

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

JANUARY 4, 2012 • VOLUME 51, No. 1



Rachel by Matthew Lutz (see page 3)

Matrix Fine Art, Albuquerque

Inside This Issue

Table of Contents	3
NM Supreme 100th Anniversary Observance	4
2011 State Bar Dues and Licensing Fees.....	5
<i>Navajo Preference Laws and the Equal Employment Opportunity Commission: Still at Odds After 25 Years</i> , by Danny Jarrett and Andrew Robeda...	6
New Mexico Courts E-Filing Update	6
Mock Trial Coaches Needed	7
Clerk's Certificates	13
Rules/Orders	
Proposed Revisions to the Rules of Criminal Procedure for the District Courts.....	16
From the New Mexico Supreme Court	
2011-NMSC-043, No. 33,029: State of New Mexico, ex rel. v. Martinez	19
2011-NMSC-044: Nos. 32,388/32,402: State v. Harper	21

126th

Birthday

CELEBRATION

You're Invited!

- What:** State Bar of New Mexico's 126th Birthday
Where: State Bar Center
5121 Masthead NE, Albuquerque, NM
When: 4 p.m., January 20

The State Bar is proud of the tremendous dedication and service that our membership has given to the legal profession and the public. We hope you will join us for this important celebration.

Hans William Voss, President
Joe Conte, Executive Director

We will honor attorneys celebrating 25 and 50 years of service.

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



STATE BAR
of NEW MEXICO



Officers, Board of Bar Commissioners

Hans Voss, President
 Andrew J. Cloutier, President-Elect
 Erika Anderson, Vice President
 Martha Chicoski, Secretary-Treasurer
 Jessica A. Pérez, Immediate Past President

Board of Editors

Ian Bezpalko	Danny W. Jarrett
Cynthia A. Christ	Maureen S. Moore
Kristin J. Dalton	Tiffany L. Sanchez
Jocelyn C. Drennan	Michael J. Thomas
Jennifer C. Esquibel	Joseph Patrick Turk

State Bar Staff

Executive Director Joe Conte
 Membership and Communications
 Director Chris Morganti
 Editor Dorma Seago
 505-797-6030 • notices@nmba.org
 Graphic Designer Julie Schwartz
 jschwartz@nmba.org
 Account Executive Marcia C. Ulibarri
 505-797-6058 • ads@nmba.org
 Digital Print Center
 Manager Brian Sanchez
 Assistant Michael Rizzo

©2012, State Bar of New Mexico. No part of this publication may be reprinted or otherwise reproduced without the publisher's written permission. The *Bar Bulletin* has the authority to edit letters and materials submitted for publication. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers. Appearance of an article, editorial, feature, column, advertisement or photograph in the *Bar Bulletin* does not constitute an endorsement by the *Bar Bulletin* or the State Bar of New Mexico. The views expressed are those of the authors, who are solely responsible for the accuracy of their citations and quotations. State Bar members receive the *Bar Bulletin* as part of their annual dues. The *Bar Bulletin* is available at the subscription rate of \$125 per year and is available online at www.nmba.org.

The *Bar Bulletin* (ISSN 1062-6611) is published weekly by the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM 87109-4367. Periodicals postage paid at Albuquerque, NM. Postmaster: Send address changes to *Bar Bulletin*, PO Box 92860, Albuquerque, NM 87199-2860.

505-797-6000 • 800-876-6227 • Fax: 505-828-3765
 E-mail: address@nmba.org • www.nmba.org

January 4, 2012, Vol. 51, No. 1

TABLE OF CONTENTS

Notices4
 2011 State Bar Dues and Licensing Fees.....5
Navajo Preference Laws and the Equal Employment Opportunity Commission:
Still at Odds After 25 Years, by Danny Jarrett and Andrew Robeda.....6
 New Mexico Courts E-Filing Update..... 6
 Legal Education Calendar8
 Writs of Certiorari 10
 List of Court of Appeals' Opinions 12
 Clerk's Certificates 13
 Recent Rule-Making Activity 14
 Rules/Orders
 Proposed Revisions to the Rules of Criminal Procedure for the District Courts..... 16
 Opinions
 From the New Mexico Supreme Court
 2011-NMSC-043, No. 33,029: State of New Mexico, ex rel. v. Martinez 19
 2011-NMSC-044: Nos. 32,388/32,402: State v. Harper 21
 Advertising 26

MEETINGS

JANUARY 2012

<p>4 Bankruptcy Law Section BOD, noon, U.S. Bankruptcy Court</p> <p>4 Employment and Labor Law Section BOD, noon, State Bar Center</p> <p>5 Real Property, Trust and Estate Section BOD, 11 a.m., via teleconference</p> <p>9 Attorney Support Group, 5:30 p.m., First United Methodist Church</p> <p>10 Lawyers Professional Liability and Insurance Committee, noon, State Bar Center</p> <p>11 Children's Law Section BOD, noon, Monte Carlo Restaurant, Albuquerque</p> <p>11 Criminal Law Section BOD, noon, State Bar Center</p> <p>12 Elder Law Section BOD, noon, State Bar Center</p>	<p>12 Intellectual Property Section BOD, noon, Lewis and Roca LLP</p> <p>12 Public Law Section BOD, noon, Montgomery and Andrews, Santa Fe</p> <p>12 Business Law Section BOD, 4 p.m., via teleconference</p> <p>13 Board of Editors, 8:30 a.m., State Bar Center</p> <p>14 Ethics Advisory Committee, 10 a.m., State Bar Center</p> <p>17 Solo and Small Firm Section BOD, 11:30 a.m., State Bar Center</p> <p>18 Law Practice Management Committee, noon, State Bar Center</p> <p>19 Health Law Section BOD, 7:30 a.m., via teleconference</p>
--	--

Cover Artist: Matthew Lutz is an artist and educator in Rio Rancho. His work represents individuals who have had a positive impression on the his life, whether directly or indirectly (www.matthewlutz.com).

NOTICES

COURT NEWS NM Supreme Court Code of Judicial Conduct Committee Vacancy

Three vacancies exist on the Code of Judicial Conduct Committee. Persons interested in volunteering time on these committees may send a letter of interest and/or resume to Joey D. Moya, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Deadline for submissions is Jan. 19.

Commission on Access to Justice January Meeting

The next meeting of the Commission on Access to Justice is from noon–4 p.m., Jan. 13, at the State Bar Center. Interested parties from the private bar and the public are welcome to attend. Further information about the Commission is available on the State Bar's website, www.nmbar.org.

First Judicial District Court Mass Reassignment of Cases

Effective Jan. 4, a mass reassignment of juvenile and neglect and abuse cases will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. All of the juvenile and neglect and abuse cases previously assigned to Judge Michael Vigil, Division IV, will be reassigned to Judge Mary Marlowe-Sommer, Division VIII. A mass reassignment of Los Alamos cases will occur pursuant to NMSC Rule 23-109, the Chief Judge Rule. All of the Los Alamos cases previously assigned to Judge Barbara J. Vigil, Division I; Judge Sarah Singleton, Division II; Judge Raymond Z. Ortiz, Division III; Judge Michael E. Vigil, Division IV; Judge Stephen Pfeffer, Division VI; Judge T. Glenn Ellington, Division VII; and Judge Mary Marlowe-Sommer, Division VIII, will be reassigned to Judge Sheri A. Raphaelson, Division V. Numerous civil cases (habeas corpus only) previously assigned to Judge Barbara J. Vigil, Division I; Judge Raymond Z. Ortiz, Divi-

sion III; Judge Michael E. Vigil, Division IV; and Judge Stephen D. Pfeffer, Division VI, will be reassigned to Judge Sheri A. Raphaelson, Division V. Parties who have not previously exercised their right to challenge or excuse will have 10 days from Jan. 4 to challenge or excuse the judge pursuant to Rule 1-088.1.

Second Judicial District Court

Change in Clerk's Office Hours

All court clerk's offices in the 2nd Judicial District Court are open from 8 a.m.–4 p.m. (open throughout the lunch hour). Direct questions to 505-841-8400.

Judicial Vacancy

A vacancy on the 2nd Judicial District Court will exist in Albuquerque as of Jan. 1 upon the retirement of the Honorable Neil Candelaria. Chief Judge Ted Baca has indicated he intends to assign the vacancy to the criminal division. The dean of the UNM School of Law, designated by the New Mexico Constitution to chair the 2nd Judicial District 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: <http://lawschool.unm.edu/judsel/application.php>, or via email by calling Judicial Selection Coordinator Sandra Bauman, 505-277-4700. 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

PROFESSIONALISM TIP

With respect to the courts and other tribunals:

I will be a vigorous and zealous advocate on behalf of my client, but I will remember that excessive zeal may be detrimental to my client's interests or the proper functioning of our justice system.

NM SUPREME COURT 100TH ANNIVERSARY OBSERVANCE

January 6 marks the 100th anniversary of President William Howard Taft's signing of the proclamation that officially created the State of New Mexico. The New Mexico Supreme is having an observance at 1:30 p.m., Jan. 10, exactly 100 years from the day the new state's Supreme Court justices first took their oaths of office and convened in Santa Fe. UNM Professor Emeritus Dr. Dan Chavez will give a public presentation in the courtroom on the creation of the State and the Court, followed by a question-and-answer period and appropriate birthday refreshments.

Nominating Commission will meet Jan. 30 at the Bernalillo County Courthouse in Albuquerque to evaluate the applicants for this position. The meeting is open to the public and those who wish to be heard about any of the candidates will have the opportunity. The deadline for complete applications is 5 p.m., Jan. 13. Applications received after that date will not be considered.

