility When Acting As Local Counsel For A Client In Association With Pro Hac Vice Counsel

Rules Implicated: The Entirety Of Rules 16-100 Et Seq. Nmra (2020); With Special Emphasis On Article 1: Lawyer-Client Relationship Rules

Disclaimer: The Ethics Advisory Committee of the State Bar of New Mexico ("Committee") is constituted for the purpose of advising lawyers on the application of the New Mexico Rules of Professional Conduct in effect at the time the opinion is issued ("Rules"). One way in which the Committee attempts to advise lawyers is through "formal opinions," which are published. In issuing formal opinions, the conclusions are based upon any facts that are referenced in the opinion. Lawyers are cautioned that should the Rules subsequently be revised, or different facts be presented, a different conclusion may be appropriate. The Committee does not opine on matters of substantive law although concerns regarding substantive law are sometimes raised in the opinions. The Committee's opinions are advisory only, and are not binding on the inquiring lawyer, the disciplinary board, or any tribunal. The statements expressed in this opinion are the consensus of the Committee members who considered the question presented.

Question Presented:

What are a lawyer's duties to the client under the Rules of Professional Conduct when they are acting in the capacity as local counsel for that client in association with a pro hac vice lawyer?

Summary Answer:

A lawyer who enters an appearance in a matter as local counsel in association with another lawyer who is admitted pro hac vice has the same duties under the Rules as in every matter in which the attorney appears.

Analysis:

Under a straightforward reading of the Rules of Professional Conduct, there is no differentiation between representing a client through a pro hac vice arrangement or through direct engagement.

The pro hac vice arrangement is a creation of the Rules of Procedure, which make it clear that local counsel is considered to have entered an appearance in the matter as an attorney of record along with the out-of-state attorney, who is only permitted to practice in association with this local counsel – a member in good standing with the bar.

Specifically, Under Rule 24-106 NMRA an attorney not admitted in New Mexico may practice law after complying with required conditions and only "in association with an active member in good standing as a member of the State Bar of New Mexico." Pursuant to Rule 1-089.1 NMRA, the local counsel must be present at every hearing "unless excused by the court," and is

considered to have signed every pleading and is subject to Rule 1-011 for everything submitted to the court. Therefore, a lawyer acting as local counsel implicitly certifies to the court that they "ha[ve] read the pleading, motion, or other paper; that to the best of the [their] knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Rule 1-011(A) NMRA.

Nothing in the Rules of Procedure differentiate between the level of participation or professionalism expected from local counsel and that of other counsel involved in a matter. To the contrary, they express the clear expectation that once counsel has entered their appearance, they are guided by universally applicable principles.

Although unpublished and therefore not authoritative, *Khalsa v. Puri* provides the example of how the expectations for "local counsel" are no different than for "counsel." In that case, the defendant had filed for a writ of certiorari with the New Mexico Supreme Court, which it granted. No. S-1-SC-36192 (Nov. 27, 2017); 2017 WL 9833745 (unpublished). The court set oral arguments for September 26, 2017 but canceled them when local counsel did not appear with pro vac vice counsel, in violation of Rule 12-302(E). *Id.* While the New Mexico Supreme Court ultimately decided to quash the order to show cause, it did award attorney's fees to opposing counsel as compensation and for the Rule 12-302(E) violation of local counsel. *Id.*

While it does not appear to be a case involving a pro hac vice arrangement, *In Re Estrada* provides an example where a less-experienced subordinate attorney was held accountable under the Rules of Professional Conduct, even though directed in her conduct by out-of-state counsel controlling the litigation. 2006-NMSC-047; 140 N.M. 492. At the client and out-of-state counsel's urging, the lawyer allowed a forged prescription to be submitted, violating her duties to the judiciary and the administration of justice. Specifically, the court found that she had repeatedly violated "Rules 16-102(D) and 16-301 by pursuing a meritless defense and assisting her client in conduct that misled the court." *Id.* ¶27, 140 N.M. at 502. The court did not find the subordinate role compelling, noting that "under Rule 16-502(A) NMRA, '[a] lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.'" *Id.* ¶26, 140 N.M. at 502. Finally, the Supreme Court admonished that: "It should be clear to Members of the New Mexico Bar and those who provide or offer to provide legal services here, that such conduct will not be tolerated." *Id.* ¶27, 140 N.M. at 502.

From the Rules of Procedure and these two cases, we are brought squarely back to the Rules of Professional Conduct. Those rules start by directing that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Rule 16-101 NMRA. Beginning with that rule, and going forward, a New Mexico lawyer who enters his or her appearance on behalf of a client – as sole

Ethics Advisory Opinion

or local counsel – is thereafter bound by the identical duties to the client, the courts, and the administration of justice.

The Fifth Circuit, applying the Louisiana Rules of Professional Conduct and discussing the “duty of care,” provides an on-point example in *Curb Records v. Adam and Reese L.L.P.*, 203 F.3d 828, 1999 WL 1240800 (5th Cir. 1999)(unpublished). In that case, a California firm hired local counsel and stated that his sole function was to “file[] and forward pleadings, discovery and orders” and that he was not to have any contact with the client. *Id.* at *1. With this understanding of his role, local counsel did not inform the client of a series of discovery defaults by the California firm, which resulted in sanctions and ultimately an unfavorable settlement. The district court, relying solely on contract principles, did not find that local counsel committed malpractice. *Id.* at *3. However, the Fifth Circuit, after a thorough analysis of lawyers’ duties under their Rules of Professional conduct concluded:

[I]n a situation in which it is clear to a reasonable attorney that substantial prejudice will occur to the client as a result of lead counsel’s malfeasance or misfeasance, we think that the duty of care under Louisiana law requires local counsel to notify the client of lead counsel’s actions or inaction, irrespective of instructions, excuses, or strategies of lead counsel.”

Id. at *6 (emphasis added). In other words, no pro hac vice agreement between attorneys can serve to alter local counsel’s duties imposed by the Rules of Professional Conduct.

Other ethics advisory committees, including Utah’s, have looked at this precise question. In its Opinion 17-04 (Sept. 26, 2017), Utah did not mince words, clearly concluding after a similar analysis that:

Acting as local counsel for a pro hac vice attorney is not a minor or perfunctory undertaking. Local counsel violates the Utah Rules of Professional Conduct when local counsel acts as nothing more than a mail drop or messenger for the pro hac vice attorney. All attorneys admitted to the Utah State Bar are required to comply with all of the Utah Rules of Professional Conduct, including when they are acting as local counsel. Under Rule 5.1 of the Utah Rules of Professional Conduct, local counsel has a general duty to adequately supervise pro hac vice counsel and to provide expertise regarding Utah law, statutes, cases, rules, procedures, and customs in Utah. Local counsel is responsible to the client and responsible for the conduct of the Utah court proceedings.....[I]f local counsel determines that the pro hac vice attorney is engaging in conduct that is likely to seriously prejudice the client’s interests, or the administration of justice, local counsel must communicate local counsel’s independent judgment to the client, and, if necessary, to the court or tribunal.

Emphasizing this point even further, Wyoming recently added the following language to their rule governing pro hac vice admissions: “Local counsel shall be deemed to have ratified all conduct of pro hac vice counsel and shall be responsible for pro hac vice

counsel’s violation of the Rules of Professional Conduct.” Rules Governing the Wyoming State Bar and the Authorized Practice of Law, Rule 8(3)(e) (effective December 1, 2019).

Finally, while our Rules allow for limited entries of appearance, Rule 16-102(C) NMRA and Rule 1-089(A) NMRA, it is the opinion of the Committee, in light of the foregoing discussion, that such limitation would have to be entered into by the client with all counsel; local counsel cannot limit their representation to be more restrictive than pro hac vice counsel with whom they are associating.

Conclusion:

For the reasons set forth above, the Committee concludes that a lawyer who enters an appearance in a matter as local counsel in association with another lawyer who is admitted pro hac vice, has the identical duties under the Rules of Professional Conduct to the client and to any court that exist in every matter in which the lawyer appears.

Endnotes

1 Rule 1-089.1(A) NMRA Nonadmitted counsel.

Except as otherwise provided in Paragraph C of this rule, counsel not admitted to practice law in New Mexico, but who are licensed to practice law and in good standing in another state or country, may upon compliance with Rule 24-106 NMRA, participate in proceedings before New Mexico courts only in association with counsel licensed to practice law in good standing in New Mexico, who, unless excused by the court, must be present in person in all proceedings before the court. Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another state or country and that they have complied with Rule 24-106 NMRA. The affidavit shall be filed with the first paper filed in the court, or as soon as practicable after a party decides on representation by nonadmitted counsel. Upon filing of the affidavit, nonadmitted counsel shall be deemed admitted subject to the other terms and conditions of this paragraph. A separate motion and order are not required for the participation of nonadmitted counsel. New Mexico counsel must sign the first motion or pleading and New Mexico counsel’s name and address must appear on all subsequent papers or pleadings. New Mexico counsel shall be deemed to have signed every subsequent pleading and shall therefore be subject to the provisions of Rule 1-011 NMRA. For noncompliance with Rule 24-106 NMRA or this rule, or for other good cause shown, the court may issue an appropriate sanction including termination of the attorney’s appearance in any proceeding.

2 Similarly, in appellate court, “[a]n attorney or firm shown as participating in the filing of any brief, motion, or other paper shall, unless otherwise indicated, be deemed to have appeared in the cause.” Rule 12-302(B) NMRA.

