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Proposed Revision of the Rules Governing Admission to the Bar

2004-NMSC-029: State v. Tracy Johnson

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Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will be mindful of time schedules of lawyers, parties and witnesses.

Meetings

October
12 Lawyers Professional Liability Committee, noon, State Bar Center
13 Bench and Bar Relations Committee, 3 p.m., State Bar Center
13 Trial Practice Section Board of Directors, 4:30 p.m., State Bar Center
13 Senior Lawyers Division Board of Directors, 4:30 p.m., State Bar Center
14 Public Law Section Board of Directors, noon, State Bar Center
18 Taxation Section Board of Directors, noon, via teleconference

State Bar Workshops

October
13 Family Law Workshop, 6 – 8 p.m., TVI Paralegal Law Center, 5618 Isleta Blvd. SW, Albuquerque
15 Lawyer Referral for the Elderly Workshop
   TOPIC: Advance Directives, 9:30 a.m. Munson Senior Center, Las Cruces
20 Estate Planning Workshop, 6 – 8 p.m., State Bar Center
26 Estate Planning Workshop, 5:30 – 7:30 p.m., Branigan Library, Las Cruces
26 Social Security Disability Workshop, 6:00 – 8:00 p.m., State Bar Center

*Consumer Debt/Bankruptcy workshops include a one-on-one consultation with an attorney. For more information, call Marilyn Kelley at (505) 797-6048 or 1-800-876-6227; or visit the SBNM Web site, www.nmbar.org.
NOTICES

COURT NEWS
NM Supreme Court
N.M. Board of Legal Specialization
Comments Solicited

The following attorney is applying for certification as a specialist in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rule 19-101 through 19-312 NMRA. The Rules of the New Mexico Board of Legal Specialization provide that the names of those seeking to qualify shall be released for publication. Further, any person may comment upon the applicant’s qualifications within 30 days after the independent inquiry and review process carried on by the board and appropriate specialty committees. The board and specialty committee encourage attorneys and others to comment upon any applicant. Address comments to New Mexico Board of Legal Specialization, PO Box 92860, Albuquerque, NM 87199.

Local Government Law
Randall D. Van Vleck

Judicial Performance Evaluation Commission
Upcoming Meeting

The Judicial Performance Evaluation Commission was created by the New Mexico Supreme Court for the purpose of providing voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers. The commission’s next meeting will be from 8 a.m. to 5 p.m., Oct. 22 at the State Bar Center in Albuquerque. For more information on the commission or with regard to the next scheduled meeting, call (505) 827-4960.

Notice of Committee/Board Vacancies

The following end-of-the-year vacancies exist on several of the New Mexico Supreme Court rules committees and specialized boards:

- Uniform Jury Instructions-Criminal: 2
- Children’s Court Rules (District Court Judge vacancy): 1
- Board of Bar Examiners: 4
- Disciplinary Board (Lawyer vacancy): 1
- MCLE: 1
- Board of Legal Specialization: 1
- Board Governing Recording of Judicial Proceedings (Reporter member vacancy): 1
- Code of Judicial Conduct: 2
- Judicial Continuing Legal Education Committee: 3
- Judicial Education and Training Advisory Committee: 3
- Code of Professional Conduct Committee: 1

Attorneys interested in volunteering time on any of these committees/boards may send a letter of interest by Oct. 29 to Kathleen Jo Gibson, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Attorneys are encouraged to notify qualified laypersons of all lay-member vacancies.

First Judicial District Court
Family Law Brownbag Meeting

The next meeting will be at noon, Oct. 12 in the Grand Jury room of the First Judicial District. It will be an open forum for attorneys to discuss current issues surrounding Family Law practice in the First Judicial District. E-mail sharonpino@pinolawoffice.com with topics of discussion to be placed on the agenda or for more information.

Second Judicial District Court
16th Annual Settlement Week

The Second Judicial District Court’s 16th Annual Settlement Week is scheduled for Oct. 18 through 25. Family Law cases will be set for Oct. 18 through 22 and on Oct. 25 if necessary. For complete details regarding referral requests, refer to LR2-602, Section C, of the Second Judicial District Court’s Local Rules governing the Settlement Facilitation Program, or call Court Alternatives, (505) 841-7412.

Fourth District Court Closure Notice

The Fourth District Clerk’s Office will be closed Oct. 13 so that staff can attend the Northeast Region District Court Conference in Santa Fe. All mail and/or fax documents received on Oct. 13 will be file-stamped or receipted as of the next business day. At-
Bernalillo County Metropolitain Court Monthly Judges Meeting

The Bernalillo County Metropolitan Court judges will conduct their monthly judges’ meeting at noon, Oct. 12 in the Judicial/Administrative Conference Room (Room 849) of the Metropolitan Court Building, 401 Lomas NW, Albuquerque. The meeting is open to the public. Pursuant to the Americans with Disabilities Act, the court will make reasonable accommodations for individuals with a disability. Should accommodations be needed, contact the court administrator’s office, (505) 841-8105.

STATE BAR NEWS

118th Annual Meeting Notice to Members

The 2004 Annual Meeting of the State Bar of New Mexico will be held at noon, Dec. 17 during the Board of Bar Commissioners meeting at the State Bar Center. Resolutions and motions to be considered must be submitted in writing and received in the office of Joe Conte, executive director, PO Box 92860, Albuquerque, NM 87199; fax, (505) 828-3765; or e-mail, jconte@nmbar.org by 5 p.m., Dec. 3.

Any resolutions adopted by the membership at the Annual Meeting are advisory and require only that the Board of Bar Commissioners consider the substance of the motion at its next regularly scheduled meeting.

2004 Section Elections

• The report of the section’s nominating committee, consisting of the name and biography of each candidate selected by the section nominating committees is published below and on the State Bar Web site, www.nmbar.org.

• In addition to those candidates, nominations may also be made in the form of a petition signed by at least 10 attorneys who have been members of the section for 30 days or more. See nomination petition form on page 15. The petition must identify the position and term sought, and state that the member has agreed to the nomination. Nomination petitions for this year’s section elections must be received at the State Bar of New Mexico’s office no later than 5 p.m., Nov. 1.

• If additional nominations are made, a notice of the contested section election will be published in the Bar Bulletin and on the Section’s web page; ballots will be mailed to all members of the section no later than Nov. 10.

• If no additional nominations are made, the nominees identified by the nominating committee are elected by acclamation and take office on Jan. 1, 2005.

BUSINESS LAW SECTION NOMINATING COMMITTEE REPORT:

Position 1: Two-Year Term

Leonard S. Katz has practiced law since 1980. He received a Juris Doctor, Order of the Coif, from the University of Colorado in 1980, a master’s degree from Claremont Graduate School in 1974 and a bachelor’s degree, cum laude, from the University of Pennsylvania in 1971. Katz was president of the First Judicial District Bar Association in 1989 and is currently a member of the Real Estate Specialty Committee of the Board of Legal Specialization. He serves on the Board of Directors of Open Hand practices in the areas of commercial, corporate, real estate, land use and construction law.

Position 2: Three-Year Term

Robert D. Gorman received a bachelor’s degree in Business Administration from UNM in 1977 and a Juris Doctor from UNM in 1983. He is a certified public accountant and lawyer who has practiced in Albuquerque for 21 years in corporate and business law, estate and tax planning and real estate and probate. Gorman is a member of the American Bar Association, the Albuquerque Bar Association, the Association of Trial Lawyers of America, the New Mexico Hispanic Bar Association, the American Institute of Certified Public Accountants, the New Mexico State Society of Certified Public Accountants and the New Mexico Society of Hispanic Certified Public Accountants.

Position 3: Three-Year Term

Nicole Strauser is general counsel for Talbot Financial Corporation, an insurance and financial services company. After receiving a bachelor’s degree, with high distinction, from the University of Nebraska-Lincoln, Strauser graduated from the University of Texas-Austin School of Law, with honors, in 1990. At Talbot, she is responsible for all legal matters, compliance and licensing for both the brokerage and financial services aspects of Talbot and its subsidiaries. Previously, she was in private practice where she focused on bankruptcy, general business and commercial law. She is currently completing her second term as a member of the board of directors of the Business Law Section.

Position 4: Three-Year Term

Jean-Nikole Wells has been practicing law in Santa Fe for 23 years. Her practice is limited to business, tax and securities law, estate planning and probate. Wells received a bachelor’s degree from the University of North Carolina, with highest honors, in 1972. She received a Juris Doctor degree in 1976, with honors, from the University of North Carolina, where she was a John Motley Morehead Fellow In Law and a member of the University of North Carolina Law Review. Wells was a member of the board of directors of the Business Law Section from 1984 to 1990 and served as chair in 1989.

COMMERCIAL LITIGATION SECTION NOMINATING COMMITTEE REPORT:

Position 1: One-Year Term

Amy Diaz is a litigation associate in Brownstein Hyatt & Farber, PC’s Albuquerque office where she focuses primarily on commercial litigation. Diaz graduated from the University of Colorado School of Law, and has practiced in New Mexico since 2002. She was an associate in the Office of the University Counsel for the University of Colorado and a law clerk for the Honorable Carole Glowinsky in the 20th Judicial District, Boulder, Colo. Diaz is a member of the Colorado Bar Association, the New Mexico Trial Lawyers Association, the New Mexico Defense Lawyers Association and the American Immigration Lawyers Association.

Position 2: Three-Year Term

Patricia Simpson – biography unavailable.

Position 3: Three-Year Term

Stephen Laufer – biography unavailable.

Position 4: Three-Year Term

Gary Don Reagan was admitted to the State Bar of New Mexico in August 1965. He was in private practice in Albuquerque from 1965 to 1968; private practice in Lea County since 1968 and is now member of Reagan & Sanchez, PA, a two-lawyer firm in Hobbs involved in commercial litigation, mediation, and general practice. He was a member of the Board of Bar Commissioners
from 1989 to 1996; president of the State Bar of New Mexico from 1994 to 1995; and a state senator from 1993 to 1996. He is currently a member of the Supreme Court’s advisory committee to the New MexicoCompilation Commission.

Position 5: Three-Year Term
Stacey Scherer is an associate with O’Brien & Houliston, PC in Albuquerque where she practices primarily in the areas of civil defense and employment law. Scherer is a graduate of the University of Kentucky College of Law and has been practicing in New Mexico since 2001. She was employed as a law clerk for the Honorable Lewis G. Paisley, Fayette County Circuit Court, Lexington, Ky. Scherer is a member of the Federal Bar of the District of New Mexico and the New Mexico Women’s Bar Association. She has served as a co-editor of the Commercial Litigation Section’s newsletter since its inaugural issue in Spring 2003.

CRIMINAL LAW SECTION NOMINATING COMMITTEE REPORT:
Position 1: Three-Year Term
Penni Adrian graduated from the UNM School of Law in 1987 and was admitted to the practice of law in the state and federal bars. She spent three years as an associate with Ron Koch, trying more than 50 jury trials. In 1991 she received certification as a specialist in Trial Practice - Criminal Law from the Board of Legal Specialization. Her practice has evolved to federal felony defense and magistrate and metropolitan court defense. Adrian belongs to the New Mexico Criminal Defense Lawyers Association, the National Association of Criminal Defense Lawyers and the American Bar Association (Sections for Criminal Justice and for Torts and Insurance Practice).

Position 2: Three-Year Term
Stephen P. McCue is the Federal Public Defender for the District of New Mexico. He graduated from Harvard College and the University of Colorado School of Law. McCue worked briefly as an associate at a large civil firm in Albuquerque before he served two years as an assistant public defender for the state in Roswell, Santa Fe and Albuquerque. Since 1986, McCue has practiced with the Federal Public Defender’s office in Albuquerque. He is on the board of directors of the Criminal Law Section and served as chair of that section from 1993 to 1994. He is a member of NACDL and the NMCDLA.

Position 3: Three-Year Term
Ousama M. Rasheed is a graduate of the UNM School of Law and a former prosecutor in the Second Judicial District. He is currently in private practice in Albuquerque where he focuses primarily in the area of criminal defense

ELDER LAW SECTION NOMINATING COMMITTEE REPORT:
Position 1: One-Year Term
Mary Ann Green practices primarily in the areas of guardianship and conservatorship, and estate planning for the elderly and disabled. She earned her bachelor’s and master’s degrees from Northwestern University and her Juris Doctor from the UNM Law School. She is a member of the Elder Law and the Real Property, Probate and Trust Law Sections of the State Bar, the Albuquerque Bar Association, the New Mexico Estate Planning Council and the National Academy of Elder Law Attorneys.

Position 2: Three-Year Term
Deborah Armstrong was recently appointed by Gov. Bill Richardson as cabinet secretary of the New Mexico Aging and Long-Term Services Department. Armstrong has been with the department for three years, previously as director of the Consumer and Elder Rights Division and then as deputy director. Armstrong graduated cum laude from the UNM School of Law in 2001. Armstrong received her bachelor’s degree from the University of Michigan in 1975 and is a licensed physical therapist. She has almost 20 years experience in health care administration. Armstrong has been a board member of the Elder Law Section since 2002.

Position 3: Three-Year Term
Amanda Hartmann is the managing staff attorney for the Lawyer Referral for the Elderly Program. She is also the chair of the newly formed National Association of Senior Legal Hotlines. Hartmann graduated from Rutgers University in 1993 with a bachelor’s degree in Archaeology, and she earned her Juris Doctor from the University of New Mexico in 2001. She was admitted to the Navajo Bar Association in 2002. Before working with the elderly, Amanda worked at the law firm of Sutin, Thayer and Browne, P.C., where she practiced civil litigation. She is currently the YLD-Elder Law Section liaison.

Position 4: Three-Year Term
Brian E. Jennings graduated cum laude in 1980 from the Thomas M. Cooley Law School in Michigan where he was a trial lawyer for 15 years, practicing in personal injury and probate law. He worked for six years in consumer protection for the state of Michigan. Since 1995, he has concentrated in probate and estate litigation, including contested guardian and conservator proceedings, will contests and other estate disputes in Albuquerque. He is a member of the Elder Law, Real Property, Probate and Trust and Solo and Small Firm Practitioners sections. He is also a past-president of the Albuquerque Lawyers Club.

EMPLOYMENT LAW SECTION NOMINATING COMMITTEE REPORT:
Position 1: One-Year “Employee” Term
J. Edward Hollington received a bachelor’s degree from Troy State University, Ala. in 1971 and a Juris Doctor degree from the University of Alabama in 1974. He has been a member of the State Bar since 1976 and has been in private practice at J. Edward Hollington & Associates, PA since 1980. His practice includes extensive civil litigation, employment law, business and commercial transactions, civil rights and tort claims and administrative law.

Position 2: Two-Year “Employee” Term
Gail Gottlieb – biography unavailable.

Position 3: Two-Year “Employer” Term
Danny J. Jarrett is a New Mexico native and a 1996 graduate of the UNM School of Law. He received a bachelor’s degree from UNM in 1989. Jarrett previously served as vice-president and corporate counsel for a national healthcare company, and is currently a shareholder and director of Noeding & Jarrett. His practice focuses on counseling and representing employers and government entities regarding labor and employment disputes. He has represented numerous clients before the National Labor Relations Board, the Equal Opportunity Employment Commission, and the Human Rights Division of the NM Department of Labor.

Position 4: Two-Year “Employee” Term
Lee Peifer – biography unavailable.

FAMILY LAW SECTION NOMINATING COMMITTEE REPORT:
Position 1: One-Year Term
Maria Montoya Chavez is an associate with the law firm of Sutin, Thayer & Browne. She has been practicing law since 2000 and practices primarily in the areas of family law, estate planning and corporation law. She completed her undergraduate degree from UNM and graduated in the top 25 percent
from St. Mary’s School of Law in 1999. She is currently the president of Keshef Dance Company, a participant of the Young Lawyer’s Division and Family Law Sections of the State Bar, the Woman’s Bar Association and Woman Entrepreneurs.

**Position 2: Three-Year Term**

Catherine Aguilar practices divorce and family law in Española, where she’s practiced since 2002. From 1995 through 2002 she was a child support hearing officer for the First Judicial District Court. Since her admission to the State Bar in 1978, her experience includes legal services, civil prosecution and defense of child abuse and neglect, guardian ad litem representation, adoptions, guardianships, divorce, child custody and child support issues. Aguilar was born and raised in Albuquerque and is a 1978 graduate of the UNM School of Law.

**Position 3: Three-Year Term**

Felissa Garcia Kelly is a Family Law practitioner who owns, operates and manages The Family Law Firm(tm), devoting 100 percent of the firm’s practice to family law and having done so since receiving a license to practice law in 1998. She is a lecturer for the bar preparatory course (BARBRI) in the area of family law for law students preparing to take the New Mexico Bar Examination. Kelley donates a significant number of hours to representing low-income, disadvantaged litigants in all family law related matters.

**Position 4: Three-Year Term**

Dara L. McKinney grew up in Albuquerque and received a bachelor’s degree with a double major in English and Political Science from Trinity University in San Antonio, Texas. McKinney’s Juris Doctor is from UNM. She is a partner in the two-attorney law firm of Griffith and McKinney, P.A. in Los Alamos where she has been practicing law for eight years. McKinney’s practice is a general civil practice with the largest percentage of her practice being in the area of family law.

**Position 5: Three-Year Term**

David Stafford grew up in southern California and graduated from UC Santa Barbara in 1977. He graduated from Franklin Pierce Law Center in Concord, N.H. in 1980 and was admitted to the State Bar on New Mexico that fall. Stafford practiced as a public defender in Santa Fe through 1986, at which time he and his wife, Julia, moved to Raton where he opened the general practice he has maintained since.

**INDIAN LAW SECTION NOMINATING COMMITTEE REPORT:**

**Position 1: Two-Year Term**

Levon B. Henry is a member of the Navajo Nation, of the Redhouse clan and born for the Zuni clan, and resides on the Navajo Nation in Naschitti. Henry is the executive director of DNA-People’s Legal Services, Inc., the largest Indian legal services program in the country serving seven Indian nations and two state counties. Henry is the former attorney general for the Navajo Nation, and recently the executive director for the Four Times Foundation in Montana. He is a former two-term president of the Navajo Nation Bar Association. Henry received a law degree from UNM in 1994 and has a bachelor’s degree from Calvin College in Grand Rapids, Mich.