U.S. District Court for the District of New Mexico Amended Local Rules of Civil Procedure

The Local Rules of Civil Procedure of the U.S. District Court for the District of New Mexico have been amended effective Jan. 1. This revision makes changes to

Judicial Records Retention and Disposition Schedules

Pursuant to the Judicial Records Retention and Disposition Schedules, exhibits (see specifics for each court below) filed with the courts for the years and courts shown below, including but not limited to cases that have been consolidated, are to be destroyed. Cases on appeal are excluded. Counsel for parties are advised that exhibits (see specifics for each court below) can be retrieved by the dates shown below. Attorneys who have cases with exhibits may verify exhibit information with the Special Services Division at the numbers shown below. Plaintiff(s) exhibits will be released to counsel of record for the plaintiff(s), and defendant(s) exhibits will be released to counsel of record for defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Court	Exhibits/Tapes	For Years	May Be Retrieved Through
1st Judicial District Court 505-455-8275	Criminal, civil, domestic relations, and probate cases	1986–1997	January 21

D.N.M.LR-Civ. 83.2, Bar Admissions, Memberships and Dues, and D.N.M.LR-Civ. 83.3, Appearance of Attorneys Licensed Outside the District. The newly amended rules are available on the Court's website at www.nmcourt.fed.us.

STATE BAR NEWS

Attorney Support Group

- Jan. 23, 7:30 a.m.
Morning groups meet regularly on the third Monday of the month. (changed due to MLK holiday).
- Jan. 9, 5:30 p.m.
Afternoon groups meet regularly on the first Monday of the month (changed due to New Years holiday).

Both groups meet at the First United Methodist Church at Fourth and Lead SW, Albuquerque. For more information, contact Bill Stratvert, 505-242-6845.

Children's Law Section Annual Meeting

The Children's Law Section will hold its annual meeting from 3–3:30 p.m., Jan. 12, during the Children's Law Institute at the Hotel Albuquerque in the Potter's Room. Watch for e-blast reminders before the event.

Paralegal Division Luncheon CLE Series

The Paralegal Division invites members of the legal community to bring a lunch and attend *Judicial Ethics and Discipline: A Case Study* (1.0 EP CLE credit) presented by Randall Roybal. The program will be held from noon–1 p.m., Jan. 11, at the State Bar Center (registration fee for attorneys—\$16, members of the Paralegal Division—\$10, non-members—\$15). Registration begins at the door at 11:45 a.m. For more information, contact Cheryl Passalacqua, 505-247-0411, or Evonne Sanchez, 505-222-9356. This CLE will be webcast to three locations:

- Santa Fe: Montgomery & Andrews, 325 Paseo de Peralta, Santa Fe. Contact Donna Ormerod, 505-986-2520.
- Roswell: Hinkle, Hensley, Shanor & Martin LLP, 400 N. Pennsylvania, Ste. 700. Contact Dora Paz, 575-622-6510.
- Farmington: Titus & Murphy, 2021 E. 20th Street. Contact Heather Parmley, 505-326-6503.

OTHER BARS

NM Criminal Defense Lawyers Association Resources Available

Discounted self-study recordings are available at www.nmcdla.org.

UNM

Guanajuato Summer Law Institute June 3–July 1

The Guanajuato Summer Law Institute offers an introduction to comparative international, and Mexican law. It is open to all law students, graduate students, and professionals interested in learning about the legal system and culture of Mexico. In addition to four courses lasting four weeks, the Institute offers an optional two-week judicial or law office externship (July 2–14) with a classroom component on Mexican Legal Systems and Social Development. For more information about the Institute, the application, or payment, contact Robyn Cote, rcote@unm.edu, or visit <http://mexicanlawclasses.unm.edu>.

Law Library Hours To Jan. 9

Building & Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	8 a.m.–5 p.m.
Sunday	noon–8 p.m.

Reference

Jan. 4–6	9 a.m.–6 p.m.
Jan. 7–8	Closed
Jan. 9	9 a.m.–6 p.m.

OTHER NEWS

NM Social Security Attorneys Association

The New Mexico Social Security Attorneys Association, a non-profit corporation, held its first meeting Dec. 13. The association is presently composed of attorneys that represent claimants seeking Social Security disability benefits. It anticipates providing education for members and non-members and spearheading proactive solutions for

MEMBER BENEFIT OF THE WEEK

Career Counseling Services

Burned out?

Unsure of your next career move?

Uncertain that practicing law is for you?

Restless in retirement?

Call 505-797-6064

or visit www.nmbar.org/careerservices/careerservices.html.

administrative roadblocks to fair and efficient processing of Social Security disability claims. Staff and non-attorney representatives may join as associate, non-voting members. Address inquiries to President Victor Roybal, 230 Adams SE, Ste. A, Albuquerque, N.M. 87108, 505-265-5805.

2012 STATE BAR DUES AND LICENSING FEES

The 2012 Dues and Licensing forms have been mailed.

Licensing fees and dues were due on or before Dec. 31, 2011, and are late after Feb. 1, 2012.

Members who have not received the form should notify the State Bar at (505) 797-6035.

Fees may be paid online through secured eCommerce at www.nmbar.org.

- Click on "Pay Dues."
- Enter your bar ID number as your username and your last name as your password. If your last name is fewer than six characters, enter a zero(s) following your name to make six characters.

State Bar, Disciplinary Board, and Client Protection Fund fees are mandatory and must be paid in order to maintain license status.

Without exception, dues and licensing fees are payable regardless of whether you received your form.

Late fees may be assessed if payment is not postmarked by Feb. 1, 2012.

NAVAJO PREFERENCE LAWS AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: STILL AT ODDS AFTER 25 YEARS

By Danny Jarrett and Andrea Robeda

In 1985, the Navajo Nation (“the Nation”) enacted the Navajo Preference in Employment Act (“NPEA” or “the Act”), which created wide-sweeping rights for Navajo workers. The NPEA, codified at title 15, sections 601-619 of the Navajo Nation Code, contains a broad legislative scheme for regulating employment on the Navajo Nation and, among other things, creating employment opportunities through mandatory Navajo preference. The Act applies to any employer doing business within the territorial jurisdiction of the Navajo Nation. The year 2010 marked the 25th anniversary of NPEA. This anniversary, coupled with the 9th Circuit Court of Appeals recent decision in *EEOC v. Peabody Western Coal*, 610 F.3d 1070 (9th Cir. 2010), provides an opportunity to examine the Act and how it has been treated by federal courts, especially with respect to Title VII of the Civil Rights Act.

In *EEOC v. Peabody Western Coal*, the 9th Circuit held that the Navajo Nation should be joined as a defendant in a case for employment discrimination under Title VII of the Civil Rights Act brought by the EEOC. *Id.* at 1074. The employer, Peabody Western Coal Company, mines coal at the Black Mesa Complex and Kayenta Mine on the Navajo and Hopi reservations in northeastern Arizona, pursuant to leases with the Navajo and Hopi Tribes. *Id.* The leases require Peabody to provide an employment preference to Navajo job applicants. *Id.* The leases were drafted and approved by the Department of Interior under the

As tribes continue involvement in significant economic enterprises, including gaming, the United States government continues to look for opportunities, such as the EEOC’s efforts here, to assert jurisdiction and attempt to impose remedies.

Indian Mineral Leasing Act of 1938. *Id.* at 1075. In a declaration submitted in the case, a former head of the Department stated that the Department drafted the leases and required the inclusion of the Navajo employment preferences. *Id.* The Department also approved amendments and extensions of the leases. *Id.*

The EEOC sued Peabody, alleging the company was unlawfully discriminating on the basis of national origin, in violation of Title VII,¹ by implementing the Navajo employment preferences contained in the leases. *Id.* The EEOC requested injunctive relief prohibiting Peabody from continuing to implement the Navajo employment preferences and damages, including back pay with interest, compensatory damages, and punitive damages. *Id.* Peabody moved for summary judgment and dismissal of the action, arguing, in part, that Rule 19 of the Federal Rules of Civil Procedure required dismissal when a necessary and indispensable party to the action cannot be joined to the action. *Id.* at 1076. Peabody argued that because the Nation is a necessary and indispensable party that has sovereign immunity from being joined, the case should be dismissed.

Id. The district court agreed and dismissed the case. *Id.*

The 9th Circuit reversed the district court, ruling that the EEOC could join the Nation to the action because the Nation could not assert sovereign immunity against the federal government. *EEOC v. Peabody Western Coal Co.*, 400 F.3d 774 (9th Cir. 2005) (“*Peabody II*”). The case was returned to the district court and, in an



NEW MEXICO COURTS E-FILING UPDATE

■ The system experienced two brief periods of downtime Dec. 16 and Dec. 19. Both were less than 15 minutes and only affected subsequent filings, not initial filings.

■ Judicial Information Division staff corrected all invalid CAID numbers in the system during the week of Dec. 19 and then implemented a “field edit” that prevents registration with an incorrect CAID. This will reduce the filing rejection rate for newly registered filers.

■ On Dec. 20, a patch was applied that will ensure that all e-filed cases are properly initiated in the Odyssey Case Management system at the time a user submits them. We’ll be watching the effect of the patch to ensure that it performs as we expect. If successful, this will increase court clerk productivity and ensure that cases are accepted in a timely manner.

■ Helpful Links and Contacts

- Visit <https://ofs.tylerhost.net/nm> for Odyssey File and Serve support, training, and contact information.
- The Judicial Information Division (JID) support is available from 8 a.m.–5 p.m., Monday–Friday.
 - JID Help Desk 1-505-476-6911
 - JID Help Desk Email helpdesk@nmcourts.gov
- Judicial District Emails
 - 1st Judicial District Court: sfedefile@nmcourts.gov
 - 2nd Judicial District Court: albdefile@nmcourts.gov
 - 13th Judicial District Court: lludefile@nmcourts.gov

—From the New Mexico Supreme Court

amended complaint, the EEOC added the Nation as a defendant under Rule 19.²

On remand, the district court again ruled against the EEOC, granting summary judgment to the defendants. *Id.* Among other things, the court found the Nation is a party that could not be joined in the case because any affirmative relief would be contrary to Title VII's exemption of Indian Tribes from suit. *Id.* The court also found the Secretary of Interior had sufficient interest in the case to make it a necessary and indispensable party that could not be joined under Rule 19. *Id.*

On appeal, the 9th Circuit reversed the district court again and sent the case back. *Id.* at 1079. The Court, summoning up *Peabody II*, said that even though the "EEOC has no claim against the party it seeks to join [the Nation] and is not seeking any affirmative relief directly from that party... [j]oinder is necessary for the 'sole purpose' of effecting complete relief between the parties by ensuring that both Peabody and the Nation are bound to any judgment upholding or striking down the challenged lease provision." *Id.*

The appellate court then considered the argument that under Rule 19 the suit could not proceed without joinder of the Secretary of the Interior as a necessary party and joinder of the Secretary was not feasible because the Secretary has sovereign immunity from being joined. *Id.* at 1077. The Court said Peabody was "between the proverbial rock and a hard place — comply with the injunction prohibiting the hiring preference policy or comply with the lease requiring it." *Id.* at 1078. The Court explained the dilemma:

If the district court were to hold the Navajo employment preference violates Title VII and to award damages against Peabody, it would be profoundly unfair if Peabody could not seek indemnification from the Secretary. It would be similarly unfair if the district court were to grant an injunction requiring Peabody to disregard the preference provision, but leaving the Secretary free, despite the court's holding, to insist that Peabody comply with it.