3 Although New Mexico has not incorporated pro hac vice language into its Rule 16-501 NMRA, the rationale of the Utah Rule is persuasive.

Advisory Opinion

From the Board Governing the Recording of Judicial Proceedings

ADVISORY OPINION NO. 2020-1

The Board Governing the Recording of Judicial Proceedings (the “Board”) received a request for an advisory opinion concerning whether a certified court reporter, hired by a party to make a stenographic record of a deposition to be conducted by videoconference (Zoom, GoToMeeting, or similar platforms), shall also make an audio-visual recording on behalf of a party, utilizing the videoconferencing software.

The answer is no. Videotaped depositions are a distinct and separate means of recording depositions. They are alternatives to the verbatim stenographic records made by certified court reporters. See Rule 1-030(B)(2) NMRA, Depositions Upon Oral Examination (requiring the party taking the deposition to provide the deponent notice of whether the deposition will be taken by “sound, sound-and-visual or stenographic means”). Accordingly, if a party taking a deposition wants a videotaped record of the deposition, that party should notice the deposition as a videotaped deposition and make the appropriate arrangements for the services of a videographer.

Videotaped recording of depositions are governed by a specific Rule of Civil Procedure. See Rule 1-030.1 NMRA, Audiotaped and Videotaped Depositions. Rule 1-030.1 sets out both the procedural and the extremely precise technical requirements for taking videotaped depositions. For example, pursuant to Rule 1-030.1(C)(3):

[U]nless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with appropriate lighting. Lighting, camera angle, lens setting and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. At both audiotaped and videotaped depositions, sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent[.]

Rule 1-030.1(B)(6) also mandates, among other requirements, that the “audio or video operator” prepare a log synched to specific events occurring during the deposition:

[T]he audio or video operator shall use a counter on the recording equipment and shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape: at which examination by different counsel begins and ends; at which exhibits are identified; and at which any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussions, mechanical failure or otherwise[.]

Certified court reporters are authorized by the Board’s rules to take depositions using stenography and to transcribe deposition testimony recorded by stenographic means. See, e.g., Rule 22-304 NMRA, Transcript Authorized. Nothing in the Board’s rules contemplates a certified court reporter who is taking a deposition by stenographic means to simultaneously act as a “video operator” and to record a videotaped deposition.

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-001

No. A-1-CA-36619 (filed August 13, 2019)

STATE OF NEW MEXICO ex rel.
OFFICE OF THE STATE ENGINEER,
Plaintiff-Appellee,

v.

TOBY ROMERO,
Defendant-Appellant,
and
ELEPHANT BUTTE IRRIGATION DISTRICT,
et al.,
Defendants.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

JAMES J. WECHSLER, District Judge

Certiorari Granted, December 26, 2019, No. S-1-SC-37903.

Released for Publication January 21, 2020.

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Opinion

Julie J. Vargas, Judge.

{1} Defendant Toby Romero appeals from the district court's memorandum opinion and order adopting the special master's report. In its report, the special master determined that Defendant's underground water rights were forfeited and abandoned, except for a portion used for livestock purposes. We affirm.

BACKGROUND

{2} This case arose as a subfile proceeding in the course of a general adjudication of water rights in the Lower Rio Grande Basin. At issue in this proceeding is a disputed groundwater right in the Lower Rio Grande Basin perfected by prior appropriation when the Atchison, Topeka, and

Santa Fe Railroad Company (the Railroad) drilled and beneficially used water from a well (the Well) in the now-nonexistent town of Cutter, New Mexico.

{3} Defendant's cousin and a limited liability company (the LLC) whose members were Defendant and Defendant's brother (collectively, the Romeros) purchased property where the Well was located (the Property) from the Railroad in 1994, with the goal of selling the water rights. The LLC conveyed its interest in the Property to Defendant and Defendant's cousin later that year, and Defendant's cousin conveyed his interest to Defendant in 1998. Defendant filed a declaration of groundwater rights with the State Engineer, filled out by an employee in the State Engineer's Office, stating that the Well was "used 1921 [through] 1966 for providing water

to steam locomotives[.]" and "from 1992 [through] 1995 for livestock watering purposes." Defendant then conveyed the Property to two buyers who conveyed the Property back to Defendant over five years later. The State never sent forfeiture notices to Defendant or his predecessors in title.

{4} In the course of its general adjudication of the water rights in the Lower Rio Grande Basin, the State served Defendant with an offer of judgment stating that the Property had no water right. Defendant objected to the State's offer, claiming a water right in the amount of 394.85 acre-feet per year. The district court referred the present subfile proceeding to a special master, pursuant to Rule 1-053 NMRA.

{5} At trial before the special master, the parties agreed that the Railroad drilled the Well in 1921 to acquire water for its operations at Cutter (the Railroad Right), long before the State Engineer's 1982 extension of the Lower Rio Grande Basin to the area wherein the Property was located. Cutter was a station located between two of the Railroad's terminal points, and the water drawn from the Well was used by the Railroad for its steam locomotives, its workers, the livestock, and the community of Cutter. Following the switch to diesel locomotives in the late 1940s, the stop in Cutter "was no longer necessary and Cutter was nearly completely abandoned."

{6} Defendant relied in part on the testimony and a report by Edward Landreth, an engineer previously employed by the Railroad. Landreth testified that in the context of the 1994 sale of the Property, he alerted Defendant's cousin "to the surplus properties that the [Railroad] was selling off" and that Landreth "may have given [Defendant's cousin] contact information with [a real estate firm], and he took it from there." When asked if he was paid for his advice, Landreth stated, "[Defendant's cousin] . . . may have paid me a little something for wages."

{7} Landreth indicated in his report that "the consumption of water from [the Well] and predecessor wells at Cutter would have been extensive between 1881 and the end of the steam locomotive era in 1955." Landreth testified that although he characterized 1955 as "the end of the steam locomotive era," steam locomotives continued to be used, albeit to a much lesser extent. He also stated in his report that "the appurtenances to [the Well] was [sic] retired in place in 1959, as the Town of Cutter had ceased to exist and the railroad track maintenance forces have been relocated."

{8} The parties stipulated to the admission of several articles detailing the history of Cutter. One such article stated that after

the Railroad switched to diesel locomotives, “the trains no longer stopped to water up or unload cinders. In time the section crews were abolished and the bunkhouse and foreman’s house became vacant. . . . [F]inally on June 15, 1956[,] the post office at Cutter was closed. The office had been serving only six families[.] Another stated that the Railroad’s “last standing depot was torn down in 1956.”

{9} A map of the area contained a handwritten notation that read “retired in place AFR 4590-59,” and arrows pointing to the Well’s pump house, fuel tank, and underground piping. Landreth testified that when property is identified as “retired in place,” it is “removed . . . from the tax rolls” and is demolished, and that the notation “AFR” identifies property that is “[a]uthorized for retirement.” He further explained that the Railroad retires property primarily to reduce their “maintenance expense and tax exposure[,]” and that when property is retired, the Railroad is “relieved . . . of the obligation to pay property taxes . . . [o]n improvements” and theoretically stops maintaining the property. However, in the context of maintaining the retired property, he noted that “what headquarters do and the local people do can be two different things.”

{10} Landreth said he did not interpret the map as identifying the Well as having been retired. Instead, he believed that the Railroad retained the Well for future use; otherwise, he stated, it would have been erased from the map, “[j]ust like the depot” that had burned down. The State’s witness, John Verploegh, a hydrographic surveyor in the Office of the State Engineer’s Litigation and Adjudication Program, testified that he understood Landreth’s statement concerning the retirement in place of the Well’s appurtenances to reference the “equipment as necessary for the diversion of water from [the W]ell . . . to its place of use, in this case that being the casing, the motor, the pump, the piping, the tank[.]” In his discussion of the map, Verploegh testified that he interpreted “the dotted lines—with arrows to both the pipeline and a dotted line to what [he] understand[ed] to be the pump house, the reservoir, [the W]ell, and the oil pit, that those dotted lines point[ed] directly to those appurtenances[.]” He understood the notation “retired in place AFR 4590-59” to mean that the appurtenances, “no longer being necessary to the operation of the [R]ailroad, their having been found not necessary for some time at that point, [he] would presume . . . that they are retired in place even inasmuch, as Mr. Landreth put it, on standby . . . in the course of general operation.”

{11} Defendant also called Walter Sam Waldo Johnson as a witness. Johnson testified that sometime between 1962 and 1964, he helped his father repair the Well

because it was not pumping water. Johnson testified that he and his father were hired to repair the Well so it could provide water for livestock. On direct-examination, defense counsel asked if Johnson had been told the Well “was always maintained in operational condition[,]” to which Johnson replied:

Yes. Yes, sir. Whenever we went out there and got it going and got it back into operational condition, the owner said that—whoever, I don’t know whether he own [sic] it or leased it. I’m not sure how. I wasn’t involved on [sic] that. But it was—they had said that it was two or three years since it had been run.

{12} A map of the Railroad’s lines in New Mexico indicated that in 1966 the Railroad still had a station in Cutter, with a siding that could “handle [eighty-two] cars.” Although Landreth could not attest to what extent, if any, water from the Well was used for steam locomotives from 1921 to 1966, nor for “municipal purposes through the [19]70s[,]” he did testify that it was his understanding that the water was used for a road project “sometime probably between [19]75 and . . . [19]86.”