**Position 2: Three-Year Term**

Aaron C. Frankland received a bachelor’s and master’s degrees in Criminal Justice from Indiana University, a master’s degree in Counseling from Western New Mexico University, and a Juris Doctor and Tribal Law Certification from the University of Kansas School of Law. Since 2001, he’s served the Navajo Nation Department of Justice as a staff attorney. He has interned with the Navajo Nation Corrections Project, the Great Lakes Indian Fish and Wildlife Commission and the Indian Law section of the Environmental Protection Agency Region VII Office. Frankland has also worked on land reclamation matters and jurisdictional issues for the Kaw Tribe of Kansas and the Kickapoo Nation.

**Position 3: Three-Year Term**

Bob Gruenig graduated from the Southern Illinois University School of Law in 2000 and from Vermont Law School in 2001, magna cum laude. He’s been employed by the National Tribal Environmental Council since 2002 and currently serves as the organization’s Air Program director in Albuquerque. He also serves as co-director of the Western Regional Air Partnership, on the Steering Committee for the Tribal Air Monitoring Support Center and as a provider for the Native Dispute Resolution Network in conjunction with the U.S. Institute for Environmental Conflict Resolution. He provides legal, policy and technical advice to tribes concerning environmental matters throughout the U.S.

**Position 4: Three-Year Term**

Helen B. Padilla was admitted to the State Bar of New Mexico in 1999. She has a bachelor’s degree, master’s degree and law degree, with a Certificate in Indian Law, from UNM. She’s also admitted to the Colorado bar and the Connecticut bar. Padilla was born and raised in Isleta Pueblo and was recently appointed as general counsel with the state’s Department of Indian Affairs. She has served as senior staff attorney for the Mohegan Tribe of Indians in Connecticut, as assistant regional counsel for the Office of General Counsel for the Social Security Administration in Denver, Colo., and an intern with the National Indian Gaming Commission.

**REAL PROPERTY, PROBATE & TRUST SECTION NOMINATING COMMITTEE REPORT:**

**Position 1: Two-Year Term**

Edward Roibal – biography unavailable.

**Position 2: Three-Year Term**

Richard B. Gregory has been licensed to practice law in New Mexico since 1975 and currently practices from his offices in Las Cruces. He is a certified public accountant and is a former accounting professor at New Mexico State University. He received a bachelor’s degree from Texas Tech University, a master’s degree from Eastern New Mexico University and a Juris Doctor degree from UNM. Gregory is a fellow of the American College of Trust and Estate Counsel and currently serves as the state chair. He serves on the Estate and Gift Tax Committee of the American Bar Association Taxation Section and the Committee on Limited Liability.

**Position 3: Three-Year Term**

Anderson Dirk Jones is a native of New Mexico who has practiced in Roswell since 1983. He graduated from Texas Tech University and is a member of the firm of Jennings & Jones, LC. He maintains a general civil practice, with emphasis on real property, natural resources, commercial transactions, estate planning and probate matters. Jones has served as president of the Chaves County Bar Association, a director of the American Quarter Horse Association for 14 years, is the past chair of the Roswell Water Advisory Board and past president of the Roswell Rotary Club.

**Position 4: Three-Year Term**

Charles Seibert, III – biography unavailable.
SOLO & SMALL FIRM PRACTITIONERS SECTION NOMINATING COMMITTEE REPORT:

Position 1: One-Year Term (2005)
James Brian Smith is a partner in the law firm of Vance, Chavez & Associates, PA practicing in real estate, business formation, water law, land use, natural resources, urban and environmental law, land use, and wildlife. He graduated from the University of Virginia School of Law and was admitted to the bar in 1999. He is a member of the Albuquerque Bar Association, the American Bar Association, the Solo and Small Firm Practitioner’s Section and the Kiwanis Club of Albuquerque.

Position 2: Two-Year Term (2005-2006)
Brian E. Jennings graduated with highest distinction from the Thomas M. Cooley Law School in Michigan where he was a trial lawyer for 15 years, practicing in personal injury and probate law. Since relocating to Albuquerque in 1995, he has concentrated on probate and estate litigation, including contested guardianship and conservatorship proceedings, will contests and other estate disputes. He also writes wills and trusts for his clients and serves as guardian ad litem in protective proceedings. Jennings is a member of the Elder Law, Real Property, Probate and Trust, and Solo and Small Firm Practitioners Sections and a past-president of the Albuquerque Lawyers Club.

Position 3: Two-Year Term (2005-2006)
Edward B. Reinhardt, Jr., is a sole practitioner in Albuquerque whose practice concentrates primarily on legal research and writing. He is a graduate of the University of North Dakota School of Law. Reinhardt was a staff attorney in North Dakota for 13 years before returning to Albuquerque in 1995. He is admitted to practice in New Mexico and North Dakota, Federal District Court in New Mexico and North Dakota, the Eighth and Tenth Circuit Courts of Appeal, and the U.S. Supreme Court.

Position 4: Two-Year Term (2005-2006)
John F. Moon Samore is the son of a solo attorney who practiced for 55 years, and has himself practiced in Albuquerque for more than 17 years as a solo attorney. He is a past president of the Solo and Small Firm Practitioners Section, and has served on the board 10 years. His practice is almost exclusively defense of persons wrongfully accused of criminal misconduct and domestic partners rightfully in need of divorce or child custody.

Position 5: Three-Year Term (2005-2007)
Jill A. Douthett earned a law degree from the University of Virginia School of Law and practiced in Philadelphia for more than 20 years as a partner in private practice and as divisional deputy city solicitor for commercial litigation for the city. She was admitted to the State Bar of New Mexico in 2003 and now has a solo practice in Rio Rancho where she specializes in business law and litigation, including business formation, governance and risk management; commercial leasing and real estate development; licensing agreements; contracts; construction; bidding and procurement; and estate planning.

Position 6: Three-Year Term (2005-2007)
Mark A. Keller graduated from the University of New Mexico School of Law in 1989. Since then he has had experience as a public defender, working for other attorneys and forming a partnership. Currently, he has his own solo practice. Keller mainly practices in the areas of criminal defense and personal injury.

Position 7: Three-Year Term (2005-2007)
Donald D. Becker has been a solo practitioner since 1975. His practice focus is business and real estate litigation, bankruptcy proceedings and litigation involving creditors and debtors. Becker is a New Mexico board Certified Specialist in Business and Consumer Bankruptcy since 1993. He has received the New Mexico State Bar “Outstanding Contribution Award” and is currently on the Board of Directors of the Solo and Small Firm Practitioners Section and is a past chair of this section and also of the Bankruptcy Law Section. He is currently the Chair of the Law Office Management Committee and is a member of the Diversity in the Legal Profession Committee.

2004 Senior Lawyers Division Nominating Committee Report

The report of the Senior Lawyers Division nominating committee follows. Additional nominations may be made in the form of a petition signed by at least 30 members of the division. All members of the State Bar of New Mexico in good standing who are 55 years of age or older and who have practiced law for 25 years or more are members of the division and are eligible for office.

A nomination petition form is included on page 16. The petition must identify the position sought and state that the member has agreed to the nomination; the deadline for submission of petitions to the State Bar is Nov. 1, 2004.

If no additional nominations are received, the nominees listed below are deemed elected by acclamation. If additional nominations are received via nominating petition, ballots will be mailed to all members of the division by Nov. 10, 2004.

NOMINATING COMMITTEE REPORT

Position #1
Term: 2003-2005
Nominee: Amanda Ashford – biography unavailable.

Position #2
Term: 2004-2006
Nominee: Wycliffe Butler
Wycliffe V. Butler has practiced law in Albuquerque for the past 43 years. He received a law degree from UNM in 1959 and an undergraduate degree from UNM in 1953. He was at New Mexico Military Institute in 1948 and 1950. He has practiced civil law with his son, Stewart C. Butler, for the past 10 years.

Position #3
Term: 2004-2006
Nominee: Charles Pharris – biography unavailable.

Position #4
Term: 2004-2006
Nominee: Albert Ussery
Albert T. Ussery has been practicing general civil law in New Mexico since 1951. He earned a bachelor’s degree from Washington University in 1950; a Bachelor of Laws Degree from UNM in 1951, and a Master of Laws Degree from Georgetown University in 1955. His practice has been primarily in the field of business, banking and real estate law. He is a certified specialist in Real Estate Law and has served by judicial appointment or by the agreement of the parties as a mediator in numerous cases over the past 13 years.

Position #5
Term: 2004-2006
Nominee: Stevan Schoen – biography unavailable.

Position #6
Term: 2004-2006
Nominee: Hon. Jonathan Sutin
Judge Jonathan B. Sutin received a
bachelor’s degree in philosophy at the University of Colorado in 1960 and received a Juris Doctor from the UNM School of Law in 1963. After graduation, Judge Sutin was a trial attorney in the United States Justice Department, Civil Rights Division. He returned to New Mexico and was a litigator at Sutin, Thayer & Browne until he was appointed and then elected to the New Mexico Court of Appeals, where he is presently employed.

Position #7
Term: 2004-2006
Nominee: Bradford Zeikus
Bradford H. Zeikus was admitted to practice in New Mexico in 1969 and is a graduate of the UNM School of Law. Zeikus is a sole practitioner in Albuquerque, where he practices in the areas of family and personal injury law. He is a member of the American Bar Association (Family Law Section), Association of Trial Lawyers of America (Family Law Section) and State Bar of New Mexico (Family Law Section). He is a past president of the Albuquerque Bar Association and a long-time board member and past president of UNM Law School Alumni/Alumnae Association and past chair of the Senior Lawyers Division of the State Bar.

Position #8
Term: 2005-2007
Nominee: Daniel Behles
Daniel J. Behles is a solo practitioner in Albuquerque who practices primarily in bankruptcy law. He has served for several years as the Senior Lawyer’s Division delegate to the Board of Bar Commissioners. The American Board of Certification and the NM Legal Specialization Board recognize him as a specialist in both Consumer and Business Bankruptcy. Behles is a member of the Albuquerque Lawyers Club, the Albuquerque Bar and the American Bankruptcy Institute.

Position #9
Term: 2005-2007
Nominee: John P. Burton
Jack Burton has practiced law for more than 35 years and has a statewide commercial practice involving transactions, alternative dispute resolution, and litigation in federal and state courts. He has practiced with the Rodey Dickason, Sloan, Akin & Robb, PA in Santa Fe, graduated from the UNM School of Law in 1979 and is admitted to practice in New Mexico and Colorado. He also is a graduate of the Mendoza School of Business, University of Notre Dame receiving a master’s degree in 1974. Arland practices in the areas of lender liability defense, bankruptcy and complex commercial litigation cases. Arland currently serves as Chairman of the Fee Arbitration Committee, having previously served in the same capacity from 1988 to 1998, and is a member of the Client Relations Committee.

Position #10
Term: 2005-2007

Position #11
Term: 2005-2007
Nominee: Timothy Padilla – biography unavailable.

Position #12
Term: 2005-2007
Nominee: William J. Arland, III
William J. Arland, III, a director with Rodey, Dickason, Sloan, Akin & Robb, PA in Santa Fe, graduated from the UNM School of Law and is admitted to practice in New Mexico and Colorado. He is a graduate of the Mendoza School of Business, University of Notre Dame receiving a master’s degree in 1974. Arland practices in the areas of lender liability defense, bankruptcy and complex commercial litigation cases. Arland currently serves as Chairman of the Fee Arbitration Committee, having previously served in the same capacity from 1988 to 1998, and is a member of the Client Relations Committee.

Position #13
Term: 2005-2007
Nominee: Anita Miller
Anita P. Miller is a practicing land use attorney in Albuquerque who represents NM municipalities and counties on land use, subdivision growth management and environmental matters. She is a member of the Regional Board of the Rocky Mountain Land Use Institute, and is an adjunct professor of Land Use Law at the UNM School of Architecture and Planning and the School of Law. She is a past member and current liaison member of the American Bar Associations’ Commission on Women in the Profession. Miller is the current regional chair of the NM chapter of the Anti-Defamation League, and is also president of the NM Women’s Forum.

Appellate Practice Section
Annual Meeting and Reception
The Appellate Practice Section will hold its annual membership meeting at 4 p.m., Nov. 5 in conjunction with the 2004 Bench and Bar Conference at the Sheraton, Old Town. The section is cosponsoring the State Bar President’s Reception following at 5 p.m. Contact Chair Frances Bassett, (505) 827-6778 or fbassett@ago.state.nm.us, to place an item on the agenda.

Business Law Section
Annual Meeting and Award Ceremony
The Business Law Section will hold its annual membership meeting from 5 to 8 p.m., Nov. 10 in Room 2401 at the UNM School of Law. Winners of the law school writing contest and the section’s Business Lawyer of the Year Award will be presented. Contact Chair Cheryl Sommer, (505) 988-3977 or kaunefoodtown1@qwest.net to place an item on the agenda.

Commission on Professionalism
Articles Sought for Publication
The State Bar of New Mexico’s Commission on Professionalism is accepting submissions of articles to be published in the Bar Bulletin and submitted to various newspapers. The commission is requesting articles on good deeds of lawyers or judges and “Be a Pro” articles that demonstrate professionalism in action. The articles will be reviewed and selected for publication by the Communications Subcommittee of the Commission on Professionalism. Contact Kris Becker, (505) 797-6038 or kbecker@nmbar.org, to request editorial guidelines and/or submit articles. Articles may also be mailed on disk to the Commission on Professionalism Communications Subcommittee, c/o Kris Becker, SBNM, PO Box 92860, Albuquerque, NM 87199-2860.
Employment and Labor Law Section
CLE, Annual Meeting and Reception

The Employment and Labor Law Section and the Center for Legal Education of the State Bar of New Mexico will present a professionalism program at 3 p.m., Dec. 2, La Posada, Albuquerque. Details and registration for the CLE program are forthcoming. The annual membership meeting and social will follow from 5 to 7 p.m. Members are encouraged to attend either or both events. Contact Chair Eric Miller, (505) 995-1017 or ermsf@aol.com to place an item on the agenda.

Family Law Section
Annual Meeting

The Family Law Section will hold its annual membership meeting at noon, Oct. 29 in conjunction with the Family Law Institute, which will be held at the State Bar Center. All section members are encouraged to attend the meeting regardless of whether or not they are registered for the CLE program. Contact Chair John D. Watson, John.Watson@state.nm.us, to place an item on the agenda.

Paralegal Division
Brownbag CLEs for Attorneys and Paralegals

The Paralegal Division of the State Bar is offering lunchtime brownbag CLEs at the State Bar Center the second Wednesday of every month. The next brownbag is on Oct. 13 and is titled “Actors, Athletes and Singers: An Introduction to Sports and Entertainment Law.” The cost is $16 for attorneys and $15 for paralegals, legal assistants and office staff. Each meeting has been approved for 1.0 CLE credits. Registration begins at the door at 11:30 a.m. each month, and the presentation will follow from noon to 1 p.m. For more information contact Debi Shoemaker-Scott at Rothstein Donatelli, (505) 243-1443.

New Rules
Regarding Paralegals

On Jan. 30 the New Mexico Supreme Court approved revisions to its Rules Governing Paralegal Services in New Mexico (Rules 20-101 through 20-115 NMRA), including the addition of specific qualifications that must be met in order to use the designation “paralegal.” The Rules as revised will serve as guidelines for the appropriate utilization of paralegals in New Mexico.

Historically, the terms “paralegal” and “legal assistant” were used interchangeably; however the Supreme Court determined that the term “paralegal” is the preferred term to identify highly-trained, highly-skilled legal support staff who engage in substantive legal work. Therefore, the Supreme Court and the Division encourage the use of the term “legal assistant” to designate legal support staff who do not qualify as paralegals under the new definition but may perform similar functions.

A working knowledge of the Rules is important, especially for attorneys, because the attorney is ultimately responsible for the paralegal’s conduct and work product and for ensuring that the conduct of the paralegal is in accordance with the Rules Governing Paralegal Services. It is also important for paralegals, legal assistants, law office administrators and employment/placement agencies to be familiar with the Rules.

To address questions or concerns regarding the revised Rules that may be raised by the legal community and public, the State Bar of New Mexico is sponsoring presentations discussing the new rules and the proper identification and utilization of paralegals. A presentation is scheduled for 1 to 4 p.m., Oct. 23 at the State Bar Center. More information is available at the State Bar Web site www.nmbar.org.

Omissions

Please note that the following members were inadvertently omitted from the Paralegal Division membership roster beginning at page 154 of the 2004-2005 Bench & Bar Directory.

Denise Leyba
New Mexico Gaming Control Board
6400 Uptown Blvd. NE, Ste. 100-E
Albuquerque, NM 87110
(505) 841-9733
(505) 841-9732 (fax)
dleyba@gcb.state.nm.us

Teri L. McHugh
Public Service Co. of New Mexico
Alvarado Square, MS 0806
Albuquerque, NM 87158
(505) 241-0879
(505) 241-4318 (fax)
tmhugh@pnm.com

Public Law Section
Board Meeting

The next Public Law Section board meeting will be held at noon, Oct. 14 at the State Bar Center. Contact Deborah Moll, (505) 827-2000, for more information.

Solo and Small Firm Practitioners Section
Annual Meeting, CLE and Reception

The Solo and Small Firm Practitioners Section will hold its annual membership meeting at 1 p.m., Dec. 2 at the State Bar. “Avoiding Malpractice in the Solo and Small Firm” presented by the State Bar’s Lawyers Professional Liability Committee, will follow at 2 p.m. Attendees will receive 1.0 general and 1.0 ethics CLE credits. Registration information will be published in November issues of the Bar Bulletin.

The afternoon will conclude with a reception from 4 to 5:30 p.m. Gourmet food and drinks will be provided free of charge. Members are encouraged to attend any or all three events. To assist in planning for the reception, R.S.V.P. to thorvat@nmbar.org by Nov. 29.

Other Bars
Albuquerque Bar Association
Distinguished Achievement Awards Dinner

The UNM Law School Alumni Distinguished Achievement Awards Dinner will be held Oct. 22 at the UNM Student Union Building Ballroom. Cocktails begin at 6 p.m. and dinner at 7 p.m. Honorees for 2004 include Ranne Miller, Maureen Sanders and Peter Winograd. The event is $75 per person, $725 per table and $1,000 for a table and sponsor. Register for the event with Carmen Rawls, (505) 277-8184.