As Peabody could not seek indemnification from the Secretary of Interior, the Court determined that the EEOC's claims for damages should be dismissed. *Id.* at 1084. The Court nevertheless ruled that the claim for injunctive relief may proceed without the Secretary. *Id.* at 1085. According to the Court, should the district court grant injunctive relief to the EEOC, a suit against the Secretary for "prospective relief in the form of an injunction or declaratory judgment" is enough to protect Peabody and the Nation. *Id.*

As this case demonstrates, the issue of reconciling Title VII and the NPEA is far from resolved. Furthermore, this case raises a troubling outlook for Indian tribes. The ultimate resolution may significantly narrow a tribe's ability to maintain long-held employment preferences. While it is encouraging from the perspective of tribes as employers that the damage claims will not be allowed to proceed, the fact that prospective, injunctive relief may still be available and the Secretary of the Interior will be interpled are problematic. As tribes continue involvement in significant economic enterprises, including gaming, the United States government continues to look for opportunities, such as the EEOC's efforts here, to assert jurisdiction and attempt to impose remedies.

Endnotes

¹Title VII prohibits employers from engaging in discrimination on the basis of an individual's race, color, religion, sex or national origin. 42 U.S.C. § 2000e-2(a)(1) (2011). Indian Tribes are explicitly excluded from the definition of "employers" under Title VII. *Id.* § 2000e(b)(1). Moreover, to encourage employment of Native Americans, Title VII allows non-tribal employers to give preferential treatment to Indians under certain circumstances. 42 U.S.C. § 2000e-2(i).

²Prior to *Peabody II*, Ninth Circuit case law held that a Navajo employment preference violated Title VII, but an individual claimant could not bring a suit for the violation without joining the Nation as an indispensable party, and the Nation had sovereign immunity from being joined. See *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150 (9th Cir. 2002); *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 154 F.3d 1117 (9th Cir. 1998).

About the Authors

Danny W. Jarrett is the managing partner of the Albuquerque, New Mexico office of Jackson Lewis LLP. Jarrett has been recognized by the New Mexico Supreme Court's Legal Specialization Board as a certified specialist in the field of labor and employment law since 2008. His practice focuses on counseling and representing employers, government entities and Native American tribal organizations regarding labor and employment disputes.

Andrea Robeda is an associate in the Albuquerque office of Jackson Lewis LLP and practices primarily in the area of employment litigation. She represents management in employment cases in federal and state courts and before administrative agencies.

MOCK TRIAL COACHES NEEDED

Attorneys are needed at Animas High School and Lordsburg High School to provide legal expertise as coaches for the 2012 Gene Franchini High School Mock Trial program. The amount of time invested will be decided by the attorney and the teacher advisor, but teams usually meet at least once each week. State finals are March 23 and 24. The attorney/coach helps train team members in the finer points of presenting their cases before panels of judges and jurors. The case problem and rules were published in early October, so the teams have just begun their preparation. Information about the role and responsibilities of attorney coaches is available on the "Tips and Advice" pages in the mock trial section of the Center for Civic Values' website at www.civicvalues.org. If you have a few hours a week to devote toward helping to provide an outstanding educational experience to New Mexico high school students or would like to know more, contact Stacy Tompkins at 505.764.9417, ext. 13. The 34th annual mock trial program is a co-sponsored activity of CCV, the State Bar and the UNM School of Law.

LEGAL EDUCATION

JANUARY

- 4 Bench and Bar Substance Abuse and Other Misjudgments**
2.0 EP
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 5-6 Estate Planning in 2012: Now That the Federal Tax Is a Dead Letter, Parts 1 and 2**
2.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 6 Compatibility of Legal and Judicial Ethics**
2.0 EP
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 9 Arbitration: Basics and Procedure**
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 10 Dangers of Using “Units” in LLC Planning**
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 11 Admissible Evidence: Computer Forensics Investigation**
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 11 Judicial Ethics and Discipline: A Case Study**
1.0 EP
Albuquerque
Paralegal Division
505-247-0411 or 505-222-9356
www.nmbar.org
- 12 Ethics on the Receipt and Release of Confidential Information**
1.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 13 Bridging the Valuation Gap: “Earnouts” and Other Techniques When Buyer and Seller Can’t Agree on Price**
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 13 Mediation: Basics and Procedure**
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 17 2011 Real Property Institute**
6.3 G, 1.0 EP
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 17 Nuts and Bolts of Chapter 11 Bankruptcy**
6.7 G
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 17 Real Estate Finance in a World With Tight Credit and Less Leverage**
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 17 Skeptically Determining the Limits of Expert Testimony and Evidence, Part 1**
4.7 G, 2.0 EP
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 18 Recusal: A Hot New Legal Ethics Topic**
2.0 EP
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com
- 19 Ethics, Technology and Solo and Small Firm Practitioners**
1.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 20 Rescission in Business Transactions: Techniques for Fixing Transactions Gone**
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 24 Incentive Trusts: Approaches and Limits to Encouraging “Good” Behavior in Beneficiaries**
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org
- 26 Bench and Bar Substance Abuse and Other Misjudgments**
2.0 EP
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com

- | | | |
|--|--|---|
| <p>26 Practical Ethics for Business Lawyers
1.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>27 Electronically Stored Information: What's Under Lock and Key
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> | <p>31 Choice of Entity for Service Businesses, Including Law Firms
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>27 Drafting Effective and Enforceable Promissory Notes
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | | |

FEBRUARY

- | | | |
|--|--|--|
| <p>2-3 2012 Ethics Update, Parts 1 and 2
2.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>7-8 Estate Planning for the Elderly, Parts 1 and 2
2.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>14 Compensation and Other Techniques for Getting Money Out of a Closely Held Business
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>3 Arbitration: Basics and Procedure
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> | <p>8 Compatibility of Legal and Judicial Ethics
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> | <p>16 Ethics Issues for Lawyers Supervising Other Lawyers and Paralegals
1.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>7 2011 Ethics/Professionalism: Conquering the Pitfalls of our Profession for a Healthy and Successful Career
2.0 EP
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>9 Bench and Bar Substance Abuse and Other Misjudgments
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> | <p>17 Mediation: Basics and Procedure
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> |
| <p>7 2011 Fall Elder Law Institute
7.2 G
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>9 Ethics in Co-Counsel and Referral Relationships
1.0 EP
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>17 2012 Sexual Harassment Update
1.0 G
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |
| <p>7 2nd Annual ADR Institute
3.9 G, 2.5 EP
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> | <p>10 Admissible Evidence: Computer Forensics Investigation
2.0 G
Teleconference
TRT, Inc.
800-672-6253
www.trtcle.com</p> | <p>21 Business Development 101: The Other Side of a Law Practice
3.0 G, 2.0 EP
Video Replay
Albuquerque
Center for Legal Education of NMSBF
505-797-6020
www.nmbarcle.org</p> |

WRITS OF CERTIORARI

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

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

EFFECTIVE JANUARY 4, 2012

PETITIONS FOR WRIT OF CERTIORARI FILED AND PENDING:

	Date Petition Filed
No. 33,353 Flemma v. Halliburton Energy	(COA 29,933) 12/15/11
No. 33,352 State v. Hensley	(COA 31,163) 12/14/11
No. 33,349 State v. Griffin	(COA 31,408) 12/14/11
No. 33,351 Wakeland v. NM Dept. of Workforce Solutions	(COA 31,031) 12/13/11
No. 33,348 State v. Valerio	(COA 30,199) 12/12/11
No. 33,346 State v. Rivera	(COA 31,441) 12/12/11
No. 33,341 State v. Ariel H. Barnes v State	(COA 31,391) 12/12/11 (12-501) 12/9/11
No. 33,342 State v. Urquizo	(COA 30,337) 12/9/11
No. 33,347 State v. Botello	(COA 31,406) 12/7/11
No. 33,339 State v. Alaya	(COA 29,309) 12/7/11
No. 33,335 State v. Flores	(COA 31,366) 12/7/11
No. 33,334 State v. Ariel H.	(COA 31,319) 12/6/11
No. 33,333 State v. Carter	(COA 31,529) 12/6/11
No. 33,332 Partida v. Motor Vehicle Division	(COA 31,460) 12/6/11
Response filed 12/20/11	
No. 33,331 Strausberg v. Laurel Healthcare	(COA 29,238) 12/6/11
No. 33,275 Solsbury v. Liberty	(COA 30,068) 12/6/11
No. 33,330 Gallegos v. Bravo	(12-501) 11/29/11
No. 33,326 State v. Glass	(COA 31,436) 12/2/11
No. 33,325 State v. Soto	(COA 30,047) 12/1/11
No. 33,324 State v. Evans	(COA 31,331) 12/1/11
No. 33,323 State v. Greenwood	(COA 29,959) 11/30/11
No. 33,322 Resource Lighting v. Rohde	(COA 30,013) 11/30/11
Response filed 12/15/11	
No. 33,320 State v. Sandoval	(COA 28,437) 11/29/11
No. 33,318 State v. Carruth	(COA 31,228) 11/28/11
No. 33,314 State v. Archuleta	(COA 29,976) 11/23/11
No. 33,312 State v. Eidson	(COA 29,750) 11/23/11
No. 33,309 State v. Marvin N.	(COA 30,730) 11/21/11
No. 33,308 State v. Mejia	(COA 31,332) 11/21/11
No. 33,307 State v. Calderon	(COA 31,169) 11/18/11
No. 33,306 State v. Alsop	(COA 31,511) 11/18/11
No. 33,305 State v. Flores	(COA 31,432) 11/18/11
No. 33,276 Miller v. State	(12-501) 11/18/11
Response due 1/12/12 by extn	
No. 33,304 State v. Hardy	(COA 29,583) 11/17/11
No. 33,300 Hernandez v. State	(12-501) 11/15/11
Response due 1/12/12 by extn	
No. 33,296 State v. Gutierrez	(COA 29,997) 11/14/11
No. 33,289 Spicknall v. Rapid Temps, Inc.	(COA 30,815) 11/4/11
Response filed 12/19/11	
No. 33,182 Moongate Water Co. v. City of Las Cruces	(COA 27,889) 10/19/11
Response filed 11/7/11	