{13} The special master recommended the district court enter a judgment rejecting Defendant’s water right claim, and adjudicating Defendant only “a livestock right.” The special master found “that the amount of water the Railroad beneficially used from the Well was at most 107.53 acre-feet per year[,]” rather than Defendant’s claim of 394.84 acre-feet per year. Further, the special master found that there was no evidence that water from the Well was used for any purpose other than watering livestock between December 31, 1960 and December 31, 1964, and that the Railroad therefore forfeited the non-livestock Railroad Right. The special master also found that the State proved by clear and convincing evidence that the Railroad abandoned the Railroad Right after not using the right for any purpose other than watering livestock for thirty-four years, at which time the Railroad sold the Property to the Romeros.

{14} The district court adopted the special master’s report in its entirety. This appeal followed.

DISCUSSION

{15} Defendant argues the special master erred in finding the Railroad forfeited and abandoned the non-livestock portion of the Railroad Right. We do not address the special master’s quantification of the Railroad Right as Defendant does not appeal this issue.

{16} Following our discussion of whether NMSA 1978, Section 72-12-8(A) (2002), provides for partial forfeiture, we review the special master’s factual findings for substantial evidence. As our holding on

the issue of partial forfeiture is dispositive of the matter, we need not reach the abandonment issue.

Standard of Review

{17} A district court may “reject the special master’s findings of fact only if they were not supported by substantial evidence.” *State ex rel. Office of State Eng’r v. United States (Office of State Eng’r)*, 2013-NMCA-023, ¶ 16, 296 P.3d 1217; see Rule 1-053(E)(2) (“In an action to be tried without a jury the [district] court shall accept the [special] master’s findings of fact unless clearly erroneous.”). The district court reviews the special master’s conclusions of law de novo. *Office of State Eng’r*, 2013-NMCA-023, ¶ 17.

{18} This Court “give[s] no deference to the district court’s findings but instead consider[s] only whether the special master’s findings of fact were supported by substantial evidence.” *Id.* ¶ 18. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State ex rel. Reynolds v. Niccum*, 1985-NMSC-016, ¶ 9, 102 N.M. 330, 695 P.2d 480 (internal quotation marks and citation omitted). Further, “[t]he [special] master’s findings are presumed to be correct and so far as they depend upon conflicting evidence, or upon the credibility of witnesses, or so far as there is any testimony consistent with the findings, they must be treated as unassailable.” *Office of State Eng’r*, 2013-NMCA-023, ¶ 27 (omission, internal quotation marks, and citation omitted). “On appeal, all disputed facts are resolved in favor of the successful party, all reasonable inferences indulged in support of the verdict, all evidence and inferences to the contrary disregarded, and the evidence viewed in the aspect most favorable to the verdict.” *State ex rel. Reynolds v. Lewis*, 1973-NMSC-035, ¶ 30, 84 N.M. 768, 508 P.2d 577 (quoting *Tapia v. Panhandle Steel Erectors Co.*, 1967-NMSC-108, ¶ 5, 78 N.M. 86, 428 P.2d 625). “Nor does the fact that there may have been contrary evidence which would have supported a different verdict permit us to weigh the evidence.” *Lewis*, 1973-NMSC-035, ¶ 30 (internal quotation marks and citation omitted) (quoting *Tapia*, 1967-NMSC-108, ¶ 5). “We review interpretation and application of constitutional and statutory provisions de novo.” *State ex rel. Office of State Eng’r v. Elephant Butte Irrigation Dist.*, 2012-NMCA-090, ¶ 8, 287 P.3d 324.

Section 72-12-8(A) Provides for Partial Forfeiture

{19} Resolving the question of whether New Mexico’s forfeiture statute permits partial forfeiture requires that we interpret the relevant statutes. “When this Court construes statutes, our charge is to determine and give effect to the Legislature’s intent.” *Badilla v. Wal-Mart Stores E. Inc.*,



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16 Teleseminar: Holding Business Interests in Trusts	17 Live Webinar: Immigration Law Institute: Ethics and Professionalism Teleseminar: Ethics of Beginning and Ending Client Relationships	18 Live Webinar: Word Master Class on Styles	19 Live Webinars: Animal Law Institute: Ethical Considerations for Animal Lobbyists, Litigators (and Lovers) The Competency Process in the Criminal Justice System	20 Teleseminar: Ethics and Dishonest Clients
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2015-NMSC-029, ¶ 12, 357 P.3d 936 (internal quotation marks and citation omitted). “To discern the Legislature’s intent, the Court looks first to the plain language of the statute[.]” *Id.* (alteration, internal quotation marks, and citation omitted). “Where the language of a statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” *Id.* (internal quotation marks and citation omitted).

{20} “When the statutory language is ambiguous we can consider principles of statutory construction that are employed with statutes that are unclear. In doing so, we must attempt to construe a statute according to its obvious spirit or reason.” *Benavides v. E. N.M. Med. Ctr.*, 2014-NMSC-037, ¶ 24, 338 P.3d 1265 (internal quotation marks and citation omitted). “When interpreting a statute, we are also informed by the history, background, and overall structure of the statute, as well as its function within a comprehensive legislative scheme.” *Badilla*, 2015-NMSC-029, ¶ 12 (internal quotation marks and citation omitted). “Additionally, we strive to read related statutes in harmony so as to give effect to all provisions.” *Benavides*, 2014-NMSC-037, ¶ 24 (internal quotation marks and citation omitted).

{21} Section 72-12-8(A), addressing the forfeiture of underground water rights, provides:

When for a period of four years the owner of a water right in any of the waters described in [NMSA 1978,] Sections 72-12-1 [to] 72-12-28 [(1931, as amended through 2019)] or the holder of a permit from the state engineer to appropriate any such waters has failed to apply them to the use for which the permit was granted or the right has vested, was appropriated or has been adjudicated, the water rights shall be, if the failure to beneficially use the water persists one year after notice and declaration of non-user given by the state engineer, forfeited and the water so unused shall revert to the public and be subject to further appropriation; provided that the condition of notice and declaration of nonuser shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965.

The statute refers to the forfeiture of “the water rights” without specifying whether such forfeiture may extend to just a portion of an appropriator’s water rights. Viewed in isolation, Section 72-12-8(A) is ambiguous in this respect.

{22} Section 72-12-8(A)’s history and background, particularly in connection with related statutes, shed some light on the issue of whether it provides for partial forfeiture. In 1907, New Mexico’s territorial Legislature enacted the “Statutory Appropriation Act,” also referred to as the “Irrigation Code.” NMSA 1915, §§ 5654 to 5729 (1907, as amended through 1913); *see, e.g., Yeo v. Tweedy*, 1929-NMSC-033, ¶ 8, 34 N.M. 611, 286 P. 970 (referring to the Act as the “[I]rrigation [C]ode”). The Irrigation Code is concerned with surface water rights, rather than underground water rights. *See, e.g.,* § 5654 (“All natural waters flowing in streams and water courses, whether such be perennial, or torrential, within the limits of the State of New Mexico, belong to the public and are subject to appropriation for beneficial use.”); § 5671 (requiring the state engineer to “make hydrographic surveys and investigations of each stream system and source of water supply in the State”); § 5673 (providing for suits to adjudicate water rights following “the completion of the hydrographic survey of any stream system”); *see also City of Albuquerque v. Reynolds*, 1962-NMSC-173, ¶ 28, 71 N.M. 428, 379 P.2d 73 (recognizing that “the water code, [1907 N.M. Laws, ch.] 49, dealt only with surface waters”). Nonetheless, it is instructive of the policy of our constitution as it pertains to the use of water in the state.

{23} Section 5701 of the Irrigation Code, currently compiled at NMSA 1978, Section 72-5-28(A) (2002), provided:

When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested for the purpose for which it was appropriated or adjudicated, except the waters for storage reservoirs, for a period of four years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

(Emphasis added.) The Legislature amended this section in 1941 and 1957, adding provisions limiting the applicability of forfeiture “if circumstances beyond the con-

trol of the owner have caused non[.]use,” 1941 N.M. Laws, ch. 126, § 16 (emphasis omitted), and during “periods of non[.]use when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by [federal law,]” 1957 N.M. Laws, ch. 91, § 1, and amended it again in 1965 to add a notice and declaration requirement prior to the reversion of the unused water to the public. 1965 N.M. Laws, ch. 250, § 1(A). The 1965 amendment also added a provision at the end of the section stating that the notice and declaration requirement “shall not apply to water which has reverted to the public by operation of law prior to June 1, 1965.” *Id.* In *State ex rel. Reynolds v. S. Springs Co.*, 1969-NMSC-023, ¶ 9, 80 N.M. 144, 452 P.2d 478, our Supreme Court recognized that partial forfeiture is a potential consequence of non-use of a portion of one’s surface water rights. Commenting on this provision of the Irrigation Code, the *S. Springs* Court stated, “the continuance of the title to a water right is based upon continuing beneficial use, and where the right is not exercised for a certain period of time (four years), [Section 72-5-28(A)] declares that the right to the unused portion is forfeited.” *S. Springs*, 1969-NMSC-023, ¶ 9, (emphasis added).¹

