

A Message From the Chair

Jonathan E. Sperber
Office of the State Engineer

This newsletter focuses on two events, one past and one upcoming, that enhance appellate practice in New Mexico by bringing together appellate practitioners, judges and judicial staff. These events are the Appellate Bench/Bar Conference, which was jointly hosted on April 11 by the Supreme Court, Court of Appeals and Appellate Practice Section, and the 19th Annual Appellate Practice Institute, which will be held at the State Bar Center on August 15.

Appellate Bench/Bar Conference

By all accounts, the Appellate Bench/Bar Conference was a terrific success. The event was organized and moderated by Judge Pickard, who reluctantly found it necessary to turn away several practitioners due to the large number of participants. As in the last Appellate Bench/Bar Conference, which was held in 1998, the emphasis was on providing an informal atmosphere in which to facilitate frank and open discussion. This informal tone was set by Chief Justice Chavez, who greeted participants at the St. Francis Hotel luncheon by saying: "Hi. My name is Ed."

The Court of Appeals panel later discussed a full suite of issues regarding notices of appeal, interlocutory appeals, calendaring, docketing statements, mediation, brief writing and oral argument. As always, insight into the Court's inner processes was particularly valuable. For instance, Judge Wechsler noted that the Court may issue a strategic calendar notice if it wants more facts to make a decision, Chief Judge Sutin stated that poorly written briefs may



Spring Wind, Southwest Springs
Jakki Kouffman

result in a memorandum opinion rather than a published opinion, Chief Staff Attorney Bridget Gavahan and Chief Clerk Gina Maestas stated that a party can indicate the best way for cases to proceed, and Mediator Robert Rambo said that he generally attempts to reach global settlements that may include non-parties.

The Supreme Court panel focused on petitions, amicus briefs, brief writing and oral argument. In emphasizing brevity in brief writing, Justice Bosson indicated that some of the best briefs were written by Section co-founder Steve Tucker, who never reached the page limit. Justice Maes advised practitioners to avoid lengthy headings in their briefs and to draft a good conclusion rather than being repetitive. Justice Serna noted that the Supreme Court carefully reads the dissents in Court of Appeals

opinions, Chief Justice Chavez said that the best amicus briefs are those invited by the court, and Justice Daniels stated in regard to *stare decisis* that wisdom should not be rejected simply because it comes late.

19th Annual Appellate Practice Institute

We hope that you will attend this year's Institute, which will be directed at appellate practitioners of all persuasions, whether civil or criminal, administrative or judicial, beginning or advanced. The morning session will include an update by Jocelyn Drennan and Sue Herrmann on recent developments in New Mexico appellate practice, a

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Recent Developments in New Mexico Appellate Practice

Compiled by Edward Ricco
Rodey, Dickason, Sloan, Akin & Robb, P.A.

May 2008
(Cases from Bar Bulletin, Vol. 46, Nos. 1-52)

Finality/Appealability

Pincheira v. Allstate Ins. Co., 2007-NMCA-094, ¶ 25, 142 N.M. 283, 164 P.3d 982, cert. granted, 2007-NMCERT-007, 142 N.M. 330, 165 P.3d 327.

Default judgment on liability only, imposed by trial court as contempt sanction and intended to allow appeal to review discovery ruling, is treated as final for purposes of appeal.

Timing of Appeals

Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co., 2007-NMSC-051, 142 N.M. 527, 168 P.3d 99.

Motion for reconsideration filed within 10 days of entry of judgment is treated as a motion to alter or amend the judgment filed under Rule 1-059(E), which tolls appeal time (suggesting, also, that later-filed motion would be viewed as motion for relief from judgment under Rule 1-060). Rule 1-059(E) has no automatic denial provision and NMSA 1978, § 39-1-1 does not result in automatic denial contrary to rule. Recent amendments to rules regarding post-trial motions explained.

CapcoAcquisub, Inc. v. GrekaEnergyCorp., 2007-NMCA-011, 140 N.M. 920, 149 P.3d 1017.

Motion by any party that tolls appeal time under appellate rules does so for all parties, not only for movant. (¶¶ 14-23)

Claim of miscommunication between client and counsel regarding filing notice of appeal does not constitute ex-



Red Rock, Near Creek
(Art in Public Places Purchase Program)
Jakki Kouffman

cusable neglect justifying extension of time to file notice. (¶¶ 25-34)

Parties to Appeal

In re Estate of Duran, 2007-NMCA-068, 141 N.M. 793, 161 P.3d 290.

Cotenants in common who did not participate in prior litigation or appeal that reversed district court and established the cotenancy were entitled to benefit from result. Where part of judgment appealed from is interwoven with remainder, and appeal requires consideration of the whole, reversal may extend to entire judgment.

Interlocutory Appeals

State v. Smallwood, 2007-NMSC-005, ¶¶ 6-11, 141 N.M. 178, 152 P.3d 821.