CERTIORARI GRANTED BUT NOT YET SUBMITTED TO THE COURT:

(Parties preparing briefs)	Date Writ Issued
No. 32,605 State v. Franco	(COA 30,028) 10/18/10
No. 32,742 State v. Martinez	(COA 30,637) 1/31/11
No. 32,804 State v. Servantez	(COA 30,414) 2/7/11
No. 32,895 State v. Gonzales	(COA 30,541) 4/4/11
No. 32,899 State v. Esparza	(COA 28,911) 4/27/11
No. 32,940 State v. Vest	(COA 28,888) 5/3/11
No. 32,943 State v. Hall	(COA 29,138) 5/11/11
No. 32,976 State v. Olson	(COA 29,010) 5/24/11
No. 33,001 State v. Rudy B.	(COA 27,589) 6/8/11
No. 33,008 State v. Lasky	(COA 28,782) 6/8/11
No. 33,014 State v. Crane	(COA 29,470) 6/8/11
No. 33,046 State v. Munoz	(COA 30,837) 7/21/11
No. 33,075 State v. Marchiondo	(COA 30,029) 7/21/11
No. 33,057 State v. Turrietta	(COA 29,561) 7/26/11
No. 33,077 State v. Gonzales	(COA 28,700) 8/5/11
No. 33,083 Martinez v. Dept. of Transportation	(COA 28,661) 8/5/11
No. 33,133 Spencer v. Barber	(COA 29,390) 9/9/11
No. 33,143 State v. Owelicio	(COA 30,461) 9/9/11
No. 33,161 Duran v. Carisbrook, Inc.	(COA 30,067) 9/9/11
No. 33,154 State v. Carillo	(COA 29,258) 9/12/11
No. 33,135 Horne v. Los Alamos National Security	(COA 29,822) 9/14/11
No. 33,136 State v. Bent	(COA 29,227) 9/16/11
No. 33,139 State v. Polson	(COA 31,138) 9/20/11
No. 33,134 Martinez v. Bustos	(12-501) 9/22/11
No. 33,184 State v. Guthrie	(COA 29,863) 10/3/11
No. 33,203 State v. Davis	(COA 28,219) 10/4/11
No. 33,166 Christus St. Vincent Reg. Med. Ctr. v. Duarte-Afara	(COA 30,343) 10/12/11
No. 33,147 Prather v. Lyons	(COA 29,812) 10/25/11
No. 33,216 Flores v. Henderson	(COA 31,295) 10/25/11
No. 33,217 State v. Ramos	(COA 29,514) 10/25/11
No. 33,224 Bank of New York v. Romero	(COA 29,945) 10/25/11
No. 33,226 State v. Olsson	(COA 29,713) 10/27/11
No. 33,257 State v. Boyse	(COA 30,656/30,657) 11/4/11
No. 33,265 State v. Garcia	(COA 29,338) 11/17/11
No. 33,287 State v. Urioste	(COA 30,110) 12/7/11

CERTIORARI GRANTED AND SUBMITTED TO THE COURT:

(Submission = date of oral argument or briefs-only submission)	Submission Date
No. 32,524 Republican Party v. Taxation and Revenue Dept.	(COA 28,292) 3/14/11
No. 32,594 Smith v. Durden	(COA 28,896) 3/15/11
No. 32,505 Charley v. Franklin Corp.	(COA 28,876) 3/22/11
No. 32,534 Bustos v. Hyundai Motor Co.	(COA 28,240) 4/11/11

OPINIONS

AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS

Wendy F. Jones, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • (505) 827-4925

EFFECTIVE DECEMBER 21, 2011

PUBLISHED OPINIONS

		Date Opinion Filed
No. 30417	3rd Jud Dist Dona Ana CV-09-596, FINANCIAL INDEMNITY v L CORDOVA (reverse and remand)	12/20/2011

UNPUBLISHED OPINIONS

No. 31314	1st Jud Dist Santa Fe LR-10-8, CITY OF ESPANOLA v A VELARDE (dismiss)	12/16/2011
No. 30441	12th Jud Dist Lincoln CR-92-28, STATE v J HERRERA (affirm)	12/19/2011
No. 29972	9th Jud Dist Curry CR-08-696, STATE v D MURRELL (affirm)	12/20/2011
No. 30489	2nd Jud Dist Bernalillo CR-09-1977, STATE v J ROBERTS (reverse and remand)	12/20/2011
No. 30606	2nd Jud Dist Bernalillo CR-09-1976, STATE v N PEREA (reverse and remand)	12/20/2011
No. 30609	AD AD ADM-10-09, PROTEST OF STEVE ORTIZ (reverse)	12/20/2011
No. 31397	2nd Jud Dist Bernalillo CV-10-5645, R HEISE v ENCOMPASS INS (affirm)	12/20/2011
No. 30523	AD AD ADM-10-08, TAX & REV v C MARTIN (reverse)	12/21/2011
No. 30539	6th Jud Dist Luna CR-09-126, STATE v E RABER (reverse and remand)	12/21/2011
No. 30956	1st Jud Dist Santa Fe ADM-10-19, TAX & REV v T CAPEHART (reverse)	12/21/2011
No. 31197	2nd Jud Dist Bernalillo DM-06-2708, DV-07-378, M MINTEER v D SUDLOW (affirm)	12/21/2011
No. 31377	1st Jud Dist Santa Fe CV-09-1477, UNIFUND v R BARNES (affirm)	12/21/2011
No. 31402	2nd Jud Dist Bernalillo CR-08-604, STATE v D BORUNDA (reverse and remand)	12/21/2011
No. 31562	1st Jud Dist Rio Arriba CV-10-194, A TAFOYA v D CLELAND (reverse)	12/21/2011

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

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

CLERK'S CERTIFICATES

FROM THE NEW MEXICO SUPREME COURT

CLERK'S CERTIFICATE
DATED DECEMBER 14, 2011

CLERK'S CERTIFICATE OF
ADDRESS AND/OR
TELEPHONE CHANGES

Linda Helen Bennett

L. Helen Bennett PC
PO Box 4305
1019 Second Street, NW
(87102)
Albuquerque, NM 87196-
4305
505-321-1461
505-244-0532 (fax)
hbennett@swcp.com

John D. Cline

Law Office of John D. Cline
235 Montgomery Street,
Suite 1070
San Francisco, CA 94104
415-322-8319
415-524-8265 (fax)
cline@johndclinelaw.com

Dean B. Cross

The Law Office of George
"Dave" Giddens PC
10400 Academy Road, NE,
Suite 350
Albuquerque, NM 87111
505-271-1053
505-271-4848 (fax)

C. Emery Cuddy, Jr.

130 Verano Loop
Santa Fe, NM 87508
505-466-6403
cemerycuddy@gmail.com

Deborah M. DeMack

Law Offices of
Deborah M. DeMack
9400 Holly Avenue, NE,
Bldg. 4
Albuquerque, NM 87122
505-471-3302
815-550-2313 (fax)
ddmack@trustthelaw.com

**Mandy Kaye Waldrop
Denson**

PO Box 1972
Ruidoso, NM 88355-1972
575-937-6788
mkwaldrop@yahoo.com

John F. Dietz

6565 Americas Parkway, NE,
Suite 200
Albuquerque, NM 87110
505-217-3516
505-212-0021 (fax)
john@dietz.pro

Christopher T. Elmore

Doughty & West PA
20 First Plaza, NW, Suite 412
Albuquerque, NM 87102
505-242-7070
505-242-8707 (fax)
chris@doughtywest.com

MacDonnell Gordon

Sommer, Udall, Sutin,
Hardwick & Hyatt PA
PO Box 1984
200 West Marcy Street,
Suite 129 (87501)
Santa Fe, NM 87504-1984
505-982-4676
505-988-7029 (fax)
macg@sommerudall.com

Sarae T. Leuckel

306 Garland Street
Lakewood, CO 80226
leuckel@cybermesa.com

Kristina Elena Martinez

Rothstein, Donatelli, Hughes,
Dahlstrom, Schoenburg &
Bienvenu LLP
PO Box 8180
1215 Paseo de Peralta
(87501)
Santa Fe, NM 87504-8180
505-988-8004
505-982-0307 (fax)
kemartinez@rothsteinlaw.
com

William A. Martinez

William A. Martinez PC
635 W. Corona Avenue,
Suite 201
Pueblo, CO 81004
719-545-4519
719-545-4423 (fax)
wamatty@comcast.net

Dalva Lon Moellenberg

Gallagher & Kennedy PA
1233 Paseo de Peralta
Santa Fe, NM 87501
505-989-7278
505-983-8160 (fax)
DLM@gknet.com

Sarah Marie Montoya

PO Box 266
544 S. Second Street
Raton, NM 87740-0266
575-445-0000
attorneymontoya@yahoo.com

Jennifer Obrey-Espinoza

Law Offices of
Bruce S. McDonald
211 Twelfth Street, NW
Albuquerque, NM 87102
505-254-2854
505-254-2853 (fax)
joebsmlegal@aol.com

Sandra Lizeth Olivares

U.S. Army Corps
of Engineers
7701 Telegraph Road
Alexandria, VA 22315
703-428-7210
703-428-7633 (fax)
sandra.l.olivares@usace.
army.mil

Johanna A. Pickel

Justitia Law Firm LLC
733 S. Camino Del Pueblo
Bernalillo, NM 87004
505-771-9197
johanna@justitialawfirm.com

Malcolm L. Shannon, Jr.

