Inside This Issue:

2005 State Bar of New Mexico Budget Disclosure
is available online at www.nmbar.org. In an effort to
save money this year, printed copies will be available
upon request. See special notice on page 2.

Board of Bar Commissioners  6
Meeting Summary

Young Lawyers Division  8
2004 Election Results

Legal Education Calendar
Writs of Certiorari

Proposed Revision of District Court Civil Rule 1-053.2
Proposed Amendment to Rule 1-123 of the Rules of
Civil Procedure for the District Courts
Proposed Revisions to the Rules of Criminal Procedure
for the District Courts and Supreme Court General
Rules
In the Matter of the Amendments of Rule 1-032 and
Forms 4-503, 4-504, and 4-505 NMRA
Proposed Revisions to UJI Civil 13-413 and 13-1651

Proposed Revisions to the Rules of Appellate Procedure

Stephen Bridgforth
2004-NMSC-035: Jicarilla Apache Nation v. Arthur
Rodarte
2005 STATE BAR OF NEW MEXICO BUDGET DISCLOSURE

Dear Members:

The Board of Bar Commissioners has approved a budget for calendar year 2005. The budget is presented in its entirety for the benefit of State Bar members online at www.nmbar.org. It is published to provide an opportunity for members to object to any proposed expenditure in the budget that is not related to the State Bar’s purposes of regulating the profession or improving the quality of legal services. **Members wishing to receive a printed copy of the budget disclosure may do so by calling 505-797-6035 or 1-800-87nmbar (876-6881).** Instructions for challenging expenditures you believe to be non-germane are set forth on page two of the online document. A challenge form is on page 19 of the online document. The first pages of the budget provide the total expenditures by categories, while the remaining pages provide explanations and further breakouts of the expenditures by category. The total expenditures for the State Bar in 2005 will be approximately $2,011,300. Of this amount, approximately $679,600 is expected to be supported by non-dues revenue and approximately $1,331,700 will be funded by dues. The following pie chart illustrates the total dues supported budget broken into four main categories.

![Pie Chart]

There were several non-budgeted items for 2003 which are outlined in this budget disclosure. These items were funded without a dues increase. In addition, there will be no assessment for the Client Protection Fund in 2005. State Bar will support this program through general operating funds.

The financial condition of the State Bar is sound and the Board of Bar Commissioners is proud of the many programs and services the State Bar provides to the membership and the public.

Sincerely,

Dennis E. Jontz
Secretary-Treasurer
GAIN THE EDGE!
NEGOTIATION STRATEGIES FOR LAWYERS

Wednesday, December 15, 2004 • 9 a.m - 5 p.m.
State Bar Center • 5.6 General and 1.0 Ethics CLE Credits

Presenter: Martin E. Latz, Esq., Adjunct Professor, Arizona State University

One of the most critical skills that any attorney can possess is the ability to negotiate, yet most negotiate instinctively or intuitively. In this seminar, one of the nation’s leading experts and instructors on negotiating techniques will help you to approach negotiations with a strategic mindset. You will learn 15 skills that will help you to gain the edge in your negotiations, skills that expert Marty Latz has shared with great enthusiasm with lawyers in over 40 states. This course also includes a complimentary copy of Latz’ latest book entitled Gain the Edge! Negotiating To Get What You Want.

Schedule

8:30 a.m. Registration
9:00 a.m. Introduction – The “Car Negotiation Story”
9:10 a.m. Discuss Latz’s Golden Rules of Negotiation
10:30 a.m. Break
10:45 a.m. Discuss Negotiation Strategies, including:
11:45 a.m. Prepare to Negotiate Simulation, including:
12:15 p.m. Lunch
1:15 p.m. Negotiation Simulation
1:45 p.m. Debrief With Opposing Party
1:50 p.m. Analyze Negotiation Simulation, including
3:15 p.m. Break
3:30 p.m. Oil Pricing Exercises and Ethics Discussion
5:00 p.m. Adjourn

© 2004 Latz Negotiation Institute. All Rights Reserved.

Book Testimonials

“Marty Latz is one of the most accomplished and persuasive negotiators I know. In Gain the Edge! you will see why.”
George Stephanopoulos, Anchor, ABC News
This Week with George Stephanopoulos

“Whether you are a confident negotiator, or one who is apprehensive of the process, you will learn much from Gain the Edge! Its lucid explanations, coupled with a host of practical examples, will help you to achieve better results when you next negotiate.”
Frank Sander, Bussey Professor of Law, Harvard Law School

REGISTRATION – GAIN THE EDGE! NEGOTIATION STRATEGIES FOR LAWYERS
December 15, 2004 • 9:00 a.m. to 5:00 p.m. • State Bar Center
5.6 General and 1.0 Ethics CLE Credits

☐ Standard and Non-Attorney - $199 ☐ Governmental and Paralegal - $189

Name:_________________________________________NM Bar#:________________________

Firm:_________________________________________Address:_______________________________

City/State/Zip:_________________________Phone:____________________________________Fax: __________________________

E-mail address:__________________________________________

Payment Options: ☐ Enclosed is my check in the amount of $_________ (Make Checks Payable to: CLE State Bar of NM)
☐ VISA ☐ Master Card ☐ American Express ☐ Discover ☐ Purchase Order (Must be attached to be registered)

Credit Card Acct. No._________________________Exp. Date ________________________

Signature____________________________________

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.

Register Online at www.nmbar.org
Solo and Small Firm Practitioner Annual Meeting, Seminar and Reception

Seminar: Professional Liability and The Solo and Small Firm Practitioner

Thursday, December 2 - Annual Meeting: 1 p.m. | Seminar: 2 - 3:40 p.m. | Reception: 4 p.m.
State Bar Center • 1.0 General, 1.0 Ethics CLE Credits

Presenters: Maureen Sanders, John Bannerman, Jack Brant, Briggs Cheney, and Jerry Dixon

This seminar is designed for those who are looking for some insights into a potpourri of topics related to professional liability. Following a wildly popular session at this year’s Bridge The Gap, several members of the Lawyers Professional Liability Committee are back for an encore presentation. The current agenda includes The Top Ten Reasons Lawyers Get Sued; Everything You Could Ever Want to Know About Retainer Agreements; Not Quite Fifty Ways to Leave a Client; The Ins and Outs of Professional Liability Insurance; and a concluding medley on Shopping for Professional Liability Insurance, When Disciplinary Comes Calling, and the Troubled Lawyer.

The seminar will immediately be followed by a reception at the State Bar Center.

☐ $59 Standard and Non-Attorney ☐ $49 Solo & Small Firm Section, Government and Paralegal

Employment and Labor Law Annual Meeting, Professionalism Video Replay and Reception

Engagement Letters: The Gateway to Better Client Relations and Professionalism

Thursday, December 2, 2004 • La Posada de Albuquerque • Video Replay – 3 p.m. • 2.0 Professionalism CLE Credits

Annual Meeting & Reception - 5 p.m.

Presented by: John Bannerman, Esq.

The Rules of Professional Responsibility make reference to disclosures and client waivers. In this day and age, those disclosures and waivers should all be in writing. The responsibility of the lawyer is to employ effective client communications and client relation skills in order to increase service to the client and foster understanding of the expectations of the representation, to include accessibility of the lawyer and the agreement to fees with the client. The primary purpose of this program is to discuss the effective use of engagement letters as a means to enhance communications and reduce the liability risks associated with your practice.

☐ $59 Standard and Non-Attorney ☐ $49 Employment and Labor Law Section Member

Fact Finding on the Internet

Tuesday, December 7, 2004 • 9 a.m. - 4:30 p.m. • State Bar Center • 6.9 General CLE Credits

Presenters: Carole A. Levitt and Mark Rosch

From nationally recognized Internet trainers and the authors of the 2nd edition ABA publication The Lawyer’s Guide to Fact Finding on the Internet comes this exciting seminar. Whether you are a litigator preparing for discovery or trial or a transactional attorney conducting due diligence, at some point, you will find the information from this course to be a great resource. While using the Internet can save time and money, it is only for those who effectively know where to search that the Internet’s greatest benefits are received. Come learn to find what you need, FAST and FREE, when you need it! (or at lower costs!). Please note that this course includes a copy of the 2nd edition ABA publication noted ($79.95 value!).

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

FOUR WAYS TO REGISTER

Name ___________________________________________ NM Bar # ____________________________
Street ____________________________________________ City/State/Zip ___________________________
Phone ____________________________ Fax ______________ Email _______________________________________
Purchase Order (Must be attached to be registered) ☐ Check enclosed $ _________ Make check payable to CLE of the SBNM
☐ VISA ☐ MasterCard ☐ American Express ☐ Discover
Credit Card # ____________________________ Exp. Date ____________________________
Authorized Signature ____________________________________________
TABLE OF CONTENTS

Notices .............................................................................................................. 6-9
Legal Education Calendar .............................................................................. 10-12
Writs of Certiorari ......................................................................................... 13-14
Rules/Orders .................................................................................................... 15-28

Proposed Revision of District Court Civil Rule 1-053.2 ...................................................... 15
Proposed Amendment to Rule 1-123 of the Rules of Civil Procedure for the District Courts .................................................................................. 16
Proposed Revisions to the Rules of Criminal Procedure for the District Courts and Supreme Court General Rules .................................................................. 17
In the Matter of the Amendments of Rule 1-032 and Forms 4-503, 4-504, and 4-505 NMRA .................................................................................................................. 19
Proposed Revisions to UJI Civil 13-413 and 13-1651 ..................................................... 24
Proposed Revisions to the Rules of Appellate Procedure ........................................... 26

Opinions ............................................................................................................. 29-40

From the New Mexico Supreme Court

No. 28,087: Ramon Pacheco Morales v. Hon. Stephen Bridgforth ........................................ 29
No. 28,128: Jicarilla Apache Nation v. Arthur Rodarte...................................................... 31

Advertising ..................................................................................................... 41-48

* Professionalism Tip *
With respect to parties, lawyers, jurors and witnesses:

I will be open to constructive criticism and make such changes as are consistent with this creed and the Code of Judicial Conduct when appropriate.

Meetings

December

1 Committee on Women and the Legal Profession, noon, Lewis & Roca, Jontz Dawe, LLP

2 Criminal Law Section Board of Directors, noon, State Bar Center

2 Solo & Small Firm Practitioners Section Annual Meeting, 1 p.m., State Bar Center

2 Employment & Labor Law Section Annual Meeting, 5 p.m., La Posada

2 Health Law Section Annual Meeting, 5 p.m., Petroleum Club, Rio Grande Room

6 Attorney Support Group, 5:30 p.m., First Methodist Church

State Bar Workshops

December

1 Family Law Workshop, 5:30 p.m., Branigan Library, Las Cruces

1 Consumer Debt/Bankruptcy Workshop*, 6:00 p.m., State Bar Center

2 Consumer Debt/Bankruptcy Workshop, 5:30 p.m., Branigan Library, Las Cruces

10 Lawyer Referral for the Elderly Workshop TOPIC: Credit/Debt Issues, 9:30 a.m., Munson Senior Center, Las Cruces

January

26 Consumer Debt/Bankruptcy Workshop*, 6:00 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

Law Library

Notice of Closing

The Supreme Court Law Library has extended its hours to include 8 a.m. to 6:30 p.m. Monday to Thursday, 8 a.m. to 5:30 p.m. Friday, and 8 a.m. to 3 p.m. Saturday. However, the library will be closed or have restricted hours on the following days:

- Nov. 25 to 27: Closed
- Dec. 23: 8 a.m. to 1 p.m.
- Dec. 24 to 25: Closed
- Dec. 27 to 29: 8 a.m. to 5 p.m.
- Dec. 30: 8 a.m. to 5 p.m.
- Dec. 31 to Jan. 1: Closed

Proposed Revision of Rule 16-701 NMRA of the Rules of Professional Conduct

The Supreme Court is considering proposed amendments to Rule 16-701 NMRA. Attorneys who wish to comment on the proposed amendments should send written comments by Nov. 26 to: Kathleen J. Gibson, Chief Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, NM 87504-0848.

For reference: The proposed revisions were printed in the Nov. 4 (Vol. 43, No. 44) Bar Bulletin.

 NM Board of Legal Specialization

Comments Sought

The following attorneys are applying for certification and recertification as specialists in the area of law identified. Application is made under the New Mexico Board of Legal Specialization, Rules 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 committee. The board and specialty committee encourage attorneys and others to comment upon any applicant. Address comments to New Mexico Board of Legal Specialization, P.O. Box 92860, Albuquerque, NM 87199.

- Family Law
  Janet E. Clow

  Federal Indian Law
  Stephanie P. Kiger

  Trial Specialist – Civil Law
  James E. Riley, Jr.

First Judicial District Court

Family Law

Brownbag Meeting

The First Judicial District Court will host its family law brownbag meeting at noon, Dec. 14 in the Grand Jury Room, second floor, of the Steve Herrera Judicial Complex in Santa Fe. It will be the annual holiday potluck luncheon so attendees should bring food to share. For more information, contact Elege Simons, (505) 982-3610 or esimons@rubinkatzlaw.com.

Second Judicial District Court

Children’s Court Monthly Judges’ and Managers’ Meeting

The Second Judicial District Children’s Court will hold its monthly judges’ and managers’ meeting at noon, Dec. 7 in the jury room, John E. Brown Juvenile Justice Center, 5100 Second St. NW, Albuquerque. Children’s Court judges and managers of court-related agencies will meet to discuss ongoing concerns and projects. For a copy of the meeting agenda, call (505) 841-7644.

Family Court Open Meetings

Second Judicial District Family Court judges will hold open meetings to discuss ongoing concerns and projects at noon on the first business Monday of each month in the Conference Center located on the third floor of the Bernalillo County Courthouse. The next regular meeting will be held on Dec. 6. Contact Mary Lovato, (505) 841-6778, for more information or to have an item placed on the agenda.

Fourth Judicial District Court

Fax Filings Number

The correct fax number for fax filings to the Fourth Judicial District Court is (505) 454-8611. This is also the fax number for the Fourth Judicial District Court Clerk’s Office.

STATE BAR NEWS

Barristers

Toastmasters Club Open House

The Barristers Toastmasters Club will hold a holiday open house at 5:45 p.m., Dec. 13 at the State Bar Center. The event is being sponsored by Romo & Associates and members are encouraged to attend. Contact Joe Conte, (505) 797-6099 or jconte@nmbar.org, to R.S.V.P. or for more information.

Board of Bar Commissioners

Meeting Summary

The Board of Bar Commissioners met on November 4th at the Bar Center in Albuquerque. Action taken at the meeting follows:

- Approved the Sept. 17 meeting minutes as submitted;
- Accepted the September 2004 financials and executive summary;
- Reviewed the accounts receivable aging report as well as the executive director’s travel reimbursements and credit card file;
- Approved a new carrier for the Bar’s D & O insurance policy in the amount of $10,000;
- Approved a recommendation of the Finance Committee to increase the Bar Center meeting room rental rates;
- Received an estimated building appraisal on the Bar Center from Wells Fargo; the Bar Center is likely valued at between $3 - $3.6 million;
- Approved a Bar dues waiver for 2004 and 2005 for a newly admitted military reservist;
- Approved the Bar dues fee for affiliate membership in the amount of $215;
- Approved the 2005 Dues and Licensing Form with revisions;
- Approved a recommendation to pay a claim made to the Client Protection Fund and approved hiring a collection attorney to recoup funds paid out of the fund;
- Received input from some of the voluntary bars regarding the issues raised in the Supreme Court Order Denying the Deunification Petition; a letter will be sent to the Supreme Court regarding compliance with the Order and informing the Court of the Bar’s outreach efforts to the voluntary bars;
- Received a report on the Oct. 14 Executive
Committee meeting regarding MCLE funds;
• Received a report on the Reciprocity Committee meeting and reviewed the draft rule, which will be sent to the voluntary bars for comment;
• Received the 2005 meeting schedule—Jan. 28, April 1, May 20, July 15, Sept. 15, Oct. 28 and Dec. 9;
• Created a committee to review the report and recommendations of the Task Force to Study the Administration of the Death Penalty in New Mexico;
• Approved Natural Resources, Energy and Environmental Law Section bylaw change regarding e-mail voting;
• Approved Public Law Section bylaw change removing the non-attorney member and reducing the board composition to 12 members; and
• Received a report on legislative advocacy compliance for the Business Law and Taxation Sections.

Note: The minutes in their entirety will be available on the Bar’s Web site following approval by the Board at the Dec. 17 meeting.

Criminal Law Section Annual Meeting
The Criminal Law Section will hold its annual meeting at noon, Dec. 2, at the State Bar Center. Contact Chair David Crum, (505) 764-5400 or david@newmexlaw.com, to place an item on the agenda.

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. The program will be a video replay of Engagement Letters: The Gateway to Better Client Relations and Professionalism, which is worth 2.0 professionalism CLE credits. 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 crmsfl@aol.com to place an item on the agenda.

Health Law Section Annual Meeting
The Health Law Section will hold its annual meeting from 5 to 8 p.m., Dec. 2 in the Rio Grande Room at the Petroleum Club, 500 Marquette, Albuquerque. Program to be announced. Contact Chair Jennifer Stone, (505) 343-1776 or jennifer@emhpc.com, to place an item on the agenda.