{24} It was not until 1927 that the Legislature enacted “An Act Declaring Waters in Underground Streams, Artesian Basins, Reservoirs, and Lakes to be Public Waters and Subject to Appropriation; Confirming Existing Rights to the Use of Such Waters, and Regulating Appropriation, Use, and Management Thereof.” 1927 N.M. Laws, ch. 182, §§ 1-6 (compiled as NMSA 1929, §§ 151-201 to -205 (1927)). Therein, the Legislature recognized that “[a]ll waters in this state found in underground streams, channels, artesian basins, reservoirs, or lakes . . . are hereby declared to be public waters and to belong to the public[.]” § 151-201. The section went on to state that such waters are “subject to appropriation for beneficial uses under the existing laws of this state relating to appropriation and beneficial use of waters from surface streams.” *Id.*

{25} Section 151-201, although later held to violate the New Mexico Constitution’s prohibition on extending existing statutes by reference, was intended to subject underground waters to “appropriation for beneficial uses” under the Irrigation Code. *See Yeo*, 1929-NMSC-033, ¶¶ 39-40

¹We note that although the section as written in 1907 was entitled “Abandonment—Failure to use water[.]” it was later retitled “Failure to use water—Forfeiture[.]” and the following proviso was added: “[T]hat forfeiture shall not necessarily occur if circumstances beyond the control of the owner have caused non-use, such that the water could not be placed to beneficial use by diligent efforts of the owner.” NMSA 1941, § 77-526 (1941); *see also S. Springs Co.*, 1969-NMSC-023, ¶ 10 (“We regret that forfeiture and abandonment have been used interchangeably, as the element of intention is required in the doctrine of abandonment. This is not so in forfeiture.”); *Pueblo of Isleta v. Tondre*, 1913-NMSC-067, ¶ 39, 18 N.M. 388, 137 P. 86 (characterizing the reversion of one’s water right to the public under Section 5701 as a forfeiture).

(explaining that the “laws of this state” referenced in Section 151-201 “is undoubtedly” referencing the Irrigation Code, and holding that Sections 151-201 to -205 violate Article IV, Section 18 of the New Mexico Constitution). Thus, the Legislature appeared intent on extending Section 5701, then compiled at NMSA 1929, Section 151-154 (1907), to underground waters. *But see El Paso & R. I. Ry. Co. v. Dist. Ct. of Fifth Judicial Dist., ex rel. Chaves Cty.*, 1931-NMSC-055, ¶ 29, 36 N.M. 94, 8 P.2d 1064 (“It is argued that [Sections 151-201 to -205,] . . . was an attempt to control and regulate the relative rights of appropriators from artesian basins as a class by themselves; thus indicating a belief that the original Code did not control. . . . But the acts referred to make no reference to statutory adjudications, do not modify their provisions as to subject-matter or parties, and may as well be urged as proof that the Legislature considered the existing law to be sufficient in that respect.”).

{26} In 1931, the Legislature enacted a new underground waters forfeiture statute:

When for a period of four [4] years the owner of a water right in any of the waters described in this act shall have failed to apply the same to the use for which the right has vested, was appropriated or shall have been adjudicated, such water right shall be forfeited and the water so unused shall revert to the public and be subject to further appropriation.

NMSA 1941, § 77-1108 (1931). Following amendments in 1957, 1959, 1961, 1963, and 1965, the section was written in its current form. 1957 N.M. Laws, ch. 118, § 1 (adding a provision “that periods of non-use when irrigated farm lands are placed under the acreage reserve program or conservation program provided by [federal law] shall not be computed as part of the four-year forfeiture period”); 1959 N.M. Laws, ch. 7, § 1 (specifying which sections describe the water rights involved in this section, including holders of a permit to appropriate waters and their failure to apply the waters “to the use for which the permit was granted” within the reach of forfeiture, and adding a provision permitting the State Engineer to grant extensions of time in which to apply water to beneficial use); 1961 N.M. Laws, ch. 32, § 1 (limiting the computation of the four-year period during “periods of non-use when water rights are acquired and placed in a water conservation program adopted by an artesian conservancy district”); 1963 N.M. Laws, ch. 195, § 1(A) (amending “shall have failed to apply the same” to read “has failed to apply them,” “shall have been adjudicated” to read “has been adjudicated,” and “such water right” to read “the water rights”; creating subsections within the section; and

placing the provisions added in 1957, 1959, and 1961 into subsequent subsections); 1965 N.M. Laws, ch. 250, § 2(A) (adding a notice and declaration requirement prior to the reversion of the unused water, and a provision that such requirement “shall not apply to water which has reverted to the public by operation of law prior to June 1, 1965”). {27} Although the text of Section 72-12-8(A) does not track Section 72-5-28(A) verbatim, its history and background reveal a legislative intent to provide for partial forfeiture. *Cf. Reynolds*, 1962-NMSC-173, ¶ 28 (“The mere fact that the [T]erritorial [L]egislature in the water code, Chapter 49, . . . , dealt only with surface waters . . . does not . . . imply a legislative intention that subsequent statutes dealing with underground waters are to be looked upon and treated entirely separate and apart as though dealing with two entirely different subjects. . . . There does not exist one body of substantive law relating to appropriation of stream water and another body of law relating to appropriation of underground water”). *But see Attorney Gen. of N.M. v. N.M. Pub. Regulation Comm’n*, 2011-NMSC-034, ¶ 10, 150 N.M. 174, 258 P.3d 453 (explaining that courts construe statutes “under the presumption that the [L]egislature acted with full knowledge of relevant statutory and common law” (internal quotation marks and citation omitted)).

{28} Indeed, our Supreme Court has held that “no matter how early a person’s priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use.” *State ex rel. Erickson v. McLean*, 1957-NMSC-012, ¶ 20, 62 N.M. 264, 308 P.2d 983. Defendant argues that because this holding and any endorsement of partial forfeiture stemming therefrom were made in the context of our Supreme Court’s discussion of “[a]n excessive diversion of water, through waste,” *id.*, partial forfeiture is limited to cases involving waste. However, any ambiguity regarding whether Section 72-12-8(A) provides for partial forfeiture is eliminated when we consider the statute in conjunction with our constitutional and statutory “beneficial use” provisions. Section 72-12-2, provides that “[b]eneficial use is the basis, the measure and the limit to the right to the use of the waters described in this act.” See N.M. Const. art. XVI, § 3 (“Beneficial use shall be the basis, the measure and the limit of the right to the use of water.”). “Beneficial use is the use of such water as may be necessary for some useful and beneficial purpose in connection with the land from which it is taken.” *Hanson v. Turney*, 2004-NMCA-069, ¶ 10, 136 N.M. 1, 94 P.3d 1 (internal quotation marks and citation omitted). As our Supreme Court stated: “By the forfeiture of [water] rights . . . the policy of our

constitution and statutes is fostered, and the waters made to do the greatest good to the greatest number. This is on the theory that the continuance of the title to a water right is based upon continuing beneficial use[.]” *S. Springs Co.*, 1969-NMSC-023, ¶ 9 (citing N.M. Const. art. XVI, §§ 1-3, and the previous compilation of Section 72-12-2).

{29} In 2 Clesson S. Kinney, *A Treatise on the Law of Irrigation & Water Rights* § 1118, at 2021-22 (2d ed. 1912), the interplay between forfeiture and beneficial use is discussed:

Although the general rule is that forfeitures are not favored in law, . . . it has been the policy of the legislatures of the various States and Territories to pass enactments providing for the forfeiture of these rights for the failure or neglect to use them for a beneficial purpose. The very life of this arid country depends largely upon the use of all of the available water supply. Therefore, by the forfeiture of the rights which are claimed by certain parties, but who fail to use them, the ends of justice are met, and the water is made to do the greatest good to the greatest number. This is upon the correct theory that the continuance of the title to a water right is based only upon continuous user; and where a person claims a certain right which he does not use for a certain period of time, the statute declares that *the right to the unused portion* is forfeited and available for the appropriation of others.

(Emphasis added.)

{30} Furthermore, since 2005 the State Engineer has interpreted Section 72-12-8(A) as providing for partial forfeiture. See 19.26.2.20(A) NMCA (explaining that under Section 72-5-28 and Section 72-12-8, “[a]ll or any part of a water right is subject to forfeiture when a person entitled to the use of water fails to apply water to beneficial use for a period of four or more consecutive years” (emphasis added)); see also *State ex rel. Stratton v. Roswell Indep. Sch.*, 1991-NMCA-013, ¶ 24, 111 N.M. 495, 806 P.2d 1085 (“Persuasive weight is given to long-standing interpretations of a doubtful or uncertain statute by the administrative agency charged with administering the statute.” (internal quotation marks and citation omitted)); cf. *In re Waterfall Cmty. Water Users Ass’n*, 2009-NMCA-101, ¶ 20, 147 N.M. 20, 216 P.3d 270 (“Given the complex nature of the statutory regime governing water appropriation in this state, relying on the expertise of the [s]tate [e]ngineer to decipher how [another provision in the Water Code] . . . fits into that scheme is prudent.”). We find persuasive the analysis in *State v. Hagerman Water Right Owners, Inc.*, 947 P.2d 400 (Idaho 1997). Faced with a similar question concerning Idaho’s

forfeiture statute,² the Supreme Court of Idaho held that although the statute was ambiguous on the issue of partial forfeiture, it nevertheless provided for partial forfeiture. *Id.* at 406-08. After discussing the persuasive impact of the Idaho Department of Water Resources' interpretation of the forfeiture statute as providing for partial forfeiture, the Supreme Court of Idaho concluded that partial forfeiture promoted the policy goals of Idaho's water law. *Id.* at 407-08. The court explained:

If this Court were to find that [Idaho Code Section] 42-222(2) does not authorize partial forfeiture of a water right, once the amount element of a water right is decreed, a water user could hold the water against all subsequent appropriators by using only a part of the water. Such a scheme is inconsistent with Idaho water law, which provides that if a water right is abandoned or forfeited it reverts to the state, following which third parties may perfect an interest therein.