9 Sherwood Drive
Methuen, MA 01844
978-258-3771
malcolms Shannon@comcast.
net

Noel Anthony Suniga

Suniga Law PLLC
400 S. Zang Blvd., Suite 105
Dallas, TX 75208
214-942-4500
noel@sunigalaw.com

Mirna Raquel Torres

122 West Madison
Lovington, NM 88260
mirna_torres@yahoo.com

Charles H. Van Gorder

PO Box 61148
Seattle, WA 98141-6148
505-699-6849
chase@vglaw.com

Ethan Watson

German & Associates LLC
12836 Lomas Blvd., NE,
Suite G
Albuquerque, NM 87112
505-407-2293
505-275-1283 (fax)
ethan@germanassociates.com

CLERK'S CERTIFICATE
OF ADMISSION

On December 2, 2011:

Troy James Oliver
Office of the District Attorney
417 Gidding, Suite 200
Clovis, NM 88101
575-769-2246
575-769-3198 (fax)

CLERK'S CERTIFICATE
OF REINSTATEMENT
TO ACTIVE STATUS

As of December 1, 2011:

Nilda M. Pabon Balderston
PO Box 1992
Roswell, NM 88202-1992

As of December 1, 2011:

Michael S. Williams
4 MacKenzie Court
Littleton, CO 80130

CLERK'S CERTIFICATE OF
WITHDRAWAL

Effective December 31, 2011:

Kathleen M. Hall
106 Chestnut Hill Cove
Austin, TX 78734

IN MEMORIAM

As of November 10, 2011:

Lucia Annalisa Gillard
1640 N. Spyglass Way
Flagstaff, AZ 8600

RECENT RULE-MAKING ACTIVITY

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

EFFECTIVE JANUARY 4, 2012

PENDING PROPOSED RULE CHANGES OPEN FOR COMMENT					
		Comment Deadline			
5-208	Issuance of warrant for arrest and summons	01/25/12	4-222	Application for free process and affidavit of indigency	02/09/11
5-211	Search warrants	01/25/12	4-223	Order for free process	02/09/11
			4-224	Attorney's certificate supporting indigency and free process	02/09/11
RECENTLY APPROVED RULE CHANGES SINCE RELEASE OF 2011 NMRA					
		Effective Date			
RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS			RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS		
1-001	Scope of rules; definitions	02/06/12	5-502	Disclosure by the defendant	02/06/12
1-004	Process	02/06/12	5-805	Probation; violation	11/01/11
1-005.2	Electronic service and filing of pleadings and other papers	11/21/11	5-123	Public inspection and sealing of court records	02/07/11
1-005.2	Electronic service and filing of pleadings and other papers	09/01/11	5-805	Probation; violation	01/31/11
1-071.1	Statutory stream system adjudication suits; service and joinder of water rights claimants; responses	06/08/11	5-604	Time of commencement of trial for cases of concurrent trial jurisdiction originally filed in the magistrate, metropolitan, or municipal court	03/23/11
1-071.2	Statutory stream system adjudication suits; stream system issue and expedited inter se proceedings	06/08/11	RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS		
1-071.3	Statutory stream system adjudication suits; annual joint working session	06/08/11	6-503	Disposition without hearing	01/31/12
1-071.4	Statutory stream system adjudication suits; ex parte contacts; general problems of administration	06/08/11	6-105	Assignment and designation of judges	12/02/11
1-071.5	Statutory stream system adjudication suits; excusal or recusal of a water judge	06/08/11	6-507	Insanity or incompetency; transfer to district court	12/02/11
1-023	Class actions	05/11/11	6-701	Judgment	03/25/11
1-077	Appeals pursuant to Unemployment Compensation Law	04/18/11	6-114	Public inspection and sealing of court records	02/07/11
1-079	Public inspection and sealing of court records	02/07/11	RULES OF CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS		
RULES OF CIVIL PROCEDURE FOR THE MAGISTRATE COURTS			7-503	Disposition without hearing	01/31/12
2-112	Public inspection and sealing of court records	02/07/11	7-701	Judgment	03/25/11
RULES OF CIVIL PROCEDURE FOR THE METROPOLITAN COURTS			7-113	Public inspection and sealing of court records	02/07/11
3-105	Assignment and designation of judges	05/27/11	RULES OF PROCEDURE FOR THE MUNICIPAL COURTS		
3-701	Appeal from metropolitan court on the record	05/27/11	8-503	Disposition without hearing	01/31/12
3-112	Public inspection and sealing of court records	02/07/11	8-507	Insanity or incompetency; transfer to district court	12/02/11
CIVIL FORMS			8-701	Judgment	03/25/11
4-831	Petition for writ of certiorari in appeal pursuant to Unemployment Compensation Law	04/18/11	8-112	Public inspection and sealing of court records	02/07/11
4-832	Writ of certiorari in appeal pursuant to Unemployment Compensation Law	04/18/11	CRIMINAL FORMS		
			9-104B	Appearance, plea and waiver	01/31/12
RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS			CHILDREN'S COURT RULES AND FORMS		
10-411	Affidavit for Search Warrant	01/16/12	10-411	Affidavit for Search Warrant	01/16/12
10-412	Search Warrant	01/16/12	10-412	Search Warrant	01/16/12
10-223A	Physical restraints in the courtroom [Suspended until further order of the court]	09/30/11	10-223A	Physical restraints in the courtroom [Suspended until further order of the court]	09/30/11
10-426	Motion for use of physical restraints [Suspended until further order of the court]	09/30/11	10-426	Motion for use of physical restraints [Suspended until further order of the court]	09/30/11
10-427	Order on physical restraints [Suspended until further order of the court]	09/30/11	10-427	Order on physical restraints [Suspended until further order of the court]	09/30/11
10-162	Peremptory challenge to a children's court judge; recusal; procedure for exercising; disability	09/09/11	10-162	Peremptory challenge to a children's court judge; recusal; procedure for exercising; disability	09/09/11

RULE-MAKING ACTIVITY

<http://nmsupremecourt.nmcourts.gov>

Form 10-496A	Order for evaluation of competency to stand trial	09/09/11
Form 10-496B	Order for diagnostic evaluation	09/09/11
Form 10-496C	Order for pre-dispositional diagnostic evaluation	09/09/11
Form 10-496D	Order for evaluation of amenability to treatment for youthful offender (requested by defense counsel)	09/09/11
Form 10-496E	Ex parte order for forensic evaluation	09/09/11
10-166	Public inspection and sealing of court records	02/07/11
10-409	Affidavit for Arrest Warrant	02/14/11
10-410	Arrest Warrant	02/14/11
10-412A	Bench warrant	02/14/11
10-137	Continuing duty to disclose; failure to comply	01/31/11
10-312	Filing of petition; amendment of petition; appointment of guardian ad litem or attorney	01/31/11

RULES OF EVIDENCE

11-804	Hearsay exceptions; declarant unavailability	01/31/11
--------	--	----------

RULES OF APPELLATE PROCEDURE

12-405	Opinions	09/12/11
12-215	Brief of an amicus curiae	06/28/11
12-306	Number of copies of papers	06/28/11
12-302	Appearance, withdrawal or substitution of attorneys	05/16/11
12-314	Public inspection and sealing of court records	02/07/11
12-210	Calendar assignments	02/09/11
12-309	Motions	02/09/11

UJI CIVIL

13-110	Conduct of jurors	03/21/11
13-305	Causation (Proximate cause)	03/21/11
13-306	Independent intervening cause	03/21/11
13-1424	Causation; products liability	03/21/11
3-1424A	Independent intervening cause; products liability	03/21/11

UJI CRIMINAL

14-945	Criminal sexual penetration of a 13-to-18 year old in the second degree; use of coercion by person in position of authority; essential elements	11/18/11
14-972	Aggravated criminal sexual penetration in the first degree; child under thirteen; essential elements	11/18/11
14-2241	Tampering with evidence; essential elements	11/18/11
14-5101	Insanity; jury procedure	04/25/11
14-101	Explanation of trial procedures	03/25/11
14-114	Recess instructions	03/25/11
14-2215	Resisting; evading or obstructing an officer; essential elements	03/21/11
14-4511	"Operating" or driving a motor vehicle; defined	03/21/11
14-4512	Actual physical control; defined	03/21/11

RULES GOVERNING ADMISSIONS TO THE BAR

15-301.2	Legal services provider limited law license	01/01/12
15-205	Administration and grading	09/01/11
15-207	Unsuccessful applicants; right of inspection	09/01/11

RULES GOVERNING DISCIPLINE

17-309	Formal charges; designation of hearing officer or committee	06/01/11
17-105	Disciplinary counsel	03/28/11

RULES FOR MINIMUM CONTINUING LEGAL EDUCATION

18-201	Minimum educational requirements	05/01/11
18-203	Accreditation; course approval; provider reporting	05/01/11
18-204	Earning credits; credit types	05/01/11

CODE OF JUDICIAL CONDUCT

21-100 et seq	Code compiled in four canons, as Rules 21-100 to 21-406 NMRA	01/01/12
---------------	--	----------

RULES GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS

22-101	Scope; definitions; title	01/27/12
22-203	Application; qualifications; renewal of certification	01/27/12
22-501	Examination standards	01/27/12

SUPREME COURT GENERAL RULES

23-114	Free process in civil cases	02/09/11
23-110	Commission on Professionalism	04/06/11

RULES GOVERNING THE NEW MEXICO BAR

24-109	Trust accounts; special requirements for IOLTA trust accounts	05/17/11
24-110	"Bridge the Gap: Transitioning into the Profession" program	04/06/11

RULES FOR REVIEW OF JSC

27-104	Filing and service	05/04/11
27-106	Form of papers	05/04/11

LOCAL RULES FOR THE FIRST JUDICIAL DISTRICT

LR1-312	Electronic filing authorized	10/03/11
---------	------------------------------	----------

LOCAL RULES FOR THE SECOND JUDICIAL DISTRICT

LR2-303	Electronic filing authorized	10/31/11
---------	------------------------------	----------

LOCAL RULES FOR THE ELEVENTH JUDICIAL DISTRICT

LR11-120	Service by electronic transmission; water rights adjudication proceedings	02/21/11
----------	---	----------

LOCAL RULES FOR THE THIRTEENTH JUDICIAL DISTRICT

LR13-411	Electronic filing authorized	09/30/11
LR13-411	Electronic filing and service pilot project	06/13/11

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

PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS

The Rules of Criminal Procedure for the District Courts Committee has recommended proposed amendments to the Rules of Criminal Procedure for the District Courts for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments to:

Joey D. Moya, Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received on or before Jan. 25, 2012, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

5-208. Issuance of warrant for arrest and summons.