Lawyers Assistance Committee

Wanted: Lawyers in Recovery
The Lawyers Assistance Committee is looking for lawyers in recovery, especially in towns outside ABQ, who would be willing to participate in 12-Step calls on attorneys with alcohol/drug problems. Lawyers willing to help should call Bill Stratvert at 242-6845.

Lawyers Assistance Support Group Monthly Meeting
The next Lawyers Assistance Support Group meeting will be held at 5:30 p.m., Dec. 6 at the First United Methodist Church at Fourth and Lead SW in Albuquerque. The group meets regularly on the first Monday of the month.

For more information, contact Bill Stratvert, (505) 242-6845.

Paralegal Division Brownbag CLEs for Attorneys and Paralegals
The Paralegal Division of the State Bar is offering luncheon brownbag CLEs at the State Bar Center the second Wednesday of every month. The next brownbag is on Dec. 8 and is titled Ethics for Legal Assistants and Paralegals. The cost is $16 for attorneys and $15 for paralegals, legal assistants and office staff. Each meeting has been approved for 1.0 G 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.

Public Law Section Board Meeting
The next Public Law Section board meeting will be held at noon, Dec. 9 in the Risk Management Division Legal Bureau Conference Room on the first floor of the Montoya Building, 1100 St. Frances Dr., Santa Fe. Contact Deborah Moll, (505) 827-2000, for more information.

Real Property, Probate and Trust Section CLE and Annual Meeting
The Real Property, Probate and Trust Section and the Center for Legal Education of the State Bar of New Mexico will present The Art of the Real Estate Deal Dec. 10 at the State Bar Center. Attendees will receive 5.1 general, 1.2 ethics and 1.2 professionalism CLE credits. See page 8 of the Nov. 11 CLE insert for registration information.

The annual membership meeting will be held at 12:45 p.m. All section members are encouraged to attend the meeting regardless of whether or not they are registered for the CLE program. Contact Chair R. Max Best, max@rmaxlaw.com, to place an item on the agenda.

Trial Practice Section CLE, Annual Meeting and Reception
The Trial Practice Section and the Center for Legal Education of the State Bar of New Mexico will present a video replay of Toil and Trouble: Avoiding Common Pitfalls at 3 p.m., Dec. 9 at the State Bar Center. Attendees will receive 1.0 ethics and 2.0 professionalism CLE credits. See page 8 of the Nov. 11 CLE insert for registration information. The annual membership meeting and reception will follow at 5:30 pm. Contact Chair Rick Shane, (505) 883-5030 or rshane@rshabqlaw.com, to place an item on the agenda.

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. See page 4 of this week’s issue for registration information.

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.
Young Lawyers Division
2004 Election Results

The State Bar Young Lawyers Division is governed by a board of directors whose members are elected to staggered two-year terms by the active, in-state members of the division. All members of the State Bar who have practiced law in any state for five years or less, and those State Bar members who are under the age of 36 are members of the division and are eligible for office.

The 2004 election closed on Oct. 31. Roman Romero, Briana Zamora, Steven Almanza and J. Brent Moore all petitioned for board positions, and were unopposed. Almanza and J. Brent Moore all petitioned Roman Romero, Briana Zamora, Steven Almanza and J. Brent Moore all petitioned for board positions, and were unopposed.

The full 2005 YLD Board of Directors is as follows:

Roxanna Chacon  
Chair  
2005
Region 4 Director  
2005-2006

Briana Zamora  
Director-At-Large, Position 1  
2004-2005

Robert P. Tedrow  
Region 1 Director  
2004-2005

Brent Moore  
Region 2 Director  
2005-2006

Vacant  
Region 3 Director  
2004-2005

Carolyn Ramos  
Region 5 Director  
2004-2005

Roman Romero  
Director-At-Large, Position 2  
2005-2006

Shawn Brown  
Director-At-Large, Position 3  
2004-2005

Steven Almanza  
Director-At-Large, Position 4  
2005-2006

Erika Anderson  
Director-At-Large, Position 5  
2004-2005

Cyndi Sanchez  
UNM Student Liaison  
Apr. 2004 – Mar. 2005

Morris J. Chavez  
Past Chair and ABA/Dist. 23 Rep.  
2005

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., Dec. 8 at Conrad’s in the La Posada Hotel, Albuquerque. Visitors are welcome and advance reservations are required. Lunch prices range from $6 to $11 and payment is to be made to the restaurant. Anyone interested in purchasing a ticket can contact Brian Colón, (505) 242-6677 or Tina Cruz, (505) 248-0500.

NM Women’s Bar Association
Mid-State Chapter
Monthly Networking Luncheon

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OTHER NEWS

American Civil Liberties
Union of New Mexico
Bill of Rights Dinner

The American Civil Liberties Union of New Mexico will host its 2004 Bill of Rights Dinner Dec. 4 at 6 p.m. at the Albuquerque Marriott Hotel. Cathy Ansheles will receive the Civil Libertarian Lifetime Achievement Award for her leadership and commitment in working to end the death penalty in New Mexico. George Bach, Kari Morrissey and Lee Peifer will receive the Cooperating Attorneys of the Year Award for fighting against the unconstitutional elements of the Sunshine Law and the Albuquerque Sex Offender Registration and Notification Act. The keynote speaker at the event will be Anthony Romero, the ACLU executive director since September 2001. He is the ACLU’s sixth executive director, and the first Latino and openly gay man to serve in that capacity. Visit the ACLU’s Web site at www.aclu-nm.org or call (505) 266-4622 for registration information.

National Lawyers Guild
Korea Peace Symposium

The NM Endowment for the Humanities and the Korea Peace Project of the National Lawyers Guild will sponsor “Possibilities for Peace on the Korean Peninsula,” a symposium on approaches to foreign policy favoring peaceful resolution of tensions with North Korea from 1 to 4 p.m., Nov. 20 at the UNM School of Law. Speakers include Sig Hecker, former Los Alamos National Labs director who traveled to North Korea in January 2004 to inspect its weapons facilities; John Feffer, author of “North Korea/South Korea: US Policy at a Time of Crisis” and Eric Sirotkin, Albuquerque human rights attorney who was a member of the 2003 National Lawyers Guild Korea Peace delegation. CLE credits are pending.

NM Workers’ Compensation Administration
Public Hearing

Notice is hereby given that at 1:30 p.m., Nov. 30 the New Mexico Workers’ Compensation Administration (WCA) will conduct a public hearing on changes to the medical fee schedule and Part 7 of the WCA 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 changes to the medical fee schedule and Part 7 of the WCA Rules are available. Written comments pertaining to the medical fee schedule will be accepted until the close of business on Dec. 15. Written Comments pertaining to the amendments to Part 7 will be accepted until the close of business on Dec. 8.

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
Holiday Hours
UNM Law Library Hours
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.
Library Holiday Closures
The Law Library will be closed during the following UNM holidays:
Nov. 25 to 26
Dec. 23 to Jan. 2
Call the Reference Desk, (505) 277-0935 if you have any questions.

DEPRESSION, ALCOHOL OR DRUG PROBLEMS?
The Lawyers Assistance Program is a statewide network of recovering lawyers and substance abuse professionals dedicated to helping others within the profession get the help they need. Discuss your concerns with professional staff who will answer your questions, provide information, give support and offer a plan of action. At your request, you may be put in touch with an attorney in recovery who can share his or her experience with you.

HATS OFF TO THE HOMELESS LEGAL CLINIC
The Homeless Legal Clinic is a program of the State Bar Young Lawyers Division. Weekly clinics are held in Albuquerque where the homeless may speak to a volunteer attorney for legal advice and some clients are referred for pro bono representation.

Sean Olivas
Scott Cameron
Mariposa Sivage
Ben Feuchter
Nancy Stratton
Kasey Daniel

Free Confidential* 24-Hour Hotline
Albuquerque (505) 228-1948
(800) 860-4914

*The NM Rules of Professional Conduct (Rule 16-803) and the NM Code of Judicial Conduct (Rule 21-300) provide for strict confidentiality.
### November

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<th>Date</th>
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<tbody>
<tr>
<td>23</td>
<td><strong>DWI: Adequacy of Proof from Opposing Sides</strong></td>
<td>VR - State Bar Center, Albuquerque Center for Legal Education of SBNM 3.6 G (505) 797-6020 <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<tr>
<td>24</td>
<td><strong>Is a New Rule Needed Regarding Class Action Litigation?</strong></td>
<td>Telephone TRT, Inc. 2.4 E (800) 672-6253 <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>29</td>
<td><strong>When Counsel’s Duties Conflict</strong></td>
<td>Telephone TRT, Inc. 2.4 P (800) 672-6253 <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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### December

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<td>1</td>
<td><strong>2004 Professionalism: An Historical Perspective</strong></td>
<td>VR - State Bar Center, Albuquerque Center for Legal Education of SBNM 2.0 P (505) 797-6020 <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td><strong>Annual ERISA Workshop</strong></td>
<td>Albuquerque Sungard Corbel Inc. 7.2 G (800) 326-7235 <a href="http://www.sungardcorbel.com">www.sungardcorbel.com</a></td>
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<td>1</td>
<td><strong>Complete Trust Course</strong></td>
<td>Albuquerque Professional Education Systems 8.4 G (715) 833-3940 <a href="http://www.pesi.com">www.pesi.com</a></td>
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<td>1-3</td>
<td><strong>Direct and Cross Examinations Skills Workshop</strong></td>
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<td>Telephone TRT, Inc. 2.4 P (800) 672-6253 <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>1</td>
<td><strong>How to Draft Wills and Trusts in New Mexico</strong></td>
<td>Albuquerque National Business Institute 6.7 G, 0.5 E (800) 930-6182 <a href="http://www.nbi-sems.com">www.nbi-sems.com</a></td>
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<td>1-3</td>
<td><strong>Internal Investigations Certificate Program</strong></td>
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<td>1</td>
<td><strong>More Recent Developments for Estate Planners</strong></td>
<td>Telephone Cannon Financial Institute 1.8 G (706) 353-3346 <a href="http://www.cannonfinancial.com">www.cannonfinancial.com</a></td>
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<td>2</td>
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2 Privacy Law 2004
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WRIT 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 NOVEMBER 17, 2004

PETITIONS FOR WRIT OF CERTIORARI FILED AND PENDING:

<table>
<thead>
<tr>
<th>No.</th>
<th>Petitioner</th>
<th>Case Name</th>
<th>Date Writ Filed</th>
<th>Date Writ Issued</th>
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<tbody>
<tr>
<td>28,597</td>
<td>State v. Schoonmaker (COA 23,927)</td>
<td>11/12/04</td>
<td>11/12/04</td>
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<td>28,596</td>
<td>State v. Baca (COA 23,021)</td>
<td>11/12/04</td>
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<td>28,595</td>
<td>State v. Allen (COA 23,548)</td>
<td>11/12/04</td>
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<td>28,594</td>
<td>State v. Dominguez (COA 24,855)</td>
<td>11/10/04</td>
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<td>28,593</td>
<td>State v. Nyce (COA 25,075)</td>
<td>11/10/04</td>
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<td>28,589</td>
<td>State v. Santiago (COA 24,806)</td>
<td>11/2/04</td>
<td>11/2/04</td>
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<td>28,588</td>
<td>State v. Vanessa V. (COA 24,964)</td>
<td>11/2/04</td>
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<td>28,587</td>
<td>State v. Titos (COA 24,842)</td>
<td>10/28/04</td>
<td>10/28/04</td>
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<td>28,586</td>
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<td>10/27/04</td>
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<td>Ebaugh v. Ebaugh (COA 24,770)</td>
<td>10/25/04</td>
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<td>10/25/04</td>
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<td>10/20/04</td>
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<td>Meechibier v. Lucero (COA 25,172)</td>
<td>10/20/04</td>
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<td>State v. Ponce (COA 23,913)</td>
<td>10/13/04</td>
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<td>Solorzcano v. Bristow (COA 23,776)</td>
<td>10/6/04</td>
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<td>Brooks v. Norwest (COA 23,423)</td>
<td>8/30/04</td>
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<td>Matrix v. Ricks Exploration (COA 24,211)</td>
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<td>5/17/04</td>
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<td>State v. Kee (COA 24,561)</td>
<td>5/17/04</td>
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<td>5/17/04</td>
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<td>State v. Williamson (COA 24,411)</td>
<td>5/17/04</td>
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<td>State v. Dickie (COA 24,475)</td>
<td>5/17/04</td>
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<td>State v. Etsitty (COA 24,414)</td>
<td>5/17/04</td>
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<td>State v. Jim (COA 24,404)</td>
<td>5/17/04</td>
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<td>State v. Henderson (COA 24,506)</td>
<td>5/17/04</td>
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<td>State v. Hunter (COA 24,816)</td>
<td>7/6/04</td>
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<td>6/22/04</td>
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<td>State v. Cearley (COA 23,707)</td>
<td>7/14/04</td>
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<td>28,668</td>
<td>State v. Dean (COA 23,409)</td>
<td>7/19/04</td>
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<td>State v. Franco (COA 23,719)</td>
<td>8/10/04</td>
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<td>28,666</td>
<td>Cerrillos Gravel v. County Commissioners (COA 23,630/634)</td>
<td>8/10/04</td>
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<td>28,665</td>
<td>State v. Still (COA 24,525)</td>
<td>8/10/04</td>
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<tr>
<td>28,664</td>
<td>State v. Perea (COA 23,557)</td>
<td>8/17/04</td>
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<tr>
<td>28,663</td>
<td>Romero v. City of Santa Fe (COA 24,775)</td>
<td>8/17/04</td>
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<td>28,662</td>
<td>State v. Maese (COA 23,793)</td>
<td>8/17/04</td>
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<tr>
<td>28,661</td>
<td>Battishill v. Farmers Insurance (COA 24,196)</td>
<td>8/24/04</td>
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<td>28,660</td>
<td>State v. Heinsen (COA 23,716)</td>
<td>8/24/04</td>
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<td>28,659</td>
<td>Sanchez v. Allied Discount (COA 23,437/7,15)</td>
<td>9/21/04</td>
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<tr>
<td>28,658</td>
<td>Tarin v. Tarin (COA 23,428)</td>
<td>9/21/04</td>
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<tr>
<td>28,657</td>
<td>Payne v. Hall (COA 22,383)</td>
<td>10/1/04</td>
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<tr>
<td>28,656</td>
<td>State v. Rodriguez (COA 23,455)</td>
<td>10/19/04</td>
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<tr>
<td>28,655</td>
<td>Deflon v. Sawyers (COA 23,013)</td>
<td>10/19/04</td>
<td></td>
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<tr>
<td>28,653</td>
<td>Pincheira v. Allstate (COA 25,070)</td>
<td>11/9/04</td>
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Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fé, NM 87504-0848 • (505) 827-4860
EFFECTIVE NOVEMBER 17, 2004

NO. 28,652  State v. Abeyta (COA 23,804)  7/19/04
NO. 28,751  State v. Perez (COA 24,474)  7/19/04
NO. 28,750  State v. Horcasitas (COA 24,274)  7/19/04
NO. 28,748  State v. Tave (COA 24,114)  7/19/04
NO. 28,746  State v. Hensley (COA 23,966)  7/19/04
NO. 28,745  State v. Torres (COA 24,683)  7/19/04
NO. 28,805  State v. Garcia (COA 24,369)  8/10/04
NO. 28,778  State v. Washington (COA 24,004)  8/10/04
NO. 28,665  State v. Self (COA 23,588)  7/19/04
NO. 28,664  State v. Lopez (COA 23,531)  7/19/04
NO. 28,663  State v. Dean
Date Writ Issued
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NO. 28,664  State v. Lopez (COA 23,531)  7/19/04
CERTIORARI GRANTED BUT NOT SUBMITTED:
(Submission = date of oral argument or briefs-only submission)
ALL CASES HELD IN ABEYANCE PENDING DISPOSITION IN
NO. 28,663, STATE V. DEAN

NO. 28,905  Maloof v. Prieskorn (COA 23,901)  11/3/04
NO. 28,931  Araiza v. Tafoya (12-501)  11/9/04
NO. 28,911  State v. Joe (COA 23,780)  11/10/04
NO. 28,914  State v. Najar (COA 23,611)  11/10/04
NO. 28,925  Sain v. Snyder (COA 25,076)  11/10/04
NO. 28,924  Lopez v. Lucero (COA 24,751)  11/10/04
NO. 28,923  State v. Warner (COA 25,035)  11/10/04
NO. 28,921  State v. Gonzales (COA 24,759)  11/10/04
NO. 28,919  Peterson v. Roark (COA 24,271)  11/10/04
NO. 28,918  State v. Bryant (COA 23,885)  11/10/04
NO. 28,915  Sanchez v. Village of Los Ranchos (COA 24,220)  11/10/04

NO. 27,950  Breen v. Carlsbad Schools (COA 22,858/22,859)
Submission Date 9/30/03
NO. 28,038  Paule v. Santa Fe County Commissioners
(COA 22,988)  10/27/03
NO. 27,945  State v. Munoz (COA 23,094)  11/18/03
NO. 27,817  Tomlinson v. George (COA 22,017)  12/15/03
NO. 28,068  State v. Gallegos (COA 22,888)  2/3/04
NO. 28,225  Huntley v. Cibola General Hospital
(COA 23,916)  2/29/04
NO. 28,272  Lester v. City of Hobbs (COA 22,250)  3/16/04
NO. 28,241  State v. Duran (COA 22,611)  3/31/04
NO. 28,317  Turner v. Bassett (COA 22,877)  4/12/04
NO. 28,261  State v. Dedman (COA 23,476)  4/13/04
NO. 28,286  State v. Graham (COA 22,913)  5/17/04
(COA 22,932)  6/14/04
NO. 28,374  Smith v. Bernalillo County Commissioners
(COA 22,766)  8/9/04
NO. 28,380  Angel Fire v. Wheeler (COA 24,295)  8/9/04
NO. 28,481  Jouett v. Grownwy (COA 23,669)  8/10/04
NO. 28,486  Jouett v. Grownwy (COA 23,669)  8/10/04
NO. 28,482  Jouett v. Grownwy (COA 23,669)  8/10/04
NO. 28,441  Gormley v. Coca Cola (COA 22,722)  8/11/04
NO. 28,462  State v. Ryon (COA 23,318)  8/11/04
NO. 28,416  Blanctt v. Blanctt (COA 24,282)  8/30/04
NO. 28,426  Sam v. Estate of Sam (COA 23,288)  9/13/04
NO. 28,119  State v. Dominguez (COA 23,286)  9/13/04
NO. 28,253  Miller v. Brock (COA 24,124)  9/15/04
NO. 28,249  Miller v. Brock (COA 24,125)  9/15/04
NO. 27,409  State v. Rodriguez (COA 22,558)  9/15/04
NO. 28,016  State v. Lopez (COA 23,424)  9/15/04
NO. 28,415  State v. Dedman (COA 23,476)  9/15/04
NO. 28,317  Turner v. Bassett (COA 22,877)  4/12/04
NO. 28,261  State v. Dedman (COA 23,476)  4/13/04
NO. 28,286  State v. Graham (COA 22,913)  5/17/04
(COA 22,932)  6/14/04
NO. 28,374  Smith v. Bernalillo County Commissioners
(COA 22,766)  8/9/04
NO. 28,380  Angel Fire v. Wheeler (COA 24,295)  8/9/04
NO. 28,481  Jouett v. Grownwy (COA 23,669)  8/10/04
NO. 28,486  Jouett v. Grownwy (COA 23,669)  8/10/4
PROPOSED REVISION OF DISTRICT COURT CIVIL RULE 1-053.2
The Supreme Court is considering the following revision to Rule 1-053.2 of the Rules of Civil Procedure for the District Courts. 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 December 10, 2004.