Doña Ana County Bar Association
Luncheon

The Doña Ana County Bar Association will hold its next meeting at noon, Oct. 14 at the Holiday Inn de Las Cruces, 201 E. University Ave. The guest speakers will be Dean Suellyn Scarnecchia from the UNM School of Law, and Carol A. Parker, Law Library director. Dean Scarnecchia will give a Law School update and Assistant Prof. Parker will discuss access to law library

www.nmbar.org
services. A reception for Dean Scarneccia will be held from 5 to 7 p.m. at the offices of Sandenaw & Piazza, PC in Las Cruces. R.S.V.P. for the luncheon and reception by Oct. 12. For questions, information, or to R.S.V.P., call Barbara Redshaw, Sandenaw & Piazza, PC, (505) 522-7500.

National Hispanic Bar Association Annual Convention
Join attorneys from around the country in New York City, Oct. 9 to 12, for the National Hispanic Bar Association Annual Convention, at the Marriott Marquis Hotel in Times Square. Attorney Alan M. Varela, who heads the New Mexico Worker’s Compensation Administration, will be sworn in as the president of the 25,000-member association. The convention brings together the most influential Hispanics in the nation to discuss issues affecting the profession. Continuing legal education courses explore current issues in the fields of international trade, immigration, civil rights, employment law, settlement techniques, environmental law, white-collar crime, Sarbanes/Oxley compliance, appellate advocacy and election law. This year’s Convention will again feature the largest law job fair in the country and will be open to lateral attorneys for the first time in HNBA history. For more information or to register for the 2004 convention, visit www.hnba.com.

NM Defense Lawyers Association Annual Meeting
The New Mexico Defense Lawyers Association will host its 3rd Annual Meeting Oct. 28. Events include a two-hour professionalism program “The Roles of the Judiciary, the Bar and American Culture in Creating a Truly Civil System of Justice” with featured presenter Cornelia Wallis Honchar, Esq., facilitating a panel discussion with judges from across the state. There will also be a reception and short awards ceremony, including recognition of the 2004 Outstanding Civil Defense Lawyer, Robert Sabin of Roswell. For more information call Rhonda Dahl, (505) 797-6021.

NM Women’s Bar Association Mid-State Chapter Monthly Networking Luncheon
The mid-state chapter of the New Mexico Women’s Bar Association will hold a networking lunch meeting from noon to 1:30 p.m., Oct. 13 at Conrad’s in the La Posada Hotel, Albuquerque. Visitors are welcome and advance reservations are required. Lunch prices range from $6 - $11 and payment is to be made to the restaurant. Anyone interested in attending this meeting should contact Virginia R. Dugan, vrd@atkinsonkelsey.com or Rendie Baker-Moore, martren@eb-b.com.

Young Lawyers Division Brownbag Luncheon
The Young Lawyers Division has a brownbag luncheon with the Honorable Lourdes A. Martinez, U.S. magistrate judge, from noon to 1 p.m., Oct. 27 at the Federal Building, 200 E. Griggs, Las Cruces. R.S.V.P. by October 25, 2004 to Roxanna M. Chacon, Miller Stravertt, PA, (505) 523-2481, (800) 424-7585, or e-mail rchacon@mstlaw.com. Lunch is included with the event.

OTHER NEWS
Albuquerque Association of Legal Professionals Monthly Meeting
The Albuquerque Association of Legal Professionals, the local chapter of NALS, the association for legal professionals, holds its monthly general meetings on the third Tuesday of each month at Shoney’s Restaurant at Menaul and Louisiana. The next general meeting will be at 6 p.m., Oct. 19. This will be the association’s annual Day-In-Court meeting and will feature a representative from the judiciary as the guest speaker. All members are encouraged to attend, and all visitors are welcome. NALS/AALP membership is open to anyone employed in any capacity in a law office or court office, or with any law-related employer, such as court reporters. At the September meeting, Jon A. Feder, of Atkinson & Kelsey, was honored as Boss of the Year for 2004. Feder received an engraved Nambé plaque.

No reservations are required for the meeting. If you need further information either on NALS/AALP or meeting location, please call Nancy Laird, (505) 837-9200 or (505) 249-3751.

Center for Civic Values Mock Trial Coach Needed
An attorney coach is needed for the Manzano High School mock trial team in Albuquerque. Attorneys interested in participating should call (505) 764-9417, extension 13, or send e-mail to mocktrial@civicvalues.org. The mock trial program is a cosponsored activity of the Center for Civic Values, the State Bar of New Mexico and the UNM School of Law.

NM Workers’ Compensation Administration UEF Public Hearing
Notice is hereby given that at 1:30 p.m., Oct. 12 the New Mexico Workers’ Compensation Administration (WCA) will conduct a public hearing on its proposed amendments to the Uninsured Employers’ Fund (UEF) rules. The hearing will be at the WCA, 2410 Centre Ave. SE, Albuquerque. Video conferencing may also be made available in WCA field offices upon request.

Copies of the revised UEF rules are available and written comments pertaining to the UEF rules will be accepted until the close of business on Oct. 19. Comments made in writing and at the public hearing will be taken into consideration.

For further information call (505) 841-6000. Copies of the draft rules can be obtained through the WCA clerk’s office, 2410 Centre Ave. SE, Albuquerque, NM 87106. If requesting a copy by mail, include a postage-paid, self-addressed envelope.

Disabled individuals who are in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing, contact Renee Blechner, (505) 841-6083, or the New Mexico relay network, (800) 659-8331.

UNM Law Library Hours Fall Semester 2004
Aug. 23 to Dec. 17, 2004
Building and Circulation:
Monday - Thursday: 8 a.m. to 11 p.m.
Friday: 8 a.m. to 5 p.m.
Saturday: 9 a.m. to 5 p.m.
Sunday: noon to 11 p.m.

Thanksgiving Day Holiday:
Sept. 5: noon to 9 p.m.

Labor Day Holiday:
Exceptions:
Sunday: noon to 4 p.m.
Friday: 9 a.m. to 5 p.m.

Dec. 11: 9 a.m. to 10 p.m.
Dec. 4: 9 a.m. to 10 p.m.
Dec. 3: 8 a.m. to 10 p.m.

Special Exam Hours:
Nov. 26: CLOSED
Nov. 24: 8 a.m. to 5 p.m.

PS Form
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American Bar Association
501 North State Street
Chicago, Illinois 60601

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2. Bar Bulletin
3. Issue Date for Circulation Data Below

UNM Law School
Ramo Lecture Series on International Justice
Great Britain’s Attorney General to Speak Oct. 28

Dr. Barry and Roberta Cooper Ramo of Albuquerque have established the Ramo Lecture on International Justice at the University of New Mexico School of Law. Dr. Ramo is a member of the New Mexico Heart Institute and clinical professor at the UNM School of Medicine and at Duke University. Cooper Ramo is a lawyer at Modrall Sperling law firm and former president of the UNM Board of Regents. She was the first woman president of the American Bar Association.

Special Exam Hours:
Dec. 3: 8 a.m. to 10 p.m.
Dec. 4: 9 a.m. to 10 p.m.
Dec. 10: 8 a.m. to 10 p.m.
Dec. 11: 9 a.m. to 10 p.m.
NOMINATION PETITION
STATE BAR OF NEW MEXICO - 2004 SECTION ELECTION

Section Name: ________________________________________________________________________________________________

Position Number: ________________________________________________________________________________________________

We, the undersigned members of the above-named Section, nominate ____________________________ of __________, New Mexico, for the position specified above.

Petition Deadline: November 1, 2004

Date Submitted: __________________________________________

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NOMINATION PETITION for SENIOR LAWYERS DIVISION
STATE BAR OF NEW MEXICO - 2004 ELECTION

We, the undersigned members of the Senior Lawyers Division in good standing, nominate ___________________________ of ___________________________ New Mexico, for Position # ______, Senior Lawyers Division Board of Directors.

Date Submitted: ________________________________________ (Note: Thirty (30) signatures are required)

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## WRITS OF CERTIORARI

**As Updated by the Clerk of the New Mexico Supreme Court**

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

**Effective October 6, 2004**

### Petitions for Writ of Certiorari Filed and Pending:

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Bar Bulletin • October 7, 2004 • Volume 43, No. 40 19
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**As Updated by the Clerk of the New Mexico Supreme Court**

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

**Effective October 6, 2004**

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NO. 04-8300
IN THE MATTER OF THE AMENDMENTS OF
RULES 1-005, 1-005.1, AND 1-005.2 NMRA
OF THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee to adopt amendments of Rules 1-005, 1-005.1, and 1-005.2 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 1-005, 1-005.1, and 1-005.2 NMRA of the Rules of Civil Procedure for the District Courts hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 1-005, 1-005.1, and 1-005.2 NMRA of the Rules of Civil Procedure for the District Courts shall be effective for cases filed on or after January 3, 2005; and

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 29th day of September, 2004.

Chief Justice Petra Jimenez Maes
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Richard C. Bosson
Justice Edward L. Chávez

1-005. Service and filing of pleadings and other papers.

A. Service; when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party, unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 1-004 NMRA.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney or party at the attorney’s or party’s last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

C. Definitions. As used in this rule:

(1) “delivery of a copy” means:
(a) handing it to the attorney or to the party;
(b) sending a copy by facsimile or electronic transmission when permitted by Rule 1-005.1 NMRA or Rule 1-005.2 NMRA;
(c) leaving it at the attorney’s or party’s office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or
(d) if the attorney’s or party’s office is closed or the person to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; and
(2) “mailing a copy” means sending a copy by first class mail with proper postage;

D. Service; numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

E. Filing; certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service, except that the following papers shall not be filed unless on order of the court or for use in the proceeding:

(1) summonses without completed returns;
(2) subpoenas;
(3) returns of subpoenas;
(4) interrogatories;
(5) answers or objections to interrogatories;
(6) requests for production of documents;
(7) responses to requests for production of documents;
(8) requests for admissions;
(9) responses to requests for admissions;
(10) depositions;
(11) briefs or memoranda of authorities on unopposed motions; and
(12) offers of settlement when made.

Except for the papers described in Subparagraphs (1), (10) and (11) of this paragraph, counsel shall file a certificate of service with the court within a reasonable time after service, indicating the date and method of service of any paper not filed with the court.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. “Filing” shall include filing a facsimile copy or filing an electronic copy as may be permitted pursuant to Rule 1-005.1 NMRA or Rule 1-005.2 NMRA. A paper filed by electronic means in compliance with Rule 1-005.1 NMRA...
constitutes a written paper for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

[As amended, effective August 1, 1988; January 1, 1998; January 3, 2005.]

1-005.1 Service and filing of pleadings and other papers by facsimile.

A. Facsimile copies permitted to be filed. Subject to the provisions of this rule, a party may file a facsimile copy of any pleading or paper by faxing a copy directly to the court or by faxing a copy to an intermediary agent who files it in person with the court. A facsimile copy of a pleading or paper has the same effect as any other filing for all procedural and statutory purposes. The filing of pleadings and other papers with the court by facsimile copy shall be made by faxing them to the clerk of the court at a number designated by the clerk, except if the paper or pleading is to be filed directly with the judge, the judge may permit the papers to be faxed to a number designated by the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Each judicial district shall designate one or more telephone numbers to receive fax filings.

B. Facsimile service by court of notices, orders or writs. Facsimile service may be used by the court for issuance of any notice, order or writ. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

C. Paper size and quality. No facsimile copy shall be filed with the court unless it is on plain paper and substantially satisfies all of the requirements of Rule 1-100 NMRA.

D. Filing pleadings or papers by facsimile. A pleading or paper may be filed with the court by facsimile transmission if:

1) a fee is not required to file the pleading or paper;
2) only one copy of the pleading or paper is required to be filed;
3) unless otherwise approved by the court, the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and
4) the pleading or paper to be filed is preceded by a cover sheet with the names of the sender and the intended recipient, any applicable instructions, the voice and facsimile telephone numbers of the sender, an identification of the case, the docket number and the number of pages transmitted.

E. Facsimile copy filed by an intermediary agent. Facsimile copies of pleadings or papers filed in person by an intermediary agent are not subject to the restrictions of Paragraph D of this rule.

F. Time of filing. If facsimile transmission of a pleading or paper is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the pleading or paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court’s facsimile machine will be determinative.

G. Service by facsimile. Any document required to be served by Paragraph A of Rule 1-005 NMRA may be served on a party or attorney by facsimile transmission if the party or attorney has:

1) listed a facsimile telephone number on a pleading or paper filed with the court in the action;
2) a letterhead with a facsimile telephone number; or
3) agreed to be served with a copy of the pleading or paper by facsimile transmission.

Service by facsimile is accomplished when the transmission of the pleading or paper is completed.

H. Demand for original. A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile transmission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

I. Conformed copies. Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by facsimile transmission.

[Approved, effective January 1, 1999; as amended, effective August 1, 2000; January 3, 2005.]

1-005.2. Electronic service and filing of pleadings and other papers.

A. Definitions. As used in these rules:

1) “electronic transmission” means the transfer of data from computer to computer other than by facsimile transmission; and
2) “document” includes the electronic representation of pleadings and other papers.

B. Service by electronic transmission. Any document required to be served by Paragraph A of Rule 1-005 NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic mail, a party served by electronic mail notifies the sender of the electronic mail that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 1-005 NMRA designated by the party to be served.

C. Service by electronic transmission by the court. The court may serve any document by electronic service to an attorney or party pursuant to Paragraph B of this rule and to any other person who has agreed to receive documents by electronic transmission.

D. Filing by electronic transmission. Documents may be filed with the court by electronic transmission in accordance with this rule and any technical specifications for electronic transmission:

1) in any court that has adopted technical specifications for electronic transmission;
2) if a fee is not required or if payment is made at the time of filing.

E. Single transmission. Whenever a rule requires multiple copies of a document to be filed only a single transmission is necessary.

F. Time of filing. For purposes of filing by electronic transmission, a “day” begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight on the day preceding the next business day of the court it will be considered filed on the immediately preceding business day of the court. For any questions of timeliness, the time and date registered by the court’s computer will be determinative.

G. Demand for original. A party shall have the right to inspect and copy any document that has been filed or served by electronic transmission if the document has a statement signed under oath or affirmation or penalty of perjury.

H. Conformed copies. Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by electronic transmission.

[Approved, effective July 1, 1997; as amended, effective March 8, 1999; August 1, 2000; January 3, 2005.]

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the New Mexico State Bar Legal Services and Programs Committee to adopt amendments to Rule 1-089.1 NMRA of the Rules of Civil Procedure for District Courts and Rule 12-302 NMRA of the Rules of Appellate Procedure and to adopt new Rule 24-106 NMRA of the Rules Governing the Bar, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rule 1-089.1 NMRA of the Rules of Civil Procedure for District Courts and Rule 12-302 NMRA of the Rules of Appellate Procedure hereby are APPROVED;

IT IS FURTHER ORDERED that new Rule 24-106 NMRA of the Rules Governing the Bar hereby is ADOPTED;

IT IS FURTHER ORDERED that the amendments of Rules 1-089.1 and 12-302 NMRA and the adoption of new Rule 24-106 NMRA shall be effective for cases filed on or after January 20, 2005;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of Rules 1-089.1 and 12-302 and adoption of new Rule 24-106 NMRA by publishing the same in the Bar Bulletin and NMRA. DONE at Santa Fe, New Mexico, this 29th day of September, 2004.

Chief Justice Petra Jimenez Maes
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Richard C. Bosson
Justice Edward L. Chávez

1-089.1. Nonadmitted and nonresident counsel.

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

B. Nonresident counsel licensed in New Mexico. In order to promote the speedy and efficient administration of justice by assuring that a court has the assistance of attorneys who are available for court appointments, for local service, for docket calls and to prevent delays of motion hearings and matters requiring short notice, the court may require a nonresident counsel licensed to practice and in good standing in New Mexico to associate resident New Mexico counsel in connection with proceedings before the court.

C. Discovery matters; counsel not licensed in New Mexico. Counsel who are not New Mexico residents and who are not licensed to practice law in New Mexico, but who are licensed to practice law and in good standing in another state or territory may, without associating New Mexico counsel, participate in discovery proceedings which arise out of litigation pending in another state or territory. However, in a specific proceeding, the court may require association of New Mexico counsel.

12-302. Appearance, withdrawal or substitution of attorneys.

A. Signatures. The original of each brief, motion or other paper filed shall bear the signature of at least one of the counsel filing it, or if a party is proceeding pro se, the signature of the party. A “signature” means an original signature, a copy of an original signature, a computer generated signature or any other signature otherwise authorized by law.

B. Appearance. An attorney or firm shown as participating in the filing of any brief, motion or other paper shall, unless otherwise indicated, be deemed to have appeared in the cause. If an attorney’s appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the limitation shall be specified on the cover page and in the signature block of each paper filed by the attorney pursuant to the limited appearance and the cover page and signature block of the paper shall include an address at which service may be made on the client.

C. Withdrawal. No attorney or firm which has appeared in a cause may withdraw from it without written consent of the appellate court, filed with the appellate court clerk. Such consent may be conditioned upon substitution of other counsel or the filing by the attorney’s client of an address at which service may be made on the client or otherwise conditioned by the appellate court. Proof of service by the withdrawing attorney shall be made on all other parties.

D. Notice. Notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the appellate court clerk. If an attorney ceases to act in a cause for a reason other than withdrawal with consent, upon motion of any party, the appellate court may require the taking of such steps as it may be advised to insure that the cause will proceed with promptness and dispatch.

E. Nonadmitted counsel.

(1) Counsel not admitted to practice law in New Mexico, but who are admitted to practice law and in good standing in another state or territory, may, upon compliance with Rule 21-106 NMRA sign briefs, motions and other papers, and may orally
argue before the appellate court, only in association with counsel admitted to practice law and in good standing in New Mexico. New Mexico counsel shall sign the first paper filed in the appellate court, and New Mexico counsel’s name and address shall appear on all subsequent papers filed. Unless excused by the appellate court, New Mexico counsel shall also be present in person in all proceedings.

(2) Nonadmitted counsel shall state by affidavit that they are admitted to practice law and are in good standing to practice law in another state or country and that they have complied with Rule 21-106 NMRA. Such affidavit shall be filed with the first paper filed in the appellate court, or as soon as practicable after a party decides on representation by nonadmitted counsel. Upon filing of the affidavit, nonadmitted counsel will be deemed admitted subject to the other terms and conditions of this subsection. Proof of service of the affidavit shall be made as provided in Rule 12-307 NMRA. A separate motion and order are not required for the participation of nonadmitted counsel.

(3) For good cause shown, the appellate court may revoke the privilege granted herein of any nonadmitted counsel to appear in any proceeding.