A. **Time.** Upon the docketing of any criminal action the court may issue a summons or arrest warrant.

B. **Form for warrant.** The warrant shall be signed by the court and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged. It shall command that the defendant be arrested and brought before the court.

C. **Form for summons.** The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place. A summons or arrest warrant shall be substantially in the form approved by the court administrator.

D. **Basis for warrant.** The court may issue a warrant for arrest upon an indictment or a sworn written statement of the facts showing probable cause for issuance of a warrant. The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such additional evidence shall be reduced to writing and supported by oath or affirmation. The court also may permit a request for an arrest warrant by any method authorized by Paragraph F of Rule 5-211 for search warrants and may issue an arrest warrant remotely provided the requirements of Paragraph F of Rule 5-211 and this rule are met.

[As amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — When a criminal action is docketed in the magistrate court by the filing of a complaint, Rule 6-204, substantially identical to this rule, will govern the procedure. Paragraph A of Rule 6-204 adds to Paragraph A of

this rule by indicating a preference for the use of summons when practicable. See also, 31-1-6 NMSA 1978.

Paragraphs B and C of this rule were derived from Rule 4(c) of the Federal Rules of Criminal Procedure. See 62 F.R.D. 271-72 (1974).

Paragraph D of this rule requires a written showing of probable cause before an arrest warrant may be issued. The constitutional basis for this requirement is Section 10 of Article 2 of the New Mexico Constitution, although that provision does not expressly mention arrest warrants. Cf. *State v. Gibby*, 78 N.M. 414, 432 P.2d 258 (1967). See also, commentary to Rule 5-209.

Paragraph D of this rule codified case law allowing the issuance of a warrant on probable cause based on hearsay evidence. This provision was taken from Rule 4(b) of the Federal Rules of Criminal Procedure. See 48 F.R.D. 553, 558-60 (1970) and 62 F.R.D. 271-72 (1974). Neither the proposed federal rule nor this rule attempts to establish what constitutes probable cause based on hearsay as that determination can only be made on a case by case basis, taking into account the unlimited variation and sources of information and the varying reliability of the information received by the affiant from others. 62 F.R.D. 271, 273-74 (1974). The fact that the information may involve double hearsay does not mean that the affidavit fails to provide probable cause. *State v. Alderete*, 88 N.M. 14, 536 P.2d 278 (Ct. App. 1975).

Paragraph E was added in 2011 to permit alternate methods for requesting and issuing arrest warrants. See Rule 5-211(F) and the related committee commentary for more information. [Commentary, as amended by Supreme Court Order No. _____, effective _____.]

5-211. Search warrants.

A. **Issuance.** A warrant may be issued by the court to search for and seize any:

- (1) property which has been obtained or is possessed in a manner which constitutes a criminal offense;
- (2) property designed or intended for use or which is or has been used as the means of committing a criminal offense;
- (3) property which would be material evidence in a criminal prosecution; or
- (4) person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B. **Contents.** A search warrant shall be executed by a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, an Indian tribal or pueblo law enforcement officer or a civil officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C. **Execution.** A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property

under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the affidavit for search warrant, and the search warrant and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant and inventory at the place from which the property was taken.

D. Return. The return of the warrant, or any duplicate original, shall be made promptly after execution of the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer and the person in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

E. Probable cause. As used in this rule, “probable cause” shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

F. Methods for requesting warrant.

A request for a search warrant may be made using any of the following methods:

(1) by affidavit substantially in the form approved by the Supreme Court with a proposed search warrant attached. Before ruling on a request for a warrant the [court] judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses [he] the affiant may produce, provided that such additional evidence shall be reduced to writing, supported by oath or affirmation and served with the warrant;

(2) by oral testimony in the presence of the judge provided that the testimony is reduced to writing, supported by oath or affirmation, and served with the warrant; or

(3) by transmission of the affidavit and proposed search warrant required under Subparagraph (1) of this paragraph to the judge by telephone, facsimile, electronic mail, or other reliable electronic means provided the following conditions are met:

(a) the judge administers an oath or affirmation to the affiant and any witnesses the affiant may produce remotely by means designed to ensure that the judge confirms the identity of the affiant and any witnesses the affiant may produce;

(b) the oath or affirmation, the sworn statement of facts, and any additional testimony taken in support of the warrant during the conversation shall be reduced to writing and served with the warrant; and

(c) if the request for a warrant is transmitted by telephone and the judge decides to issue a warrant

(i) the affiant shall read the contents of the proposed warrant to the judge, and the judge may enter the contents verbatim, or may modify the contents as the judge deems appropriate, into a writing substantially in the form approved by the Supreme Court;

(ii) the judge shall sign the original warrant, enter on its face the exact time and date it is issued, transmit a copy by reliable electronic means to the affiant; and file the original with the court; and

(iii) upon the affiant’s acknowledgment of receipt by telephone or other appropriate means, the electronically trans-

mitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write the words “duplicate original” on the transmitted copy; or

(d) if the request for a warrant is transmitted by facsimile, electronic mail, or other reliable electronic means and the judge decides to issue a warrant

(i) the judge may adopt the contents verbatim, or may modify the contents as the judge deems appropriate, provided the warrant is substantially in the form approved by the Supreme Court,

(ii) the judge shall sign the original warrant, enter on its face the exact time and date it is issued, transmit a copy by reliable electronic means to the affiant; and file the original with the court; and

(iii) upon the affiant’s acknowledgment of receipt by telephone or other appropriate means, the electronically transmitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write the words “duplicate original” on the transmitted copy.

[As amended, effective October 1, 1974 and July 1, 1980, as amended by Supreme Court Order No. _____, effective _____]

Committee commentary. — This rule is patterned after Rule 41 of the Federal Rules of Criminal Procedure.

For other court rules governing issuance, etc., of search warrants by the magistrate court, see Rule 6-208, Rule 7-208, and Rule 8-208. These rules are substantially identical and are based upon the New Mexico constitutional requirements. See N.M. Const., Art. 2, § 10. The court rules replaced the former search warrant statute, repealed in 1972. See N.M. Laws 1967, ch. 245, §§ 1 and 2, formerly compiled as 41-18-1 and 41-18-2, 1953 Comp.

“Property” in Paragraph A of this rule is defined in Rule 41(h) of the Federal Rules of Criminal Procedure “to include documents, books, papers and any other tangible objects.” The committee is of the opinion that this would include such things as blood, fingerprints, and handwriting samples. See *Sanchez v. Attorney General*, 93 N.M. 210, 598 P.2d 1170 (Ct. App. 1979).

As amended in 1979, this rule provides a procedure for the obtaining of a search warrant to conduct a search of premises for a person even when a warrant is not required. As stated in the advisory committee note to Rule 41 of the Federal Rules of Criminal Procedure:

That part of the amendment which authorizes issuance of a search warrant to search for a person unlawfully restrained is consistent with ALI Model Code of Pre-Arrest Procedure § SS 210.3(1) (d) (Proposed Official Draft, 1975), which specifies that a search warrant may issue to search for ‘an individual * * * who is unlawfully held in confinement or other restraint.’

As noted in the Commentary thereto, *id.* at p. 507:

Ordinarily such persons will be held against their will and in that case the persons are, of course, not subject to ‘seizure.’ But they are, in a sense, ‘evidence’ of crime, and the use of search warrants for these purposes presents no conceptual difficulties.

In *United States v. Watson*, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976), the Court . . . alluded to “the still unsettled question” of whether, absent exigent circumstances, officers acting without a warrant may enter private premises to make an arrest. Some courts have indicated that probable cause alone

ordinarily is sufficient to support an arrest entry, *United States v. Fernandez*, 480 F.2d 726 (2d Cir. 1973); *United States ex rel. Wright v. Woods*, 432 F.2d 1143 (7th Cir. 1970). There exists some authority, however, that except under exigent circumstances a warrant is required to enter the defendant's own premises, *United States v. Calhoun*, 542 F.2d 1094 (9th Cir. 1976); *United States v. Lindsay*, 506 F.2d 166 (D.C. Cir. 1974); *Dorman v. United States*, 435 F.2d 385 (D.C. Cir. 1970), or, at least to enter the premises of a third party, *Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974); *Fisher v. Volz*, 486 F.2d 333 (3d Cir. 1974); *Huotari v. Vanderport*, 380 F. Supp. 645 (D. Minn. 1974).

A warrant must be served between the hours of 6:00 a.m. and 10:00 p.m. unless for reasonable cause shown the issuing judge authorizes the execution at any time. The time periods designated were taken from the definition of "day time" in Rule 41(h) of the Federal Rules of Criminal Procedure.

Paragraph E of this rule was derived in part from Rule 41(c) of the Federal Rules of Procedure. On the use of hearsay evidence to establish probable cause, see *State v. Perea*, 85 N.M. 505, 513 P.2d 1287 (Ct. App. 1973). See also, 48 F.R.D. 553, 630 (1970).

Uncorroborated information given by an unknown informant to support an affidavit for probable cause may be found to be reliable if the information is personal to the informant and other information given by the informant has been corroborated by information supplied by a reliable confidential informant. *State v. Turkal*, 93 N.M. 248, 599 P.2d 1045 (1979).

The tests for evaluating the supporting affidavit for probable cause were set forth in *State v. Perea*, supra: (1) technical requirements of elaborate specificity are not required; (2) any inferences to be drawn from statements of the affiant must be drawn by the judge and not the police officer; (3) affidavits are tested by less rigorous standards than those governing the admissibility of evidence at trial; and (4) where affiant is relying on an informant, the affidavit must set forth some of the underlying circumstances supporting the affiant's conclusion that the information is credible or reliable. Only a probability of criminal conduct need be established and common sense should control the magistrate's determination of probable cause, which should be shown great deference by the reviewing court. *State v. Bowers*, 87 N.M. 74, 529 P.2d 300 (Ct. App. 1974). See also, *State v. Alderete*, 88 N.M. 14, 536 P.2d 278 (Ct. App. 1975).