1-053.2 Domestic relations hearing officers; duties.
A. Appointment. Domestic relations hearing officers shall be appointed by and serve at the pleasure of a majority of the judges of a judicial district. Consistent with the authority set forth in this rule, domestic relations hearing officers may perform such duties as assigned by the judges of the district in domestic relations proceedings.

B. Qualifications. Any person appointed to serve as a domestic relations hearing officer shall have the same qualifications as provided in Section 40-4B-4 NMSA for a child support hearing officer.

C. Authority. A domestic relations hearing officer may perform the following duties in domestic relations proceedings:
(1) review petitions for indigency;
(2) determine if petitioners' requests for temporary restraining orders should be granted;
(3) conduct hearings on the merits of petitions;
(4) in a child support enforcement division case, carry out the duties of a child support hearing officer as set forth in the Child Support Hearing Officer Act;
(5) carry out the duties of a domestic violence special commissioner as set forth in Rule 1-053.1 NMRA;
(6) assist the court in carrying out the purposes of the Domestic Relations Mediation Act and the Uniform Parentage Act;
(7) upon the filing of a petition for dissolution of marriage or a petition for division of property, hold an interim hearing on:
  (a) allocation of income and expenses of the parties; and
  (b) child custody and support; [Interim hearings on child support shall be conducted in the manner provided by the Child Support Hearing Officers Act]; and
(8) prepare recommendations to the district court regarding disposition of requests for orders of protection.

[All orders must be signed by a district judge before the recommendations of a domestic relations hearing officer become effective.]

D. Domestic violence proceedings. Unless the judicial district has appointed a full-time domestic violence special commissioner pursuant to Rule 1-053.1 NMRA, a domestic relations hearing officer may also perform the following duties:
(1) interview parties in domestic violence proceedings; and
(2) assist the court in carrying out the purposes of the Family Violence Protection Act;

E. Recommendations. Within thirty (30) days after a hearing, the domestic relations hearing officer shall file a report on the issues heard by the hearing officer. A copy of the report shall be filed with the court and served on each of the parties.

F. Review. Within ten (10) days after service of a domestic relations officer's report, a party may file written objections to the report. A copy of the written objections shall be served on all parties to the proceeding. If a party files written objections, a district court judge shall hold a de novo hearing on the written objections. The court after a de novo hearing may enter an order adopting the report, modifying the report or rejecting it in whole or in part.

G. Limitations on private practice. Full-time domestic relations hearing officers shall devote full time to domestic relations matters and shall not engage in the private practice of law or in any employment, occupation or business interfering with or inconsistent with the discharge of their duties. Part-time domestic relations hearing officers may engage in the private practice of law so long as in the discretion of the appointing judge it does not interfere with nor is inconsistent with the discharge of their duties as a domestic relations hearing officer and subject to the Code of Judicial Conduct rules enumerated in Paragraph F of this rule.

PROPOSED AMENDMENT TO RULE 1-123 OF THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS

The Supreme Court is considering proposed amendments to the Rules of Civil Procedure for the District Courts. 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

Your comments must be received by the Clerk on or before December 10, 2004, to be considered by the Court.

1-123. [Community and separate property and liability schedules; child support worksheets] Mandatory disclosure in domestic relations actions; affidavits of disclosure.

A. Duty to disclose. Parties to domestic relations actions shall disclose to other parties relevant information concerning characterization, valuation, division or distribution of assets or liabilities whether separate or community property in any proceeding involving the distribution of property or the establishment or modification of child or spousal support as provided in this rule.

[NEW MATERIAL]

B. Affidavits of disclosure.

1) Preliminary affidavit of disclosure. Unless otherwise stipulated by the parties or ordered by the court, in every contested domestic relations action involving property and debt division or characterization and in every original spousal support action, each party shall serve on the other party the petitioner shall, within thirty (30) days after filing the petition, serve on the respondent, and the respondent shall, within thirty (30) days after service of process, serve on the petitioner. The affidavit of disclosure shall contain:

(a) an interim monthly income and expense statement;

(b) a community property and liability schedule; and

(c) [if applicable,] a separate property and liability schedule and file a certificate of service with the court and file a certificate with the court.

The statements and schedules shall be in substantial compliance with Domestic Relations Forms 4A-122, 4A-131 and 4A-132 NMRA approved by the Supreme Court. The schedules shall be accompanied by a list of the documents utilized to complete the schedules.

2) Paternity actions. In an action seeking to establish paternity, within thirty (30) days after the court makes a finding of paternity the parties each shall serve an affidavit of disclosure containing a monthly income and expense schedule in compliance with Domestic Relations Form 4A-122 NMRA. The schedules shall be accompanied by a list of the documents utilized to complete the schedules.

3) Spousal support. In an action for modification of spousal support or child support, the petitioner shall, within thirty (30) days after filing the petition for modification, serve on the respondent, and the respondent shall, within thirty (30) days after service of process, serve on the petitioner, an affidavit of disclosure containing a monthly income and expense schedule in compliance with Domestic Relations Form 4A-122 NMRA.

The schedules shall be accompanied by a list of the documents utilized to complete the schedules.

C. Supplemental affidavit of disclosure. The schedules supplemental affidavits shall be served [by the] upon the opposing parties at least five (5) days before trial. The affidavits of disclosure shall be supplemented in accordance with Subparagraphs (2) and (3) of Paragraph E of Rule 1-026 NMRA. The schedules affidavits shall be delivered to the trial judge at least one (1) day before trial. The schedules shall not be filed with the court.

[NEW MATERIAL]

D. Child support worksheets. [If the action involves] In actions involving child support, the parties shall each complete a child support worksheet as provided by Section 40-4-11.1 NMSA 1978. Unless otherwise stipulated by the parties or ordered by the court, the worksheets shall be served [by the parties] at least five (5) days before trial. The worksheets shall be delivered to the trial judge at least one (1) day before trial.

E. No limitation of discovery. This rule does not limit otherwise permissible discovery pursuant to Rules 1-026 to 1-037 NMRA.

F. Failure to comply. Failure to timely serve the schedule or worksheet may result in the assessment of costs and attorney fees against the delinquent party or such other sanctions as the court deems appropriate a party who fails to make timely and full disclosure pursuant to this rule. The court also may impose sanctions pursuant to Rule 1-037 NMRA.

[NEW MATERIAL]

2004 COMMITTEE COMMENTS

Purpose

A duty to disclose is hereby created in order to:

1) decrease acrimony and mistrust between and among parties involved in domestic relations disputes;

2) lessen legal fees and costs of domestic relations disputes;

3) foster the fiduciary duty between spouses and others who have cohabited in an intimate relationship and who are presently involved in a domestic relations dispute;

4) assist lawyers to assure that clients make full and honest disclosure of the existence and value of assets, debts and income, and

5) encourage families to restructure their relationships inexpensively, efficiently and

This rule impacts Rule 1-122(C) concerning the time for the parties to exchange certain information.

For the reasons stated in the preceding paragraph, this rule imposes a broad duty of disclosure on parties to domestic relations actions involving property and debt distribution, spousal support or child support provisions of Rule 1-026 NMRA that protect from discovery privileged matter, material prepared in anticipation of litigation and certain facts known and opinions held by experts are also limitations upon the duty of disclosure created by this rule.

Rule 1-123 NMRA and Rule 1-122 NMRA previously required that parties to domestic relations actions exchange information, but provided that the information be exchanged shortly before a hearing or before trial.

Paragraph B of this rule advances the time for the exchange of the same information in cases involving property and debt distribution. In paternity actions, the required disclosure is narrower, and is deferred until there has been a finding of paternity.

Rule 1-123 NMRA now requires that the disclosures be accompanied by a list of the documents used to complete the disclosure.
Paragraph C assures that the initial affidavits of disclosure will be updated prior to trial in accordance with the requirements for updating discovery that are contained in Subparagraphs (2) and (3) of Paragraph E of Rule 1-026 NMRA.

Paragraph D incorporates and implements the parties’ duty to prepare and exchange child support worksheets, and sets the time for doing so.

Paragraph E provides that mandatory disclosure provided by this rule does not supersede the process of discovery established in Rules 1-026 to 1-037 NMRA. The court has ample authority to order that discovery be deferred until disclosure is complete where it is appropriate to do so. See Paragraphs B(2), C and F of Rule 1-026 NMRA.

Paragraph F provides for sanctions for non-compliance with the duty of disclosure. Normally, the court will follow the procedure set forth in Paragraph A of Rule 1-037 NMRA whereby a party moves for an order compelling compliance and sanctions are imposed if the order is not complied with. However, in cases of egregious, bad faith failure to comply with the duty of disclosure, the first sentence of Paragraph F authorizes the court to impose a sanction, after a hearing, in the absence of a court order compelling a party to comply with the provisions of a hearing, in the absence of a court order compelling a party to comply with the provisions of this rule. In addition to the power to sanction parties for non-compliance during the pendency of the proceeding, the court also retains the power to reopen proceedings and to modify the court’s decree where a party’s failure to make full disclosure is discovered after the decree is entered. See Paragraph B of Rule 1-060 and Subsection A of Section 40-4-11 NMSA 1978.

PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS AND SUPREME COURT GENERAL RULES

The Supreme Court is considering proposed revisions to the Rules of Criminal Procedure for the District Courts and Supreme Court General Rules. 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

Your comments must be received by the Clerk on or before December 10, 2004, to be considered by the Court.

5-204. Amendment or dismissal of complaint, information and indictment.

* * *

(No amendments are proposed for Paragraphs A through C.)

D. Effect. No appeal, or motion made after verdict, based on any such defect, error, omission, repugnancy, imperfection, variance or failure to prove surplusage shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced [thereby in his] in the defendant’s defense on the merits.

E. Refiled proceedings. If an indictment or information is dismissed and a subsequent indictment or information is filed arising out of the same incident, the bond shall continue in effect pending review by the district court.

F. Effect on bail. The dismissal of an indictment or information shall not exonerate a bond prior to the expiration of the time for automatic exoneration pursuant to Subparagraphs A(1) or A(2) of Rule 5-406 NMRA of these rules.

5-303. Arraignment.

A. Arraignment. The defendant may appear at arraignment:

(1) through a two way audio-visual communication in accordance with Paragraph H of this rule; or
(2) in open court.

If the defendant appears without counsel, the court shall advise the defendant of the defendant’s right to counsel.

B. Reading of indictment or information. The district attorney shall deliver to the defendant a copy of the indictment or information and shall then read the complaint, indictment or information to the defendant unless the defendant waives such reading. Thereupon the court shall ask the defendant to plead.

C. Bail review. At arraignment, upon request of the defendant, the court shall hold a hearing on the issue of conditions of release pursuant to the provisions of Rule 5-401 NMRA. If conditions of release have not been set, the court shall set conditions of release.

* * *

(Paragraphs D, E, F, G and H to be re-lettered without amendment as Paragraphs E, F, G, H and I respectively.)

[F] Waiver of arraignment. [An arraignment may be waived with the consent of the court, by the defendant filing a written plea of not guilty prior to or at the time set for arraignment.] A defendant who has been released pending trial may waive arraignment by filing a written plea of not guilty with the court and serving a copy on the state. The notice shall be hand
delivered or faxed to the prosecuting attorney in time to give notice to interested persons. An entry of a plea of not guilty shall be substantially in the form approved by the Supreme Court.

9-405

[For use with District Court Rule 5-303]
STATE OF NEW MEXICO
COUNTY OF___________________
IN THE DISTRICT COURT
No. ___________

STATE OF NEW MEXICO
v.
________________________________, Defendant

WAIVER OF ARRAIGNMENT
ENTRY OF PLEA OF NOT GUILTY

I understand that I am charged with the following criminal offense or offenses under the law of the State of New Mexico:_________ _______________________________ (list all offenses charged).

I understand that I am entitled to personally appear before the district court and enter my plea to the crime or crimes charged and to have my rights explained to me.

I hereby acknowledge receipt of a copy of the complaint, indictment or information which I have read and had explained to me by defense counsel. I understand the crime or crimes charged and the penalty provided by law for the crime or crimes charged.

I further understand that: I have a right to trial by jury; I have a right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if I cannot afford one; I have a right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; I have a right to present evidence on my own behalf and to have the state compel witnesses of my choosing to appear and testify; I have a right to remain silent and that any statement made by me may be used against me; I have a right to trial by jury and that all jurors must agree on my guilt of the crime charged beyond a reasonable doubt for me to be found guilty.

After reading and understanding the above, I hereby give up my right to personally appear before the district court for arraignment and I hereby enter a plea of not guilty to all criminal offenses charged in the above-styled cause.

I have been released from custody and I do not intend on having the court review the conditions of my release from custody.

Date ______________ Name of Defendant

[Approved:

________________________________
District Judge]
NO. 04-8300
IN THE MATTER OF THE AMENDMENTS OF RULE 1-032 
AND FORMS 4-503, 4-504, AND 4-505 NMRA

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 cleanup amendments to Rule 1-032 and Forms 4-503, 4-504, and 4-505 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 cleanup amendments of Rules 1-032 and Forms 4-503, 4-504, and 4-505 NMRA of the Rules of Civil Procedure for District Courts hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 1-032 and Forms 4-503, 4-504, and 4-505 NMRA of the Rules of Civil Procedure for District Courts 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 the above-referenced rules by publishing the same in the Bar Bulletin and NMRA.

DONE at Santa Fe, New Mexico, this 27th day of October, 2004.

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

1-032. Use of depositions in court proceedings.

Only Paragraph B of this rule has been amended. It was amended to correct an erroneous internal reference. As amended, effective January 20, 2004, Paragraph B provides:

B. Objections to admissibility.

Subject to the provisions of Paragraph B of Rule 1-028 NMRA and Subparagraph (3) of Paragraph D of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Statutory witness fee amendments. Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for “nonsalaried public officers”. Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of $95.00 for each meeting attended. Civil Forms 4-503, 4-504 and 4-505 NMRA have been amended to be consistent with the 2003 amendment of Section 10-8-4 NMSA 1978.

4-503

[For use with Magistrate Court Rule 2-502 NMRA
and Metropolitan Court Rule 3-502 NMRA]

STATE OF NEW MEXICO
COUNTY OF ____________
THIS SUBPOENA issued by or at request of:

Name of attorney of party

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY
I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this ___ day of ____________, __________.

(1) ____________________________________
   Name of party
   (Address)

(2) ____________________________________
   Name of party
   (Address)

   Attorney
   Signature
   Date of signature

TO BE PRINTED ON EACH SUBPOENA
1. If a person’s attendance is commanded, one full day’s per diem must be tendered with the subpoena.
2. If a person is ordered to produce books, documents, or tangible things in the person’s possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party’s premises before trial, the party need not appear in person at the time of the inspection.
3. The judge or clerk may issue a pro se party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.
4. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS
A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney’s fee.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(1) fails to allow reasonable time for compliance;
(2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or
(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(4) subjects a person to undue burden.