(4) New Mexico residents not admitted to practice law in this state may not appear as counsel, except pro se.

[As amended, effective September 1, 1993; January 1, 1997; May 1, 2003; January 20, 2005.]

24-106. Practice by nonadmitted lawyers before state courts.

A. Conditions of appearance. Upon compliance with the requirements of this rule, but only in association with an active member in good standing as a member of the State Bar of New Mexico, an attorney authorized to practice law before the highest court of record in any state or country (“nonadmitted attorney”) may appear on behalf of a party in any civil proceeding pending before a court of this state, even though the attorney is not licensed to practice law in this state. A non-admitted attorney shall comply separately for each civil action, suit or proceeding in which the attorney intends to appear.

B. Registration certificate. For each civil proceeding in which the attorney intends to appear, the nonadmitted attorney shall file a registration certificate with the State Bar of New Mexico in which the attorney shall identify the proceeding in which the attorney intends to appear and shall certify that:

(1) the attorney is admitted or licensed as an attorney in good standing in another state or country;

(2) the attorney will comply with applicable statutes, laws and procedural rules of the state of New Mexico; and

(3) the attorney will comply with the Rules of Professional Conduct and the Rules Governing Discipline approved by the Supreme Court, and will submit to the jurisdiction of the New Mexico courts and the Disciplinary Board with respect to acts and omissions occurring during the attorney’s admission under this rule.

C. Payment of fee. With each registration certificate the non-admitted attorney shall pay a non-refundable fee of two hundred fifty dollars ($250) to the State Bar of New Mexico. The fee shall be waived if the nonadmitted attorney certifies that the attorney is employed by a governmental authority and will be appearing on behalf of a governmental authority in the proceeding for which the attorney is registering and will be charging no fee for the appearance.

D. Use of fees. From each fee collected under this rule, the State Bar of New Mexico may deduct an administrative and processing charge of not more than ten dollars ($10.00). The balance of all such fees shall be held by the State Bar of New Mexico in a special fund to support the delivery of civil legal services to the poor. The Board of Bar Commissioners shall distribute all fees held in the special fund at least annually to nonprofit organizations providing or supporting the provision of civil legal services to the poor and shall use the State Bar of New Mexico’s state plan as a guide to distribution.

[Approved, effective January 20, 2005.]
PROPOSED REVISION OF THE RULES GOVERNING ADMISSION TO THE BAR

The Supreme Court is considering the following revisions to Rules 15-103, 15-105 and 15-301.1 NMRA and a proposed new Rule 15-301.2 NMRA of the Rules Governing Admission to the Bar. If you would like to comment on the proposed amendments set forth below, please send your written comments to:

Kathleen J. Gibson, Chief Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Comments must be received by October 29, 2004.

15-103. Qualifications.
(No amendments are proposed for Paragraphs A and B.)

C. Character and fitness standards and investigation.

(1) The purpose of character and fitness investigation before admission to the bar is to assure the protection of the public and to safeguard the justice system.

(2) The applicant bears the burden of proving good character in support of the application.

(3) The revelation or discovery of any of the following may be treated as cause for further inquiry before the board determines whether the applicant possesses the character and fitness to practice law:
  (a) unlawful conduct;
  (b) academic misconduct;
  (c) misconduct in employment;
  (d) acts involving dishonesty, fraud, deceit or misrepresentation;
  (e) acts which demonstrate disregard for the rights or welfare of others;
  (f) acts involving dishonesty, fraud, deceit or misrepresentation;
  (g) abuse of legal process, including the filing of vexatious or frivolous lawsuits;
  (h) neglect of professional obligations;
  (i) violation of an order of a court, including child support orders;
  (j) conduct that evidences current mental or emotional instability that may impair the ability to, practice law;
  (k) conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
  (l) denial of admission to the Bar in another jurisdiction on character and fitness grounds;
  (m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
  (n) or as otherwise determined by the Board for just and good cause.

(4) The board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:
  (a) the applicant’s age at the time of the conduct;
  (b) the recency of the conduct;
  (c) the reliability of the information concerning the conduct;
  (d) the seriousness of the conduct;
  (e) the factors underlying the conduct;
  (f) the cumulative effect of the conduct or information;
  (g) the evidence of rehabilitation;
  (h) the applicant’s positive social contributions since the conduct;
  (i) the applicant’s candor in the admissions process; and
  (j) the materiality of any omissions or misrepresentations.

(5) The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the board or the Court.

(Paraphrags C and D have been relettered as Paragraphs D and E.)

15-105. Application fees.

A. Fees. Every applicant shall pay the fees as prescribed by the board from time to time. The following fees are fixed, until changed by the board:

(1) four hundred and fifty dollars ($450.00) for applicants whose graduation from law school is less than one (1) year prior to filing the application and who have not engaged in the practice of law in any state;

(2) a reduced fee of one hundred dollars ($100.00) for applicants who apply to repeat the examination; provided, however, that if the investigation report is dated more than fifteen (15) months prior to the date of application, an additional fee will be required to update the investigation report as provided in Rule 15-106 NMRA of these rules;

(3) reasonable additional expenses to be determined by the Board of Bar Examiners, in connection with any investigations or hearings. The board shall assume its costs of the first completed investigation and hearing for an applicant who presents character and fitness issues. The board shall assess costs for subsequent investigations and hearings. If an applicant has been denied admission or has withdrawn the applicant’s application after the first completed investigation and hearing, the board shall assess costs against the applicant for each reapplication thereafter which involves an investigation and hearing. Such costs shall include, but not be limited to, board attorney fees, court reporter fees, medical evaluations and any other fees for services to complete the investigation and hearing. Payment of such fees shall be a prerequisite for admission or for consideration of subsequent reapplication. In all cases, the applicant shall bear the applicant’s costs associated with the application, investigation and hearing;

(4) eight hundred dollars ($800.00) for all other applicants;

(5) later filing fees shall be assessed as follows:
  (a) fifty dollars ($50.00) if an application is filed within thirty (30) days of the filing deadline;
  (b) one hundred dollars ($100.00) if an application is filed within sixty (60) days of the filing deadline;
  (c) one hundred and fifty dollars ($150.00) if an application is filed within ninety (90) days of the filing deadline;
A. Definitions. As used in this rule:

(1) “public employee” means any officer, employee or servant of a governmental entity, excluding independent contractors;

(2) “governmental entity” means the state or any local public body as defined in subparagraphs (3) and (4) of this paragraph;

(3) “local public body” means all political subdivisions of this state and their agencies, instrumentalities and institutions;

(4) “[state or] “state agency” means the [state of New Mexico or] any of its branches, agencies, departments, boards, instrumentalities or institutions of the state of New Mexico.

B. Eligibility. Upon application, the clerk of the Supreme Court may issue a limited non-renewable one (1) year license to an attorney who:

(1) is admitted to practice law in another state, territory or protectorate of the United States or the District of Columbia;

(2) is in good standing to practice law in each state in which the attorney is licensed; and

(3) satisfies the limited license requirements set forth in this rule.

C. Application procedure. An applicant for a limited license to represent public defender clients or any governmental entity in this state shall file with the clerk of the Supreme Court an application for limited license which shall be accompanied by:

(1) a certificate of admission to practice and good standing from each state in which the applicant is licensed to practice bar but shall be subject to the Rules of Professional Conduct and rules of the Supreme Court of New Mexico and the New Mexico statutes relating to the conduct of attorneys; and

(2) a letter from the head of the governmental entity which has employed the applicant certifying employment with that governmental entity;

(3) a certificate signed by the applicant that the applicant has read and is familiar with the New Mexico Rules of Professional Conduct and rules of the Supreme Court of New Mexico and the New Mexico statutes relating to the conduct of attorneys; and

(4) a docket fee in the amount of one hundred twenty-five dollars ($125.00) payable to the New Mexico Supreme Court and disciplinary fee in the amount of one hundred thirty dollars ($130.00) payable to the Disciplinary Board.

All fees and costs associated with an application for limited license are not refundable.

D. License; issuance and revocation.

(1) If an applicant for a limited license to represent public defender clients or a governmental entity complies with the provisions of this rule, the clerk of the Supreme Court may issue a limited, one (1) year license to represent public defender clients or practice law as an employee of a governmental entity. This license shall not be renewed.

(2) A limited license issued pursuant to this rule only permits the licensee to practice law in New Mexico as a public employee representing public defender clients or a governmental entity.

(3) The clerk shall revoke the limited license of any person found in violation of these rules, any rule approved by the Supreme Court or any state or federal law. Upon revocation of a limited license, the applicant shall not appear in any court in this State as an attorney;

(4) failure of the limited licensee to take the next New Mexico bar examination for which the limited licensee is eligible.

(5) once a limited license expires or is revoked, an attorney who resides or maintains a legal residence in this state shall be subject to the Rules of Professional Conduct and rules of the Supreme Court of New Mexico and disciplinary rules approved by this Court.

E. Expiration. An attorney who is issued a limited license to represent public defender clients or practice law as an employee of a governmental entity shall take the next New Mexico bar examination for which the applicant is eligible. A limited license issued pursuant to this rule shall expire upon occurrence of the earliest of the following events:

(1) the expiration of one (1) year from the date of issuance by the New Mexico Supreme Court;

(2) notification that the applicant has failed the New Mexico bar exam;

(3) termination of employment with the governmental entity;

(4) failure of the limited licensee to take the next bar examination for which the limited licensee is eligible; or

(5) admission to the New Mexico Bar upon passing the bar examination.

F. Limited licensee status. An attorney granted a limited license pursuant to this rule shall not be a member of the state bar but shall be subject to the Rules of Professional Conduct and the Rules Governing Discipline. Licensees shall pay the annual disciplinary fee as part of the application process.

PROPOSED NEW RULE 15-301.2
15-301.2. Legal services limited license to practice law.

A. Definitions. As used in this rule:

(1) “qualified legal services provider” means a not for profit legal services organization whose primary purpose is to provide legal services to low income clients;

(2) “emeritus attorney” means any person, retired from any state in which the applicant is licensed to practice bar but shall be subject to the Rules of Professional Conduct and the Rules Governing Discipline. Licensees shall pay the annual disciplinary fee as part of the application process.
the highest court of New Mexico or any other state or territory of
the United States of America or the District of Columbia.

B. Eligibility. Upon application, the clerk of the Supreme
Court may issue a legal services limited license to represent legal
services clients through a qualified legal service provider to an
attorney who:

1. is admitted to practice law in another state or the
   District of Columbia;
2. is in good standing to practice law in each state in
   which the attorney is licensed;
3. satisfies the legal services limited license require-
   ments set forth in this rule, and
4. supplies a statement that the applicant has not been
   the subject of disciplinary action by the bar or courts of any ju-
   risdiction during the preceding five (5) years.

C. Application procedure. An applicant for a legal services
limited license to represent legal services clients through a quali-

fied legal services provider shall file with the clerk of the Supreme
Court an application for a legal services limited license which
shall be accompanied by:

1. a certificate of admission to practice and good stand-
   ing from each state in which the applicant is licensed to practice
   law;
2. a letter from the director of the legal services provider
   which has employed the applicant certifying applicant’s employ-
   ment;
3. a certificate signed by the applicant that the applicant
   has read and is familiar with the New Mexico Rules of Profes-
   sional Conduct and rules for the Supreme Court of New Mexico
   and the New Mexico Statutes relating to the conduct of attorneys;
4. a docket fee in the amount of one hundred twenty-
   five dollars ($125.00) payable to the New Mexico Supreme Court and
disciplinary fee in the amount of one hundred and thirty dollars
   ($130.00) payable to the disciplinary board.

All fees and costs associated with an application for legal
services limited license are not refundable.

D. License; issuance and revocation.
(1) If an applicant for a legal services limited license to
represent legal services clients through a qualified legal services
provider complies with the provisions of this rule, the clerk of
the Supreme Court may issue a legal services limited license.
(2) A legal services limited license issued pursuant to this
rule only permits the licensee to practice law in New Mexico as
an attorney representing legal services clients through a qualified
legal services provider.
(3) Under a legal services limited license, an emeritus
attorney, under the supervision of a supervising attorney, will be
allowed to provide legal services for legal service clients through
a qualified legal services provider.
(4) The clerk shall revoke the legal services limited
license if any person issued such license is found in violation
of these rules, any rule approved by the Supreme Court or any
state or federal law. Upon revocation of a legal services limited
license, the applicant shall not appear in any court in this State
as an attorney representing any legal services client.

E. Expiration. An attorney who is issued a legal services lim-
ited license to represent legal services clients through a qualified
legal services provider license shall expire upon occurrence of
any of the following events:

1. termination of employment with the qualified legal
   services provider;
OPINION

EDWARD L. CHÁVEZ, JUSTICE

{1} A jury convicted Defendant Tracy Johnson of two counts of first-degree felony murder, contrary to NMSA 1978, § 30-21(A)(2) (1994); armed robbery, contrary to NMSA 1978, § 30-16-2 (1973); conspiracy to commit armed robbery, contrary to NMSA 1978, § 30-28-2 (1979) and Section 30-16-2; possession of a firearm by a felon, contrary to NMSA 1978, § 30-7-16(A) (2001); and tampering with evidence, contrary to NMSA 1978, § 30-22-5 (1963, prior to 2003 amendment). We review Defendant’s convictions pursuant to Article VI, Section 2 of the New Mexico Constitu-


{2} Defendant argues the trial court violated his right to confront the witnesses against him when it admitted a tape recording of an unavailable accomplice’s custodial police interview, and that such error was not harmless beyond a reasonable doubt. Since Defendant filed this appeal, the United States Supreme Court decided Crawford v. Washington, 124 S. Ct. 1354 (2004), which held that out-of-court “testimonial” statements are inadmissible against a criminal defendant absent a showing of both “unavailability and a prior opportunity for cross-examination.” Id. at 1374. The State concedes the recording at issue in this case was admitted in violation of Defendant’s Sixth Amendment right of confrontation under Crawford. Although the State acknowledges this case “presents an extremely close call on the issue of harmless error,” the State asks that we decide this close case in its favor, on the basis that the improper admission of the accomplice statement was harmless beyond a reasonable doubt. However, because the accomplice’s inadmissible statement provided key evidence directly inculpating Defendant, and the remaining circumstantial evidence against him, although strong, was disputed, we conclude the error was not harmless with respect to all convictions except the conviction of tampering with evidence. Accordingly, we reverse Defendant’s convictions of felony murder, armed robbery, conspiracy to commit armed robbery, and felon in possession of a firearm, and we affirm Defendant’s conviction of tampering with evidence.

1. Background

{3} The two victims were beaten, robbed, and killed inside a residence belonging to one of them. One victim had been shot three times—once in the head, once in the chest, and once in the back—and had been struck in the head by a hard, curved object, consistent with a tire iron. The other victim had been shot twice—once in the head and once in the chest—and had also been struck in the head by a hard, curved object. A ballistics expert testified that all five bullets were fired from the same firearm. However, neither the murder weapon nor any of the items stolen from the house were ever recovered.

{4} It was undisputed at trial that on the evening of the killings, Defendant, along with acquaintances Jamall Young (“Young”), Coley Ingram (“Coley”), and Jeff Hoff (“Hoff”), returned to the victim’s house to purchase cocaine, where they had made a drug purchase earlier in the day with Coley’s brother, Wayne Ingram (“Wayne”). During this second drug transaction but prior to the commencement of the robbery, Defendant and Coley went by themselves into a bathroom, leaving Hoff and Young in the bedroom with the two victims. What occurred after these events is disputed, and the State’s theory is significantly different from Defendant’s.