....

Integral to the goal of securing maximum use and benefit of our natural water resources is that water be put to beneficial use. This is a continuing obligation. Partial forfeiture makes possible allocation of water consistent with beneficial use concepts.

Hagerman Water Right Owners, Inc., 947 P.2d at 407-08 (internal quotation marks and citations omitted).

{31} In light of Section 72-12-8(A)'s history and background, the policy considerations underlying forfeiture, and the State Engineer's interpretation of the statute, we conclude that Section 72-12-8(A) provides for partial forfeiture.

Substantial Evidence Supports the Special Master's Findings Regarding Beneficial Use

{32} Defendant argues there was insufficient evidence to support the special master's findings regarding beneficial use of the Railroad Right. We note, however, that the State did not challenge the special master's finding that the portion of the Railroad Right used for watering livestock was not forfeited, either in the district court or on appeal to this Court. We therefore review only the special master's finding that the Railroad Right used for non-livestock purposes was not used between December 31, 1960 and December 31, 1964.

{33} The evidence indicates that the Railroad no longer stopped at the Cutter station to "to water up or unload cinders" after switching to diesel locomotives, that "the section crews were abolished[,] " that "the bunkhouse and foreman's house [were vacated,]" that Cutter's post office closed and its "last standing depot was torn down in 1956," and that the Well's appurtenances were "retired in place" and "authorized for retirement" in 1959. Landreth's report buttressed these facts, as he stated that the Well's appurtenances were "retired in place in 1959 as the Town of Cutter had ceased to exist, and the railroad track maintenance forces [were] relocated." There was no evidence that the Railroad Right was used for non-livestock purposes after the 1950s.

{34} Furthermore, Johnson testified that sometime between 1962 and 1964, the Well was not pumping water. Consequently, he helped his father repair the Well to water livestock, at which time either the owner or the lessee said "it was two or three years since [the Well] had been run." We acknowledge Defendant's argument that the special master improperly relied on hearsay from Johnson regarding the nonuse of the Well for two or three years. Because Defendant elicited this testimony after asking Johnson if someone had told him whether the Well was maintained in operational condition, Defendant "cannot complain of reversible error [he] invited and thereby caused." *State ex rel. State Eng'r v. United States*, 2018-NMCA-053, ¶ 36, 425 P.3d 723, cert. granted, ___-NM-CERT-___ (No. S-1-SC-37068, Aug. 13, 2018), cert. denied, ___-NM-CERT-___ (No. S-1-SC-37100, Aug. 13, 2018). Moreover, Defendant did not object after Johnson provided his answer. See *Gonzales v. Shaw*, 2018-NMCA-059, ¶ 14, 428 P.3d 280 ("In order to preserve an issue for review, a party must have made a timely and specific objection that apprised the district court of the nature of the claimed error and that allows the district court to make an intelligent ruling thereon." (internal quotation marks and citation omitted)); see also Rule 12-321(A) NMRA ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.").

{35} To the extent Landreth's testimony conflicts with the special master's finding, the special master indicated that it afforded Landreth's testimony "little weight" because of his role in the 1994 sale of the Property. See *Office of State Eng'r*, 2013-NMCA-023, ¶ 27 (explaining that the special master's finding of a witness's

credibility "must be treated as unassailable" (internal quotation marks and citation omitted)). Furthermore, although Defendant's declaration of underground water right states that the Well was "used 1921 [through] 1966 for providing water to steam locomotives[,]" the State Engineer employee who wrote this did so based on information provided by Defendant's cousin. Moreover, such "[d]eclarations are only prima facie proof until they are rebutted." *Eldorado Utils., Inc. v. State ex rel. D'Antonio*, 2005-NMCA-041, ¶ 20, 137 N.M. 268, 110 P.3d 76.

{36} To be sure, there was no direct evidence in the record supporting the special master's finding that the non-livestock portion of the Railroad Right was not beneficially used between December 31, 1960 and December 31, 1964. However, indulging all reasonable inferences in favor of, and viewing the evidence in the aspect most favorable to, the verdict, we conclude that the evidence of the Railroad's withdrawal from Cutter and the Town's subsequent cessation to exist, along with the other evidence presented is such evidence as a reasonable mind might accept as adequate to support the special master's finding. We therefore affirm the special master's finding that the non-livestock portion of the Railroad Right was not beneficially used between December 31, 1960 and December 31, 1964, and was therefore subject to forfeiture under Section 72-12-8(A).

Defendant's Remaining Arguments Regarding the Application of Forfeiture Are Unavailing

{37} Defendant made several arguments in the district court and on appeal regarding the applicability of forfeiture to the case at hand. These arguments are unavailing.

{38} Defendant, citing *McBee v. Reynolds*, 1965-NMSC-007, 74 N.M. 783, 399 P.2d 110, and *Hanson*, 2004-NMCA-069, argues that "[u]ntil a basin is declared by the [State Engineer], the [State Engineer] cannot exercise jurisdiction in connection with its underground waters." These cases explain that the State Engineer exercises jurisdiction and administrative control over a particular groundwater basin by declaring the basin. See *McBee*, 1965-NMSC-007, ¶ 13 (recognizing that the state engineer cannot exercise jurisdiction in connection with underground waters until the state engineer declares a basin); *Hanson*, 2004-NMCA-069, ¶ 2 ("The [s]tate [e]ngineer exercises administrative control over a particular groundwater basin by declaring it and defining its boundaries."). To the extent Defendant relies upon these cases for the proposition

²Idaho Code Section 42-222(2) (2004) provides in relevant part: "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter[.]"

that the State Engineer lacked the statutory authority to pursue forfeiture in the Lower Rio Grande for events occurring prior to when the basin was declared in 1981, we decline to review this argument as he has failed to cite any supporting, on-point authority and has failed to clearly explain any such argument. *See Elephant Butte Irrigation Dist.*, 2012-NMCA-090, ¶ 20 (declining to review the defendants' argument that the state engineer lacked the statutory authority to pursue forfeiture for events occurring before 1981, when the Lower Rio Grande Basin was declared, because they failed to cite supporting on-point authority and failed to respond to the state engineer's argument on that point); *Valdez v. Yates Petroleum Corp.*, 2007-NMCA-038, ¶ 24, 141 N.M. 381, 155 P.3d 786 (declining to review a novel argument when the plaintiff failed to cite any on-point authority in support of such argument); *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] arguments might be."). Moreover, Defendant made no such argument in the district court, and thus did not preserve the issue for review by this Court. *See Gonzales*, 2018-NMCA-059, ¶ 14 (requiring a timely and specific objection apprising the district court of the claimed error to preserve an issue for appeal); *see also* Rule

12-321(A) ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked.").

{39} In the district court, Defendant argued for the application of exceptions found at Section 72-12-8(E), (F), and NMSA 1978, Section 72-1-9(B) (2006). However, he has not raised this argument on appeal, and we therefore decline to address the applicability of these exceptions to the case at hand. *See Crespin v. Safeco Ins. Co. of Am.*, 2018-NMCA-068, ¶ 32 n.1, 429 P.3d 968 (noting that "issues not briefed are considered abandoned, and we do not raise them on our own" (internal quotation marks and citation omitted)).

{40} To the extent Defendant argues our forfeiture statute should not apply or should apply differently to the Railroad's water rights, he explicitly limited such argument in the district court to abandonment, rather than forfeiture. We therefore decline to further review this argument. *See* Rule 12-321(A). Further, to the extent Defendant argues economic difficulties excused forfeiture of the non-livestock Railroad Right, he made no such argument in the district court. Nor did he argue in the district court that any other circumstances beyond the control of the Railroad or its successors in interest caused nonuse, thereby excusing forfeiture. We therefore

decline to review this argument. *See id.*
{41} Finally, Defendant argues the district court's "decision . . . constitutes unconstitutional confiscation of private property rights without just compensation" under Article II, Section 20 of the New Mexico Constitution. As Defendant fails to develop his argument beyond this sentence and failed to preserve this issue in the district court, we decline to review it. *See Headley*, 2005-NMCA-045, ¶ 15 ("We will not review unclear arguments, or guess at what [a party's] arguments might be."); *see also State v. Leyva*, 2011-NMSC-009, ¶ 49, 149 N.M. 435, 250 P.3d 861 (reiterating Rule 12-321(A)'s preservation requirements and explaining trial counsel's obligation under New Mexico's interstitial approach to "develop the necessary factual base and raise the applicable constitutional provision in [district] court").

CONCLUSION

{42} For the foregoing reasons, we affirm the district court.

{43} **IT IS SO ORDERED.**
JULIE J. VARGAS, Judge

WE CONCUR:
M. MONICA ZAMORA, Chief Judge
KRISTINA BOGARDUS, Judge

From the New Mexico Court of Appeals

Opinion Number: 2020-NMCA-002
No. A-1-CA-36284 (filed August 22, 2019)

PAUL ROGERS,
Plaintiff-Appellant,
v.
BOARD OF COUNTY COMMISSIONERS
OF TORRANCE COUNTY, MARTIN RIVERA,
ERWIN YOUNG, and RON SAAVEDRA,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF TORRANCE COUNTY
MERCEDES C. MURPHY, District Judge

Certiorari Denied, December 9, 2019, No. S-1-SC-37976.
Released for Publication January 21, 2020.