If a subpoena

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(2) requires disclosure of an unretained expert’s opinion or information not describing specific events or occurrences in dispute and resulting from the expert’s study made not at the request of any party, or
(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA
(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation or matters that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

4-504
[For use with Metropolitan Court Rule 3-501.1 NMRA]

STATE OF NEW MEXICO

________________________, Plaintiff

v.

________________________, Defendant

SUBPOENA

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place:

Date: ______________, ______. Time: _______ (a.m.) (p.m.)

to give a statement in the above case.
RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of __________________, __________, in ______________ County, I served this subpoena on ______________________ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of $______________.

____________________________
Deputy Sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of __________________, __________, in ______________ County, I served this subpoena on ______________________ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of $______________.

____________________________
Person making service

SUBSCRIBED AND SWORN to before me this _____ day of __________________, __________ (date).

____________________________
Judge, notary or other officer authorized to administer oaths

THIS SUBPOENA issued by or at request of:

Name of attorney of party
____________________________
Address
____________________________
Telephone

CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this _____ day of __________________, __________.

(1) (Name of party)
____________________________
(Address)

(2) (Name of party)
____________________________
(Address)

Attorney
____________________________
Signature
____________________________
Date of signature

TO BE PRINTED ON EACH SUBPOENA

1. If a person’s attendance is commanded, one full day’s per diem must be tendered with the subpoena.
2. The judge may issue a pro se party a subpoena for a statement only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.

3. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney’s fee.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
(1) fails to allow reasonable time for compliance;
(2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or
(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(4) subjects a person to undue burden.

If a subpoena
(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(2) requires disclosure of an unretained expert’s opinion or information not describing specific events or occurrences in dispute and resulting from the expert’s study made not at the request of any party, or
(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Approved, effective May 1, 2002; as amended, effective January 20, 2005.]

4-505
[For use with District Court Civil Rule 1-045 NMRA]
STATE OF NEW MEXICO
COUNTY OF ____________________________ JUDICIAL DISTRICT
SUBPOENA FOR APPEARANCE OF PERSON FOR

[ ] DEPOSITION  [ ] TRIAL

TO:

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: _______________________

Date: ___________ , _____ Time: __________ (a.m.) (p.m.)

[ ] testify at the taking of a deposition in the above case.
[ ] testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s)

________________________________________

________________________, _____.

Judge, clerk or attorney

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _________________, ______, in _________________ County, I served this subpoena on _______________________ by delivering to the person named a copy of the subpoena, a witness fee in the amount of $___________3.

Deputy Sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _________________, ______, in _________________ County, I served this subpoena on _______________________ by delivering to the person named a copy of the subpoena, a witness fee in the amount of $___________3.

Person making service

SUBSCRIBED AND SWORN to before me this _____ day of ______________________, (date).

Judge, notary or other officer authorized to administer oaths

THIS SUBPOENA issued by or at request of:

Name of attorney of party

Address

Telephone

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

3. If a person’s attendance is commanded, one full day’s per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney’s fee.

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if:

(1) fails to allow reasonable time for compliance,

(2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(4) subjects a person to undue burden.

If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(2) requires disclosure of an unretained expert’s opinion or information not describing specific events or occurrences in dispute and resulting from the expert’s study made not at the request of any party, or

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20, 2005.]
PROPOSED REVISIONS TO UJI CIVIL
The Supreme Court is considering proposed new UJI Civil 13-413, 13-1650 and 13-1651 and proposed amendments to UJI Civil 13-1718 NMRA. If you would like to comment on the proposed new jury instruction set forth below, please send your written comments to:

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

Comments must be received by December 10, 2004.

PROPOSED NEW JURY INSTRUCTION
UJI 13-413. Liability of employer or co-employee defendant.
_________________ (defendant employer or co-employee), is responsible for damages caused to ____________ (plaintiff) only if __________________ (employer or co-employee) intentionally or willfully injured ____________ (plaintiff).

_________________ (employer or co-employee) acted intentionally if [he] [she] [it] [committed an act] [or] [failed to act] when [he] [she] [it] knew or should have known, under the conditions existing at the time, that __________________ (plaintiff) was substantially certain to be injured as a result.

_________________ (employer or co-employee) acted willfully if [he] [she] [it]:

(1) intentionally [acted] [or] [failed to act], without just cause or excuse in a way reasonably expected to result in injury to __________________ (plaintiff); and

(2) either expected the injury to occur or utterly disregarded the consequences of [his] [her] [its] [act] [or] [failure to act].

DIRECTIONS FOR USE
This instruction is to be used whenever the plaintiff is suing an employer or co-employee for injuries suffered in the course and scope of employment.

COMMITTEE COMMENT
Under Delgado v. Phelps Dodge Chino, 2001-NMSC-034, 131 N.M. 272, 34 P.3d 1148, an employer or co-employee may be held liable for an on-the-job injury only if the defendant either intentionally or willfully caused the plaintiff’s injury.

PROPOSED NEW JURY INSTRUCTION
_________________ (name of plaintiff) says in this case that __________________ (name of defendant) intentionally [disposed of, destroyed, mutilated or significantly altered] evidence relevant to a [potential lawsuit] [lawsuit]. In order to prove intentional spoliation of evidence, ____________ (plaintiff) must prove each of the following:

1. There was [a lawsuit] [the potential for a lawsuit];
2. __________________ (defendant) knew there was [a lawsuit] [the potential for a lawsuit];
3. __________________ (defendant) disposed of, destroyed, mutilated or significantly altered potential evidence;
4. By its conduct __________________ (defendant)’s sole intent was to disrupt or defeat a potential lawsuit;
5. The destruction or alteration of the evidence resulted in ____________ (plaintiff)’s inability to prove [his] [her] case;
6. ____________ (plaintiff) suffered damages as a result of the destruction or alteration.

DIRECTIONS FOR USE
This instruction is to be used when the plaintiff brings a claim for intentional spoliation of evidence.

COMMITTEE COMMENT
The elements of the tort of spoliation of evidence were discussed in Coleman v. Eddy Potash, Inc., 120 N.M. 645, 905 P.2d 185 (1995).

In Torres v. El Paso Electric Co., 1999-NMSC-029, 127 N.M. 729, 987 P.2d 386, the court discussed wrongful activity occurring prior to the filing of a complaint, and suggested that spoliation, “at least spoliation discovered prior to trial, should be tried in conjunction with the underlying claim, rather than in a bifurcated or separate trial”. The court in Torres indicated that the tort seeks to remedy acts taken with the sole intent to maliciously defeat or disrupt a lawsuit. Practitioners should note that the trial court may independently impose sanctions for destruction of evidence ranging from dismissal, or imposition of liability to instructing the jury regarding an inference arising from spoliation. See Segura v. K-Mart Corporation, 2003-NMCA-013, 133 N.M. 192, 62 P.3d 283.

PROPOSED NEW JURY INSTRUCTION
13-1651. Inference where evidence is lost, destroyed or altered.
_________________ (plaintiff or defendant) says that evidence within the control of __________________ (other party) was lost, destroyed or altered. If you find that this happened, without a reasonable explanation, you may, but are not required to, conclude that the lost, destroyed or altered evidence would be unfavorable to __________________ (other party).

DIRECTIONS FOR USE
This instruction may be given by the court when evidence in the control of one of the parties has been lost, destroyed or altered.

COMMITTEE COMMENT
In determining whether to give this instruction or to provide a different remedy, trial courts should consider whether the loss, destruction or alteration was intentional, whether there was a reasonable possibility of a lawsuit involving this evidence, whether the party requesting the instruction acted with due diligence in preserving the evidence and whether the evidence would have been relevant to a material issue in the case. Torres v. El Paso Electric Co., 1999-NMSC-029, 127 N.M. 729, 987 P.2d 386.

The court may also choose to impose other sanctions it considers appropriate under the circumstances. For the standards to be used for an appropriate sanction, see Restaurant Management Company v. Kidde-Fenwal, Inc., 1999-NMCA-101, 127 N.M. 708, 986 P.2d 504 and Segura v. K-Mart Corporation, 2003-NMCA-013, 133 N.M. 192, 62 P.3d 283.

13-1718. Punitive damages.

If you find that plaintiff should recover compensatory damages for the bad faith actions of the insurance company, and you find that the conduct of the insurance company was in reckless disregard for the interests of the plaintiff, or was based on a dishonest judgment, or was otherwise malicious, willful or wanton, then you may award punitive damages.

[“Reckless conduct” is the intentional doing of an act with utter indifference to the consequences.]

[“Dishonest judgment” is a failure by the insurer to honestly and fairly balance its own interests and the interests of the insured.]
Punitive damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses. The amount of punitive damages must be based on reason and justice, taking into account all the circumstances, including the nature of the wrong and such aggravating and mitigating circumstances as may be shown. The amount awarded, if any, must be reasonably related to the compensatory damages and injury.

DIRECTIONS FOR USE

This instruction must ordinarily be given in every action under UJI 13-1702, 13-1703 and 13-1704 NMRA. The trial court may omit this instruction only in those circumstances in which the plaintiff fails to make a prima facie showing that the insurer’s conduct exhibited a culpable mental state. Because this instruction is complete on the availability of punitive damages in insurance bad faith actions, UJI 13-1827 NMRA is unnecessary and should not be given in such cases.

COMMITTEE COMMENT


Where the insured has a cause of action under UJI 13-1707 NMRA for violation of the Unfair Practices Act the trial judge, upon a finding of willful engagement in the trade practice, may treble the actual damages awarded. Section 57-12-10 NMSA 1978. In the same action the insured may have a common law action for bad faith which requires instructing the jury on punitive damages. In the event of a trebling of damages by the trial judge and a verdict for punitive damages based upon the same conduct, the insured must elect between the two awards. To allow both statutory treble damages and punitive damages based upon the same conduct would be improper under the rule against duplication or double recovery. Hale v. Basin Motor Company, 110 N.M. 314, 795 P.2d 1006 (1990).

[Gross negligence or recklessness also provides an additional basis for recovery of punitive damages by the insured against the insurer on claims for breach of an insurance contract. Romero v. Merryn’s, 109 N.M. 249, 255, 784 P.2d 992, 998 (1989). The committee has drafted this instruction specifically for that case where punitive damages are supported by evidence of bad faith. If gross negligence or recklessness are also relied upon as a separate and additional basis for punitive damages this instruction should be properly expanded.]

In Jessen v. National Excess Ins. Co., 108 N.M. 625, 776 P.2d 1244 (1989), the New Mexico Supreme Court considered whether an insurance company could be vicariously liable for the punitive damages recovered against an independent insurance adjuster which it had hired to investigate an accident. The court held that the independent contractor status of the adjuster did not relieve the insurer of liability. Id. 108 N.M. at 629, 776 P.2d at 1248. The court found the evidence in the case sufficient to support a finding of ratification, justifying an instruction under UJI 13-1826. The court further found sufficient evidence of an independent wrongful act by the insurer. However the court also considered that the duty of good faith dealing by parties to an insurance contract is a non-delegable duty, breach of which supports vicarious liability for punitive damages. The committee has not determined whether Jessen is a sufficient basis for instructing a jury that an insurer may be found vicariously liable for conduct of a third party justifying a recovery of punitive damages. Where an insurer has hired a third party to satisfy its contract obligations and the third party’s conduct justifies an instruction on punitive damages, Jessen should be considered.
PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE

The Supreme Court is considering the following new rules. If you would like to comment on the proposed amendments set forth below, please send your written comments to:

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

Comments must be received by December 10, 2004.

12-202. Appeal as of right: how taken. ***

(No amendments are proposed for Paragraphs A and B.)

C. Additional requirements for appeals in criminal cases.
In addition to the requirements set forth in Paragraph B of this rule, the following are required, when applicable, with a notice of appeal in criminal cases:

(1) a notice of appeal by the state under Section 39-3-3B(2) NMSA 1978 shall also include the certificate of the district attorney required by the statute;
(2) if the notice of appeal names the appellate division of the public defender department as appellate counsel, a copy of the order appointing the appellate division of the public defender department shall be attached to the notice of appeal; and
(3) if the appeal is an appeal taken from the district court in which a sentence of death or life imprisonment has been imposed, and the proceedings are not [tape audio recorded], a designation of proceedings shall be filed at the same time as the notice of appeal in accordance with Subparagraph (3) of Paragraph C of Rule 12-211 NMRA.

D. Service of the notice of appeal. The appellant shall give notice of the filing of a notice of appeal:

(1) in criminal cases, including criminal contempt cases, and cases governed by the Children’s Court Rules, by serving a copy on the appellate court, appellate division of the attorney general, appellate division of the public defender, trial judge, trial counsel of record for each party other than the appellant, and the [tape court monitor] court monitor or court reporter who took the record;
(2) in child abuse and neglect proceedings and proceedings involving the termination of parental rights, in addition to those required in Subparagraph (1) of this paragraph, by serving a copy on the Legal Services Bureau of the Human Services Department; and
(3) in all other cases, by serving a copy on the appellate court, trial judge, [tape court monitor] court monitor or court reporter who took the record and trial counsel of record for each party other than the appellant.

***

(No amendments are proposed for Paragraphs E and F.)

12-211. Transcript of proceedings.

A. Transcript of proceedings. As used in these rules:

(1) “transcript of proceedings” includes [tape] audio recordings of the proceedings and stenographic transcripts of the proceedings; and
(2) “audio recording” includes any tape, digital or other electronic recording of the proceedings. Audio recordings must comply with standards established by the Supreme Court.

B. [Taped] Audio recorded proceedings.

(1) Where the transcript of proceedings is [tape) an audio recording, within fifteen (15) days after the receipt of the general calendar assignment, the district court clerk shall prepare and send the original and two (2) duplicates of the [tape recording and index log to the appellate court and shall prepare and retain one (1) duplicate. Unless otherwise ordered by the appellate court, upon motion by the appellant, the transcript shall include the entire proceedings, including pretrial, trial and post-trial proceedings. The district court clerk shall include a statement of the cost of the [tape] audio recordings. After final determination of the appeal, the appellate court shall preserve the original [tape] audio recording for storage in accordance with approved retention schedules as maintained by the office of the appellate court clerk.

(2) The appellant shall make satisfactory arrangements with the district court clerk for the cost of the duplicate copies of the [tape] audio recording. Proof that satisfactory arrangements have been made shall be filed in the district court within five (5) days of service of the general calendar assignment. Such proof of satisfactory arrangements shall be by certificate of the district court clerk.

C. Proceedings not [on tape] audio recorded.

(1) Where the proceedings are not [on tape] audio recorded, and except for those cases described in subparagraph (5) of this paragraph, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the district court and serve on the other parties to the appeal a description of the parts of the proceedings which the appellant intends to include in the transcript. If the appellant does not intend to designate any part of the proceedings for inclusion in the transcript, the appellant shall, within fifteen (15) days after service of the general calendar assignment, file in the appellate court and serve on the other parties to the appeal a notice that a transcript will not be designated. The appellant shall designate all portions of the proceedings material to the consideration of the issues presented in the docketing statement or statement of the issues, but shall designate only those portions of the proceedings that have some relationship to the issues on appeal. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation or the notice of nondesignation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.

(2) Each party designating a portion of the stenographic transcript of proceedings shall make satisfactory arrangements with the court reporter for payment of the cost of that portion of the transcript. Proof that satisfactory arrangements have been made shall be filed with the district court clerk within fifteen (15) days of the designation. Such proof of satisfactory arrangements shall be by certificate of the reporter.

(3) Except for computer-aided transcripts, within sixty (60) days after the filing of the last certificate of satisfactory arrangements, the court reporter shall file with the district court three (3) copies of the designated transcript of proceedings with a certificate of the court reporter that such copies are true and correct copies of the transcript of proceedings. If the transcript is a computer-aided transcript, the transcript shall be filed within thirty (30) days after the filing of the last certificate of satisfactory arrangements. The transcript shall be in the form required by Rule 12-305 of these rules and Rule 22-302 of the Rules Governing the Recording of Judicial Proceedings. The transcript of proceedings...
shall include a statement of the cost of the transcript. The district court clerk shall serve notice on all parties of the filing of the transcript.

(4) Within fifteen (15) days after service of the notice of filing of the transcript of proceedings, any party may file with the district court clerk, and serve on the opposing party, objections to the stenographic transcript. A hearing on the objections shall be held by the district court within fifteen (15) days after the filing of the objections. At the hearing the district court shall resolve the objections and, if necessary, order appropriate corrections to be made. If no objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court when the time for filing objections has expired. If objections are filed, the district court clerk shall send the three (3) copies of the transcript to the appellate court within ten (10) days after the hearing on the objections.

(5) If an appeal is taken from the district court in which a sentence of death or life imprisonment has been imposed and the proceedings are not [tape] audio recorded, the parties shall proceed in accordance with this rule, except that the designation of proceedings shall be filed at the same time as the notice of appeal. The proceedings beginning with the opening statement and ending with the return of the verdict on the guilt phase shall be deemed to be designated in every case. The appellant shall designate any other portions of the proceedings material to the consideration of the issues to be raised on appeal, but shall designate only those portions of the proceedings that have some relationship to those issues. If any other party to the appeal deems a transcript of other parts of the proceedings to be necessary, that party shall, within fifteen (15) days after the service of the designation of the appellant, file in the district court and serve on the appellant a designation of additional parts to be included or apply to the district court for an order requiring appellant to designate such parts.