As in the federal rule, any additional evidence received by the court when the affiant appears personally must be made a part of the facts showing probable cause. In addition, under this rule, the additional evidence must be reduced to writing and sworn to in

order to comply with the constitutional requirement of a "written showing of probable cause."

For cases showing examples of the sufficiency of descriptions in warrants, see *State v. Ferrari*, 80 N.M. 714, 460 P.2d 244 (1969) (instrumentalities of the crime in a murder case); *State v. Sero*, 82 N.M. 17, 474 P.2d 503 (Ct. App. 1970) (sufficiency of the description of the place to be searched); *State v. Quintana*, 87 N.M. 414, 534 P.2d 1126 (Ct. App. 1975), cert. denied, 88 N.M. 29, 536 P.2d 1084, cert. denied, 423 U.S. 832, 96 S. Ct. 54, 46 L. Ed. 2d 50 (1975) (sufficiency of description of controlled substances).

Absent a showing of prejudice, defects in the return of service will not invalidate the warrant. See *State v. Wise*, 90 N.M. 659, 567 P.2d 970 (Ct. App.), cert. denied, 91 N.M. 4, 569 P.2d 414 (1977); *State v. Baca*, 87 N.M. 12, 528 P.2d 656 (Ct. App.), cert. denied, 87 N.M. 5, 528 P.2d 649 (1974).

In 2011, Paragraph F was added to permit multiple methods for requesting a warrant. Beyond the traditional in-person submission of a written affidavit and proposed warrant, Paragraph F permits requesting a search warrant through oral testimony in the presence of the judge or by submission of the affidavit and proposed search warrant over the telephone, by fax, by email, or by other electronic means. A judge is not required to accept requests for warrants by alternative methods, but, if the judge decides to do so, the judge must ensure that any oath or affirmation administered by remote means is done in a way that allows the judge to confirm the identity of the affiant. For example, the oath or affirmation may be accomplished by audio-visual means that allows the judge to see the person to whom the oath or affirmation is administered. Or the oath or affirmation may be accomplished by telephone or other audio method if done in a way that allows the judge to confirm identity, such as by having the call made through a known law enforcement telephone number with a verifiable badge number given by the officer requesting the warrant. See, e.g., Rule 11-901(A) NMRA. If the judge accepts a request for warrant by remote means, the judge must ensure that the sworn statement of facts offered in support of the warrant is reduced to writing to be served along with the warrant. And if the judge issues the warrant by remote means, the judge must file the original warrant with the court and authorize the affiant to write the words "duplicate original" on the remotely transmitted copy for service.

[Commentary, as amended by Supreme Court Order No. _____, effective _____.]



Access to Opinions

from the New Mexico Supreme Court
and
the New Mexico Court of Appeals



is provided online by the Compilation Commission.

Visit <http://www.nmcompcomm.us>





ALLEN, SHEPHERD,
LEWIS, SYRA & CHAPMAN, P.A.

Allen, Shepherd, Lewis, Syra & Chapman, P.A.
would like to announce that Dan Lewis
is gratefully accepting mediation referrals.



ALLEN, SHEPHERD, LEWIS, SYRA & CHAPMAN, P.A.
P.O. Box 94750, Albuquerque, NM 87199-4750
4801 Lang Ave. Suite 200, Albuquerque, NM 87109
Phone: 505-341-0110 Fax: 505-341-3434 Web: www.allenlawnm.com

Considering a settlement?

- Structured Settlements
- Settlement Analysis & Advice



QFinancial
Planning

**Your local structured
settlement provider.**

Susan M. Morrison, JD, CFP®
Investment Advisor Representative of TFA

(505) 433-2255 • Susan@QFPNM.com
QFinancialPlanning.com

Investment Advisor Representative with securities and investment advisory services offered through Transamerica Financial Advisors, Inc. (TFA). Member FINRA, SIPC and Registered Investment Advisor. QFinancial Planning is not affiliated with TFA. Non-securities products and services are not offered through TFA. Neither TFA nor its representatives provide legal or tax advice. Persons who provide such advice do so in a capacity other than as a representative of TFA.

LD42387-12/11



MOODY &
WARNER, P.C.
LABOR & EMPLOYMENT ATTORNEYS

Moody & Warner, P.C. is pleased to announce that **Christopher M. Moody** has been selected for membership in the Multimillion Dollar Advocates Forum. Membership is limited to attorneys who have won multi-million dollar verdicts, awards and settlements. Mr. Moody practices in the field of labor and employment law.

4169 Montgomery Blvd. NE
Albuquerque, New Mexico 87109
505.944.0033 • Fax: 505.944.0034

www.nmlaborlaw.com

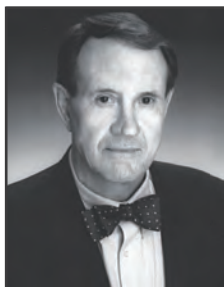
RETIRING? TRYING TO SLOW DOWN? WANT TO WORK LESS?

Plaintiff's personal injury firm is looking to combine its practice with an established personal injury or work comp lawyer who wants to retire or cut back on their hours.

Please e-mail abqlaw@msn.com.

DONALD J. LETHERER, PRESIDENT

LEATHERER INSURANCE CONSULTANTS, LLC



*We know how to solve Professional
Liability Insurance Problems*

*Free Consultations
Call us!*

505.433.4266

Please visit our website: www.licnm.com

Walter M. Drew

Construction Defects Expert

40 years of experience

*Construction-quality disputes
between owners/contractors/
architects, slip and fall, building
inspections, code compliance,
cost to repair, standard of care*

(505) 982-9797

waltermdrew@gmail.com

VIDEO DEPOSITIONS / DAY IN THE LIFE FILMS

PHOTO / VIDEO / AUDIO EXHIBITS

CONTACT JESSE HALL

505-270-5563

PLUGAJAWEA@ME.COM

WWW.PLUGAJAWEA.COM

GREAT WORK AT A GOOD PRICE

SHORT NOTICE AVAILABILITY



No need for another associate

Bespoke lawyering for a new millennium

THE BEZPALKO LAW FIRM

Legal Research and Writing

(505) 341-9353

www.bezpalkolawfirm.com

Karen S. Mendenhall

MEDIATION

Civil Litigation Matters

(505) 888-4300

www.eavesandmendenhall.com

JANE YOHALEM
Appeals Specialist

(505) 988-2826 • jbyohalem@gmail.com

Visit the State Bar of
New Mexico's website

www.nmbar.org

STEVEN L. TUCKER

APPELLATE SPECIALIST

www.stevetucker.net
stevetucker47@gmail.com

(505) 982-3467



**HEIGHTEN
YOUR EXPECTATIONS™**

*Quality Staffing
for the Legal Community.*

**HIGH DESERT
LEGAL STAFFING**

(505) 881-3449

www.highdesertstaffing.com

Email: info@highdesertstaffing.com

HIGH DESERT LEGAL STAFFING

CLASSIFIED

POSITIONS

Special Masters

The United States District Court for the District of New Mexico is seeking one or more Special Masters for the following water rights adjudications: New Mexico ex rel. State Engineer v. Abbott, Nos. 68cv7488-BB & 70cv8650-BB consolidated (Rio Santa Cruz & Rio Truchas adjudication); New Mexico ex rel. State Engineer v. Aragon, No. 69cv07941-BB (D.N.M.) (Rio Chama adjudication); United States v. A & R Productions, No. 01cv00072-BB (D.N.M.) (Zuni River Basin adjudication, including No. 07cv000681-BB, which is a formal subproceeding dealing with Zuni Indian claims). The requirements for the positions are the following: attorney at law admitted to practice in New Mexico or another prior appropriation state; experience with water rights; trial practice as counsel, judge, special master, or hearing examiner; clear legal writing skills, and not disqualified under Fed.R.Civ.P. 53 (a)(2). The United States and the State of New Mexico will recommend a candidate or candidates to the Hon. Bruce D. Black in consultation with the other parties to the cases. If you would like to be considered, please submit a proposal as soon as possible, but not later than January 23, 2012, including a resume and a legal writing sample, together with a schedule of your proposed fees and reimbursable expenses. Counsel for the United States and for the State of New Mexico will review all submittals and may conduct interviews with candidates for the position. Counsel for other parties may also review the submittals and participate in interviews. If interviews are conducted, travel will be at the expense of the candidate. Proposals should be mailed to Edward C. Bagley, Litigation and Adjudication Program, State Engineer Office, P.O. 25102, Santa Fe, New Mexico 87504-5102, FAXed to Mr. Bagley at (505) 827-3887, or emailed in pdf format to him at edward.bagley@state.nm.us.

Lawyer-A

The NM Human Services Department, Office of General Counsel seeks to fill a Lawyer-A position in Santa Fe. This position requires a Juris Doctor and five (5) years experience in the practice of law in one or more of the following areas: administrative law, benefits programs, drafting or review of contracts, rulemaking, legislation or representation of a public agency. Specialized knowledge in health care law is desired. Applicant must be licensed to practice in New Mexico, be in good standing and have no history of professional disciplinary actions. Salary ranges from \$20.70/hr to \$36.80/hr. To apply: Access the website for the NM State Personnel Office (SPO); www.spo.state.nm.us Click on Apply for a State Government Job. The State of New Mexico is an Equal Opportunity Employer.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open to a new or experienced attorney. Salary will be based upon the District Attorney Personnel and Compensation Plan with starting salary range of an Associate Trial Attorney to a Senior Trial Attorney (\$41,685.00 to \$72,575.00). Please send resume to Janetta B. Hicks, District Attorney, 400 N. Virginia Ave., Suite G-2, Roswell, NM 88201-6222 or e-mail to jhicks@da.state.nm.us.

Associate Attorney

Well established Albuquerque personal injury law firm is seeking an associate attorney with zero to 3 years experience. Must have good communication and people skills. Competitive compensation in a great work environment. Send or drop off your resume and contact information to POB 92860, Albuquerque, NM 87199 Attention Box E.

