A Message from the President

Dear members,

This is my first communication to you and I would like to start by saying that it is a privilege to serve as the 109th president of the State Bar of New Mexico. Whatever else may happen this year, I offer my sincere pledge that I will work to serve you well over the course of 2005.

As I start my year as president, I do so with the understanding that one year is not ample time to accomplish any one strategic goal. Instead, I believe it is important to begin initiatives that will be carried out long after my time as president. I follow excellent leadership and look ahead to outstanding individuals who will assume this office next year and beyond.

The State Bar was fortunate to be represented this past year by Dan O’Brien and I hope you will join me in thanking him for his commitment and dedication to this office. Dan’s year was marked by stability and, under Dan’s leadership, the State Bar emphasized both fiscal responsibility and outreach to members.

We are also fortunate to have a capable, committed group of members from throughout the state who represent the diverse interests of our entire membership on the Board of Bar Commissioners (See the Board of Bar

(continued on page 6)
KOB LAWLINE 4
2005 SIGN-UP

The KOB LawLine 4 Call-In is regularly scheduled for the third Wednesday of each month. The hours are 5:00 p.m. until 7:30 p.m. We do not schedule a session in December.

PLEASE CONSIDER SIGNING UP NOW SO YOU CAN CALENDAR YOUR PARTICIPATION. This is a tentative commitment: someone will call you 10 days to 2 weeks in advance of each scheduled date to confirm the date, time and your continued ability to participate.

*******************************************************************************

(Do not use my name as a reference:)

NAME: _____________________________ PHONE: _____________________________

I have some questions. Please call me at: ______________________________________

I have an attorney associate/ friend/ acquaintance that might be interested in participating.

Call ____________________________________________  (Name)     (Telephone Number)

You may use my name as a reference: DO NOT use my name as a reference:

PLEASE RETURN TO:

Richard Spinello
Director, Public & Legal Services Department
State Bar of New Mexico
P.O. Box 92860
Albuquerque, NM 87199-2860

OR FAX TO: 505 797-6074
Visit the State Bar advisory opinion archive and topical index on the State Bar Web site,* www.nmbar.org, for assistance in interpreting the New Mexico Rules of Professional Conduct.

**Easy to Use**

- 80 indexed, summarized opinions.
- Select “Attorney Services/Practice Resources” then “Risk Management.”

**More Resources**

- Risk Management Hotline, (800) 326-8155.
- Original questions, involving one’s own conduct, should be sent to the committee chair, Peter Pierotti, c/o State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860.

* The published advisory opinions are also available at the UNM School of Law Library and the Supreme Court Library.
22  The Basics of Real Estate Transactions from Negotiation to Closing
Saturday, January 22 • 9 a.m. - 4:30 p.m.
State Bar Center • 5.6 General and 1.0 Ethics
Co-Sponsor: Paralegal Division

Who better to address fundamental real estate issues in New Mexico than two well-recognized New Mexico attorneys with extensive real estate experience. John F. McCarthy of White, Koch Kelly & McCarthy PA and John Patterson of Scheuer, Yost & Patterson will take you through a real estate transaction in New Mexico from contract to closing. This extensive program will cover such issues as merchantable title, liens, easements, encroachments, boundary disputes, surveys, water and mineral rights, environmental compliance, financing, title commitments and policies, and title conveyance.

☐ $159 Standard and Non-Attorney
☐ $139 Government and Paralegals

18 | 21 | 25
2004 Professionalism: An Historical Perspective
Video Replay • January 18 (3:15 - 5 p.m.)
January 21 and 25 (2:45 - 4:30 p.m.)
State Bar Center

2.0 Professionalism Self-Study CLE Credits

Join historian and accomplished writer Thomas E. Chavez, PhD, Executive Director of the National Hispanic Cultural Center in Albuquerque, and Richard L. Gerding, Esq., 2003 recipient of the New Mexico Bar Association’s Professionalism Award, as they take you on a unique journey through New Mexico’s legal history that is both educational and entertaining. Moderated by The Honorable Pamela B. Minzner of the New Mexico Supreme Court and Jan Gilman-Teeper, Esq., Chair of the New Mexico Board of Minimum Continuing Legal Education.