D. Disagreements over cost. In case of disagreement over the cost of a stenographic transcript or duplicates of [tape] an audio recording, a party may file with the district court a motion for determination by the district court of the amount of compensation to be paid. The district court may order the payment or collateral to be deposited in the registry of the district court to secure payment of the cost.

E. Extensions of time. Each appellant shall be responsible for the timely preparation and filing of the transcript of proceedings. Any extension of time for filing a transcript of proceedings may be granted only by the appellate court. Any motion for extension of time must be supported by an affidavit from the responsible court reporter. [tape] court monitor, district court clerk or other party whose duty it is to prepare the transcript of proceedings or to duplicate the master [tape] audio recording unless this affidavit is waived by the appellate court for good cause shown. The affidavit shall set forth the pending cases in which the reporter or [tape] court monitor has transcripts ordered, the estimated dates on which such transcripts will be completed and the reasons an extension is necessary in this case. If the transcript is computer-aided, the motion shall also be accompanied by a written statement signed by the managing court reporter stating the reasons why the managing court reporter supports or opposes the requested extension.

F. Failure to file transcript of proceeding. If the appellant shall fail to cause the transcript of proceedings to be filed in the appellate court within the time limit prescribed by this rule, the district court or the appellate court, upon motion, shall make such orders as will prevent such default from prejudicing any other party’s appeal in the same case.

G. Filing in appellate court. Upon receipt of the transcript of proceedings, the appellate court clerk shall serve notice of the filing on all parties and the district court clerk.

H. Unavailability or inaudibility of transcript; statement of proceedings. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript of proceedings is unavailable or inaudible, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection. If no court reporter or [tape] court monitor was present at the proceedings, the statement shall be prepared and filed in the district court within fifteen (15) days after service of the notice of a general calendar assignment. If a [tape] court monitor was present at the proceedings, but the [tape] audio recorded transcript is totally or partially unavailable or inaudible, the statement shall be filed in the district court within fifteen (15) days after the filing of [the tape] an audio recorded transcript of proceedings in the appellate court or within thirty (30) days after service of the notice of a general calendar assignment, whichever is earlier. If a court reporter was present at the proceedings, but the stenographic transcript is totally or partially unavailable, the statement shall be filed in the district court within fifteen (15) days after the time the stenographic transcript of proceedings is due to be filed in the district court. The statement shall be served on the appellee, who may file objections or propose amendments thereto within fifteen (15) days after service. If there are any objections or proposed amendments thereto, the objections or amendments shall be submitted to the district court for settlement and approval. Within fifteen (15) days after filing of the objections or amendments, the district court shall settle and approve the transcript of proceedings. Upon approval, the district court clerk shall include the transcript of proceedings in the record proper and immediately transmit it to the appellate court. The appellate court may extend the time limits set forth in this paragraph for good cause shown.

***
(No amendments are proposed for Paragraphs I, J and K.)

A. Brief in chief. The brief in chief of the appellant, under appropriate headings and in the order herein indicated, shall contain:

(1) a table of contents, which shall contain a listing of each legal issue raised in the appeal and the page at which the argument on the issue begins. The appellant may raise issues in addition to those raised in the docketing statement unless the appellee would be prejudiced. When the transcript of proceedings is an audio recording, at the end of the table of contents, counsel shall include a statement of the name of the manufacturer and model of the recording device used by counsel in citing references to the transcript, together with a statement of how many counters or units are on one side of a tape when that tape is played on counsel’s machine (e.g., counsel used a Sony BM-25 with 730 counters per tape side), or a statement that counsel is using the official log in citing references to the transcript. When the transcript of proceedings is a digital or other electronic recording, at the end of the table of contents, counsel shall include a statement to that effect and shall further state that references to the recorded transcript are by elapsed time from the start of the recording (e.g. “Tr. 10:25” indicates a point occurring ten minutes and twenty-five
seconds after the start of the recording) or that counsel is using the official log in citing references to the transcript;

(2) a table of authorities, arranged in separate headings for each type of authority cited, listing cases alphabetically (New Mexico decisions separately from decisions from other jurisdictions), statutes and other authorities cited with references to the pages of the brief where they are cited;

(3) a summary of proceedings, which shall indicate briefly the nature of the case, the course of proceedings, and the disposition in the court below, and shall include a summary of the facts relevant to the issues presented for review. Such summary must be accompanied by references to the record proper, transcript of proceedings or exhibits showing a finding or proof of each factual allegation contained therein. A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition;

(4) an argument which, with respect to each issue presented, shall contain a statement of the applicable standard of review, the contentions of the appellant and a statement explaining how the issue was preserved in the court below, with citations to authorities and parts of the record proper, transcript of proceedings or exhibits relied on. New Mexico decisions, if any, shall be cited. The argument must set forth a specific attack on any finding, or such finding shall be deemed conclusive. A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the argument has identified with particularity the fact or facts which are not supported by substantial evidence; and

(5) a conclusion containing a precise statement of the relief sought.

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(No amendments are proposed for Paragraphs B, C, D, E, F, G and H.)
From the New Mexico Supreme Court

Opinion Number: 2004-NMSC-034

RAMON PACHECO MORALES and
Similarly Situated Habeas Petitioners,
versus
HON. STEPHEN BRIDGFORTH,
District Judge,
Respondent.
No. 28,078 (filed: Oct. 26, 2004)

ORIGINAL PROCEEDING FOR WRIT OF SUPERINTENDING CONTROL

JOHN BIGELOW,
Chief Public Defender
SOPHIE COOPER,
Assistant Public Defender
Albuquerque, New Mexico
for Petitioners

PATRICIA A. MADRID,
Attorney General
DAVID K. THOMSON,
Assistant Attorney General
Santa Fe, New Mexico
for Respondent

OPINION

PETRA JIMENEZ MAES, CHIEF JUSTICE

{1} Petitioner and other similarly situated habeas petitioners petitioned this Court for a writ of superintending control to allow the Post Conviction Conflict Division of the Public Defender Department (“the Department”) to represent individuals in habeas proceedings who allege that their public defender at trial was ineffective, provided each individual consents to such representation. See N.M. Const. art. VI, § 3. We granted the writ, concluding there is no per se conflict of interest where the Post Conviction Conflict Division of the Department represents an individual arguing a claim of ineffective assistance of counsel by an attorney from the Trial Division of the Department. However, we recognized the potential for a conflict and concluded that each potential conflict must be reviewed on a case-by-case basis. We further concluded that an individual could waive such a conflict, if one exists, by knowingly and intelligently signing a waiver after proper advisement. Consequently, we ordered the parties to submit briefs regarding the essential elements of an effective waiver. After reviewing the rationale for our decision that each potential conflict must be reviewed on a case-by-case basis and may be waived by the individual, we address what form the waiver must take.

{2} We recognize that there is a split of authority on the question of whether a public defender department should be automatically disqualified from representing a defendant who is asserting, either on direct appeal or in a habeas corpus proceeding, that a public defender did not provide effective assistance at trial. Compare Asch v. State, 62 P.3d 945, 952-53 (Wyo. 2003) (adopting a case-by-case analysis for potential conflicts of interest arising from alleged ineffective assistance of counsel by the public defender department at trial when that argument is raised by the public defender department on appeal) with McCall v. Dist. Court for Twenty-First Judicial Dist., 783 P.2d 1223, 1229 (Colo. 1989) (adopting a per se rule requiring disqualification of the appellate public defender when the appeal is based on a claim of ineffective assistance at the trial level by a public defender) and Restatement (Third) The Law Governing Lawyers § 123 cmt. d(iv) (2000) (“The rules on imputed conflicts and screening . . . apply to a public-defender organization as they do to a law firm in private practice in a similar situation.”). The potential conflict of interest is based on the possibility that the appellate attorney will be divided in his or her loyalty to the client because of a possible desire to protect his or her colleagues in the Department by covering up their malpractice.

{3} New Mexico precedent has adopted a case-by-case analysis for evaluating similar conflicts of interest. In Richards v. Clow, 103 N.M. 14, 16, 702 P.2d 4, 6 (1985), we adopted a case-by-case analysis for claims of potential conflict of interest within the Department at the trial level based, in part, on our decision not to apply the imputed disqualification rules applicable to private law firms to the Department. We affirm Richards in that the Department will not be automatically disqualified for potential conflicts of interest, but rather only for actual conflicts of interest that are not waived by the individual client. We note that the Department has created a Post Conviction Conflict Division to deal with post-conviction conflict issues that is separate, at least on a divisional level, from the trial attorneys in the Department’s districts. Also, we note that the Legislature has declared it New Mexico’s public policy to afford indigent individuals representation in post-conviction proceedings through the Department. See NMSA 1978, § 31-15-10(D) (2001) (“The district public defender shall represent any person within the district who is without counsel and who is financially unable to obtain counsel in any state postconviction proceeding.”). Additionally, in State v. Jones, 119 N.M. 53, 888 P.2d 935 (Ct. App. 1994), our Court of Appeals held that in cases of apparent conflict of interest on direct appeal, the Appellate Public Defender must either (a) file a waiver of the conflict, (b) make a showing of no conflict, or (c) move to withdraw. The waiver adopted in Jones was modeled on Rule 16-107(B) NMRA 2004 of our Rules of Professional Responsibility. See Jones, 119 N.M. at 54, 888 P.2d at 936. We are confident that a similar waiver based on Rule 16-107(B) will work as well for post-conviction proceedings as it has for direct appeals.

{4} Further, requiring a per se disqualification would, in our view, “needlessly jeopardize the right of individual defendants to skilled and competent representation” by the Department, especially in complex, costly and time-consuming cases like habeas corpus proceedings. Asch, 62 P.3d at 953. A public defender trained in post-con-
This does not mean that attorneys not in the Post Conviction Conflict Division are not qualified to handle post-conviction cases, but rather that an individual should be given the choice to waive a potential conflict instead of having this valuable service automatically taken away. Our precedent and the rationales of the jurisdictions that follow a case-by-case analysis persuade us that adopting a case-by-case analysis is appropriate for potential conflicts of interest arising from appellate representation by the Department, either on direct appeal or in a habeas corpus proceeding, claiming ineffective assistance of counsel by the Department at trial. Accordingly, we recognize that this type of conflict may be waived by the individual in accordance with Rule 16-107(B).

The waiver, based on Rule 16-107(B), should contain: (1) a statement by counsel that he or she reasonably believes that his or her representation will not be adversely affected by any potential conflict of interest, and (2) a statement from the client saying that he or she consents to the representation after consultation about the risks involved in such representation. Both parties agree that during consultation, the client should be told of the nature of the conflict and the risks involved in such representation; that he or she has the statutory right to conflict-free representation; and that if he or she decides not to waive the conflict, independent counsel will be obtained to represent him or her. Petitioner asserts that counsel should also tell the client that he or she believes that his or her representation will not be adversely affected, and that the client must decide whether he or she chooses to waive the conflict. Respondent asserts that the client should be given a reasonable amount of time to consider the risks involved before waiving the statutory right to counsel. We agree with these suggestions and conclude that the client should be informed of the potential conflict, the implications of such representation, and the advantages and risks of such representation. See Rule 16-107(B).

Thus, we agree with the parties that the waiver should correspond to the waiver published in Jones, 119 N.M. at 53-54, 888 P.2d at 935-36, with the modifications as indicated herein.

To ensure that the waiver is knowingly and intelligently made, Respondent also contends that the trial court should be required to question the individual on the record about his or her waiver. In the alternative, Respondent suggests the trial court should be required to obtain independent counsel to explain the potential conflict and waive to the client. Respondent asserts that this requirement is consistent with the rule pertaining to business transactions with or adverse to a client. See Rule 16-108(A)(2) NMRA 2004. Petitioner responds that requiring an on-the-record waiver with the participation of the court is intrusive and unnecessary. Petitioner contends that such a requirement may threaten the client’s rights and privileges because a judge cannot determine the extent of the conflict without knowing the particular facts of the case. Although a discussion on the record between the client and the trial court will be prudent in some cases, we conclude such a colloquy is not a required element of an effective waiver. We also reject Respondent’s suggestion that the trial court must obtain independent counsel to explain the potential conflict and waive to the client, although such a suggestion might prove appropriate in isolated cases. Therefore, the Jones-type waiver, as modified herein, should generally be sufficient for an effective waiver.

In conclusion, we hold that when a potential conflict of interest arises based on the Public Defender Department’s representation of an individual in a habeas corpus proceeding claiming ineffective assistance of counsel by his or her public defender at trial, the individual may waive the potential conflict of interest resulting from such representation if the waiver conforms to the above requirements. For the benefit of counsel, attached below is a suggested waiver form that the Post Conviction Conflict Division of the Department may use.

IT IS SO ORDERED.

PETRA JIMENEZ MAES, Chief Justice

WE CONCUR:
PAMELA B. MINZNER, Justice
PATRICIO M. Serna, Justice
RICHARD C. BOSSON, Justice
EDWARD L. CHÁVEZ, Justice

Pursuant to Rule 16-107(B) NMRA 2004, I have consulted with Petitioner in the above-entitled action regarding a possible conflict of interest that may exist based on Petitioner’s allegation of ineffective assistance of counsel by trial counsel, who is also a public defender. I have explained the implications of the conflict of interest to Petitioner, and the advantages and risks involved. I have advised Petitioner that he/she has a right to conflict-free counsel and that the Public Defender Department will pay for private contract counsel to represent him/her in these proceedings if he/she so chooses. I have represented to Petitioner that I reasonably believe my representation will not be adversely affected or materially limited by the possible potential conflict of interest in this case. After consultation, Petitioner has waived the conflict of interest, and I am satisfied that Petitioner understands the waiver of the potential conflict of interest.

Attorney for Petitioner

My habeas attorney has informed me about having a possible conflict of interest because my habeas attorney and my trial attorney are both employed by the Public Defender Department. My attorney has told me the possible conflict of interest is that he/she might harbor some feelings of loyalty to my public defender at trial, and that such loyalty might conflict with his/her duty to zealously represent me. My habeas attorney has told me that I have a right to conflict-free counsel and that, if I prefer, the Public Defender Department will appoint and pay for contract private counsel to represent me in this habeas proceeding. My habeas attorney has assured me that he/she believes his/her representation in this case will not be affected or limited by the possible potential conflict of interest. After consulting with my attorney and having had a reasonable time to consider the advice, I waive the possible conflict of interest and I choose to have the habeas attorney from the Public Defender Department continue to represent me.

Petitioner
From the New Mexico Supreme Court

Opinion Number: 2004-NMSC-035

Topic Index:
Administrative Law and Procedure: Administrative Law, General; Judicial Review; Legislative Intent; and Standard of Review
Agriculture: Animals and Livestock
Constitutional Law: Separation of Powers
Government: Game and Wildlife; and Regulatory Authority
Property: Property Taxation; and Property Valuation
Statutes: Interpretation; Legislative Intent; and Rules of Construction.
Taxation: Property Tax; Valuation; and Taxation, General

JICARILLA APACHE NATION,
Plaintiff-Respondent,
versus
ARTHUR RODARTE, in his official capacity only, RIO ARriba COUNTY ASSESSOR,
Defendant-Petitioner,
No. 28,128 (filed: Sept. 3, 2004)

ORIGINAL PROCEEDING ON CERTIORARI
JAMES A. HALL, District Judge

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for Petitioner

JAVIER R. LOPEZ,
Santa Fe, New Mexico
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New Mexico Taxation & Revenue Department

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Rancho Del Oso Pardo, Inc.

OPINION

EDWARD L. CHÁvez, JUSTICE

{1} Petitioner Arthur Rodarte, the Rio Arriba County Assessor acting in his official capacity only, appeals from a decision of the Court of Appeals which reversed the decision of the Rio Arriba County Valuation Protests Board (the Board). The Board had upheld Petitioner’s property tax assessment which changed the classification of the bulk of the 32,075.80-acre property at the Lodge at Chama (the Lodge) from agricultural to “miscellaneous non-residential.” The change resulted in a nearly ten-fold increase in the Lodge’s assessed value, from $2,199,378 to $21,301,191. At issue is whether Petitioner and the Board properly concluded: (1) that neither the Lodge’s private elk herd nor the public herd is “livestock” under the property tax code for purposes of determining whether the property in question is agricultural, and (2) that the Lodge’s conservation agreement with the federal government was either not a proper soil-conservation agreement to qualify as an agricultural use or not the primary use of their land. Finding that the Board properly relied on a reasonable determination of the Property Tax Division of the Department of Taxation and Revenue (the Division), we reverse the Court of Appeals and uphold the Board’s decision.