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Opinion

J. Miles Hanisee, Judge.

{1} In this appeal, we resolve whether a lawyer's mistaken action that had the unintended effect of terminating litigation warrants relief under Rule 1-060(B)(1) NMRA, when that action was undertaken without client authority. Concluding so, we reverse the district court's denial of Plaintiff's limited Rule 1-060(B) motion.

BACKGROUND

{2} On January 6, 2014, Plaintiff filed a complaint for damages under the New Mexico Tort Claims Act and common law in the Seventh Judicial District Court in Torrance County, New Mexico (state case). Plaintiff filed a second lawsuit in United States District Court (federal case) a year later, on January 5, 2015, asserting Fourth Amendment claims based on the same events as underpinned the state case. In May 2016 Plaintiff and his attorney (Plaintiff's counsel) discussed dismissing Plaintiff's state case. Sometime after

the discussion, Plaintiff sent an e-mail to Plaintiff's counsel stating "[p]er our telephone conversation today, I agree to drop the state case in order to better position ourselves in our ongoing federal case."

{3} Plaintiff's counsel contacted Defendants by telephone to report Plaintiff's wish to dismiss the state case *without* prejudice. Defendants opposed the proposed dismissal because trial in the state case was then imminent and "significant costs and expenses had been and were being incurred to prepare for trial." Either too ill¹ to understand or simply unaware that such a dismissal would have preclusive effect in federal court based upon established principles of res judicata, Plaintiff's counsel filed the opposed motion seeking dismissal *with* prejudice "as a show of good faith to Defendants that the state case would be terminated forever." Plaintiff explained in his motion that dismissal would not be prejudicial to Defendants since their trial preparation to date on the state case would be "applicable in the parallel federal proceeding" and that by dismissing the case

after expiration of the applicable statute of limitations, Plaintiff would forgo his municipal liability and property damage claims, adding specifically that Plaintiff would only pursue his federal case. After viewing Plaintiff's filed motion containing new dismissal "with prejudice" language, Defendants reversed course, consented to dismissal and submitted to Plaintiff's counsel a proposed order of dismissal. Subsequently, Defendants filed a response clarifying that they "only opposed dismissal without prejudice[.]" and that although they "disagree with most of the basis and argument contained in [P]laintiff's motion[.]" they no longer oppose dismissal with prejudice. The district court entered an order granting dismissal of the state case with prejudice on June 3, 2016.

{4} Two months later, Defendants filed a motion for summary judgment in the federal case arguing it should be terminated on res judicata grounds. The motion—which was eventually granted by the federal court—rested exclusively on the fact that the state case was dismissed with prejudice. As a result, approximately two months after the summary judgment motion was filed in the federal case, Plaintiff moved, under Rule 1-060(B), to reopen the state case for the limited purpose of recharacterizing Plaintiff's motion to dismiss, along with the stipulated order of dismissal, as "without prejudice." Among several grounds identified as a basis for Rule 1-060(B) relief, Plaintiff posits that Plaintiff's counsel acted without authorization because his actions unwittingly terminated litigation in both the state and federal cases. Defendants opposed the motion, arguing that Plaintiff's decision to dismiss the case with prejudice was a failed strategy decision instead of a mistake and that Plaintiff is not entitled to relief because his counsel did not understand the legal consequences of his deliberate acts. In reply, Plaintiff submitted an affidavit that he had "never directed [his] legal counsel to do anything that would have jeopardized [his] federal case."

{5} After a hearing, the district court entered an order denying Plaintiff's motion. Although the district court found that it was Plaintiff's decision to "drop the state case in order to better position [himself] in [the] ongoing federal case[.]" and that it was Plaintiff's understanding that dismissing the state case would not affect his federal claims, it also found that "Rule [1-060(B)](1) relief is not available for a party who simply misunderstands the

¹Plaintiff's counsel later explained that when he filed Plaintiff's motion to dismiss "with prejudice," he was recovering from a gallstone attack.

legal consequences of his deliberate acts.” The district court then found that “the decision to pursue the case only in federal court was a strategic decision made by counsel with the consent of the Plaintiff.”

DISCUSSION

{6} Plaintiff makes many of the same arguments on appeal as he did before the district court, and in addition, argues that the district court applied an incorrect legal standard when it concluded, based upon *Jacobs v. Electronic Data Systems Corp.*, 240 F.R.D. 595, 601 (M.D. Ala. 2007), that “[c]lients retain counsel and entrust him or her with the fiduciary duty to make certain strategic and tactical litigation decisions which bind the client, even if made without express authorization or approval, and even if they are bad decisions.” Defendants again argue that Plaintiff’s decision to dismiss the state case was strategic and therefore the district court correctly denied relief to Plaintiff under Rule 1-060(B) (1).

Standard of Review

{7} “We generally review the district court’s grant of relief under Rule 1-060(B) for an abuse of discretion except in those instances where the issue is one of pure law.” *Kinder Morgan CO₂ Co., L.P. v. State Taxation & Revenue Dept.*, 2009-NMCA-019, ¶ 9, 145 N.M. 579, 203 P.3d 110 (alteration, internal quotation marks, and citation omitted). “The scope of Rule 1-060(B)(1) and application of the rule to the facts involve questions of law which we review de novo.” *Kinder Morgan*, 2009-NMCA-019, ¶ 9. A reviewing court may reverse the district court under an abuse-of-discretion standard if it is determined that the district court’s decision was “arbitrary, fanciful, or unreasonable.” *Id.* (internal quotation marks and citation omitted). Our review is de novo as we must interpret the meaning and applicability of Rule 1-060(B)(1).

Relief is Proper Due to Mistake Under Rule 1-060(B)(1)

{8} Rule 1-060(B)(1) states “[o]n motion and on such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.” A motion under Rule 1-060 “shall be made within a reasonable time and for reasons” under Rule 1-060(B)(1), “not more than one (1) year after the judgment, order, or proceeding was entered or taken.” Rule 1-060(B)(6). Courts are required to balance “interests of finality versus relief from unjust judgments” when applying Rule 1-060(B). *Kinder Morgan*, 2009-NMCA-019, ¶ 10.

{9} As an initial matter, we note that Plaintiff filed his Rule 1-060(B) motion a little less than four months after the district

court entered the order dismissing the state case with prejudice, well within the one year deadline required by Subsection (B)(6) for Subsection (B)(1)-based Rule 1-060 motions, and only a few months after Defendants filed their summary judgment motion in the federal case. Plaintiff’s motion was thus timely filed in the district court below and is now properly before us on appeal.

{10} Few New Mexico cases discuss mistake under Rule 1-060(B)(1), and no New Mexico case discusses mistake associated with an attorney’s action lacking client authority. However, “[t]he New Mexico Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, and the substance of Rule 1-060(B) is virtually identical to its federal counterpart, Federal Rule of Civil Procedure 60(b).” *Marquez v. Frank Larrabee and Larrabee, Inc.*, 2016-NMCA-087, ¶ 12, 382 P.3d 968 (internal quotation marks and citation omitted). Thus, the federal construction of Federal Rule of Civil Procedure 60(b) “is persuasive authority for the construction of Rule 1-060(B)” because the language in our rule tracks the language in the federal rule so closely. *Marquez*, 2016-NMCA-087, ¶ 12 (internal quotation marks and citation omitted). Therefore, we analyze federal case law regarding whether an attorney’s unauthorized dismissal with prejudice, effectively terminating a client’s separate action on a same case, qualifies for relief due to mistake under Rule 1-060(B)(1). See *Marquez*, 2016-NMCA-087, ¶ 12.

{11} We first observe that, on one occasion, the United States District Court for the District of New Mexico predicted how New Mexico state courts would address this issue under New Mexico law. In the unreported opinion of *Wilson v. Jara*, 2012 WL 1684595, at *1 (D.N.M. May 10, 2012) the United States District Court for the District of New Mexico addressed whether counsel for the plaintiff “committed excusable neglect in dismissing his claims with prejudice[.]” *Id.* In *Wilson*, a deprivation of civil rights lawsuit, one of two plaintiffs in the case elected to cease pursuit of his federal claims with the intention of pursuing them at a later time. *Id.* at *4. The plaintiff’s attorney informed the court that the plaintiff would no longer pursue his claims, did not proceed to trial, and based thereon the court dismissed the plaintiff’s claims with prejudice. *Id.* at *2. In his objections to the magistrate judge’s proposed findings and recommended disposition, finding that dismissal of the plaintiff’s claims with prejudice was harmless error, the plaintiff argued under Rule 60(b)(1) that the federal court should have considered his attorney’s actions as excusable neglect because he never discussed with his attorney that he “would not be able to come back and file

on his own.” *Id.* at **4-5 (internal quotation marks and citation omitted). The plaintiff submitted his own affidavit, a letter he wrote to his attorney, and an affidavit from the other plaintiff in the case to show that he intended to reassert his claims at a later time. *Id.* at *4. As a result, the *Wilson* Court found “that the affidavits, statement, and letter that [the plaintiff] submitted are affirmative proof that [the plaintiff’s attorney] did not act within his authority when he agreed to a dismissal with prejudice[.]” and that the finding was “sufficient to establish excusable neglect under [R]ule 60(b)(1) of the Federal Rules of Civil Procedure.” *Id.* When addressing the other plaintiff’s allegations of her own attorney’s separate excusable neglect, the *Wilson* Court noted, “[t]here is a tension between how the law treats attorney actions that are without authority, thus permitting relief under [R]ule 60(b), and how the law treats those attorney actions which are inexcusable litigation[] decisions, thus failing to qualify for relief[.]” *Id.* at *7. In a detailed footnote, the court explained that there is a distinction between litigation mistakes and attorneys acting without consent “when the client is aware that the attorney is acting on his or her behalf[.]” *Id.* *n.7. The distinction lies “between decisions which dispose of the case and ordinarily require client consent, and other routine attorney decisions which take place over the course of the case.” *Id.* (emphasis added).