Outside Counsel

Continental Divide Electric Cooperative, Inc., a member-owned electric utility corporation, is seeking outside counsel who is a member, in good standing, of the New Mexico bar association. Qualified candidates must have a minimum of five (5) years of experience in the following; corporate law, public utility law, contract law, and, or unemployment compensation law. Candidates should be familiar with Robert's Rules of Order, The New Mexico Open Meetings Act, and Inspection of Public Records Law. Applicant must be able to attend monthly and other meetings as required; in, as well as, outside the Cooperative service area. Please send your sealed resume and hourly or monthly professional and travel rates, by 4:30 p.m. Wednesday, January 11, 2012 to: Corina Sandoval, Human Services Department, Continental Divide Electric Cooperative, Inc., P.O. Box 1087, Grants, N.M. 87020.

Would you like to earn a little extra money to pay for those holiday expenses?

One of the staff attorneys at the State Bar's Lawyer Referral for the Elderly Program (LREP) will be taking leave during January and February 2012, and as such, LREP is looking to fill the Albuquerque-based part time position temporarily for the months of January and February. It is possible the position could continue after February 2012, but that is not certain at this point. Primary duties include working the legal helpline answering general civil law questions for senior citizen clients, providing brief services and making private attorney referrals for more extended representation. Must be able to work between 20-30 hours a week. Patience and compassion required. Requires a current license to practice law. Salary is comparable to other legal services providers. Send letter of interest and resume to LREP Managing Attorney, PO Box 92860, Albuquerque, NM 87199 or email to jcampbell@nmbar.org. EOE.

Ron Bell Injury Lawyers Full Time Personal Injury Attorney

Fluency in both Spanish and English is highly preferred. New Mexico licensure is required, as well as one to three years of personal injury experience and strong academic credentials. Qualified candidates will be highly motivated, client driven and will enjoy working in a fast-paced environment and meeting multiple deadlines simultaneously. Needles software experience is preferred, but not required. Benefits include medical, dental, vision and life policies as well as 401k and paid time off. Please email letter of interest (including salary requirements), resume, transcripts, professional references and writing sample to bmiller@898-bell.com or fax to 1-866-413-7286. (e-mail correspondence is preferred). Please ensure that all correspondence references "Personal Injury Attorney".

Request for Applications City of Albuquerque Assistant City Attorney Position Revised Address and Deadline Date

Assistant City Attorney: Assistant City Attorney position available with the Real Estate and Land Use Division with 1-3 years' experience in real estate or land use litigation in handling pretrial discovery, motion practice, trial preparation, and trial. The position will also include advising City Departments and Administrative Boards regarding land use decisions. 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 submit resume to the attention of "Land Use Attorney Application." c/o Roberta Duran, Fiscal Officer, P. O. Box 2248, Albuquerque, NM 87103. Revised Application Deadline is January 20, 2011

Senior Trial Attorney, Valencia County Assistant Trial Attorney, Sandoval County

The 13th Judicial District Attorney's Office is accepting resumes for an experienced Senior Trial Attorney in the Valencia County Office, Belen, NM and an Assistant Trial Attorney in the Sandoval County Office, Bernalillo, NM. The Senior Trial Attorney position requires substantial knowledge in areas of child abuse and complex felony work. Upon request, be prepared to provide a summary of cases tried. Salary is based upon experience. Send resumes to Carmen Gonzales, HR Administrator, P.O. Box 1750, Bernalillo, NM 87004, or via E-Mail to: cgonzales@da.state.nm.us. Deadline for submission of resumes: Open until positions are filled.

Assistant County Attorney

Bernalillo County is seeking applications for the position of Assistant County Attorney to perform legal work for the County of Bernalillo specifically in the areas of Zoning and Environmental Health, Animal Care Services Regulations, Personnel, Labor and Contracts. The position entails filing and prosecuting criminal complaints in Metropolitan Court, advising administration regarding personnel disciplinary matters, drafting and reviewing contracts, assisting union negotiating committees, performing research, and litigating some matters including but not limited to contract issues, preliminary injunctions, permanent injunctions and abatement of nuisances actions in District Court. In addition, attendance at various administrative meetings on behalf of the County may be required. Works under the direction of the County Attorney. Requires a J.D. degree and licensed to practice law in the State of New Mexico. Minimum of 2 years experience in the practice of law. Salary negotiable. Benefit package included with salary. The On-line Application Process can be accessed at website www.bernco.gov/alljobs/. Copies of required certifications, registrations, and/or licenses, if not attached on-line, must be provided at the time of interview. Bernalillo County is an equal opportunity employer, offering a great work environment, challenging career opportunities, professional training and competitive compensation. For more information regarding the job description, salary and closing dates visit the Bernalillo County web site at www.bernco.gov and refer to the section on job postings. Apply on-line or in person at Bernalillo County Human Resources Department, One Civic Plaza, 4th Floor, Albuquerque, New Mexico, 87102

Supreme Court of New Mexico - Associate Staff Counsel Position

The Supreme Court seeks to fill an attorney-associate position in its staff counsel office. The position is classified, and the annual salary is \$68,603. The selected applicant will provide staff support to the Court's rules committees, boards, and commissions and will provide legal research and writing assistance to the Court in all areas of its workload. For a detailed description of the job qualifications, please visit the Jobs page on the New Mexico Judiciary Web Site at www.nmcourts.gov. To apply, you must submit a completed New Mexico Judicial Branch Application for Employment, a letter of interest and resume by mail to Joey D. Moya, P.O. Box 848, Santa Fe, NM 87504. Complete applications must be received by January 12, 2012, at 5:00 p.m.

Paralegal & Legal Assistant- Advanced (#18536) - DOT

The New Mexico Department of Transportation (NMDOT), Office of General Counsel, located in Santa Fe, seeks an experienced Paralegal/Legal Assistant to work in its Employment and Administrative Law Unit. Applicants should have a high school diploma or GED, an Associate's Degree in Paralegal Studies and a minimum of two (2) years of work experience in drafting legal correspondence and pleadings, conducting legal research and maintaining a case management/tracking system. Any combination of education from an accredited college or university in a related field and/or direct experience in this occupation totaling two (2) years may substitute for the required education. Paralegal certification is preferred, but not required. Salary range is \$27,664 to \$49,171 annually, with all State benefits to apply. Further details regarding the position, Class Code H2011A, are available at: <http://www.spo.state.nm.us>. Apply to the New Mexico State Personnel Office, at the aforementioned web address no later than January 13, 2012. In addition, please send a copy of your resume and a writing sample to the attention of Toby Gurule, in the Human Resources Division of NMDOT, located at 1120 Cerrillos Road, Room 135, P.O. Box 1149, Santa Fe, NM 87504-1149. NMDOT is an Equal Opportunity Employer.

BAR BULLETIN

Official Publication of the STATE BAR of NEW MEXICO

SUBMISSION DEADLINES

All advertising must be submitted via e-mail by 4:00 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Wednesday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by the publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.**

For more advertising information, contact:
Marcia C. Ulibarri at 505.797.6058 or
e-mail ads@nmbar.org

Director, Administrative Office of the District Attorneys

This position performs a variety of administrative, legislative, and managerial duties as the agency director for AODA and on behalf of the elected District Attorneys, and supervises AODA staff and budget. Equal Opportunity Employer. Full application information at <http://www.da.state.nm.us>

Workers' Compensation Legal Assistant

Downtown Albuquerque litigation law firm, seeks a Workers' Compensation Legal Assistant. Must have experience. Full-time with benefits. Fast paced office. Must be organized and a team player. Submit resume by email to apply-legal@hotmail.com

SERVICES

Medical Consultant for Chemical Sensitivities & Environmental Illnesses

Ann McCampbell MD, 505-466-3622, DrAnnMcC@aol.com

Need Help In Your Office?

25+ years experience - Legal Asst/Paralegal duties. Meet or request Resume/Portfolio packet. Short/long-term. Call Hope: 505/850-9040.

Legal Research & Writing

Meet your deadlines with confidence. You: have a busy office but need confidential, quality work to meet your client's expectations. I: relish research and excel in persuasive writing. Strong language skills in Spanish and French. 505-269-1693 or werenkolaw@gmail.com

OFFICE SPACE

Professional Offices: Great Location—Great Price

Furnished or Unfurnished—two offices in prestigious downtown building. Includes separate spaces for assistants, impressive reception area, conference room and small kitchen, state of the art telephones and high speed internet. Receptionist services available. Attached indoor parking @55 per month. NM Bank & Trust Building (4th & Gold) \$495 or \$695 for large corner office—No lease required. Liz @ 505-235-8854.

NEW MEXICO LAWYERS AND JUDGES ASSISTANCE PROGRAM

You don't have to manage alone



New Mexico Lawyers and Judges Assistance Program (NMJLAP) provides free, *confidential* assistance to law students and members of the New Mexico bench and bar to help identify and address problems with alcohol, drugs, depression, and other mental health issues. NMJLAP assists in reducing public harm caused by impaired members of the legal profession and helps improve the health and welfare of its members by facilitating early intervention and treatment.

Help and Support are only a phone call away. Confidential assistance – 24 hours every day.

Judges call 888-502-1289

Lawyers and law students call 505-228-1948 or 800-860-4914

<http://www.nmbar.org/JLAP/JLAP.html>



**2012 - 2013
Bench & Bar
Directory**
advertising sales
are now in
progress.



To make your space reservation, please contact Marcia Ulibarri
505.797.6058 | mulibarri@nmbar.org

State Bar of New Mexico's Got Talent
A Bar Foundation fundraising event!

A few good acts needed

Casting Call

Singers • Bands • Musical Acts
Stand-Up Comics • Skits • Monologues
Poets • Magicians • Dancers
Jugglers • Acts • Acts.....

Acts will be judged by members of the bench and bar.
Prizes will be awarded to winners.

Make the Cut

Auditions will be held at 6 p.m., January 27, 2012,
at the State Bar Center Auditorium.

To audition, please contact Kate Mulqueen,
505.797.6064 or kmulqueen@nmbar.org.

Sponsored by the
State Bar of New Mexico Young Lawyers Division



The SBNM Talent Show will be held from 6 – 9 p.m., March 9, 2012
at the State Bar Center Auditorium.

Cost will be \$50 per person and will include the
show, food, and drinks.

All proceeds will go to fund legal services for the needy in New Mexico.