{5} The State argued that, while in the bathroom, Defendant and Coley formed a conspiracy to commit armed robbery, then used a firearm and a tire iron to rob and
committing the robbery by urging him to
Coley out of committing a robbery. Further, the victims, but believed he had talked
at trial, directly supported by his own tes-
murder the two victims. Defendant’s theory
right of confrontation. We must address,
violation of Defendant’s Sixth Amendment
nity to cross-examine Young, the admission
cause Defendant did not have an opportu-
ticipated as an accomplice in the crimes.
Further, Young’s statement provided the
only direct evidence that Defendant himself
stole property from the victims.
II. Young’s Custodial Statement
A. Application of Crawford
[7] The State does not dispute that the tape
recording of Young’s police interview was
admitted in violation of Defendant’s Sixth
Amendment right of confrontation under
Crawford, which held that out-of-court
“testimonial” statements are inadmis-
sible unless there has been a showing of
“unavailability and a prior opportunity for
cross-examination.” 124 S. Ct. at 1374. The
Supreme Court did not decide, however, the
full scope of the term, “testimonial”:
We leave for another day any
effort to spell out a comprehen-
sive definition of “testimonial.”
Whatever else the term covers,
it applies at a minimum to
prior testimony at a preliminary
hearing, before a grand jury, or
at a former trial; and to police
interrogations. These are the
modern practices with closest
kinship to the abuses at which
the Confrontation Clause was
directed.
Id. (footnote omitted and emphasis added).
Because Young’s custodial interview falls
squarely within the class of “testimonial”
evidence under Crawford, 124 S. Ct. at
1365, we need not in this case attempt to
delineate more fully the scope of that term.
We simply hold that, under Crawford, be-
cause Defendant did not have an opportu-
nity to cross-examine Young, the admission
of Young’s statement constituted a per se
violation of Defendant’s Sixth Amendment
right of confrontation. We must address,
therefore, whether the violation was harm-
less in this case.
B. Principles of constitutional harm-
less error
[8] Except in cases involving “structural”
errors, which are subject to per se reversal, we
are bound to apply the harmless-error
analysis outlined in Chapman v. California,
386 U.S. 18, 24 (1967), to federal
constitutional errors. See Neder v. United States,
527 U.S. 1, 7-8, 15-16 (1999). In order to
conclude a non-structural constitutional
error does not require reversal, we must
conclude the error was “harmless beyond
a reasonable doubt.” Chapman, 386 U.S.
at 24. Underlying the Chapman analysis
is the acknowledgment “that there may be
some constitutional errors which in the
setting of a particular case are so unimportant
and insignificant that they may, consistent
with the Federal Constitution, be deemed
harmless, not requiring the automatic rever-
sal of the conviction.” Id. at 22. Thus, the
United States Supreme Court in Chapman
fashioned a rule that would balance the
Court’s inherent interest in vindicating fed-
eral constitutional guarantees against the
utility of blocking the traditional practice
of automatically “setting aside convictions
for small errors or defects that have little, if
any, likelihood of having changed the result
of the trial.” Id.
[9] The Court has articulated the
constitutional harmless-error standard variously
since Chapman was decided, but the central
focus of the Chapman inquiry has always
been “whether there is a reasonable pos-
sibility that the evidence complained of
might have contributed to the conviction.”
Id. at 23 (quotation marks and quoted au-
thority omitted). Stated differently, in
the context of an essential element that was
not presented to the jury, the reviewing court
must be able to “conclude beyond a reason-
able doubt that the jury verdict would have
been the same absent the error[.]” Neder,
527 U.S. at 19; see Sullivan v. Louisiana,
. . is not whether, in a trial that occurred
without the error, a guilty verdict would
surely have been rendered, but whether the
guilty verdict actually rendered in this trial
was surely unattributable to the error.”).
Once the constitutional error has been
established, the burden is on the State to
demonstrate the error is harmless beyond
a reasonable doubt. See Brecht v. Abra-
[10] In conducting this inquiry, the re-
viewing court must ever bear in mind that
criminal defendants have a constitutional
right to have a jury, not appellate court
judges on review, decide guilt or innocence.
See Sullivan, 508 U.S. at 279 (“[T]o hy-
pothesize a guilty verdict that was never
in fact rendered—no matter how inescap-
able the findings to support that verdict
might be—would violate the jury-trial
guarantee”).; cf. Rose v. Clark, 478 U.S.
570, 578 (1986) (noting that harmless-error
review does not apply where the judge
directs a verdict, because “the wrong entity
judged the defendant guilty”). Therefore,
it is imperative that a reviewing court be
guided not by its own assessment of the
guilt or innocence of the defendant—a
matter which is irrelevant to the question
whether the constitutional error might have
contributed to the jury’s verdict—but rather
by an objective reconstruction of the record
of evidence the jury either heard or should
have heard absent the error and a careful
examination of the error’s possible impact
on that evidence. See Yates v. Evatt,
500 U.S. 391, 404-05 (1991) (examining the
“probative force” of the constitutional error
against the “probative force” of the
evidence considered by the jury), overruled
on other grounds by Estelle v. McGuire,
502 U.S. 62, 73 n.4 (1991). If, at the end of
that examination, we conclude there is a reason-
able possibility the evidence complained of
might have contributed to the conviction,
we must reverse.
[11] In the specific context of a Confron-
tation Clause violation, as we are faced
with in this case, the Supreme Court in
Delaware v. Van Arsdall, 475 U.S. 673, 684
(1986), stated that the reviewing court must
examine various factors in conducting its
harmless-error inquiry:
These factors include the im-
portance of the witness’ tes-
timony in the prosecution’s
case, whether the testimony was
cumulative, the presence or ab-
source of evidence corroborating
or contradicting the testimony of
the witness on material points,
the extent of cross-examination
otherwise permitted, and, of
course, the overall strength of
the prosecution’s case.
We emphasize that constitutional er-
ror must not be deemed harmless solely
based on overwhelming evidence of the
defendant’s guilt; the overall strength of the
prosecution’s case is but one factor in our
harmless-error analysis. The central focus
of the inquiry, for which the Van Arsdall
factors are but a guide, is whether there
is a reasonable possibility the erroneous
C. Testimony admitted at trial

1. Testimony of Hoff

{12} Hoff testified that he was in the bedroom when Defendant and Coley left the room together. Hoff began to wonder what they were doing, and he left the room to look for them. Hoff found them in the bathroom discussing something. Defendant then told Hoff to “get out” and that they were “handling business.” After Defendant shut the bathroom door, Hoff stood by the door for about twenty seconds, trying to listen in on the conversation. Hoff could not make out what the two men were saying, but it sounded “like arguing, like maybe kind of anger.” It sounded as though “one person didn’t want to do it and one person did.” After about twenty seconds, Defendant and Coley came out of the bathroom and returned to the bedroom.

{13} During his direct examination, Hoff testified that as the two men entered the bedroom, Defendant said to the two victims, “[W]e’re gonna jack ya,” which Hoff interpreted to mean they were going to rob the two men. Hoff’s testimony on this point, however, was called into question on cross-examination: there, Hoff conceded that as the two men entered the bedroom when Defendant and Coley left, the house, Wayne was there. Hoff wanted to leave, so he picked up the telephone to call his mother for a ride home. Defendant told Hoff to hang up the phone and to walk home. Defendant then told Wayne to “watch” Hoff to ensure he does not “go to the cops.” After Defendant left the room, Hoff again used the telephone to call his mother. Hoff’s mother picked him up at the canal about a quarter of a mile away. Wayne walked into Hoff to the canal, where Hoff’s mother gave Wayne a ride to his destination.

2. Testimony of Wayne Ingram

{17} Wayne Ingram, although he was not present during the commission of any of the crimes, did spend portions of the evening with the other men as they drove around Carlsbad, including a stop at the victim’s house when the group first went there to purchase drugs. Wayne testified about a telephone call he received sometime after midnight on the night of the killings, allegedly sometime before the commencement of the robbery. During this call Wayne talked at different times both to his brother and to Defendant, and one of the two men asked Wayne where they could get a firearm. Wayne testified he could not recall which of the two men asked him about the firearm; however, he admitted that he had earlier told the police it was Defendant who asked the question. He also conceded during cross-examination, however, that he might have told the police it was Defendant rather than Coley because “I was trying to help my little brother.”

{18} Wayne also testified concerning the events that took place when the three men returned to Defendant’s house that morning, sometime around 4:00 or 5:00 a.m. Wayne had been asleep at Defendant’s house for a few hours, and was awakened when he heard Defendant, Young, and Hoff return. Wayne confirmed that one of the two men, Defendant or Young, asked him to “keep an eye on Hoff”; he could not recall, however, which of the two men said those words.

3. Testimony of Defendant

{19} Defendant testified at trial, directly contradicting both key testimony of Hoff and Wayne and facts asserted in Young’s police statement. Defendant testified that in the early morning hours, before the second trip to the victim’s house, Coley used the telephone to call Defendant’s house. Coley called to talk to Wayne, who was at Defendant’s house at the time, to tell him they were going to pick him up. Although Defendant also talked to his father during that call, he denied asking anyone about finding a gun.

{20} After the call, the four men drove to the house where the previous drug purchase had transpired. Defendant testified that he did not participate in either the robbery or the killings. According to Defendant, when the six men were in the bedroom ingesting cocaine, Coley called Defendant out of the bedroom to talk to him. Having stepped into the bathroom with Defendant, Coley asked Defendant how much money he had; Defendant replied he had fifty dollars. Coley then said, “[Y]ou know what . . . we don’t have to buy it, we can take it.” Defendant replied, “We don’t have to take it, we’re straight.” Coley appeared to relent, and the two men left the bathroom. As soon as they reached the bedroom, however, and to Defendant’s surprise, Coley pulled out a firearm and said to the victims, “[T]his is a jack.” He then turned to Hoff and asked, “[A]re you in or are you out?” Hoff replied, “I’m out,” and left the room.

{21} Defendant testified that when Coley pulled the gun out, he told Coley to put the gun away. Coley asked the two victims where the drugs were, but they repeatedly said there were no more drugs in the house. In response, Coley stated, “[D]on’t act stupid with me.” Coley then put the firearm into his pants and picked up a black tool box, which he threw at the two victims. The tool box fell open, and a tire iron fell out of the box. Coley grabbed the tire iron and used it to strike one of the victims.

{22} Defendant testified that when Young returned to the bedroom, Young went over to the other victim and started “beating him up.” Coley again demanded to know where the drugs were, and one of the victims responded, “[Y]ou’ve got all the dope[,] Coley, just take everything, I’m not going to say nothing.” Coley again struck both victims with the tire iron, and continued to demand to know where the drugs were. After Coley again pulled out the firearm, he then turned, pointed it, and fired at one of the victims. At this point Defendant ran out of the house.

{23} According to Defendant, during the robbery he repeatedly told Coley to put
away the firearm, and at no point did Defendant himself wield either the firearm or the tire iron. Defendant also testified that at no point did he agree to participate in, assist, or encourage the robbery in any way. He asserted that it was Coley alone who struck the two victims with the tire iron and shot them with the firearm. Defendant established that Coley was a large man, approximately six feet, two inches tall and 270 pounds, and that by comparison Defendant was much smaller—five feet, six inches tall and 170 pounds. When asked why he did not physically attempt to stop Coley from committing the armed robbery, Defendant replied, “How am I going to stop Coley? What am I going to do? All I could tell him is put the . . . gun down . . . . I can’t—I’m not going to wrestle with him for the gun, I’m not going to attack him.”

{24} Defendant testified that he did not remove any property from the victim’s house. After the shootings, they ran out of the house, but Coley stayed behind, saying that he was going to “clean up this mess.” On the ride back to Defendant’s house, Hoff asked what had happened, and Defendant responded, “Coley shot them fools.” There was no further discussion on the way back to Defendant’s house.

{25} When they arrived at Defendant’s house, Defendant denied both telling Hoff to hang up the telephone and telling Wayne to watch Hoff. He explained by testifying that his father, who was at the house, wanted Wayne to leave. Hoff had just used the telephone to call his mother to come pick him up, and so Defendant told Wayne to get a ride with Hoff.

{26} Finally, Defendant testified that none of the stolen property was taken into his father’s house. Rather, he drove the car from his father’s house to “the Flume area,” where the car got stuck in the sand. As they tried to extricate the car from the sand, Defendant told Young to remove the stolen property from the car. At this point, Defendant saw Young make several trips with the property to a location somewhere in the area.

4. Impermissible evidence—Young’s tape-recorded statement to the police

{27} According to Young’s erroneously admitted statement, just before the armed robbery commenced, Young was in the bedroom when Coley and Defendant left the room together. When Defendant and Coley returned to the bedroom, Defendant was carrying a firearm, and Coley was pulling a tire iron out of his pants. Young was somewhat equivocal on this point, and he conceded to the police that the weapons may have been reversed when they entered the room: the firearm may have been in Coley’s hand and the tire iron in Defendant’s. Despite this equivocation, Young’s statement indicates that he witnessed Defendant wielding the firearm at some point during the ordeal.

{28} Upon entering the bedroom, Coley said to the victims: “this is a jack” or “we’re going to jack you.” Coley then turned to Young and Hoff and asked, “Are you in or out?” In response, Hoff immediately left, but Young, tacitly agreeing to participate in the robbery, began taking personal property from the house out to the car. Young also admitted that at one point he struck one of the victims with his fist, denying that he himself had wielded either the firearm or the tire iron.

{29} Young made several trips out to the car with stolen property. At one point, when he returned to the house, Young stated that “the weapons had changed,” and that Coley was holding the firearm and Defendant was holding the tire iron. Later, when Young was again outside at the car, Young heard several gunshots report from the house. Young went back into the house, where he saw Defendant and Coley both grabbing items from the room. Defendant and Coley then said, “[L]et’s go, let’s go, let’s go,” and the three men left the house. After a brief argument, Coley decided to stay behind, and Defendant and Young got into the car with Hoff and left. Young did not mention what happened to the stolen goods after the three men drove away.

{30} Young’s statement confirmed that Wayne was at Defendant’s house when the three men arrived. Young’s statement also confirmed that Hoff used the telephone at one point, and that Hoff and Wayne left the house together. However, Young did not mention Defendant or anyone else telling Hoff not to use the phone or telling Wayne to “watch” Hoff. Finally, Young stated that he and Defendant drove to “the Flumes,” where the car got stuck in the sand.

D. Discussion

{31} Because our harmless-error analysis instructs that “error may be prejudicial with respect to one conviction, but harmless with respect to another,” we review the effect of Young’s statement with respect to each conviction separately. Clark v. State, 112 N.M. 485, 487, 816 P.2d 1107, 1109 (1991).

1. Armed robbery

{32} “Robbery consists of the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.” Section 30-16-2. A conviction of armed robbery requires that the defendant commit robbery “while armed with a deadly weapon.” Id. Under this theory, the State was required to prove, in relevant part: (1) Defendant took and carried away property from the victims or from their immediate control, intending to permanently deprive them of the property; (2) Defendant was armed with a firearm or tire iron; and (3) Defendant took the property by force or violence. See UJI 14-1621 NMRA 2004 (defining elements of armed robbery). Here, Hoff did not see Defendant holding either the firearm or the tire iron, and Defendant denied holding either weapon. Thus, Young’s statement provided the only direct evidence at trial that “Defendant took and carried away property,” that he “was armed with a firearm or tire iron,” and that he “took the property by force or violence.” Because Young’s statement provided the only direct evidence of guilt with respect to this theory of armed robbery, we conclude there is a reasonable possibility that its erroneous admission contributed to the verdict.

{33} The jury, however, was also instructed under a theory of accomplice liability for armed robbery; therefore, we apply our harmless-error analysis to that conviction as well. See NMRA 1978, § 30-1-13 (1972) (“A person may be charged with and convicted of the crime as an accessory if he procures, counsels, aids or abets in its commission . . . although he did not directly commit the crime[.]”). To convict Defendant under a theory of accomplice liability for armed robbery, the State in this case was required to prove, in relevant part: (1) Defendant intended that the armed robbery be committed; (2) the armed robbery was committed; and (3) Defendant helped, encouraged, or caused the armed robbery to be committed. See UJI 14-2822 NMRA 2004 (defining elements of accessory to a crime other than attempt and felony murder). It was undisputed at trial that Defendant’s alleged accomplice, Coley, committed armed robbery, thus satisfying the second element. We therefore review whether Young’s statement was harmless beyond a reasonable doubt with respect to the first and third elements.

{34} Accomplice liability requires that the defendant “share the criminal intent of the principal. There must be community of purpose, partnership in the unlawful undertaking.” State v. Ochoa, 41 N.M. 589, 599,
72 P.2d 609, 615 (1937). Indicia of such criminal intent “may be as broad and varied as are the means of communicating thought from one individual to another.” Id. Nevertheless, “[m]ere presence, of course, and even mental appraisal, if unaccompanied by outward manifestation or expression of such approval, is insufficient.” Id.

{35} The State concedes this case “presents an extremely close call on the issue of harmless error.” The State argues, however, even discarding Young’s statement, the other evidence of Defendant’s intent to commit armed robbery was so overwhelming, and the impact of Young’s statement so miniscule by comparison, that it could not possibly have contributed to the verdict. See State v. Moore, 94 N.M. 503, 504, 612 P.2d 1314, 1315 (1980) (outlining a three-prong test to determine whether an evidentiary error was harmless).

{36} In this case, we cannot conclude beyond a reasonable doubt that Young’s direct, eyewitness account was “so unimportant and insignificant” that it could not have contributed to the verdict. Chapman, 386 U.S. at 22. While there is much other circumstantial evidence from which reasonable inferences of Defendant’s guilt might have been derived, Young’s statement provides the direct evidence of Defendant’s intent to commit armed robbery that rendered such inferences unnecessary. Because Hoff did not at any time see Defendant holding either a firearm or a tire iron, Young’s statement provided the only direct evidence that Defendant was armed. Because Hoff did not at any time see Defendant in possession of any of the stolen property, Young’s statement provided the only direct evidence that Defendant took or helped take the stolen items. Either of these facts, if believed, conclusively inculpates Defendant as an accomplice to the armed robbery, because either fact conclusively establishes Defendant’s intent to commit armed robbery. With respect to the first Van Arsdall factor, therefore, Young’s statement was of central importance to the prosecution’s case against him on the charge of armed robbery.

{37} Regarding the second Van Arsdall factor, the State argues that portions of Young’s statement were merely cumulative of Hoff’s testimony on the same points, and therefore harmless beyond a reasonable doubt. See State v. Woodward, 121 N.M. 1, 10, 908 P.2d 231, 240 (1995) (“The erroneous admission of cumulative evidence is harmless error because it does not prejudice the defendant.”). First, however, whether evidence is cumulative is merely one factor in the “host of factors” outlined in Van Arsdall, 475 U.S. at 684. Therefore, improperly admitted evidence that is cumulative is not ipso facto harmless beyond a reasonable doubt: the reviewing court must further inquire into the effect that evidence might have had on the jury’s verdict. Second, we clarify that when determining whether certain erroneously admitted evidence is “cumulative,” the reviewing court must carefully assess the degree to which that evidence corroborated other similar evidence of the defendant’s guilt. To the extent the evidence corroborates, and therefore strengthens, the prosecution’s evidence, it cannot be deemed “cumulative” as we understand that term.

{38} Black’s Law Dictionary defines “cumulative evidence” as “additional evidence of the same character existing and that supports a fact established by the existing evidence (esp. that which does not need further support).” Black’s Law Dictionary 577 (7th ed. 1999). We agree with the following articulation of the scope of the term:

Cumulative evidence is additional evidence of the same point as other evidence already given; evidence of other and different circumstances tending to establish or disprove the same fact is not cumulative; nor is evidence of facts tending to prove circumstantially the existence of a fact cumulative to evidence which tends to establish the same fact directly. State v. Harris, 64 S.W.2d 256, 258 (Mo. 1933) (quotation marks and quoted authority omitted) (holding it was reversible error for trial court to exclude the defendant’s alibi evidence on the basis that it was cumulative). Because direct evidence is of a different character than circumstantial evidence, we cannot deem evidence that tends directly to prove a particular fact cumulative of other evidence that tends to prove that same fact circumstantially.

{39} Further, we must carefully evaluate the degree to which the inadmissible evidence might have operated to corroborate other similar evidence of guilt. The distinction has been articulated thus: [c]orroborative evidence tends to corroborate or to confirm, whereas cumulative evidence merely augments or tends to establish a point already proved by other evidence. State v. Kennedy, 592 P.2d 1288, 1292 (Ariz. Ct. App. 1979) (emphasis added). The probative force—and therefore the possible prejudicial effect—of a particular piece of evidence tends to decrease the more redundant that evidence is in the context of other similar evidence. Therefore, only in very clear instances of accumulated evidence—who the evidence is so redundant that its corroborative effect is negligible—should the improper admission or exclusion of one accretion of such evidence be considered “cumulative” for purposes of our harmless-error analysis.