{12} Similarly, in *Federated Towing & Recovery, LLC v. Praetorian Ins. Co.*, the same federal district court expounded upon the same issue, this time in conjunction with its conclusion that a party’s attorney had authority to agree to dismiss the case without prejudice because “[t]here is no indication that [the attorney] in any way barred his clients from litigating the merits of the claims brought against them.” 283 F.R.D. 644, 663 (D.N.M. 2012). Directly discussing mistake under Rule 60(b)(1), the court explained that mistake can entail “either acting without the client’s consent or making a litigation mistake.” *Id.* at 661; see *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999) (“Rule 60(b)(1) motions premised upon mistake are intended to provide relief to a party . . . when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority[.]”). Again, the *Federated Towing* Court stated that it was not able to “locate a New Mexico case addressing whether an attorney has implied authority to dismiss or to agree to dismissal of a client’s case without prejudice[.]” and then analyzed relevant New Mexico and federal case law in an attempt to predict what a New Mexico court would hold. 283 F.R.D. at 662. Looking to the New Mexico

state court cases discussing an attorney's authority to compromise a client's claims, the *Federated Towing* Court noted that New Mexico courts "are most concerned with an attorney's actions precluding a client from litigating the merits of the case[.]" citing case law that requires attorneys to have specific authority to compromise a client's cause of action. *Id.* at 662 (citing *Bolles v. Smith*, 1979-NMSC-019, ¶ 11, 92 N.M. 524, 591 P.2d 278 (stating that an attorney must have specific authority to bind a client to a settlement agreement, "unless there is an emergency or some overriding reason for enforcing the settlement despite the attorney's lack of specific authority")); see *Diversified Dev. & Inv., Inc. v. Heil*, 1995-NMSC-005, ¶ 22, 119 N.M. 290, 889 P.2d 1212 (stating an "attorney does not have implied authority to compromise [a] client's cause of action"); *Augustus v. John Williams & Assocs., Inc.*, 1979-NMSC-002, ¶ 9, 92 N.M. 437, 589 P.2d 1028 (stating any authority a client gives to an attorney to compromise or settle his or her cause of action must be "clear and unequivocal" and that "[t]he mere employment of an attorney does not of itself give the attorney the implied or apparent authority to compromise his client's cause of action"). The federal district court again expressed its belief that under New Mexico law, decisions to terminate litigation, "such as settlement or a stipulation of dismissal," are different from other litigation decisions not warranting Rule 60(b)(1) relief "because decisions to terminate the litigation are ordinarily left to the client." *Federated Towing*, 283 F.R.D. at 661 (internal quotation marks and citation omitted).

{13} We agree with the rationale set out in *Wilson* and *Federated Towing*. In line with previously established New Mexico case law finding that an attorney lacks implied authority to compromise his or her client's cause of action, we hold that mistake occurs under Rule 1-060(B)(1) when an attorney acts without authority and the result of such action bars the client henceforth from litigating the merits of his or her claims on the same cause. Such actions are distinct from routine attorney decisions made during the course of litigation, and therefore require client authority. We conclude that when an at-

torney lacks client authority to dismiss a case with prejudice, yet does so, whether intentionally or inadvertently, in a manner that terminates litigation, that attorney has committed a mistake under Rule 1-060(B)(1).

{14} Finally, our holding today conforms with historic and current analysis on this topic in other jurisdictions. See C.R. McCorkle, Annotation, *Authority of Attorney to Dismiss or Otherwise Terminate Action*, 56 A.L.R.2d 1290 § 2[a](1957) (stating that "[t]he rule prevailing in most jurisdictions is that an attorney employed to prosecute an action has implied authority, by virtue of such employment, to have the action discontinued or dismissed where such discontinuance or dismissal will not operate as a bar to the institution of a new action on the same cause, or, as expressed in some cases, where the dismissal or other termination is 'without prejudice.'") (footnote omitted); *Id.* n.4 (compiling supportive decisions from Georgia, Illinois, Indiana, Kentucky, Minnesota, Missouri, New York, and Texas); see also *Saxton v. Spletstoezer*, 557 P.2d 1126, 1127 (Alaska 1976) ("The authority to terminate litigation must be explicit or ratified by subsequent conduct of the client."); *Lovelace v. Lovelace*, 177 S.E. 685, 687 (Ga. 1934) (stating that defendant's counsel had general authority "to bind their client by any agreement in relation to the conduct of the suit, not amounting to a retraxit"); *Cory v. Howard*, 164 N.E. 639, 639 (Ind. Ct. App 1929) (in banc) (stating "[a]s the dismissal of a suit does not bar the bringing of another for the same cause of action, the attorney of record has the implied authority to discontinue the action if he sees fit"); *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 758 (Tex. 2003) ("Texas courts have held that an attorney has implied authority to nonsuit a client's claim when the nonsuit does not affect a substantial right or bar the bringing of another suit based on the same cause of action").

{15} Given our conclusion under Rule 1-060(B)(1), we next turn to whether Plaintiff's counsel had authority to dismiss the state case with prejudice when the effect of the dismissal was to dismiss Plaintiff's claims in the federal case as a result of claim preclusion. Our review of

the record establishes that Plaintiff only gave his counsel permission to "drop the state case in order to better position ourselves in our ongoing federal case." Indeed, Plaintiff and his counsel discussed terminating Plaintiff's state case so that they could focus their efforts on the federal case. There being no evidence to the contrary, we conclude Plaintiff did not give his counsel permission to dismiss the state case in such a way that the dismissal would operate as a bar to his claims in the federal case. Stated differently, Plaintiff's counsel did not have implied authority to dismiss the state case with prejudice and most certainly did not have authority to dismiss the state case in such a way that would negatively affect Plaintiff's federal case. Thus, the dismissal of Plaintiff's state case with prejudice and without explicit client authority, thereby causing the dismissal of Plaintiff's federal claims on the same cause of action, constitutes mistake under Rule 1-060(B)(1). Even the district court, in denying Plaintiff's motion, stated that Plaintiff only had authority to dismiss the state case in order "to pursue the case only in federal court." Our determination today under Rule 1-060(B) "is consistent with the need to carefully balance the competing principles of finality on the one hand, while permitting relief from unjust judgments on the other." *Curliss v. B & C Auto Parts*, 1993-NMCA-139, ¶ 16, 116 N.M. 668, 866 P.2d 396. Relief from unjust judgment is proper where Plaintiff's counsel's unauthorized actions resulted in the permanent preclusion of Plaintiff's claims in a separate but related cause of action.

CONCLUSION

{16} Based upon the foregoing, we reverse the district court's denial of Plaintiff's motion to substitute order granting dismissal and remand for proceedings consistent with this decision.

{17} **IT IS SO ORDERED.**
J. MILES HANISEE, Judge

WE CONCUR:
JULIE J. VARGAS, Judge
MEGAN P. DUFFY, Judge



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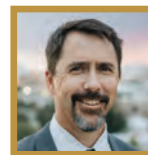
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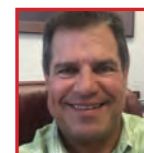
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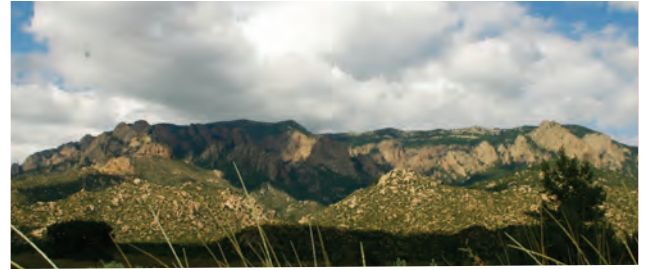
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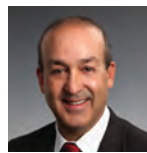
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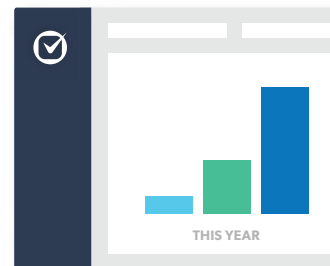
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The Ninth Judicial District Attorney's Office is seeking entry level and experienced trial attorneys for our Clovis office. Come join an office that is offering immediate jury trial experience, during the COVID-19 crisis, in a jury trial test jurisdiction. 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.

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.

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

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.

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.

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

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

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.

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.