I. Background

{2} The 32,075.80-acre Lodge is located near Chama, New Mexico, and until 1989 or 1990 was known as the “Chama Land and Cattle Company.” The Lodge bills itself as “one of the world’s foremost outdoor recreational retreats.” Respondent Jicarilla Apache Nation purchased the Lodge in 1995. From at least 1996 through 1999, the property was classified as agricultural, and Respondent paid ad valorem taxes on its private elk herd. In 2000, however, assessors at Petitioner’s office received information that led them to conclude that the Lodge was used for recreational, rather than agricultural, purposes. Specifically, they received a copy of a letter from the Bureau of Indian Affairs (BIA) to the Jicarilla Apache Nation that seemed to indicate the Lodge was used primarily as a recreational retreat, which was confirmed by looking at the Lodge’s website. Additionally, the assessors learned from attending a seminar on the subject that the Department of Taxation did not consider elk to be livestock under the Property Tax Code. In fact, the assessors and the Board relied on Property Tax Division (P.T.D.) General Order No. 99-25, issued by the Division. In that order, as required by NMSA 1978, § 7-36-21(D) (1975), the Division determined the “various classes of livestock and the value of each class.” The order does not list “elk” among the various classes of livestock. As a result, Petitioner issued an amended notice of valuation that reclassified the land from agricultural to miscellaneous non-residential. Respondent protested to the Board, which conducted a hearing on the claim.

{3} Before the hearing, the parties resolved a number of the potential issues facing the Board by stipulation. The parties agreed to the classification and valuation of the fifteen-acre homesite: the four acres underlying the residential structures and lodge structure are valued at $10,000 per acre, and the remaining eleven acres are valued at $664 per acre. Additionally, the parties stipulated that twenty acres of the property are classified as irrigated land and valued at $150 per acre, and five-thousand acres on the western portion of the property are classified as grazing land and valued at $2.00 an acre. Finally, the parties stipulated that “[t]he only issue in controversy in this action is whether the remaining 27,040.80 acres at the Property should be classified and valued as agricultural land.”

{4} At the hearing, it was established that the 27,040.80 acres covers two types of land. First, the Lodge operates two 3,200-acre state-licensed game parks on which it...
maintains its private elk herd. These game preserves are each enclosed by an eight-foot-high fence. Respondent actively manages the private elk herd through a heavily regulated genetic improvement breeding program and irrigates the land to produce feed. The Lodge maintains an elk handling facility which allows year-round handling of up to 200 elk at a time for testing, tagging and other measurements, and feeds some of the elk from troughs. Second, the Lodge maintains the remaining land, the “uplands,” as a habitat for the wild public herd of elk that graze there.

[5] The uplands portion of the property is maintained consistent with a conservation plan entered into with the United States Department of Agriculture (the USDA) as part of its Environmental Quality Incentives Program (EQIP). The Lodge’s stated purpose for entering into the agreement was to improve the elk habitat in order to improve “the production, quality, and health of wild elk there.” Under the agreement, the Lodge agreed to construct fences; to irrigate to minimize soil erosion and nutrient losses; to manage grazing to protect the soil resources; and to manage pasture and hayland to maintain enough soil cover. In return, the USDA agreed to share some of the costs. Respondent also manages its timber resources in the uplands in order to maximize the elk habitat.

[6] The Lodge maintains the private elk herds on the game parks so that it can sell big game hunting packages. These packages include food, lodging, and guide services, and can cost up to $13,000 per person. The Lodge also sells permits, which it has received from the state, for its customers to hunt the wild elk in the uplands area. Because the quality of the private herd of elk is better than that of the wild herd, the permits to hunt from the public herd are less expensive. Nearly all of the hunters who have this package take home the packaged meat from the animal and have the carcasses mounted. The Lodge also sold some of the elk to another farm in 1997, if property has been classified as agricultural in one of the three previous years and the use of the land has not changed, there is a presumption that the property continues to be agricultural. On the other hand, under NMSA 1978, § 7-36-6 (1981), Petitioner enjoys a statutory presumption that his valuation and classification is correct. The Board tried to reconcile these two provisions by concluding that Petitioner had the initial burden to show that the classification had changed or the original classification was incorrect. If

the land is not agricultural. With respect to the soil conservation agreement, the Board found that it “has, as its primary purpose, the development and maintenance of a habitat suitable for the maintenance of elk, not soil conservation.” Indeed, the Board found that “[a]ny soil conservation effected by the plan is incidental and secondary to this primary purpose. As such, the plan does not qualify as a soil conservation program pursuant to [the Property Tax Code].”

[8] Respondent filed an appeal to the district court, which certified the case to the Court of Appeals as one involving a substantial public interest. See NMSA 1978, § 39-3-1.1(F) (1999). The Court of Appeals accepted certification and reversed the decision of the Board. In so doing, the Court of Appeals held that the private herd of livestock fits the statutory definition of “other domestic animals useful to man,” NMSA 1978, § 7-35-2(C) (1994), but that the public herd in the uplands region did not. Jicarilla Apache Nation v. Rio Arriba County Assessor, 2003-NMCA-055, ¶¶ 28, 35, __ N.M. __, 92 P.2d 642. The Court of Appeals also held that the agreement between the Lodge and the USDA represented a valid soil conservation agreement, and that under the Department of Taxation and Revenue’s own regulations, the mere existence of such an agreement is sufficient to establish that the primary use of the land it covers is agricultural. Id. ¶¶ 38-39. We reverse both of these holdings of the Court of Appeals.

II. Discussion

[9] Under the Property Tax Code, property is typically valued as “its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods.” NMSA 1978, § 7-36-15(B) (1995). The Legislature has, however, provided for a different valuation method for “land used primarily for agricultural purposes,” which is instead “the land’s capacity to produce agricultural products.” NMSA 1978, § 7-36-20(A) (1997). Typically, as it did in this case, this method of valuation results in a much lower tax burden. We have previously identified the policy underlying this agricultural exemption: “It is clear that the legislative intent behind this special method of property tax valuation is to aid the small subsistence farmers in our state.” County of Bernalillo v. Ambell, 94 N.M. 395, 397, 611 P.2d 218, 220 (1980). Although we are not certain that the size of the operation that puts land to agricultural use is significant, it is certain that the exception is designed to promote bona fide agriculture in New Mexico. In determining whether a particular property is being put to an agricultural use, we must bear in mind this policy and the fact that it is an exception to the general method of valuation.

[10] Under the same statute, “agricultural use” is defined as “the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry or fish.” Section 7-36-20(B). Livestock, the only term in that list relevant to this case, is in turn defined for purposes of the Property Tax Code as “cattle, buffalo, horses, mules, sheep, goats, swine, rafites and other domestic animals useful to man.” Section 7-35-2(C). Section 7-36-20(B) further provides that agricultural use “also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.”

[11] The Court of Appeals had previously discerned from Section 7-36-20 three separate requirements for qualifying for the agricultural exemption: (1) the property must be put to agricultural use; (2) that use must be bona fide; and (3) that use must be the primary use of the property. Alexander v. Anderson, 1999-NMCA-021, ¶ 11, 126 N.M. 632, 973 P.2d 884. As noted, the Court of Appeals in this case reversed the Board on two salient points. First, the Court of Appeals held, contrary to the Board, that raising the private elk herd did constitute “agricultural use.” Second, the Court of Appeals held that the Lodge’s conservation agreement was sufficient to establish that the “primary use” of the land was agricultural. After resolving some initial issues involving conflicting statutory presumptions and the use of an income method of valuation, we turn to each of these major holdings.

A. Statutory presumptions

[12] Under Section 7-36-20(A), as amended in 1997, if property has been classified as agricultural in one of the three previous years and the use of the land has not changed, there is a presumption that the property continues to be agricultural. On the other hand, under NMSA 1978, § 7-38-6 (1981), Petitioner enjoys a statutory presumption that his valuation and classification is correct. The Board tried to reconcile these two provisions by concluding that Petitioner had the initial burden to show that the classification had changed or the original classification was incorrect.
at the end of his case-in-chief he had met that burden by showing that the use had changed or that the original classification was in error, he then enjoyed the statutory presumption of correctness and the Lodge then had the burden to show his valuation to be incorrect. Cf. NMSA 1978, § 7-36-16(A) (2000) (requiring assessors to “implement a program of updating property values so that current and correct values of property are maintained”) (emphasis added). The Court of Appeals rejected this approach, relying on Black v. Bernalillo County Valuation Protest Board, 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980). In that case, the Court of Appeals held that Section 7-38-6 did not apply to the initial question whether property was entitled to the special valuation method available to agricultural property. Black, 95 N.M. at 141, 619 P.2d at 586.

{13} Subsequent to Black, however, the Legislature amended Section 7-38-6. Prior to the 1981 amendment, Section 7-38-6 read, in its entirety:

Values of property for property taxation purposes determined by the department or the county assessor are presumed to be correct. Determinations of tax rates, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are presumed to be correct. NMSA 1978, § 7-38-6.

{14} Subsequently, the Legislature amended Section 7-38-6 to read:

Values of property for property taxation purposes determined by the division or the county assessor are presumed to be correct. Determinations of tax rates, classification, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are presumed to be correct. NMSA 1978, § 7-38-6.

{15} Furthermore, we conclude that the Board properly reconciled the competing presumptions found in Sections 7-36-20 and 7-38-6. Although the Legislature amended Section 7-36-20 in 1997, subsequent to the 1981 amendment to Section 7-38-6, it chose not to modify the statutory presumption in that later Section. We presume that the Legislature acts with full knowledge of, and consistent with, existing legislation. State ex rel. Quintana v. Schnedar, 115 N.M. 573, 757-76, 855 P.2d 562, 564-65 (1993). “Thus, two statutes covering the same subject matter should be harmonized and construed together when possible, . . . in a way that facilitates their operation and the achievement of their goals.” Id. We therefore try to read Section 7-36-20 and 7-38-6 harmoniously, in a way that can give effect to the presumptions established by each. The Board’s burden-shifting approach is a reasonable attempt to reconcile these two provisions, and we uphold it. We therefore reverse the Court of Appeals on this point and accept the Board’s decision to afford Petitioner a presumption that his classification of the property in question as “miscellaneous non-agricultural” was correct, having met his initial burden of putting on a prima facie case that the original classification was incorrect.

B. Income analysis

{16} In concluding that the property in question was not put to agricultural use, the Board relied in part on one of the Assessor’s exhibits which contrasted the income the Lodge earned from elk hunting, big game parks, sport fishing, skeet-shooting, hiking, cross-country skiing, the restaurant, the lodge, and the corporation facilities, which the Assessor concluded were non-agricultural uses of the land, with the income earned from timber production and cattle grazing, which the Assessor conceded were agricultural. The exhibit showed that over eighty percent of the Lodge’s income came from non-agricultural sources.

{17} As authority for this income method of classification, the Board noted that Section 7-36-15 provided for such a method. Section 7-36-15(B), however, allows for such a method of valuation “[u]nless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33.” As noted, Section 7-36-20 provides the method of valuation for agricultural property. Faced with these provisions, the Board concluded that the methods of Section 7-36-20 are not the exclusive methods by which the classification and valuation of the subject property can occur, and found support for that interpretation in the Department of Taxation’s regulations, including 3.6.5.22 NMAC and 3.6.5.27(A)(2) NMAC. The latter regulation provides that “[a] presumption exists that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.” 3.6.5.27(A)(2) NMAC.

{18} The Court of Appeals rejected this approach, noting first that to the extent the Board relied on Section 7-36-15, that section does not, by its plain terms, apply to agricultural property. Furthermore, the Court of Appeals argued that valuation is distinct from classification and “[i]t makes no sense to classify property in the first instance by looking to its income potential or value, a step that should not take place until the property has first been classified.” Jicarilla Apache Nation, 2003-NMCA-055, ¶ 22. Finally, the Court of Appeals reasoned that the Board expressly did not rely on 3.6.5.27(A)(2) NMAC, “other than as indirect support for their reliance on Section 7-36-15.” Jicarilla Apache Nation, 2003-NMCA-055, ¶ 23. Noting that it had previously questioned the validity of this regulation creating such a factual presumption in Black, the Court of Appeals chose not to address reliance on the regulation because it concluded that the Board itself did not rely on the regulation.

{19} Contrary to the Court of Appeals, we conclude that the Board did, in fact, rely on 3.6.5.27(A)(2) NMAC to support the use of an income analysis. As noted, the Board expressly concluded that the methods of valuation and classification found in Section 7-36-20 are not the only permissible methods, and it found support for that conclusion in two Department of Taxation regulations, one of which was 3.6.5.27(A)(2) NMAC. Its reasoning could have been clearer, and in general we evaluate an administrative agency’s decision solely on the grounds that it itself used, but we may affirm an agency decision whose analysis is less than ideal. See Rio Grande
Chapter of the Sierra Club v. N.M. Min.

ing Comm’n, 2003-NMCA-005, ¶ 13, 133
N.M. 97, 61 P.3d 806. Furthermore, the
use of such an income analysis is reason-
able. When the subject property is used in
multiple ways, some agricultural and some
not, using a comparison of the income de-
erved from each type of use is in this case a
reasonable proxy for determining whether
the agricultural use is primary. The fact that
the regulation creates a presumption, rather
than an inflexible conclusion, tends to make
the regulation more, not less, reasonable.
We thus do not share the same concerns as
the Court of Appeals about the Department
of Taxation creating a factual presumption
of this kind by regulation. See Black, 95
N.M. at 141, 619 P.2d at 586.

{20} Of course, as the Court of Appeals
noted, when the parties dispute whether a
given use is agricultural, this analysis is
of limited utility. That is, it does not help
determine whether a given use is agricul-
tural, but only whether, in the case of
multiple uses, the agricultural use or uses
are primary. Further, the regulation only
provides for a rebuttable presumption that
uses which generate a higher income are
primary. There may be circumstances in
which that presumption can be rebutted.
For example, in Alexander the Court of
Appeals noted that taxpayers must come
forward with “evidence of intent to pro-
duce a crop.” 1999-NMCA-021, ¶ 27.
Furthermore, the Court of Appeals in that
case did not “read the subject provisions as
requiring proof of actual sales. All that is
required is an objective intent to produce
a crop” and not “proof of actual sales,” a
landowner with that intent could rebut the
presumption. That is but one ex-
ample; there may be other ways a taxpayer
could rebut the presumption and establish
that an agricultural use which generates
less income than non-agricultural ones is,
nevertheless, the primary use of the land.

{21} In this case, the income analysis
found in the regulation does not resolve
the issues presented on appeal. That is, it
does not answer the question whether or
not raising elk in two 3,200-acre enclosed
game preserves for the primary purpose
of producing trophy bulls for hunters is
agricultural. It does, however, support the
Board’s determination that, assuming that
such a use is not agricultural, the Lodge
should not enjoy the agricultural method
of valuation because the income derived
from the non-agricultural uses significantly
exceeds that of the admittedly agricultural
uses of timber production and cattle graz-
ing. Thus, while we uphold the Board’s
reliance on 3.6.5.27(A)(2) NMAC generally,
we do not rely on the regulation in
resolving the remaining issues.

C. Elk as livestock

{22} Because elk are not included among
the enumerated animals in the definition of
livestock under Section 7-35-2(C), the
question becomes whether either the
Lodge’s private or public herd of elk are
“other domestic animals useful to man.”
Under the Property Tax Code, Petitioner
and the Board are entrusted to make this ini-
tial determination, subject to the Division’s
supervision. See NMSA 1978 § 7-36-16(A)
(2000) (“County assessors shall determine
values of property for property taxation
purposes in accordance with the Property
Tax Code . . . and the regulations, orders,
rulings and instructions of the depart-
ment.”); NMSA 1978 § 7-35-3(A) (1989)
(“The [director of the Division] has general
supervisory authority over county assessors
for the purposes of assuring implementa-
tion of and compliance with the provisions
of the Property Tax Code . . . and applicable
regulations, orders, rulings and instruc-
tions of the department.”). In this case
both Petitioner and the Board based their
decision on the fact that Petitioner learned
from attending a seminar that the Division
does not consider elk to be livestock and
had omitted elk from its list of classes
That order is required by NMSA 1978, §
7-36-21(D) (1975), and directs the assess-
os in the imposition of property taxes on
livestock. Furthermore, the Department of
Taxation’s regulations provide:

Classes of livestock and the
value of each class are required
to be established by order each
tax year pursuant to [Section
7-36-21]. Particular classes or
types of “[other] domestic ani-
mal[s] useful to man” which are
named in the order establishing
classes of livestock are “live-
stock” as that term is defined
in [Section 7-35-2].

3.6.1.7(F) NMAC. The assessors are
required to follow this order in valuing
livestock for property tax purposes. See
Section 7-36-16(A); see also Zwaagstra v.
DelCurto, 114 N.M. 263, 264-65, 837 P.2d
457, 458-59 (Ct. App. 1992) (concluding
that the assessors do the actual valuation
of livestock, although their discretion is
limited to “determin[ing] the number of
animals in each class of livestock owned
by the taxpayer, and apply[ing] to that the
values established by the division”). Thus,
although procedurally we are reviewing the
Board’s decision to uphold Petitioner’s
assessment, in a very real sense we are re-
viewing the Division’s determination that
elk are not livestock and its decision not to
include elk in P.T.D. Order No. 99-25.

I. Standard of Review

{23} The Court of Appeals concluded that
the Lodge’s private herd had met the defini-
tion of livestock contained in Section 7-35-
2(C), but that the public herd did not. The
answer to this question depends, in large
part, on the appropriate standard of review.
Under NMSA 1978, § 7-38-28 (1999), a
party may appeal an order made by a county
valuation protests board by filing an appeal
pursuant to the provisions of NMSA 1978,
§ 39-3-1.1 (1999). Under Subsection D of
Section 39-3-1.1, there are three grounds
for reversing an order of an agency:

1. the agency acted fraudulent-

ly, arbitrarily or capriciously;

2. the final decision was not

supported by substantial evi-
dence; or

3. the agency did not act in

accordance with law.