{40} The key element in this analysis is the degree to which the erroneously admitted evidence strengthened or corroborated the other evidence of guilt. If, for example, there were three pieces of properly admitted evidence of the same character supporting the same finding of fact, the erroneous introduction of a fourth might be properly deemed cumulative, in the sense that its admission would almost certainly have a negligible corroborative effect upon the other similar evidence. See State v. Lopez, 2000-NMSC-003, ¶ 21, 128 N.M. 410, 993 P.2d 727 (holding that improper testimony was cumulative of testimony of three other witnesses, who each “described substantially the same events, same statements, and same description” of the crime scene, and therefore harmless beyond a reasonable doubt); State v. Worley, 100 N.M. 720, 725, 676 P.2d 247, 252 (1984) (holding that the inferences that might have been drawn from the silence of a codefendant not subject to cross-examination were cumulative of testimony provided by three eyewitnesses, and therefore harmless constitutional error). On the other hand, were there only one other piece of admissible evidence of the same character supporting the same finding, the inadmissible evidence in that case would clearly have had, if believed, a greater corroborative effect. Regardless of whether there exists other properly admitted evidence to support the same factual finding, therefore, the correct inquiry is whether the erroneously admitted evidence was “so unimportant and insignificant,” Chapman, 386 U.S. at 22, that its corroborative effect upon other evidence of guilt was negligible.

{41} Here, certain portions of Young’s statement, viewed in isolation, were arguably cumulative. The two admissible eyewitness accounts—Hoff’s and Defendant’s—establish that Defendant had a discussion with Coley in the bathroom immediately prior to the commencement of the armed robbery. Both accounts agree
that Defendant returned to the bedroom with Coley and remained with him during the entire criminal episode. Finally, both accounts agree that Defendant drove the vehicle containing the stolen property away from the crime scene. Because Defendant does not contest these particular facts, the corroborative effect of Young’s statement on these points was negligible. Therefore, we may conclude that Young’s additional eyewitness support on these points was cumulative.

{42} Ultimately, however, the prejudicial portions of Young’s statement are not those which are uncontradicted and corroborated by multiple other sources, but those which are in dispute and which provide strong direct evidence that Defendant intended the armed robbery to be committed. Young’s statement provides the only direct evidence at trial that Defendant (1) threatened the victims with a weapon during the robbery, (2) grabbed the victims’ property, and (3) assisted Coley in carrying out the robbery. Contradicting this direct evidence, Defendant testified that he did not at any time hold either the firearm or tire iron, that he never touched any of the stolen items, and that he actively tried to persuade Coley to put away the firearm. While Defendant admitted remaining in the bedroom with Coley, Defendant directly disputed those portions of Young’s statement that indicate Defendant intended the armed robbery to be committed and that he assisted Coley in committing the robbery. Defendant’s testimony directly contradicted critical portions of Young’s statement, a fact which bears on our analysis of the third Van Arsdall factor, “the presence or absence of evidence . . . contradicting the testimony of the witness on material points[.]” Van Arsdall, 475 U.S. at 684.

{43} On this point, the State asks that we not attach too much significance to Defendant’s testimony because he presented no additional conflicting evidence to discredit the prosecution’s case, and because the jury was free to disregard Defendant’s “rather expected version of the events.” As an appellate court, however, we are not in a position to judge the credibility or weight of Defendant’s testimony. If it were otherwise, we would “become in effect a second jury to determine whether the defendant is guilty.” Neder, 527 U.S. at 19 (quotation marks and quoted authority omitted). Instead, the correct inquiry is whether there exists a reasonable possibility the evidence complained of might have contributed to the jury’s verdict. Defendant offered testimony which, if believed, directly contradicts crucial facts necessary for a determination that he intended the armed robbery to be committed. We cannot say, therefore, that the erroneous admission of Young’s statement was harmless beyond a reasonable doubt.

{44} Arguably, one could cobble together sufficient evidence, essentially uncontested, to conclude the jury might have convicted Defendant as an accomplice to armed robbery even without considering Young’s statement. The undisputed evidence that Defendant discussed robbing the two men with Coley in the bathroom, that Defendant remained in the room with Coley while the armed robbery was committed, and that Defendant drove the vehicle containing the stolen property gives rise to a reasonable inference that Defendant intended the armed robbery to be committed. We sharply distinguish, however, review for sufficiency of evidence from harmless-error review. In reviewing whether constitutional error is harmless, we do not indulge all reasonable inferences tending to show guilt. On the contrary, we examine “whether the record contains evidence that could rationally lead” to a verdict of not guilty. Neder, 527 U.S. at 19.

{45} Further, we emphasize that for purposes of harmless-error review, we review not the case the State might have presented, but the case the jury actually heard. See Sullivan, 508 U.S. at 279. Specifically, we inquire whether the erroneously admitted evidence possibly influenced the evidence the jury actually considered, not some hypothetical pattern of evidence pieced together after the fact. In this case, the State’s particular relevance at trial on Young’s overwhelmingly inculpatory statement further mitigates in favor of a new trial. The prosecutor concluded his closing statement to the jury as follows:

Ladies and gentlemen, I know you have your own recollection of this evidence. The key importance is the statement that was made by Jamal[[]] Young against him. Not only does that statement corroborate everything that Hoff tells you, but it implicates [Defendant] in everything that they did. Everything. In for a penny, in for a pound.

It should be no surprise that the case actually presented to the jury relied so heavily on Young’s statement. The prosecutor knew that Young’s statement, standing by itself, would have been sufficient to convict Defendant of armed robbery: Young’s account directly puts a gun in Defendant’s hand and stolen goods in his pocket. This is the case the jury actually heard, and Young’s statement lies at its core. We cannot conclude beyond a reasonable doubt that this evidence, which the jury actually heard, was of so little consequence that it did not contribute to the verdict.

2. Felony murder

{46} Felony murder consists of “the killing of one human being by another without lawful justification or excuse, by any of the means with which death may be caused . . . in the commission of or attempt to commit any felony[].” Section 30-2-1(A)(2). Our case law regarding felony murder states an additional mens rea element that must be proved to the jury beyond a reasonable doubt: “an intent to kill or an intent to do an act greatly dangerous to the lives of others or with knowledge that the act creates a strong probability of death or great bodily harm.” State v. Ortega, 112 N.M. 554, 565, 817 P.2d 1196, 1207 (1991). Here, armed robbery was the predicate felony for the felony-murder charge, and the State prosecuted Defendant for felony murder under a theory of accomplice liability.

{47} It was undisputed that Defendant’s alleged accomplice, Coley, committed armed robbery “under circumstances or in a manner dangerous to human life” and that the victims were killed in the course of the armed robbery. See UJI 14-2821 NMRA 2004 (defining elements of accessory to felony murder). Therefore, the State in this case was required to prove, for each count of felony murder, the following four elements: (1) Defendant helped, encouraged or caused the felony of armed robbery to be committed; (2) Defendant intended that the armed robbery be committed; (3) Defendant helped, encouraged, or caused the killings to be committed; and (4) Defendant knew that he was helping to create a strong probability of death or great bodily harm. See id. Defendant disputed all four of these elements at trial.

{48} Because we have concluded that Young’s statement was not harmless beyond a reasonable doubt with respect to Defendant’s intent that armed robbery be committed, we must also conclude the statement was prejudicial with respect to his felony-murder conviction, based as it is on the underlying felony of armed robbery. In addition, we note that, because Young’s statement provided the only direct evidence that Defendant wielded the firearm or the tire iron—evidence that was directly
rebutted by Defendant’s testimony—we conclude that Young’s statement was also prejudicial with respect to the jury’s determinations that Defendant helped, encouraged, or caused the killings to be committed and that Defendant knew that he was helping to create a strong probability of death or great bodily harm.

3. Conspiracy to commit armed robbery

{49} “Conspiracy consists of knowingly combining with another for the purpose of committing a felony within or without this state.” Section 30-28-2. An overt act is not required; the crime is complete when the felonious agreement is reached. State v. Davis, 92 N.M. 341, 344, 587 P.2d 1352, 1355 (Ct. App. 1978). Such an agreement need not be proven by direct evidence; the agreement may be in the form of a mutually implied understanding and may be inferred from circumstantial evidence. Id. at 342, 587 P.2d at 1353. There being no dispute about Coley’s intent to commit armed robbery, the State was required to prove beyond a reasonable doubt both (1) that Defendant intended to commit armed robbery, and (2) that Defendant entered into an agreement with Coley to commit armed robbery.1 See UJI 14-2810 NMRA 2004 (defining elements of conspiracy).

{50} Our harmless-error analysis of the armed-robbery conviction above applies also to these two elements of conspiracy. While Defendant admits he was in the bathroom with Coley when Coley proposed the robbery, Defendant directly disputed the State’s theory of the substance of that discussion when he testified that he did not agree to join in the robbery—indeed, that he thought he had persuaded Coley against it. We note that Hoff’s testimony tended to corroborate Defendant’s account of the bathroom conversation when Hoff said it sounded as though “one person didn’t want to do it and one person did.” Hoff’s and Defendant’s testimony on this point, if believed, would lead to a rational conclusion that Defendant had not entered into an agreement at this stage. Such a conclusion would thus heighten the importance of Young’s statement with respect to the jury’s determination that Defendant entered into an agreement with Coley to commit armed robbery: Young’s statement provided strong direct evidence that Defendant both intended to commit armed robbery and joined with Coley in committing the armed robbery. Therefore, we cannot say its erroneous admission was harmless beyond a reasonable doubt with respect to this conviction.

4. Possession of a firearm by a felon

{51} “It is unlawful for a felon to receive, transport or possess any firearm . . . in this state.” Section 30-7-16(A). There being no dispute that Defendant, in the preceding ten years, had been convicted and sentenced to one or more years imprisonment, the State was required to prove that Defendant possessed a firearm at some point during the criminal episode. See UJI 14-701 NMRA 2004 (defining elements of possession of a firearm by a felon). Hoff did not at any time see Defendant holding a firearm. Young’s statement that he saw Defendant at one time holding the gun provides the only direct evidence that Defendant possessed a firearm. Further, Defendant expressly denied ever holding a firearm, providing evidence directly contradicting the State’s otherwise circumstantial case. Young’s statement providing both (1) the only direct evidence offered at trial that Defendant possessed a firearm and (2) strong circumstantial evidence from which it may be reasonably inferred that Defendant possessed a firearm, Young’s statement almost surely contributed to this verdict. Therefore, its erroneous admission was not harmless beyond a reasonable doubt.

5. Tampering with evidence

{52} “Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.” Section 30-22-5. Under a theory of liability as a principal, the State would be required to prove, in relevant part: (1) Defendant “destroyed or placed” the property taken from the victims; and (2) Defendant intended to prevent his apprehension, prosecution or conviction. See UJI 14-2241 NMRA 2004 (defining elements of tampering with evidence). Because the jury was instructed on a theory of accomplice liability for this charge, however, the State was required to prove at trial: (1) Defendant intended that the crime of tampering with evidence be committed; (2) the crime was committed; and (3) Defendant helped, encouraged, or caused the crime to be committed. See UJI 14-2822 (defining elements of accessory to a crime other than attempt and felony murder).

{53} Young’s statement is silent with respect to what happened ultimately to the stolen property and whether Defendant had a role in disposing of any physical evidence. Because Young’s statement did not serve to strengthen or corroborate the other evidence of guilt, we conclude its erroneous admission was harmless beyond a reasonable doubt with respect to this conviction.

{54} Because Defendant also asserts there is insufficient evidence in the record to sustain this conviction, we review “whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction.” State v. Sutphin, 107 N.M. 126, 131, 753 P.2d 1314, 1319 (1988) (describing the standard of review for sufficiency of evidence); see also State v. Garcia, 114 N.M. 269, 273-74, 837 P.2d 862, 866-67 (1992) (emphasizing the requisite scrutiny to be applied). Defendant’s own testimony indicated his intent that the physical evidence be “placed” when he directed Young to remove the stolen property from the car, thus satisfying the first element of accomplice liability. Although Defendant testified he did not know what happened to the stolen property, Defendant did testify that he saw Young taking the stolen property from the car to another location. The other circumstantial evidence leads to a reasonable inference Young moved the evidence with the intent to prevent his apprehension, prosecution, or conviction, thus satisfying the second element. Finally, Defendant

1 The State argues that Crawford does not apply to Defendant’s conviction of conspiracy, on the ground that Coley’s declaration of a “jack move” in Defendant’s presence was one made in furtherance of a conspiracy and therefore not testimonial. See Crawford, 124 S. Ct. at 1367 (noting that the category of statements in furtherance of a conspiracy was an established hearsay exception by 1791, and that such statements are not testimonial). Because Coley’s declaration of a “jack move” is not testimonial under Crawford, the State argues it was not erroneously admitted. However, the State does not account for the hearsay-within-hearsay problem: Coley’s declaration of a “jack move” appears within the broader narrative of Young’s statement to the police, and it is this statement, in its entirety, that Crawford prohibits.
testified he drove the car from his father’s house to “the Flume area” with the specific purpose of disposing of the stolen property, satisfying the third element. viewing the evidence in the light most favorable to the State, resolving all conflicts and indulging all permissible inferences favors the verdict, see id., the State has presented sufficient evidence to support a verdict that Defendant committed tampering with evidence under a theory of accomplice liability.

III. Conclusion

{55} We reverse Defendant’s convictions of conspiracy to commit armed robbery, armed robbery, felony murder, and felony in possession of a firearm, and remand for a new trial. We affirm Defendant’s conviction of tampering with evidence.

{56} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Justice

WE CONCUR:
PETRA JIMENEZ MAES, Chief Justice
PAMELA B. MINZNER, Justice
RICHARD C. BOSSON, Justice
PATRICIO M. SERNA, Justice (concurring in part and dissenting in part)

PATRICIO M. SERNA, Justice (concurring in part, dissenting in part)

{57} I concur with the majority’s application of Crawford v. Washington, 124 S. Ct. 1354 (2004) to Young’s out-of-court testimonial statement. I also concur with remanding for a new trial on Defendant’s conviction of felon in possession of a firearm and with affirming Defendant’s conviction of tampering with evidence. However, I respectfully disagree with the discussion of harmless error. Applying the harmless error standard articulated by the United States Supreme Court, I would affirm Defendant’s convictions of felony murder1 and conspiracy.

{58} The majority discusses at length the meaning of cumulative evidence in the context of harmless error. The majority modifies this Court’s prior understanding of cumulative evidence by concluding that, in order to be cumulative, evidence must have no corroborative effect, or only a “negligible” effect, on other evidence of guilt. I respectfully disagree with this analysis. The United States Supreme Court has explained that one factor relevant to a constitutional harmless error inquiry is whether the erroneously admitted evidence is cumulative to properly admitted evidence. Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986). New Mexico courts have repeatedly adhered to the general rule that the erroneous admission of cumulative evidence does not prejudice the defendant and is harmless beyond a reasonable doubt. State v. Woodward, 121 N.M. 1, 10, 908 P.2d 231, 240 (1995); accord, e.g., State v. Lopez, 2000-NMSC-003, ¶ 20, 128 N.M. 410, 993 P.2d 727 (applying Woodward to a Confrontation Clause violation); State v. Martinez, 1999-NMSC-018, ¶ 25, 127 N.M. 207, 979 P.2d 718 (applying Woodward to a constitutional violation); State v. Martinez, 1996-NMCA-109, ¶¶ 19-20, 122 N.M. 476, 927 P.2d 31 (applying Van Arsdall and Woodward to a Confrontation Clause violation and noting the cumulative nature of the evidence). I am unable to find any indication in Van Arsdall, or subsequent cases, that the Supreme Court’s reference to cumulative evidence meant that, in order to be harmless, the evidence must be cumulative to evidence that is itself already cumulative. As the majority notes, the term cumulative simply means additional evidence of a similar character as existing evidence. The definition of this term requires duplication; it does not, in my view, require triplication or quadruplication, as the majority seems to suggest. I agree that not every instance of cumulative evidence can be considered harmless, but I respectfully disagree that harmlessness based on cumulative evidence is limited to “very clear instances of accumulated evidence.” Majority opinion, ¶ 39. I respectfully do not believe this to have been the Supreme Court’s intended meaning of cumulative evidence.

{59} Our cases have uniformly accepted the rationale that cumulative evidence does not cause prejudice. The majority rejects this principle based on the possibility that the erroneously admitted evidence may have had a corroborative effect on the properly admitted evidence. I respectfully believe that this rationale conflicts with the harmless error standard established by the Supreme Court, which is binding on this Court in our application of the Confrontation Clause. Under Neder v. United States, 527 U.S. 1, 18 (1999), appellate courts faced with a Confrontation Clause violation must answer the following question in assessing whether the error was harmless as a matter of federal constitutional law: “Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?” This standard establishes an objective measure of harmless error under which we must evaluate the effect of a constitutional error by looking to a rational jury’s evaluation of the properly admitted evidence. This standard does not contemplate an appellate reconstruction of the jury’s deliberations to determine whether the jury based its decision on a particular piece of evidence. As a result, it is not necessary to speculate about a potential corroborative effect that the improperly admitted evidence had on the properly admitted evidence. By requiring inquiry “into the effect that evidence might have had on the jury’s verdict,” Majority opinion, ¶ 37, the majority applies a harmless error approach that has been specifically rejected by the Supreme Court.

{60} Under the Neder standard, the notion of corroboration has a different significance. If the improperly admitted evidence is corroborated by properly admitted evidence, then the importance of the improperly admitted evidence is diminished; the corroborating evidence supports the same verdict by a rational jury without reference to the improperly admitted evidence as the verdict reached by the actual jury with the improperly admitted evidence. Thus, contrary to the use of the notion of corroboration in the majority opinion, the existence of evidence corroborating the improperly admitted evidence makes it more likely that the error will be deemed harmless. See Idaho v. Wright, 497 U.S. 805, 823 (1990); Van Arsdall, 475 U.S. at 684; see also State v. Ross, 1996-NMCA-031, 122 N.M. 15, 27, 919 P.2d 1080, 1092.

{61} Relying on what I believe to be a mistaken view of corroboration in the context of harmless error, and focusing on the impact of the impugned evidence on the jury’s actual deliberations, the majority determines that harmless error effectively requires that the improper

1The State concedes that the conviction of armed robbery would merge with the conviction of felony murder if the latter conviction were to be affirmed.
evidence not strengthen or corroborate other evidence of guilt “[r]egardless of whether there exists other properly admitted evidence to support the same factual finding.” Majority opinion, ¶ 40. Not only does this new description of harmless error conflict with Neder, I believe it also requires the State to prove the impossible. All evidence offered by the prosecution in a criminal trial, if properly admitted by the trial court, will to some degree strengthen or corroborate the evidence of guilt. In order to be admissible, the prosecution’s evidence must be relevant, and by definition, relevant evidence has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 11-401 NMRA 2004. In my view, this new standard adopted by the majority effectively creates a rule of automatic reversal for Crawford-type errors, contrary to binding precedent from the United States Supreme Court.