Water & Environmental Law Attorney

Law & Resource Planning Associates, P.C., ("LRPA"), an AV-rated law firm, is accepting resumes for an experienced, personable Attorney with strong academic and technical credentials to work primarily in the area of natural resource law and environmental and water law. Competitive salary commensurate with experience. Excellent benefits package. All inquiries kept confidential. Please submit a cover letter, resume, transcript(s), and writing samples to Hiring Coordinator, LRPA, P.C., P.O. Box 27209 Alb., NM 87125. E-mail responses may be submitted to J. Brumfield at jb@lrpa-usa.com

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.

Civil Rights Respondent/ Complainant Advisors

Supports and guides students, faculty, and staff engaged as respondents and complainants in University civil rights proceedings. This individual advises participants of policies, hearing procedures, and assists parties in the hearing process. This position is in support of the 2020 Updated Title IX Regulations that became effective in August 2020. Bachelor's degree in a directly related field; at least 3 years of experience directly related to the duties and responsibilities specified; this is a part-time, 1-year term position. Completed degree(s) from an accredited institution that are above the minimum education requirement may be substituted for experience on a year for year basis. The University of New Mexico is an affirmative action, equal opportunity employer. Apply online: Respondent: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/13868?c=unm>; Complainant: <https://unm.csod.com/ux/ats/careersite/18/home/requisition/13869?c=unm>

Litigation Associate

Mann Morrow, PLLC, a growing litigation firm with offices in Las Cruces, NM and El Paso, TX, seeks a litigation associate attorney to join our Las Cruces team. The ideal candidate will have up to five years experience, and be a team player with excellent communication (written and oral) and legal research skills, a strong work ethic, and a willingness to learn. The firm offers a competitive salary and benefits package, including health insurance and 401K. License to practice law in New Mexico required. Please send letter of interest, resume, references and writing sample to christina.munoz@mannmorrow.com. All responses are confidential.

Experienced Family and Criminal Law Attorney Needed

Attorney will be handling family and criminal law matters independently. Will also assist in civil rights litigation so civil litigation experience is a plus. Please send resume and 2 writing samples to info@collinsattorneys.com.

Town Attorney

The Town of Silver City, New Mexico is seeking applicants for the position of Town Attorney. The position calls for an attorney with at least five years of experience in government practice. The applicant must demonstrate working knowledge of administrative, criminal and corporate law. The position will involve dealing with legal concerns associated with city planning, personnel and labor management, law enforcement, public works, water and the broad range of legal issues encountered by the several other departments of the Town. The Town Attorney will provide legal support to the Town Council, Town Manager and to the Town staff, and must be familiar with New Mexico law. Applicants must be proficient in drafting ordinances and interpreting existing local, state and federal law as they apply to New Mexico municipalities. The Town Attorney must possess excellent writing and communication skills and will often be called to issue legal opinions and memoranda of interpretation. It is intended that the successful applicant will interact with attorneys from other public entities and must have the ability to work cooperatively. The Town Attorney will also act as legal counsel for the Town's Planning and Zoning Commission, and the Town's various other committees and commissions. The attorney will work closely with Executive Department staff and is expected to be knowledgeable of personnel and union issues. It is the continuing commitment of the Town to be pro-active in educating its officers and staff so as to minimize exposure to litigation and liabilities occasioned by error or misapprehensions. The Town subscribes to the practice of "preventative law" and is seeking an attorney who is amicable to that philosophy with the skill to implement it. The Town Attorney will be an in-house employee, with access to the generous benefits offered by the Town. Salary will be negotiable based upon experience and skills level. Recognizing the importance of growing relationships, the successful applicant will need to be a resident of Grant County within three months of appointment. The position is open for application and will close December 04, 2020. Please direct inquiries to 575-534-6359 or personnelofficer@silvercitynm.gov. For complete copy of job description and instructions on submittal of application, go to www.townofsilvercity.org.

Lawyer Position

Guebert Gentile & Piazza P.C. seeks an attorney with up to five years' experience and the desire to work in tort and insurance litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert Bruckner Gentile P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. advice1@guebertlaw.com. All replies are kept confidential. No telephone calls please.

Commercial Litigation Associate Attorney – Santa Fe

Holland & Hart is seeking a Litigation Associate Attorney to join its Santa Fe office. Requirements: Successful candidates will have five or more years of top tier law firm experience in complex litigation matters, an energetic personality, interpersonal skills, and the ability to work in a team environment. Excellent legal research and writing skills are required. Preferred candidates will possess a strong academic background, practical law school experience (law review, law journal, moot court, or trial advocacy team), and/or judicial clerkship experience. Professional references are required. Qualified applicants are invited to apply online. Please be prepared to submit a cover letter, resume, law school transcript. Your cover letter may be addressed to Leslie Beard, Recruiting & Onboarding Coordinator. No phone calls or resumes from search firms at this time, please. Holland & Hart is an Equal Opportunity Employer. About Holland & Hart: Holland & Hart is a full-service law firm that today has approximately 470 lawyers across eight states and in Washington, D.C. delivering integrated legal solutions to regional, national, and international clients of all sizes in a diverse range of industries. As part of its longstanding focus on diversity and inclusion, the firm has adopted a diversity plan and participates in diversity initiatives. For more information, please visit: <https://www.hollandhart.com/diversity>. Explanation of Voluntary Self Identification Opportunity for EEO-1 and Mansfield Certification. Holland & Hart LLP (the "Firm") may be required by federal law to compile and file a report (referred to as an "EEO-1") with the Equal Employment Opportunity Commission. The report contains aggregated data of applicants' gender, race and/or ethnicity, and does not identify applicants by name. Some states in which the Firm does business may also require the collection of such information. We provide every applicant, current employee and newly hired employee the option to voluntarily supply the requested information and take advantage of firm-sponsored programs and initiatives that may benefit them. Having achieved Mansfield Certification and Mansfield Certification Plus every year, Holland & Hart continues its efforts to advance the representation of diverse lawyers in leadership by various strategic initiatives including ensuring that an all-inclusive applicant base is considered for attorney positions. The Firm gathers race/ethnicity data for inclusion in an EEO-1 report and Mansfield Certification report. While the Firm may be required by law to file an EEO-1 report and the information you supply will help facilitate this process, your participation is entirely voluntary and the status of your application or your potential employment will not be affected by your decision to participate or to refrain from participating in this data collection process. The firm also gathers data

regarding veteran status and LGBTQ+, both of which are not required for EEO-1 reporting purposes, however data related to LGBTQ+ data is requested as part of the Mansfield Certification reporting. Your decision to provide the information is also entirely voluntary, and your candidacy will not be affected by your decision to participate or not. If you have any questions, please feel free to contact Misae Nishikura in Recruiting & Professional Development: MNishikura@hollandhart.com

Attorney

Legal Solutions of New Mexico is expanding and we are looking to hire an f.n.g. for our family law division. Successful candidates will have a heart-of-gold, a dark sense of humor, and a thick skin. Think Rhinoceros. You will be required to go to court, conduct litigation, and solve the world's problems one day at a time. If you don't know how to use a Mac computer, get with the times because that's what we roll with. Submit a letter of interest and a 1-page resume to kim@legalsolutionsofnm.com. Salary depends on the value you create. Get out and Vote!

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

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.

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.

CLE Program Coordinator

The New Mexico State Bar Foundation Center for Legal Education seeks a full-time, Continuing Legal Education (CLE) Program Coordinator. The Foundation is a non-profit New Mexico accredited CLE course provider dedicated to providing high quality, affordable educational programs to the legal community. CLE offers a full range of educational services including live seminars, live webcasts, live replays, national series teleseminars and online self-study videos. Visit nmbar.org/CLE. The successful applicant must have excellent project administration, customer service, computer, and communication skills. Must be able to manage multiple projects and deadlines. Comfort and interest in learning new technologies is required. Minimum high school diploma plus 1 year of related work experience required. Generous benefits package. \$15-17 per hour, depending on experience and qualifications. To be considered, submit a cover letter and resume. EOE. For full details and instruction on how to apply visit <https://www.nmbar.org/NmbarDocs/AboutUs/Careers/CLE2020-2.pdf>

Full Time Paralegal/Legal Assistant

Jackson Loman Stanford & Downey, P.C. seeks a full time paralegal/legal assistant with 3+ years of law firm experience. We practice in the areas of commercial, employment, construction, professional liability and trust and estate litigation. We are looking for a positive, detail-oriented professional with strong organizational skills who can assist with court filings, calendaring, file management, discovery, and trial preparation. We offer competitive salary and benefits. Inquiries kept confidential. Please email resume to sarah@jacksonlomanlaw.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.

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.

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.

Legal Writing And Research Services

Please call; (575) 495-9076. Writing samples available upon request. Kenneth C. Detro LLC

Miscellaneous

Want To Purchase

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

Office Space

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 sft., 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.

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.

Downtown Office Space For Lease:

1001 Luna Circle. Charming 1500 square ft. home converted to 4 offices, kitchenette and open reception/secretarial area with fireplace and wood floors. Walking distance from courthouses and government buildings. Free parking street-front and in a private lot in back. Security System. \$1500/mo. plus utilities. Call Ken @ 505-238-0324

Downtown Office for Rent

Converted house on Marquette. Close to the courthouse. Three large offices, two assistant areas, great parking, refrigerated air. \$800.00 a month. Please call 505-243-4541.



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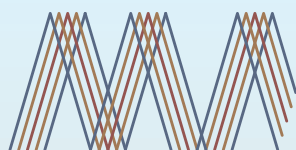
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For more information,
contact Marcia Ulibarri at
505-797-6058 or mulibarri@nmbar.org.



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