The Court of Appeals acknowledged this
limited scope of review but also noted that,
while it would not substitute its judgment
for that of the Board’s, it was not bound by
the Board’s interpretation of the law. Jica-
rella Apache Nation, 2003-NMCA-055, ¶
17. Although it never makes this point ex-
licit, the Court of Appeals seemed to view
this question to be a legal one and reviewed
the Board’s determination de novo.

{24} Determining whether the Lodge’s
private or public herd of elk consists of
“other domestic animals useful to man”
would ordinarily require factual find-
ings about the nature of the elk and the
Lodge’s handling of them, and then a legal
determination whether the facts so found
support the conclusion that the elk fit the
legal definition of livestock. In general,
we review findings of fact for substantial
evidence, and the legal conclusion de novo.
See TPL, Inc. v. N.M. Tax. & Rev. Dep’t,
2003-NMSC-007, ¶ 10, 133 N.M. 447, 64
P.3d 474; Rauscher, Pierce, Rofnes, Inc. v.
Tax. & Rev. Dep’t, 2002-NMSC-013, ¶ 26,
132 N.M. 226, 46 P.3d 687. But see State v. Attaway, 117 N.M. 141, 144-45, 870 P.2d 103, 106-07 (1994) (suggesting that the standards of review for fact and law are not binary and the degree of deference given to a mixed question of law depends less on the category into which each fall than on “principles of appellate review” and “policy considerations”). Here, however, the facts are not in dispute. Instead, the parties disagree about the legal conclusion to draw from those facts. Thus, we are

parties disagree about the legal conclusion that the facts are not in dispute. Instead, the

“policy considerations”). Here, however, it was not the only evidence of the Division’s determination; as noted, an

asessor in Petitioner’s office testified that he learned that the Division did not consider elk livestock from attending a seminar on the subject. See NMSA 1978, § 7-35-5(A) (1991) (“The department shall conduct or sponsor special courses of instruction and in-service and intern training programs on the technical, legal and administrative aspects of property taxation.”). The fact that some animals listed in the statute are absent from the order could become an issue in other cases, but it is not at issue here. That is, had Petitioner denied an agricultural exemption to land used primarily to produce buffalo based solely on its absence in the order, such a decision would be invalid because it violates Section 7-35-2. Because, however, Petitioner denied an agricultural exemption to land used primarily to produce an animal that is included in neither the order nor the statute, and because the order is not the only evidence of the Division’s conclusion on the matter, we cannot say Petitioner unreasonably concluded that the Division does not consider elk to be livestock.

27 On appeal to this Court, the Department of Taxation and Revenue filed an Amicus Curiae brief arguing that the Court of Appeals’ opinion, by allowing the assessors to disregard the direction of the Division, could lead to uneven application of the Property Tax Code. Indeed, the Department could not “emphasize too strongly what problems it would cause in the administration of property taxes throughout the state if local county assessors had the power to substitute their own judgment for statutory provisions and regulations and classifications issued by the Department.” [Amicus Br. 6] That risk is heightened by the final result of the Court of Appeals’ opinion, which concluded that some elk are livestock and other elk are not.1 We agree that uneven administration of the Property Tax Code is troubling, which is why we emphasize what we are reviewing in this case is the Division’s categorical determination that elk are not livestock. As we explain below, we conclude that the Division’s conclusion that elk are not livestock is a reasonable interpretation of Section 7-35-2. Furthermore, the facts of this case show that the Petitioner’s and the Board’s acceptance of the Division’s determination is also reasonable.

28 Neither party disputes that the meat and hides of elk make them “useful to man.” Rather, the dispute centers on the question whether elk are “domestic animals.” The Court of Appeals reversed the Board in part because it concluded that elk are not significantly less tame than buffalo. Jicarilla Apache Nation, 2003-NMCA-055, ¶ 28. In support of this argument, the Court noted how the Lodge carefully regulates their breeding and they are kept within an eight-foot fence. Although these facts are both indicia of domestication, we conclude that they are not sufficient to allow a court to second-guess the Board’s decision to follow the Division’s determination. Although the private elk herd are contained within a fence, that fence encloses two separate 3,200-acre game preserves. There was no testimony at the hearing to support a conclusion that the herd was significantly restricted within either of the 3,200-acre sections. Furthermore, the Board based its conclusion in part on the fact that the elk were used to support the Lodge’s use as a hunting lodge. The fact that the elk are “harvested” through big game hunts—that is, through sport—is at odds with a conclusion that they are “domestic,” and supports the Board’s decision to follow the determination of the Division. They are distinguished from the animals in the enumerated list of livestock in Section 7-35-2(C) by this fact.

29 Finally, contrary to the Court of Appeals, we do not conclude that the fact that “farmed cervidae” is listed under the definition of livestock under the Livestock Code is dispositive of their classification under the Property Tax Code. First, we note that each definition includes different animals in its enumerated lists that fit the definition. Compare NMSA 1978, § 77-2-1.1(A) (2001) (livestock includes “horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae”), with § 7-
35-2(C) (livestock means “cattle, buffalo, horses, mules, sheep, goats, swine, [and] ratites”). Additionally, each provides a different blanket definition covering those animals not listed. Compare § 77-2-1.1(A) (“‘livestock’ means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity”), with § 7-35-2(C) (livestock also means “other domestic animals useful to man”). Had the Legislature intended for the word “livestock” to be given identical treatment under each section, it would have been a simple matter for it to have given the term identical definitions.²

{30} Second, the definition section of the Livestock Code begins: “As used in The Livestock Code . . . .” Section 77-2-1.1. The Property Tax Code definition section is preceded by a similar phrase. See § 7-35-2. Thus, both codes, by their express terms, limit the scope of the definitions contained therein. Additionally, the definition of “livestock” under the Livestock Code itself recognizes different definitions of the term for different purposes. The general definition described above is followed by these provisos:

[P]rovided that for the purposes of Chapter 77, Article 9 NMSA 1978, [dealing with branding of livestock] “animals” or “livestock” have the meaning defined in that article. . . . For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of “animals” or “livestock[,]” Section 77-2-1.1(A). Chapter 77, Article 9, referred to above, defines “livestock” only as “horses, asses, mules, cattle or bison.” NMSA 1978, § 77-9-1.1 (1999). Thus, even the Livestock Code itself recognizes that the definition of livestock is not fixed and can have different meanings in different contexts.

{31} Finally, we note that other Codes seem to refer to elk in a way that is inconsistent with their being livestock. For example, the Food Donors Liability Act contains a provision allowing hunters to donate wild game meat products. That provision defines “wild game” as “deer, elk, antelope, caribou, ibex, oryx and Barabry sheep.” NMSA 1978, § 41-10-5(B) (1997) (emphasis added). Additionally, NMSA 1978, § 17-2-3(A)(4) (1971), contained in the Chapter that describes the duties and powers of the State Game Commission to regulate the hunting of certain animals, includes “all of the family Cervidae (elk and deer)” in the list of “game mammals” subject to the commission’s regulation. {32} As the Court of Appeals held, in general we try to read different statutes “in connection with other statutes concerning the same subject matter.” Quantum Corp. v. Taxation & Revenue Dept., 1998-NMCA-050, ¶ 8, 125 N.M. 49, 956 P.2d 848. Additionally, we generally presume that the Legislature does not intend to enact legislation inconsistent with existing law. See Schnedar, 115 N.M. at 575, 855 P.2d at 564. We, however, see nothing necessarily inconsistent with defining terms in different ways depending on the context in which the term is to be used. The Legislature, for whatever reason, has defined livestock and elk differently in different sections. We must give effect to that unambiguous intent.

{33} The Court of Appeals concluded that the private elk herd could only be considered livestock. We reverse that conclusion and hold that the Board properly deferred to the decision of the Division that the private herd was not livestock, despite the fact that it bears some indicia of domestication. The Court of Appeals also held that the public herd was not livestock. Because the public herd bears none of the indicia of domestication, we affirm that conclusion. We do so because the facts of this case allow us to accept the Division’s categorical determination that elk are not livestock. As the Court of Appeals noted, however, these conclusions do not completely resolve the case. We next determine whether the Lodge’s conservation agreement with the USDA mandates that the property in question be considered agricultural.

D. Soil conservation program

{34} Although Petitioner had conceded at the hearing that the Lodge’s conservation agreement with the USDA was a bona fide agricultural use, the Board concluded that it was not. Specifically, the Board concluded that the agreement has, as its primary purpose, the development and maintenance of a habitat suitable for the maintenance of elk, not soil conservation. Any soil conservation effected by the plan is incidental and secondary to this primary purpose. As such, the plan does not qualify as a soil conservation program pursuant to [Section 7-36-20(B)].

The Court of Appeals reversed, concluding that: (1) the agreement was a soil conservation agreement under Section 7-36-20(B); and (2) under the Department of Taxation’s regulations, a valid soil conservation agreement is by itself sufficient to show that the property is primarily used for agricultural purposes. Jicarilla Apache Nation, 2003-NMCA-055, ¶¶ 38, 40.

{35} The Board’s conclusion is ambiguous. On the one hand, language in the first part of the paragraph quoted above suggests that it rejected the Lodge’s argument because it concluded that the conservation agreement was not the primary use of the land. On the other hand, the last sentence states that, because soil conservation was not the primary purpose of the agreement, it did not qualify as a soil conservation agreement under the statute.

{36} To the extent that the Board concluded that the agreement was not a soil conservation agreement, we agree with the Court of Appeals that such a conclusion would be error. This agreement is with the USDA, an “agency of the federal government” under Section 7-36-20(B). It required the Lodge to irrigate “for the purpose of . . . minimize[ing] soil erosion and nutrient losses”; to manage grazing on a schedule that “meets the needs of the soil, water, air, plant and animal resources”; and to manage pasture and hayland “to maintain enough cover to protect the soil.” Although the agreement also had other intended effects, it nonetheless a “soil conservation agreement” under the same provision. Finally, because the USDA shared the costs of these projects, the use of the land “met the requirements for payment or other compensation.” There is simply no grounds in Section 7-36-20(B) for concluding, as the Board might have, that an agreement is

² For example, in a completely different context, the Legislature has identified two stages of a criminal trial where a defendant’s mental retardation is relevant: (1) competency to stand trial and (2) sentencing in capital trials. In the two separate statutory provisions addressing these procedures, the definition of mental retardation is identical. Compare NMSA 1978, § 31-20A-2.1(A) (1991) (defining “mental retardation” in the context of a bar to execution), with NMSA 1978, § 31-9-1.6(E) (1999) (defining “mental retardation” which can result in incompetency to stand trial).

36 BAR BULLETIN - November 18, 2004 - Volume 43, No. 46
not a bona fide soil conservation agreement even if its primary purpose is something other than soil conservation.\(^{37}\) Nonetheless, establishing that the Lodge entered into a valid soil conservation agreement only satisfies the “agricultural use” requirement of Section 7-36-20(B). Under Subsection A of that Section, this use must also be the “primary” use of the property. That is, under Sections 7-36-20(A) and (B), the primary use of the land must be to meet the requirements for compensation pursuant to the soil conservation agreement in order to be entitled to the agricultural method of valuation. Conversely, property which is primarily used for non-agricultural purposes but which incidentally meets the requirements for compensation pursuant to a valid soil conservation agreement is not “land used primarily for agricultural purposes” under Section 7-36-20(A). Considering that the agricultural method of valuation is meant to be a limited exception to the normal rule of property taxation, cf. Ambell, 94 N.M. at 397, 611 P.2d at 220 (noting that “Section 7-36-20 establishes a special method of valuation”), we doubt the Legislature intended a broad safe harbor for those whose primary use of the land is non-agricultural but who also enter into a soil conservation agreement. This may be what the Board was alluding to in its order when it concluded that the Lodge’s soil conservation agreement did not satisfy Section 7-36-20 because the primary purpose of the uses described in the agreement was to provide suitable habitat for elk, not to conserve soil. Cf. Rio Grande Chapter of the Sierra Club, 2003-NMSC-005, ¶ 13 (noting that “a court may uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned”) (quotation marks and quoted authority omitted).

\(^{38}\) The Court of Appeals, interpreting 3.6.5.27(A)(1) NMAC, concluded that “the Nation’s qualification for compensation under this agreement constituted primary agricultural use of the upland portion of the property” without a further showing that the compensation agreement was the primary use of the property. Jicarilla Apache Nation, 2003-NMCA-055, ¶ 41. We disagree. That regulation provides:

> (1) When applying for classification of land as land used primarily for agricultural purposes, the owner of the land bears the burden of demonstrating that the use of the land is primarily agricultural. This burden can-

not be met without submitting objective evidence that:

> (a) the plants, crops, trees, forest products, orchard crops, livestock, poultry or fish which were produced or which were attempted to be produced through use of the land were:

> (i) produced for sale or home consumption in whole or in part; or

> (ii) used by others for sale or resale; or

> (iii) used, as feed, seed or breeding stock, to produce other such products which other products were to be held for sale or home consumption; or

> (b) the use of the land met the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; or

> (c) the owner of the land was resting the land to maintain its capacity to produce such products in subsequent years.

3.6.5.27(A) NMAC (emphasis added).

\(^{39}\) The regulation delineates several ways that a taxpayer can demonstrate that the land is used for agricultural purposes. The listed uses are alternative necessary conditions for establishing agricultural use, and the regulation requires the taxpayer to present objective evidence that the land is used in accordance with at least one of them. None, however, are sufficient conditions that by themselves definitively prove that the land meets all of the qualifications for the agricultural exemption. The taxpayer must still establish the other two requirements found in Section 7-36-20(A): that the agricultural use is bona fide and the primary use of the land. In this case, objective evidence that the “land meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government” was a necessary element to prove agricultural use, but it was not sufficient by itself to establish the agricultural exemption. The Lodge also needed to prove that this use was the primary use of the land. The Court of Appeals seems to have read the minimum requirement of proving the existence of the soil conservation agreement as one sufficient to establish, by itself, that the use consistent with the agreement is a primary use. Jicarilla Apache Nation, 2003-NMCA-055, ¶¶ 39-40.

\(^{40}\) The regulation, however, does not read: “This burden will be met by submitting objective evidence” of use consistent with a valid soil conservation agreement. Instead, it reads: “This burden cannot be met without submitting objective evidence” of the proper use. In that sense, subsection (A)(1)(b), unlike subsection (A)(1)(a), adds very little to the requirements set forth in Section 7-36-20(A) and (B) that the property be primarily used to meet the requirements of a valid soil conservation agreement. Furthermore, a reading of 3.6.5.27(A)(1) NMAC that obviates the need to show that the property is primarily used to meet the requirements for compensation under a valid soil conservation agreement would conflict with Section 7-36-20(A), and would be ultra vires. See City of Albuquerque v. Pub. Regulatory Comm’n, 2003-NMSC-028, ¶ 22, 134 N.M. 472, 79 P.3d 297.

\(^{41}\) Consistent with the Court of Appeals, we hold that the Lodge entered into a valid soil conservation agreement with the USDA which governs in part the use of the uplands region. Contrary to the Court of Appeals, however, we uphold the Board’s determination that the agreement was insufficient to establish that the primary use of the uplands region was agricultural. The Board’s conclusion that the primary use of the land was commercial hunting, not to meet the requirements of the agreement, is supported by substantial evidence and is not contrary to law. We therefore reverse the Court of Appeals on this point and affirm the order of the Board.

**III. Conclusion**

\(^{42}\) For the foregoing reasons, we reverse the Court of Appeals and affirm the decision and order of the Board. We remand this case for proceedings consistent with this opinion.

**IT IS SO ORDERED.**

**EDWARD L. CHÁVEZ,**

Justice

**WE CONCUR:**

**PETRA JIMENEZ MAES,**

Chief Justice

**PATRICIO M. SERNA,** Justice

**PAMELA B. MINZNER,** Justice (dissenting)

**RODERICK T. KENNEDY,** Judge (sitting by designation) (dissenting)
PAMELA B. MINZNER, JUSTICE (dissenting)

{44} I respectfully dissent. The statutory analysis on which the opinion depends seems to me to give too little weight to the text of NMSA 1978, Section 7-36-20 (1997) and too much weight to Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884, in which the Court of Appeals construed and applied Section 7-36-20(A) as it read prior to the 1997 amendment. I would affirm the opinion of the Court of Appeals on the following basis.

{45} The prior statute read as follows:

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land’s capacity to produce agricultural products. The burden of demonstrating primary agricultural use is on the owner of the land, and he must produce objective evidence of bona fide agricultural use for the year preceding the year in which application is made for his land to be valued under this section. The fact that land was devoted to agricultural use in the preceding year is not of itself sufficient evidence to support a finding of bona fide primary agricultural use when there is evidence that the agricultural use was subordinate to another use or purpose of the owner, such as holding for speculative land subdivision and sale, commercial use of a nonagricultural character, recreational use or other non-agricultural purpose.

1975 N.M. Laws, ch. 165, § 3.

{46} The existing statute reads as follows:

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land’s capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made shall be determined on the basis of the land’s capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

§ 7-36-20(A).