{62} In this case, there is no question that Young’s statement was important to the prosecution. However, most of Young’s statement was cumulative to or corroborated by other evidence, much of which came from Defendant himself. The only part of Young’s statement that was neither cumulative to nor corroborated by other evidence is the assertion that Defendant held the gun at some point during the robbery. This part of the statement was critical for the conviction of felon in possession of a firearm, making the error prejudicial with respect to this count, but it was simply not necessary to Defendant’s culpability for felony murder as an accessory. The State did not have to prove that Defendant shot the gun, held the gun, or even wielded the tire iron in order for the jury to find that Defendant helped, encouraged, or caused the crime to be committed. Young’s statements that Defendant and Coley Ingram went into the bathroom in the victim’s house prior to the robbery, that Coley asked Hoff whether he was in or out, that Hoff left in response to this question, and that a tire iron and gun were both used in the robbery are cumulative to Hoff’s testimony, Defendant’s testimony, and the physical evidence from the victims’ autopsies. This evidence establishes that Defendant discussed the robbery with Coley, that he had prior knowledge of Coley’s intent to commit a robbery, and that, like Hoff, he had an opportunity to extricate himself from the robbery prior to its commission and after he became aware that Coley had a gun. The use of two weapons also supports a reasonable inference that there were multiple perpetrators of the crime.

{63} Other portions of Young’s statement, those more generally implicating Defendant as a participant in the robbery and killing, in contrast to the specific statement that Defendant held the gun, are cumulative to some evidence and corroborated by a great deal of other evidence. Most significantly, Young’s statement implicating Defendant as a participant in the crime is cumulative to Defendant’s confession to Hoff. Although the majority describes Young’s statement as “the only direct evidence that Defendant . . . participated as an accomplice in the crimes,” Majority opinion, ¶ 6, Defendant’s confession to Hoff is direct evidence of guilt. Defendant’s confession was properly admitted evidence that was before the jury in this case. Hoff testified that Defendant told him either that Defendant or Defendant and Coley together “smoke[d]” the victims and that Defendant bragged about being a gangster as a result of the killings. Hoff further testified that, at the time of the killings, he and Defendant were friends and Coley was merely an associate of two of his friends, Defendant and Young. Hoff also testified that he remembered the incident clearly and, on rebuttal, that he was certain Defendant had not said that Coley was the one who had killed the victims. A confession of guilt by the defendant has “a profound impact” on the jury. Arizona v. Fulminante, 499 U.S. 279, 296 (1991).

{64} Other evidence also corroborated Defendant’s participation in the crime. In his testimony before the jury, Defendant conceded that, a short time after the crime, he untruthfully told police officers that he was not at the victims’ house at the time of the robbery and murder. This admitted lie to the police not only served to undermine Defendant’s credibility but also constituted substantive evidence of a consciousness of guilt. See State v. Faubion, 1998-NMCA-095, ¶ 13, 125 N.M. 670, 964 P.2d 834 (stating that lies to the police are evidence of consciousness of guilt); State v. Lujan, 103 N.M. 667, 674, 712 P.2d 13, 20 (Ct. App. 1985) (similar). As with Defendant’s confession to Hoff, this admission to the police containing false information regarding the details of the crime and manifesting a consciousness of guilt is direct evidence of Defendant’s participation in the crime aside from Young’s statement. See State v. Wheeler, 802 S.W.2d 517, 519 (Mo. Ct. App. 1989).

The jury also had a second, independent evidentiary basis to find a consciousness of guilt. The jury found beyond a reasonable doubt that Defendant tampered with evidence of the robbery, and this Court has determined that this conviction is supported by substantial evidence and is not tainted by Young’s statement. Tampering with evidence after the fact constitutes evidence of a consciousness of guilt for the earlier crime. State v. Martinez-Rodriguez, 2001-NMSC-029, ¶ 24, 131 N.M. 47, 33 P.3d 267. “[T]he state of mind that is characterized as guilty consciousness or consciousness of guilt is strong evidence that the person is indeed guilty.” State v. Robertson, 760 A.2d 82, 99 (Conn. 2000) (quotation marks and quoted authority omitted) (alteration in original); accord Torres v. State, 794 S.W.2d 596, 598 (Tex. App. 1990) (“A ‘consciousness of guilt’ is perhaps one of the strongest kinds of evidence of guilt. It is consequently a well accepted principle that any conduct on the part of a person accused of a crime subsequent to its commission, which indicates a ‘consciousness of guilt’ may be received as a circumstance tending to prove that he [or she] committed the act with which he [or she] is charged.”) (quotation marks and quoted authority omitted).

{65} Additionally, two witnesses testified about Defendant’s actions after the crime. In addition to relating Defendant’s confession, Hoff testified that Defendant exited the house with Coley and Young and that Defendant had a “[v]ery calm” demeanor. Hoff also testified that when they returned to Defendant’s house Defendant told him to hang up the phone and instructed Wayne Ingram to watch him to make sure he did not report the crime to the police. Defendant conceded that he, and not Young, told Wayne to leave with Hoff, although he denied telling him to watch Hoff, and Wayne corroborated Hoff’s testimony by confirming that he was instructed to “keep an eye on Hoff.” This testimony from two witnesses establishes that Defendant attempted to prevent the report of the crime, which again demonstrates a consciousness of guilt. The absence of Young’s statement, which did not include
the subject of Wayne being told to leave or watch Hoff, would not affect a rational jury’s assessment of this evidence.

{66} In contrast to the abundant evidence corroborating Young’s description of Defendant’s participation in the robbery and murders, the only evidence conflicting with Young’s statement is Defendant’s self-serving, uncorroborated testimony. However, Defendant’s testimony was undermined both by his prior inconsistent statements and by the improbability of his story. Defendant’s story fails to explain how Hoff, who testified that he did not discuss the details of the crime with any participant beyond Defendant’s confession, could have known that a tire iron was used in the robbery when, according to Defendant, Coley did not obtain the tire iron until after Hoff had left. In addition, according to Defendant’s story, Defendant and the two victims told Coley to put away the gun. Despite this opposition by three men, Coley placed the gun in his waistband to search for a second weapon. Considering the physical evidence establishing that both victims received wounds from a tire iron, a rational jury would understand that it would have been far more likely with multiple victims for one person to hold the gun on the victims to prevent their resistance while another person beat them with the tire iron. Under these circumstances, I do not believe that Defendant’s testimony can be viewed as sufficiently conflicting with Young’s that, in the absence of Young’s testimony, it could have led to an acquittal by a rational jury.

{67} As with the factor of cumulative evidence, the existence of evidence conflicting with the improperly admitted evidence is only one of several Van Arsdall factors relevant to a harmless error inquiry. The bare existence of conflicting evidence, without reference to the quality and quantity of that evidence in relation to the properly admitted evidence of guilt, does not lead to automatic reversal under the Chapman harmless error standard. For example, in Ross, despite the defendant’s testimony that he did not intend to kill the victim, 122 N.M. at 19, 919 P.2d at 1084, we concluded in that case that the defendant’s self-serving testimony did not constitute substantially conflicting evidence in light of other evidence in the case. Id. at 27, 919 P.2d at 1092; cf. United States v. Blevins, 960 F.2d 1252, 1263-64 (4th Cir. 1992) (determining that a constitutional trial error was harmless despite the defendants’ testimony denying culpability); People v. McPeters, 832 P.2d 146, 165 (Cal. 1992) (concluding an error was harmless because the “defendant’s guilt was established by the testimony of numerous eyewitnesses as well as corroborating physical evidence, and . . . defendant’s credibility was undermined by his own inherently improbable testimony denying any connection to the murder”); Fayson v. State, 726 N.E.2d 292, 295 (Ind. 2000) (concluding admission of co-defendant’s incriminatory statement harmless beyond a reasonable doubt because eyewitness testified to the defendant’s involvement and, “significantly,” the defendant admitted his involvement to another witness, despite the fact that the defendant testified and denied both committing the crime and making the admission of guilt). We also concluded in Ross that a Confrontation Clause violation was harmless because the erroneously admitted statement was cumulative to some evidence and corroborated by other evidence. 122 N.M. at 27, 919 P.2d at 1092. I believe the same conclusion we reached in Ross applies in the instant case. Defendant’s denial of involvement in the crimes is uncorroborated, self-serving, not fully exculpatory, impeached by two of his own prior statements, and factually improbable. As in Ross, given the other evidence introduced by the State, Defendant’s testimony is not substantial conflicting evidence for purposes of harmless error.

{68} The jury’s task in this case was not as difficult as it would be in most murder cases tried before a jury. Defendant’s own testimony established that Defendant was at the scene of the crime, that he arrived at the scene with an undisputed perpetrator of the crime and had a discussion with this individual about the crime before it occurred, and that he was aware that his cohort was armed with a gun. It was also undisputed that Defendant chose to remain in the room during the robbery despite prior knowledge of Coley’s intent, an awareness that Coley had a gun, and the same opportunity to leave exercised by Hoff. The only question for the jury was whether, while voluntarily in the room with his gun-wielding friend during the robbery, Defendant participated in the crime. There was an abundance of evidence heard by the jury supporting Defendant’s complicity with Coley, including an eyewitness’s testimony that he initiated the robbery, a confession of guilt from Defendant, powerful evidence of a consciousness of guilt, and eyewitness testimony from two witnesses of Defendant’s behavior after the fact being consistent with his participation in the crime. All of this evidence was actually heard by the jury and is not a hypothetical pattern of evidence constructed after the fact. The harmless error standard established by the Supreme Court requires that we examine the evidence actually presented to the jury to determine whether a hypothetical, rational jury would have reached the same verdict without the introduction of Young’s statement. Under this standard, I believe the State has established beyond a reasonable doubt that a rational jury would have reached the same verdict in the absence of Young’s statement. I would therefore affirm Defendant’s convictions of felony murder and conspiracy and respectfully dissent from the majority’s holding to the contrary.

PATRICIO M. Serna,
Justice
Certiiorari Granted, No. 28,002, April 28, 2003

From the New Mexico Court of Appeals

Opinion Number: 2004-NMCA-112

TOPIC INDEX:

Appeal and Error: Abandonment of Appeal; and Standard of Review

Statutes: Interpretation; and Rules of Construction

THE CHASE MANHATTAN BANK, AS TRUSTEE OF IMC HOME EQUITY LOAN TRUST 1998-4 UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF JUNE 1, 1998, Plaintiff-Appellee,
versus

JOHN A. CANDELARIA, JANE C. CANDELARIA, MOREQUITY, INC., A DELAWARE CORPORATION, JOHN DOE, A TENANT WHOSE NAME IS UNKNOWN, JANE DOE, A TENANT WHOSE NAME IS UNKNOWN, Defendants-Appellants,

versus


No. 22,625 (filed: March 10, 2003)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

WILLIAM F. LANG, District Judge

ANTHONY JAMES AYALA
ALDRIDGE, GRAMMAR, JEFFREY & HAMMAR, P.A.
Albuquerque, New Mexico for Appellant Roybal

WILL JEFFREY
ALDRIDGE, GRAMMAR, JEFFREY & HAMMAR, P.A.
Albuquerque, New Mexico for Appellee Reule

OPINION

JAMES J. WECHSLER, CHIEF JUDGE

{1} Appellant Carlo A. Roybal (Redeemer) appeals the district court’s award of $10,638.35 to Charles L. Reule (Purchaser) to reimburse Purchaser for improvements made to property that was acquired at a foreclosure sale. We hold that the “betterment statute,” NMSA 1978, §§ 42-4-17 to 42-4-18 (1953), permits such an award and affirm.

Background

{2} The Chase Manhattan Bank filed a complaint for foreclosure against John and Jane Candelaria, the owners of property located in Albuquerque, New Mexico. The Candelarias did not file an answer, and a default judgment and decree of foreclosure was entered against them.

{3} On March 7, 2001, Purchaser successfully acquired the property with a $71,000 bid at the foreclosure sale. Purchaser knew at the time of his bid that his purchase would be subject to redemption by the Candelarias or their assigns. The district court approved the sale on March 21, 2001. Purchaser took immediate possession of the unoccupied property and began making improvements.

{4} The Candelarias assigned their rights of redemption in connection with the property to Redeemer. On April 6, 2001, Redeemer filed a petition for certificate of redemption and deposited $71,000 plus interest with the court. Purchaser was served with the petition on April 9, 2001.

{5} Purchaser filed his response to the petition for certificate of redemption and claimed he was entitled to reimbursement of $10,917.45 for the labor and materials he had invested in the property. Redeemer replied and argued that he had complied with the statutory requirements for redemption set forth in NMSA 1978, § 39-5-18 (1987), and that no additional funds could be required.

{6} Purchaser’s claim for reimbursement was tried to the court on September 5, 2001. The parties stipulated to Purchaser’s exhibits and the appraisal of Purchaser’s expert. Additionally, they stipulated that the property was worth $71,000 at the time of the foreclosure sale and that Purchaser had spent $10,638.35 on labor and materials. Redeemer introduced no testimony or exhibits.

{7} The court awarded Purchaser $10,638.35 as reimbursement for labor and materials invested on the property and interest of $641.85. Redeemer appealed.

Application of Section 39-5-18 and Section 42-4-17

{8} Redeemer claims that Section 39-5-18 is exclusive on the amount that must be paid for statutory redemption and, therefore, the award reimbursing Purchaser for improvements made is not authorized by statute and is contrary to law and legislative intent. “[I]nterpretation of a statute is a question of law which an appellate court reviews de novo.” State ex rel. Shell W. E & P, Inc. v. Chavez, 2002-NMCA-005, ¶ 7, 131 N.M. 445, 38 P.3d 886; see W. Bank v. Malooly, 119 N.M. 743, 748, 895 P.2d 265, 270 (Ct. App. 1995) (stating that the issue of whether a junior lienholder’s right of redemption would merge with the property interest that lienholder acquired at a judicial sale is a question of law to be reviewed under a de novo standard).

{9} Section 39-5-18 provides in part:

A. After sale of any real estate pursuant to any such judgment or decree of any court, the real estate may be redeemed by the former . . . owner of the real estate . . . or [his] assigns . . .:

(1) by paying to the purchaser . . . the amount paid, with interest from the date of purchase at the rate of ten percent a year, together with all taxes, interest and penalties thereon . . .; or

(2) by petitioning the district court in which the judgment or decree of foreclosure was entered for a certificate

...
of redemption and by making a deposit of the amount set forth in Paragraph (1) of this subsection in cash in the office of the clerk of the district court in which the order, judgment or decree under which the sale was made was entered. . . .

D. The hearing shall be governed by the rules of civil procedure. At the hearing, the judge shall determine the amount of money necessary for the redemption, which shall include the money paid at the sale and all taxes, interest, penalties and payments made in satisfaction of liens, mortgages and encumbrances.

{10} Purchaser does not dispute that Redeemer had the right to redeem the property by complying with the procedures set out in Section 39-5-18. The parties disagree as to whether Redeemer may also be required to reimburse Purchaser for improvements made before redemption.

{11} Purchaser argues that he was entitled to reimbursement under the betterment statute. Section 42-4-17 provides in part:

When any person or his assignors may have heretofore made, or may hereafter make any valuable improvements on any lands, and he or his assignors have been or may hereafter be deprived of the possession of said improvements in any manner whatever, he shall have the right, either in an action of ejectment which may have been brought against him for the improvements or in an appropriate action at any time thereafter within ten years, to have the value of his said improvements assessed in his favor, as of the date he was so deprived of the possession thereof, and the said value so assessed shall be a lien upon the said land and improvements, and all other lands of the person who so deprived him of the possession thereof situate in the same county, until paid.

{12} Sections 39-5-18 and 42-4-17 can be construed together in the circumstances of this case. See Rauscher v. Taxation & Revenue Dep’t, 2002-NMSC-013, ¶ 24, 132 N.M. 226, 46 P.3d 687 (reading statutes together because both were relevant under the facts of the case). Section 39-5-18 authorized the redemption ordered by the court. Purchaser made his claim for labor and materials for the improvements in his response to the petition for certificate of redemption. Under Section 42-4-17, Purchaser had the right to bring a claim for improvements in an “appropriate action” within ten years of loss of possession of the improvements. Assuming that Section 42-4-17 gives Purchaser the right to bring an action against Redeemer for the improvements, it would be contrary to the principles of judicial economy to require Purchaser to initiate an independent action to resolve his Section 42-4-17 claim.

{13} Purchaser met the requirements of Section 42-4-17 to bring his claim. Purchaser had possession of the property and color of title as a result of the district court’s order confirming the sale of the property and ordering delivery of the property and the deed to Purchaser. See Cano v. Lovato, 105 N.M. 522, 536, 734 P.2d 762, 776 (Ct. App. 1986) (requiring color of title for application of Section 42-4-17). Redeemer does not dispute that Purchaser made the improvements to the property and was thereby deprived of possession. Therefore, Purchaser is entitled to reimbursement for the improvements unless, as Redeemer argues, the application of Section 42-4-17 contravenes the public policy embodied in the redemption statutes.

{14} The betterment statute creates an obligation to pay for improvements based on principles of equity and unjust enrichment. See Cano, 105 N.M. at 537, 734 P.2d at 777; Madrid v. Spears, 250 F.2d 51, 54 (10th Cir. 1957) (stating that betterment statutes “have their genesis in and are based upon [both] the maxim that one who seeks equity must do equity” and principles of unjust enrichment). Our Supreme Court has noted the breadth of these principles. See Plaza Nat’l Bank v. Valdez, 106 N.M. 464, 467, 745 P.2d 372, 375 (1987) (stating that a court sitting in equity “may avail itself of those broad and flexible powers which are capable of being expanded to deal with novel cases and . . . [e]quity has the inherent power to supply a method in any suit to protect the rights of all interested parties”) (citation omitted). The redemption statutes do not preclude recovery for unjust enrichment. See id. (recognizing the application of equity to the right of redemption in affirming a district court’s extension of the statutory time period for redemption).

{15} We are therefore not concerned that the application of the betterment statute to allow reimbursement for improvements to property subject to redemption contravenes the public policy embodied in the redemption statutes. A court need not grant reimbursement if doing so would, under equitable principles, fail to carry out the purposes of the redemption statutes. See Madrid, 250 F.2d at 54 (stating that the betterment statutes are designed to allow a court to balance the equities and do complete justice).