☐ $59 Standard and Non-Attorney
Meetings

January
18
Solo and Small Firm Practitioners Section Board of Directors, 11:30 a.m., State Bar Center

19
Bankruptcy Law Section Board of Directors, noon, Bankruptcy Court

19
Law Office Management Committee, noon, State Bar Center

20
Health Law Section Board of Directors, 7:30 a.m., State Bar Center

21
Family Law Section Board of Directors, 9 a.m., via teleconference

21
Bankruptcy Law Section Brownbag, noon, Bankruptcy Court, Training Room 10327, 10th floor

21
Commercial Litigation Section Board of Directors, 3 p.m., State Bar Center

21
Legal Services and Programs Committee, 1:30 p.m., State Bar Center

State Bar Workshops

January
26
Lawyer Referral for the Elderly Workshop, 9:30 a.m., Munson Senior Center, Las Cruces

26
Family Law Workshop, 5:30 p.m., Branigan Library, Las Cruces

26
Consumer Debt/Bankruptcy Workshop*, 6 p.m., State Bar Center

27
Lawyer Referral for the Elderly Workshop, 10 a.m., Deming Senior Center, Deming

27
Lawyer Referral for the Elderly Workshop, 1:15 p.m., Meadowlark Senior Center, Rio Rancho

27
Consumer Debt/Bankruptcy Workshop*, 5:30 p.m., Branigan Library, Las Cruces

*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.
A Message from the President

(continued from front cover)

Commissioners insert this issue). Of the 22 members of the Board, 36.3% are women; 50% represent minority populations; 31.8% are in small firms; 22.7% are in medium sized firms; 13.6% are in large firms; and 31.8% are public or government lawyers. The diversity on the Board continues to increase and reflect our member population and we are proud to have such broad and diverse representation.

I have many goals for the State Bar. My vision for the future of the State Bar includes a focus on public service, public legal education and outreach to the broader community.

Public Service and Public Legal Education

In a recent survey of the State Bar’s membership, 71% of our members felt the State Bar should be providing public services and two-thirds of members said they support educating the public about legal issues. To this end, the State Bar has committed more than $380,000 to our public service programs for 2005, including the Client Attorney Assistance Program, the Lawyer Referral for the Elderly Program and other public education and outreach efforts.

The State Bar will be undertaking some new initiatives, including a helpline for the working poor and a Classroom Law Project for students. The State Bar will continue its excellent consumer debt, family law and elder issue workshops presented throughout the state, as well as its successful monthly KOB-TV Call-In program. The State Bar also will continue to support Mock Trial, the Public Legal Education Committee high school essay contest and the Young Lawyer Division public service programs.

Public legal education is one of the most important things the State Bar can do. Abraham Lincoln perhaps summed it up best when he said:

"Upon the subject of education, not presuming to dictate any plan or system respecting it, I can only say that I view it as the most important subject which we as a people can be engaged."

Community Outreach

In addition to expanding public service and education, we will have more interaction with business and community organizations. In an effort to position the State Bar as a resource and leader on legal issues, I plan to meet with the media, business and civic groups.

I will encourage State Bar Sections to become a resource for the state legislature. Before the legislative session, I plan to contact the legislature and offer the State Bar Section Chairs as subject matter experts in their respective areas and encourage legislators to contact these individuals if they have any relevant questions.

I will reach out to our primary and secondary schools through the State Bar’s Public and Legal Services Department to encourage more lawyers to become involved in our public school classrooms. As lawyers, we have much to offer today’s students, and by doing so, we will get back ten-fold in the way of personal and professional satisfaction.

Finally, I will reach out to community and business groups in ways that will enhance the State Bar’s presence and position our members not only as experts in the law, but also as individuals who serve the public, their communities and their places of worship. In many respects, I believe the State Bar is a vastly underutilized resource for the community and I hope to begin creating more opportunities for positive interactions.

I appreciate the opportunity to serve as President of the State Bar of New Mexico. I look forward to meeting with many of you throughout the coming year and I hope you will feel free to contact me if I or the State Bar can be of assistance to you. My telephone number is (505) 768-7377 and my e-mail is cvigil@rodey.com.

Sincerely,

Charles J. Vigil
President
State Bar of New Mexico

6 BAR BULLETIN - JANUARY 17, 2005 - VOLUME 44, NO. 2
NOTICES

COURT NEWS

NM Supreme Court Judicial Performance Evaluation Commission

Upcoming Meeting

The Judicial Performance Evaluation Commission was created by the New Mexico Supreme Court for the purpose of providing voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers. The commission's next meeting will be from 8 a.m. to 5 p.m., Jan. 28 at the State Bar Center in Albuquerque. For more information on the commission or with regard to the next scheduled meeting, call (505) 827-4960.

Statewide Alimony Guidelines Committee Pilot Projects

The Supreme Court has appointed a committee to study implementation of alimony guidelines statewide. The committee is collecting data on the use of alimony guidelines in pilot projects established in the First, Second, Third and Eighth Judicial Districts. During this study, the guidelines are to be referred only for settlement purposes and they should not be cited as authority in court proceedings. There are lengthy commentaries explaining the guidelines that should be reviewed. Commentaries can be purchased at the District Court Clerk's office in the First, Second, Third, and Eighth Districts.