{47} The prior statute contained neither of the two presumptions the present statute contains. The prior statute placed the burden of demonstrating “primary agricultural use” on the owner wishing to take advantage of Section 7-36-20(A) and required “[e]vidence of bona fide agricultural use for the tax year preceding the year in which application is made.” The existing statute first creates a presumption “that the land is used primarily for agricultural purposes during the tax year in which the determination is made” if there is “[e]vidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made.” The existing statute creates a second presumption; the existing statute creates a presumption “that the land continues to be entitled” to valuation under Section 7-36-20(A) “if the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made.”

{48} These differences between the two statutes suggest that the Legislature was trying to simplify proof for the taxpayer and give greater weight to a prior determination of agricultural use. Further, the rules of construction the Legislature have provided, see generally NMSA 1978, § 12-2A-10(A) (1997), indicate that to the extent there is a conflict between or among statutes, the later, as well as the more specific, controls.

{49} I recognize that Section 12-2A-10(A) provides that “[i]f statutes appear to conflict, they must be construed, if possible, to give effect to each.” As the majority indicates, the Board attempted to construe Section 7-36-20(A) and NMSA 1978, Section 7-38-6 (1981) to give effect to both by placing the initial burden of persuasion on the Assessor and then, after determining that the Assessor had produced sufficient evidence to rebut the presumption provided by Section 7-36-20(A), affording the Assessor’s determination the presumption provided by Section 7-38-6. See Maj. Op. ¶ 12. I agree with the majority that the 1981 amendment to Section 7-38-6 calls into question the analysis of that section contained in Black v. Bernalillo County Valuation Protests Bd., 95 N.M. 136, 141, 619 P.2d 581, 586 ( Ct. App. 1980). In Black, the Court of Appeals reasoned that because Section 7-38-6 referred to “[v]alues” as presumptively correct and the facts presented raised an issue of entitlement “to the special method of valuation provided for in § 7-36-20,” the presumption provided for in Section 7-38-6 did not apply. 95 N.M. at 140-41, 619 P.2d at 585-86. In 1981, the Legislature added the term “classification” to the list of “determinations” that were presumed correct. The amendment raises a question of construction: whether, by adding the term “classification” to the list of determinations of value that are presumed correct, the Legislature intended to change the result in Black.

{50} The facts that Black was decided in 1980 and the amendment was enacted in 1981 seem to me to raise the question, rather than answer it. The majority reasons that the analysis in Black depended on the list of determinations the Legislature had provided prior to 1981, rather than the difference between the purposes of Section 7-38-6 and Section 7-36-20(A). I understand Black to have reasoned that Section 7-36-20(A) was a more specific statute, one which provided a method of valuation to which a taxpayer was entitled if the statutory requirements were met. The 1981 amendment to Section 7-38-6 makes the Legislature’s intent less clear, but the 1997 amendment to Section 7-36-20(A) seems to me to be more consistent with the continued validity of Black than with a construction of its having been overruled.

{51} If there is ambiguity, and I am not persuaded there is, the more general rule of construction I would apply favors the taxpayer. “Where there is reasonable doubt of the meaning of a revenue statute, the doubt is resolved in favor of those taxed.” 3A Norman J. Singer, Statutes and Statutory Construction § 66:1, at 3 (6th ed. 2003). Professor Singer notes that there are several theories that have been advanced in support of the principle, including that the principle is “a desirable way to secure equality and uniformity in the imposition of the tax burden.” Id. at 13. As the majority notes, the Court of Appeals accepted certification in part to secure a “uniform application of the Property Tax Code.” See
shown a valid Soil Conservation Agreement stands alone as justifying a classification of land as agricultural under the statute. The taxpayer was entitled to the benefit of the presumption provided in Section 7-36-20(A). The Assessor was required to rebut that presumption. The Assessor offered evidence to support a finding of fact or conclusion that land covered by the agreement was used to create a habitat for elk. The regulation does not limit the availability of agricultural classification to particular uses under an agreement, but rather refers only to “the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.” 3.6.5.27(A)(1)(b) NMAC.

That language exactly tracks the language of Section 7-36-20(B). The majority appropriately emphasizes that the statute indicates the Legislature intended the special method of valuation for land used “primarily for agricultural purposes.” See Maj. Op. ¶ 37. I disagree that the Board was entitled to conclude “that the Lodge’s [S]oil [C]onservation [A]greement did not satisfy Section 7-36-20 because the primary purpose of the uses described in the agreement was to provide suitable habitat for elk, not to conserve soil.” See Maj. Op. ¶ 37.

After the 1997 amendment to Section 7-36-20(A), the Legislature seems to have entrusted to the Department the responsibility for providing guidance on “determining whether or not land is used primarily for agricultural purposes.” § 7-36-20(C). After the 1997 amendment, Section 7-36-20(A) no longer provides much guidance on how a taxpayer initially shows land is used primarily for agricultural purposes. Section 7-36-20(C) continues to provide, however, that the Department is to issue appropriate regulations. The regulation the Department has provided does not require more of the taxpayer than did the Legislature in enacting Section 7-36-20(B). To add, as did the Board, the requirement that the taxpayer must demonstrate the use was to conserve soil or the limitation that providing a suitable habitat for elk is not agricultural seems to rewrite both the statute and the regulation. Adding or limiting the availability of the special method seems to me to be the work of the Legislature or the Department.

One of the purposes of strict construction of a tax statute is to provide notice. “[A] rigid application of revenue measures is for the protection of citizens by informing them in unambiguous terms as to the amount and nature of their duty to pay taxes.” 3 A Singer, supra § 66.1, at 13. In suggesting that the Legislature could not have meant to grant land subject to a valid Soil Conservation Agreement the benefit of Section 7-36-20(A) if the use was non-agricultural, see Maj. Op. ¶ 37, the majority seems to me to overlook the fact that the Legislature has defined use pursuant to a Soil Conservation Agreement as agricultural. See § 7-36-20(B).

Further, the majority has left open to a variety of interpretations a term the Legislature has entrusted the Department to interpret by regulation. See Section 7-36-20(C).

Because the Soil Conservation Agreement covers most of the acreage in dispute, the Board may have erred in addressing separately the acreage occupied by the private herd. Cf. 3.6.5.8(B) NMAC (governing classification of multiple-use properties, those which contain both residential and non-residential components) (“If it is not feasible to separate a multiple-use property into discreet entities, then that property shall be classified according to the predominant use of the property”). The private herd seems to occupy only about six thousand of the twenty-seven thousand acres at issue. Perhaps the predominant use of the property should be measured by the number of acres devoted to a use. The Board’s determination that the predominant use of the land was to provide a suitable habitat for elk seems to have been a determination that affected its determination as to all twenty-seven thousand acres. I question whether the appeal actually presents two different questions. The assessment made, however, as well as the stipulations seem to have distinguished the acreage devoted to the public herd from the acreage devoted to the private herd.

If it is necessary to address separately the acreage devoted to the private herd, then I believe the focus on whether elk are appropriately considered livestock or not is misplaced. The Board concluded that providing a habitat for elk was a non-agricultural use and that there was evidence the owner intended to make “recreational and other non-agricultural uses” primary. The Board relied on Alexander in concluding that an applicant was required to demonstrate an objective intent. The Board’s analysis seems more consistent with the prior version of Section 7-36-20(A), which described evidence of use in a prior year as being insufficient “objective evidence” when “there is evidence that the...
agricultural use was subordinate to another use or purpose of the owner, such as . . . recreational use or other nonagricultural purpose.” See Alexander, 1999-NMCA-021, ¶ 9. The Board’s reliance on Alexander and the analysis therefore seem erroneous as a matter of law.

{59} The Board also relied on the evidence of income, the Bureau of Indian Affairs Letter Statement of Intent, and the fact that “[a] significant portion of the subject property is used for the production of private elk, and the grazing of public elk, both of which are used in the big game hunting business.” The Board noted that timber income, which is recognized as a bona fide agricultural use, “averaged between 10% and 30% of the total income for the property for the four years given.” The Board appears to have concluded that timber production was a secondary use. Having concluded that providing a suitable habitat for elk was a non-agricultural use, I think the Board must have thought the Legislature did not, or perhaps could not, have intended to encompass such use under Section 7-36-20. That is a thoughtful construction of the statutes, but I, think, what we should conclude the Legislature intended after the 1997 amendment to Section 7-36-20(A).

{60} Based on the evidence produced, the most appropriate result seems to turn on who had the burden of proof on any question or questions of fact and then what law controls the conclusion to be drawn. If I am right to think that the taxpayer was entitled to rely on the presumption provided in the last sentence of Section 7-36-20(A), then the question is whether or not the Assessor provided enough to rebut that presumption. The Court of Appeals did not think that the absence of the term “elk” in P.T.D. 99-25 was enough, and I think that the recitation of other statutes both in the Court of Appeals opinion and the Majority Opinion is an indication of ambiguity within and among the statutes as a whole, rather than proof that the absence of the term within the division’s order is an indication of direction from the Department. I am not convinced the ultimate question is factual. Even if all the questions were factual, however, the indica of domestication to which the majority refers in paragraph 28, when taken together with the statutory presumption provided by the third sentence in the present Section 7-36-20(A), seem circumstances that compel a different result.

{61} The majority affirms the Board in part on the basis of the Department’s regulation creating a presumption “that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.” Maj. Op. ¶ 17, 19 (quoting & discussing 3.6.5.27(A)(2) NMAC). The Court of Appeals reasoned that this presumption was not relevant because the Board did not rely on it. The majority believes the Board did rely on it, see Maj. Op. ¶ 19, but indicates agreement with the Court of Appeals that “when the parties dispute whether a given use is agricultural, this analysis is of limited utility.” See Maj. Op. ¶ 20. I agree that the regulation does not resolve the issue presented on appeal.

{62} The Legislature probably ought to say something more about multiple uses, or pursuant to Section 7-36-20(C), the Department ought to say something more definitive about proof of primary use in light of Sections 7-36-20(A) and (C). Separating classification of land from a taxation scheme based on its generation of revenue as a measure of value might also be worthy of consideration. Until one or the other acts more definitively, I would conclude we ought to affirm the Court of Appeals.

{63} The issue of uniformity is an important one, and I appreciate that the majority tries to reach a decision that promotes uniformity. I think the Court of Appeals tried to do the same thing. What seems to me to be a deciding factor is that the Board appears to have had to reach a conclusion that the Legislature must make, whether or not providing habitat for elk is a non-agricultural use, because unless it is not, the taxpayer seems to be entitled to rely on the presumption the Legislature has provided. The Court of Appeals tried to work with the statutes as written, however ambiguous they seemed. The Board on the other hand, particularly with respect to the Soil Conservation Agreement, appears to have had to limit the statute the Legislature has written in order to reach its determinations. On balance, I believe the Court of Appeals opinion contains the more appropriate analysis.

{64} The majority would reverse the Court of Appeals on the basis the Board reached the right result. For the foregoing reasons, I respectfully dissent.

PAMELA B. MINZNER, Justice

I CONCUR: RODERICK T. KENNEDY, Judge
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In-session Open House
Wednesday, January 12, 2005
9:00-11:00a
Open House
Sunday, February 13, 2005
2:00-4:00p

Manzano Day School
1801 Central Avenue NW, Albuquerque, NM 87104
505-243-6659 www.manzano-dayschool.org

CHRISTMAS PARTY AND OPEN HOUSE CELEBRATION FOR ELENA MORENO SPARKS DECEMBER 4TH
Hosted by
Infinite Dispute Resolution Services, LLC,
Elena Moreno Sparks,
Attorney & Counselor at Law, LLC,
and Elena’s friends and family.

<table>
<thead>
<tr>
<th>OPEN HOUSE 11 AM - 2 PM</th>
<th>CELEBRATION 6 PM UNTIL CLOSING</th>
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| Elena has opened her Santa Fe law office. It is centrally located near Cerrillos and St. Michaels. | Let’s celebrate Elena’s
| Elena practices in the areas of Family Law, Domestic Violence, Civil Rights, Employment Law, and Intellectual Property. | * Excellent achievement as an Associate at Infinite Dispute Resolution Services, LLC;
| | * Opening of her own law office;
| | * Award of a community contract to provide consultations to Mexican Nationals in the areas of Family Law and Domestic Violence by the Mexican Consulate in Albuquerque;
| | * 2004 Award as Santa Fe Business Woman of the Year from the Capital City Business & Professional Women; and
| | * Election to President of the Board of Silver Bullet Productions, a non-profit organization creating educational film produced by students.

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SCHOOL OF LAW
Calendar of Events

JANUARY
5 Alumni Reception
San Francisco
6:00 – 8:00 PM
*San Francisco Hilton
*subject to change

FEBRUARY
3 Valencia County
Meet the Dean
La Luna Mansion
5:30 – 7:30 PM
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The 11th Judicial District Attorney’s office, Division I (San Juan County) is accepting resumes for positions of Associate Trial Attorney to Senior Trial Prosecutor. Salary is $36,000 to $46,000 DOE. Please send resume to: Gregory M. Tucker, District Attorney, 710 E. 20th St., Farmington, NM 87401. Equal Opportunity Employer.

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Vigil & Vigil, P.A., an established AV rated Law Firm in Albuquerque, NM, seeks an Associate Attorney with 1-5 years experience and interest in Medical Malpractice, Products Liability, and General Negligence Litigation and Trial work for Plaintiffs’ practice. Please send resume, references and a writing sample to Vigil & Vigil, P.A., 2014 Central SW, Albuquerque, NM 87104.

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Sandia National Laboratories is one of the country’s largest research facilities, employing nearly 8,400 people at major facilities in Albuquerque, New Mexico and Livermore, California. Please visit our website at www.sandia.gov. Sandia Corporation, a wholly owned subsidiary of Lockheed Martin Corporation operating the Labs under contract with the U.S. Dept of Energy, is searching for an experienced Attorney able to provide a full range of legal services in the areas of corporate/business law applicable to a federally funded research and development center, specifically in areas such as procurement, taxes, insurance, foreign interactions, federal property management, information/records management, Freedom of Information Act, safeguards and security requirements, and litigation management as assigned. The position requires strong analytical and writing skills as well as the ability to work effectively with internal clients. Qualified candidates must possess a JD from an ABA accredited institution; five years or more of solid legal experience; the ability to use sound judgment; and top-tier legal and business skills. Must be willing to become a member of the New Mexico bar (http://www.nmexam.org/). A DOE Security Clearance is required for continued employment; please review eligibility criteria at 10 CFR 710.8 before applying. An understanding of the contractor–government relationship and/or in-house experience or representation of large corporate clients preferred, but not required. Please send resume to: Jeanette Brioneer, Sandia National Laboratories, P.O. Box 5800 MS: 0141, Albuquerque, New Mexico 87185-0141, or Fax: 505-844-3551, or Email: jdbbrion@sandia.gov.

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Assistant District Attorney wanted for immediate employment with the 13th Judicial District Attorney’s Office, which includes Cibola, Valencia and Sandoval counties. Employment will be based primarily in Valencia County. Minimum qualifications: admission to the State Bar of New Mexico plus any combination of three years experience in the general practice of law, with at least two years having been as an attorney. Must be willing to relocate to Valencia County within six (6) months of employment. Salary will be based upon experience, and the District Attorney Personnel and Compensation Plan. Send resume to 13th Judicial District Attorney’s Office; Attention: Filemon Gonzalez, 333 Rio Rancho Drive, Suite 303, Rio Rancho, NM 87124.

Seventh Judicial District Court

Court Administrator
The Seventh Judicial District Court in Socorro, NM is accepting applications for the full-time classified position of Judicial Supervisor. Current Hiring Salary $16.132 - $20.165 per hour. Manages, supervises and participates in the work of subordinate staff in the clerk’s office of the Socorro District Court, including case management and accounting functions. Plans, organizes, integrates and coordinates the office work, and hires, trains, evaluates and disciplines subordinate staff. Ensures compliance with established court rules and procedures. More information, contact: Kim C. Padilla, Court Administrator at 505-835-0050 ext. 20 or logon to the Judiciary’s website at www.nmcourts.com under Job Opportunities. Applications along with resumes must be submitted by 4:00 p.m. on December 3, 2004 to: Kim C. Padilla, Court Administrator, P.O. Drawer 1129, Socorro, NM 87801. EOE.

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NOTE

Submission Deadlines
All advertising must be submitted by e-mail or fax by 5 p.m. Wednesday, one week prior to publication (Bulletin publishes every Thursday). Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by the editor and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The editor reserves the right to review and edit classified ads, to request that an ad be revised prior to publication or to reject any ad. Cancellations must be received by 10 a.m. on Thursday, one week prior to publication. For more advertising information, contact: Marcia C. Ulibarri at 505.797.6058 or e-mail ad to ads@nmbar.org or fax 505.797.6075.
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Wanted for local downtown law office in Albuquerque, N.M.: Attorney with at least five years experience and interest in Medical Malpractice, Products Liability and General Negligence Litigation and Trial work for defense practice. Benefits include paid health insurance, paid parking, 401K plan. Please send your resume and references to Civerolo, Gralow, Hill and Curtis, P.A., P.O. Drawer 887, Albuquerque, N.M. 87103.

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Sole practitioner, personal injury practice, seeking a full time paralegal who will also do some transcription/secretarial work. Please send resume and salary requirements to P.O. Box 92860, Alb., NM 87199, Attn: Box D.

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12:00 Noon Lunch
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