{16} Significantly, Redeemer made no such showing in this case. The district court had issued the certificate of redemption prior to trial. Both parties agreed that the value of the property increased by $24,000 from March 7, 2001, when Purchaser paid $71,000, to July 31, 2001, when the property was appraised at $95,000. The parties also agreed that Purchaser incurred $10,638.35 of improvement costs. Redeemer did not introduce any evidence contradicting either the appraisal or the expenses, and the court awarded the lesser of the increase in market value and the amount actually spent. See Cano, 105 N.M. at 537, 734 P.2d at 777 (holding that original purchaser who improved property would be entitled to recover the lesser of the value of his labor and materials or the amount his improvements added to the market value of the land). Nor is there any timing issue as discussed by the dissent in the case because Purchaser did not bring a claim after the redemption period. The district court’s award to Purchaser of $10,638.35 to reimburse Purchaser for improvements was consistent with the equitable policy of avoiding unjust enrichment and did not threaten or violate Redeemer’s statutorily conferred right of redemption.

Redeemer’s Other Arguments

{17} Redeemer contends that Purchaser continued to make improvements “after being served with [Redeemer’s] Petition for Certificate of Redemption.” However, there was no evidence introduced at trial that Purchaser knew of Redeemer’s intent to redeem the property until April 6, 2001, when Redeemer filed his petition for certificate of redemption. Because Redeemer did not raise this issue at trial or submit evidence on it, he has waived this issue. See Campos Enters., Inc. v. Edwin K. Williams & Co., 1998-NMCA-131, ¶ 12, 125 N.M. 691, 964 P.2d 855 (“As a court of review, we cannot review [a party’s] allegations which were not before the district court.”).

{18} In his earlier motion for summary judgment, Redeemer attached an affidavit in which he claimed that he telephoned Purchaser in late March and notified Pur-
chaser of his intention to redeem. However, Purchaser disputed Redeemer’s assertions in his response and in his deposition, and we leave it to the trier of fact to resolve any conflict in testimony. See Buckingham v. Ryan, 1998-NMCA-012, ¶ 10, 124 N.M. 498, 953 P.2d 33 (“[W]hen there is a conflict in the testimony, we defer to the trier of fact.”).

{19} Finally, additional issues raised in various proceedings below, but not raised or argued in Redeemer’s brief, are considered abandoned. Fleming v. Town of Silver City, 1999-NMCA-149, ¶ 3, 128 N.M. 295, 992 P.2d 308 (“All issues raised in the docketing statement, but not argued in the brief in chief are deemed abandoned.”).

**Conclusion**

{20} We affirm the district court because Section 39-5-18, while providing the exclusive procedure and remedy for redemption, does not bar a court from ordering a redeemer to reimburse a purchaser at foreclosure for improvements made by that purchaser before a petition for a certificate of redemption is filed or served. The district court had the authority to order such reimbursement under Section 42-4-17.

**I CONCUR:**

MICHAEL D. BUSTAMANTE, Judge
IRA ROBINSON, Judge (Dissenting)

IRA ROBINSON, JUDGE (Dissenting)

{22} There are several reasons why I cannot agree with the majority. First and foremost is the concept of equity as it is applied in this appeal. I have reached the conclusion that relying on the concept of equity misses the mark, resulting in inequity.

{23} The majority relies upon the betterment statute, Section 42-4-17, to get around the obvious and clear language of the redemption statute, Section 39-5-18. The redemption statute sets out those specific expenditures that must be reimbursed by a property owner or his assignee who redeems property that has been sold at a foreclosure sale. I believe that the betterment statute as applied in these circumstances is contrary to sound public policy.

**Public Policy**

{24} The redemption statute recognizes that a family may have lived in a home for five, ten, or more years and have been paying faithfully on the mortgage. But, for reasons of bad health, a job lost, a recession or other social calamity, the family falls upon hard times and cannot keep up the mortgage payments. The bank or other lending institution then forecloses upon their interest in the home, and it is sold at a foreclosure sale.

{25} We see little justice in a family losing a home for which it has been paying all these years. The legislature has sought to make it as reasonable (we cannot say “easy”) as possible for the family to get their home back through the redemption process.

**The Redemption Statute, Section 39-5-18**

{26} This statute deals with the rights and obligations of a person (or his assigns) who is trying to redeem real property lost at a foreclosure sale. Subsection A limits the time within which a redeemer may seek return of the foreclosed property to nine months from the date of the foreclosure sale, and Subsection D limits the amount of money that the redeemer has to pay to get his property back. The kinds of payments that are required under the redemption statute go directly to the taxes owed and payments such as mortgage payments that are designed to avoid any additional defaults or foreclosures. These are payments that protect the property. These are the essentials, not the extras.

{27} Here, the district court determines that the amount of money necessary for redemption, “shall include the money paid at the sale and all taxes, interest, penalties and payments made in satisfaction of liens, mortgages, and encumbrances.” Section 39-5-18(D). And, not more.

**The Betterment Statute, Section 42-4-17**

{28} I disagree with the manner in which the majority has applied the betterment statute. I believe the legislature intended that statute to apply in ejectment, where Plaintiff is legally entitled to possession of the premises.

{29} I see important distinctions which make these two statutes incompatible. Section 42-4-17 of the betterment statute gives the redeemer ten years from the date of purchase to pay purchaser for the value of his “improvements.”

{30} The redemption statute does not even mention the word “improvements.” Furthermore, the redeemer only has nine months -not ten years- in which to pay the foreclosure sale purchaser the statutory amount owed to him.

**Equity and Unjust Enrichment**

{31} Unlike payments for outstanding taxes, interest and penalties, mortgages or encumbrances, the foreclosure sale purchaser, Mr. Reule, was not spending money to protect or preserve the real estate. He was spending money to improve the real estate, to make it more valuable. He spent Ten Thousand Dollars on the house in the first five weeks after purchasing it at the foreclosure sale. Was he trying to put the cost of the house improvements out of reach of the original owner who might try to redeem it?

{32} It is reasonable to assume that any foreclosure sale purchaser knows that the owner of the real estate would not have lost his property if he had the money to bring the mortgage payments, taxes, penalties and interest current. Such a purchaser knows that it will be difficult for that owner to raise sufficient funds to get his property back.

{33} The purchaser also knows that if he puts ten or twenty thousand dollars, or more, in “improvements” into the property, the would-be redeemer has no chance to ever get his property back because it has been placed farther outside his reach. “Equity” is defined as “Justice administered according to fairness as contrasted with the strictly formulated rules of common law.” Black’s Law Dictionary 540 (6th ed. 1990). How do the concepts of equity and unjust enrichment fit into our system of justice in this case? Poorly, I believe.

{34} The majority may be more comfortable because there is only Ten Thousand Dollars worth of improvements in this case. What is to stop another court from invoking so-called equity if a purchaser makes $50,0000 or $100,000 worth of “improvements”?

Where do we draw the line?

{35} The majority is more concerned with any possible unjust enrichment of Redeemer than they are in forcing Redeemer to pay for so-called improvements he did not ask for and cannot afford. More important, these improvements are something Redeemer doesn’t want, and the property doesn’t need.

{36} Invoking the unjust enrichment concept in this case opens an avenue of abuse where the foreclosure sale purchaser has no limits on the improvements he can make to the property for which he can then demand reimbursement. The wisdom of the framers of the redemption statute is that they understood that we need a mechanism to limit the amount of extra costs and expenses a redeemer has to pay to get his property back.

{37} I respectfully dissent.

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11:30 am Lunch (On Your Own)
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2:45 pm Closing Arguments
3:25 pm Jury Instructions
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Attorney with a minimum of two years experience needed for associate position with small firm in Socorro, New Mexico. An excellent opportunity to begin private practice (i.e. Domestic Relations, Personal Injury, Criminal Defense and Civil Litigation). Must be willing to relocate to a small community one hour south of Albuquerque. Anticipate substantial equity position within 3 years. Principal Attorney is 62 years of age. If interested, please submit proposal including salary requirement and writing samples to: Hiring Administrator, P.O. Box 37, Socorro, NM 87801. All replies are kept confidential.

**Children’s Court Attorney, Child Protective Services, State of New Mexico Children, Youth and Families Department (CYFD)**
CYFD is seeking a Children’s Court Attorney to represent the department in abuse/neglect and termination of parental rights proceedings. Minimum qualifications: Graduation from an accredited school of law. Special requirements: License as an attorney by the Supreme Court of New Mexico. Benefits include medical, dental, paid vacation and an outstanding retirement package. 36-65K annually, DOE and qualifications. Applications must be obtained from and returned to the local New Mexico Dept. of Labor. In addition, please mail a copy of your state application to: Paul L. Bachicha, Managing Attorney, 1920 Fifth Street, Santa Fe, New Mexico 87505; (505) 827-7444. The State of New Mexico is an EOE.

**Bi-lingual Receptionist**
Bi-lingual receptionist needed for busy professional downtown office to answer phones, screen applicants and provide administrative support. Candidate should have strong customer service skills, be extremely detail oriented and flexible. Experience with Microsoft Office a plus. Bi-lingual in Spanish required. Mail applications to: Legal FACS, P.O Box 2204, Albuquerque, NM 87102 or fax to: 505-256-0780.

**Legal Secretary**
Busy insurance defense firm seeks full-time litigation secretary with five plus years experience in insurance defense and general civil litigation. Position requires a hard working team player, who can handle two attorneys, with strong word processing skills including proficiency with Word Perfect, knowledge of court systems and superior clerical and organizational skills. Should be skilled in transcription, attentive to detail and accurate. Minimum typing speed of 75 wpm. Excellent work environment, salary and benefits. Send resume and references to Office Administrator at Riley, Shane & Hale, P.A., 4101 Indian School Rd. NE, Suite 420, Albuquerque, NM 87110 or fax to (505) 883-4362.

**Paralegal**
IP Paralegal to join a developing IP Department in Albuquerque, New Mexico for an established International Company. This position would assist two or more attorneys/agents in all IP matters. Candidate must have substantial experience in setting up IP Master (MDC) database, proficient in managing the docket, and handling all matters relating to U.S. and Foreign filing and prosecution. In addition, the position will include all IP reporting including maintenance and Docket reports, requesting or performing various searches, setting up files, handling all mail and faxes, tracking all invention disclosures, contract/agreement support, participate in IP Team meetings, and interact with clients and senior managers. The individual for this position must be able to work independently as part of a team, with a high degree of initiative and enthusiasm. E-mail resumes to information@wkmcLaughlin.com. William K. McLaughlin Associates is an executive search firm specializing in the placement of patent attorneys.

**Legal Support**
High Desert Legal Staffing seeks legal secretaries and paralegals with strong computer skills for both temporary and permanent positions with leading firms in Albuquerque and Santa Fe. E-mail: LBrwn@highdesertstaffing.com; fax (505) 881-9089; or call (505) 881-3449 for immediate interview.
Offi ce Manager

Office Manager with exp needed for a progressive, fast-paced practice. Candidate must have legal document review experience, excellent legal research skills, and experience in the interpretation of state and federal regulations. Thornburg Companies offer competitive salary and benefits. Interested candidates please send resume to Thornburg Mortgage Home Loans, Inc., c/o Human Resources, 119 Marcy St., Santa Fe, NM 87501 or humanresources@thornburg.com. Thornburg Mortgage Home Loans, Inc. is an equal opportunity employer.

Offi ce Sharing

Carlisle & Montgomery
Office with secretarial space, opens to private patio, phone system, fax, copier, security, ample parking, easy freeway access, $500 per month, 4300 Carlisle NE. Greg Pelton 881-7800.

Louisiana/Candelaria Corner

Offi ces for Lease

Downtown - Spacious remodeled ofi ces with furnished secretarial space. ($450.00 - $650.00) Two conference rooms; including utilities, janitorial, Cat. 5 networking, DSL internet; phones, security and free parking. Walking distance to all courts - Congenial atmosphere. Call Deborah (505) 843-9171.

One Offi ce Available
Best location in town, one block or less from the new federal, state, metropolitan courts. Lease includes secretarial space, phones and service, parking, library, janitorial, security, receptionist, runner. Contact Thomas Nance Jones, (505) 247-2972.

Santa Fe
2 offi ce suite, private reception, bath, entry, great parking, near rail yard. Call 820-7139 or 989-8616.

New Executive Suites in Nob Hill
Amenities include paid utilities, phone with private number and voicemail, keyed mailbox, secured parking, conference room use, break room, T-1 internet access. Call 314-1300.

Offi ce Space

Jurassic Park Law Ofi ce
One available near Natural History Museum with four attorneys. Share phone system with modem, library, fax, copier, library/conference room and kitchenette. Vaulted ceilings, ample parking, utilities and maintenance included; great setting. $410/month. One month free rent. Call Tito D. Chavez at 345-0541 or Janet Hernandez at 243-2900.

Office Space


Wells Fargo Building Downtown
Great space, great building, great location, great rent, flexible term; a block to all courthouses; law / professional ofi ces in Wells Fargo Bank Building. 4 large ofi ces, 2 associate / paralegal / staff ofi ces; reception, workstation locations, large conference room, and kitchen/break room, private copy / work center, 2 large storage areas. 4,567 RSF, $4,725.00 PER MONTH, full service, plus abundant parking at $35.00 per month. Sam Carnes, Carnes & Company, Inc. 200 Lomas Blvd., NW. 247-8000, or 239-5200 mobile. scarnes@nm.net.

Journal Center II
Share new ofi ce space down the street from the State Bar building. Contact Stephen Eaton, (505) 837-9200.

CONSULTING

Cardio-Legal Consultants
Clinical cardiologists. Experienced in reviewing adult or pediatric heart cases for plaintiff or defense. New Mexico licensed. Widely published, Academic credentials. New Mexico references. Reasonable rates. Contact: mdheartnlegal@yahoo.com.

SERVICES

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Great Rates. Please contact Brandy Aubuchon at 505-450-1855 or e-mail @ brandyaubuchon@yahoo.com.

B AR BULLETIN

October 7, 2004

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Media Conference:  
Media Law Unplugged  
Thursday, November 4, 2004 • State Bar Center  
6.9 General & 1.5 Ethics CLE Credits

7:30 a.m.    Continental Breakfast
8:30 a.m.    Welcome and Opening Remarks  
             The Honorable Petra Jimenez Maes  
             Chief Justice, New Mexico Supreme Court
9:00 a.m.    Scripted Mock Trial on Subpoenas,  
             Closed Courtrooms, and Closed Records  
             Jim Dynes • Dick Knipfing • Geoffrey Rieder • Kent Walz
10:30 a.m.   Break
10:45 a.m.   Breakout Sessions (Processing Mock Trial)
12:15 p.m.   Lunch with Performance by Special Guest Deborah Allen  
             (Performance from 12:30 to 1:15 p.m.)
1:15 p.m.    Intellectual Property Session: Media Law and Copyright  
             Jill L. Marron, Chair, Public Legal Education and Professor of  
             Media Law, UNM Special Guest Deborah Allen
2:15 p.m.    Break
2:30 p.m.    Ethics of Bench and Bar Media Relations-Hollywood Style  
             Andy Schultz, Adjunct Professor, UNM School of Law
3:45 p.m.    Panel Discussion
5:00 p.m.    Adjourn

Featured speakers currently include journalists Dick Knipfing and Kent Walz  
with local attorneys Jim Dines, Andy Schultz and Geoffrey Rieder. This year’s  
special guest will be singer/songwriter Deborah Allen.

Please note: Program is subject to change without notice.

REGISTRATION - MEDIA LAW CONFERENCE  
Thursday, November 4, 2004 • State Bar Center  
6.9 General & 1.5 Ethics CLE Credits

☐ $99 State Bar of New Mexico Members  ☐ $39 Media

Name ____________________________________________________________ NM Bar No. _____________________
Address __________________________________________________________________________________________________________
City ___________________________________________________________ State ___________ Zip ______________
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☐ Enclosed is my check in the amount of $ ____________________ (Make Checks Payable to: CLE State Bar of NM)

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Mail this form to: Center for Legal Education of the NM State Bar Foundation, PO Box 92860 Albuquerque, NM 87199 or Fax to (505) 797-6071.
Enemy Combatants, Civil Liberties, and The USA PATRIOT Act
Friday, October 22, 2004 - 8:30 a.m.
7.6 General CLE Credits
State Bar Center, Albuquerque

featuring
Professor Viet Dinh
Georgetown University Law Center in Washington, D.C.

Having escaped from Vietnam in 1978 at the young age of 10, Viet Dinh has since become the epitome of the American Dream. A magna cum laude graduate of both Harvard College and Harvard Law School, Dinh served as a law clerk for U.S. Supreme Court Justice Sandra Day O’Connor, before rising to his position as U.S. Assistant Attorney General for the Office of Legal Policy (2001 to 2003), Special Counsel to Senator Pete V. Domenici in the Impeachment Trial of President William Jefferson Clinton, and as counsel to the Special Master in "In re Austrian and German Bank Holocaust Litigation." Professor Dinh, author of the controversial USA PATRIOT Act, will speak on recent U.S. Supreme Court decisions involving the Terrorism Trilogy (Hamdi, Padilla, Guantanamo Bay detainees). Also included in this distinguished program will be U.S. Attorney David Iglesias (USERRA), Foreign Intelligence Surveillance Court Member and Utah District Court Chief Judge Dee Benson (FISA), Executive Assistant U.S. Attorney Rumbleo Armijo (Indian Law Jurisdiction), and Attorney John Watson (SCRA).

REGISTRATION
ENEMY COMBATANTS, CIVIL LIBERTIES, AND THE USA PATRIOT ACT
Friday, October 22, 2004 - 8:30 a.m. - State Bar Center - 7.6 General CLE Credits

☐ $199 Standard and Non-Attorney ☐ $179 Government and Paralegal

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Mail this form to: Center for Legal Education of the NM State Bar Foundation, PO Box 92860, Albuquerque, NM 87199 or Fax to (505) 797-6071.
THE ST. THOMAS MORE SOCIETY

cordially invites you and your family, friends and associates
to participate in the Annual Votive Mass of the
Holy Spirit, traditionally known as

The Red Mass

in honor of St. Thomas More and St. Ives, patrons of the
Legal Profession, to seek Divine guidance for judges,
lawyers and the administration of justice.

Most Reverend Michael J. Sheehan, Main Celebrant

Friday, October 29, 2004
at 12:10 p.m.

Immaculate Conception Church
619 Copper N.W.
Albuquerque, NM

Reception following the Mass