Supreme Court has jurisdiction over interlocutory appeal in case where sentence of death may be imposed.

State v. Jade G., 2007-NMSC-010, ¶¶ 9-14, 141 N.M. 284, 154 P.3d 659.

Interlocutory appeal from suppression order in child delinquency proceeding is governed by NMSA 1978, § 39-3-3(B) (2).

Class Certification Appeals

Ferrell v. Allstate Insurance Co., 2007-NMCA-017, ¶¶ 48-51, 141 N.M. 72, 150 P.3d 1022, cert. granted, 2007-NM-CERT-001, 141 N.M. 164, 152 P.3d 151.

Defendant who appealed trial court's certification of multi-state class pursuant to Rule 1-023(F) but did not challenge certification of statewide class in same appeal is precluded from challenging statewide class certification on remand or in a subsequent appeal.

Jurisdiction

Smith v. City of Santa Fe, 2007-NMSC-055, ¶¶ 9-10, 142 N.M. 786, 171 P.3d 300.

Court of Appeals erred in avoiding difficult jurisdictional issues which it believed would not affect outcome of appeal and proceeding to merits. "[J]udicial economy cannot outweigh the need to address a threshold jurisdictional question that is squarely presented for review."

A Message From the Chair

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practicum by Tom Bird and Edward Ricco on issue preservation and the appellate record, and John Boyd's perspectives on arguing before the U.S. Supreme Court. The Section will then hold its annual meeting, which all members and prospective members are invited to attend.

Keynote speaker Cliff Gardner, who has briefed and argued several cases before the U.S. Supreme Court and California Supreme Court, will jumpstart the afternoon session with a presentation on effective oral advocacy. Zach Ives and Bill Lazar will then share strategies and approaches for securing extraordinary review, and the Institute will conclude with a distinguished panel of Supreme Court justices and Court of Appeals judges who will discuss ethical issues confronting appellate attorneys. The judicial panel will be co-moderated by Scott Davidson and Jocelyn Drennan.

19th Annual Appellate Practice Institute

State Bar Center, Albuquerque • Friday, August 15, 2008

5.2 General and 1.0 Ethics CLE Credits

8:00 a.m.	Registration	1:15 p.m.	Keynote Address: Effective Oral Advocacy <i>Cliff Gardner, Esq., Law Offices of Cliff Gardner, Oakland, CA</i>
8:15 a.m.	Introductory Remarks <i>Jonathan Sperber, Esq., NM Office of the State Engineer; Appellate Practice Section, Chair</i>	2:15 p.m.	Securing Extraordinary Review: Strategies and Approaches Relating to Interlocutory Appeals, Writs of Error & Extraordinary Writs <i>Zach Ives, Esq., Freedman Boyd Hollander Goldberg & Ives P.A.</i> <i>Bill Lazar, Esq., Attorney at Law</i>
8:30 a.m.	Recent Developments in Appellate Practice <i>Sue A. Herrmann, Esq., NM Office of the State Engineer</i> <i>Jocelyn Drennan, Esq., Rodey Dickason Sloan Akin & Robb P.A.</i>	3:15 p.m.	Break
9:10 a.m.	Building the Appellate Record: Coordination Between Trial and Appellate Counsel; Issue Preservation; Mechanics and Practicalities of Bringing up the Record; Methods of Addressing Deficiencies in the Record; Consequences of an Inadequate Record <i>Tom Bird, Esq., Keleher & McLeod P.A.</i> <i>Edward Ricco, Esq., Rodey Dickason Sloan Akin & Robb P.A.</i>	3:30 p.m.	Judicial Panel: Ethical Issues Confronting Appellate Attorneys <i>Hon. Edward L. Chavez, Chief Justice, NM Supreme Court</i> <i>Hon. Charles Daniels, Justice, NM Supreme Court</i> <i>Hon. Jonathan B. Sutin, Chief Judge, NM Court of Appeals</i> <i>Hon. Cynthia A. Fry, Judge, NM Court of Appeals</i> <i>Hon. Celia Foy Castillo, Judge, NM Court of Appeals</i> Co-moderators <i>Scott Davidson and Jocelyn Drennan</i>
10:30 a.m.	Break	4:30 p.m.	Adjourn
10:45 a.m.	Anatomy of a United States Supreme Court Case: A Practitioner's Strategies and Experiences <i>John Boyd, Esq., Freedman Boyd Hollander Goldberg & Ives P.A.</i>		
11:45 a.m.	Lunch (provided at State Bar Center)		
12:45 p.m.	Annual Appellate Section Meeting		

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Save the Date

**19th Annual
Appellate Practice Institute**
August 15, 2008
State Bar Center, Albuquerque

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Albuquerque, NM 87199

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State Bar of New Mexico
Appellate Practice Section

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