Every person who has an alimony case, whether settled or tried, is urged to fill out an Alimony Survey Sheet. Survey sheets may be obtained from the district court clerks in the pilot project districts or the committee's pilot project coordinators:

Albuquerque:
Muriel McClelland
murielmcclelland@aol.com

Las Cruces:
Carolyn J. Baca Waters
bacawaters@zianet.com

Santa Fe:
Sandra E. Rotruck
mgpa@cybermesa.com

Taos:
Catherine E. Oliver
coliver@newmex.com

Supreme Court Notice Regarding Pleadings and Oral Argument

Attorneys are reminded that motions to extend page limits on documents and motions to vacate oral argument rarely are granted by the Court except for exceptional good cause shown. Motions for extension of time to file briefs also are discouraged and rarely will be granted for more than a seven- to ten-day extension of time for good cause shown.

NM Board of Legal Specialization
Comments Solicited

The following attorney is applying for certification 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, PO Box 92860, Albuquerque, NM 87199.

Family Law
Hartley B. Wess

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, Feb. 1 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 Feb. 7. Contact Mary Lovato, (505) 841-6778, for more information or to have an item placed on the agenda.

U.S. District Court for the District of New Mexico Notice to Federal Practitioners

The Omnibus Appropriations Act of 2005 included a provision raising the district filing fee by $100, from $150 to $250. The new fee will become effective on Feb. 7.

Suspension of 2005 Annual Federal Bar Dues

With the concurrence of all active Article III Judges in the District of New Mexico, it is ordered that the annual attorney bar dues of $25 shall be suspended for the calendar year 2005. All delinquent dues are still required to be paid. The administrative order may be viewed on the Court's Web site at www.nmcourt.fed.us.

STATE BAR NEWS

Attorney Support Group Monthly Meeting

The next Attorney Support Group meeting will be held at 5:30 p.m., Feb. 7 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.

Bankruptcy Law Section Brownbag Luncheon

Learn about the Internet while having some lunch at the Bankruptcy Law Section’s Brownbag at noon, Jan. 21 in the

BAR BULLETIN - January 17, 2005 - Volume 44, No. 2 7
2005 License and Dues

- The 2005 License and Dues forms were mailed Dec. 6, 2004.
- Without exception, dues and license fees are due on Feb. 1. Members who have not received the form should notify the State Bar, (505) 797-6036, (505) 797-6035.
- For members’ convenience, dues may also be paid online through secured e-commerce at www.nmbar.org.
- License and disciplinary fees are mandatory for active attorneys and must be paid to maintain license status (inactive and judges exempt from disciplinary fees).
- Late fees will be assessed if payment is not postmarked by Feb. 1.

Employment and Labor Law Section Board Meetings Open to Section Members

The Employment and Labor Law Section Board of Directors welcomes section members to attend its meetings. The board meets at noon on the first Wednesday of each month at the State Bar Center. The next meeting will be Feb. 2. (Lunch is not provided.)

For information about the section, visit the State Bar Web site, www.nmbar.org, or call Cindy Lovato-Farmer, section chair, (505) 667-3766.

Paralegal Division Annual Meeting

The 2005 Annual Meeting of the State Bar Paralegal Division will be held at noon on Jan. 22 at the State Bar Center in Albuquerque. Lunch will be served courtesy of LexisNexis. As in previous years, the Annual Meeting will be held in conjunction with a full day of CLE. This year’s CLE program is being presented by two well-known New Mexico attorneys, John F. McCarthy and John Patterson, who will share their knowledge and expertise in the area of real estate. For information on the Annual Meeting and CLE opportunities, check the Paralegal Division section on the State Bar’s Web site at www.nmbar.org. The registration form for the Annual Meeting can be downloaded from the Web site to be mailed to the Division at PO Box 1923, Albuquerque, NM 87103 or emailed to PD@nmbar.org. See pages four and 43 of this Bar Bulletin for more information. NOTE: Registration for the Annual Meeting luncheon will be separate from the CLE seminars.

Solo and Small Firm Practitioners Section Monthly Meeting

The Solo and Small Firm Practitioners Practice Section will hold a monthly meeting at noon, Jan. 18 at the State Bar Center. A presentation will be made by Chief Judge William F. Lang on “The Second Judicial District: A View from the Bench.” The section board will meet prior to the meeting at 11:30 a.m. Lunch will be provided for all section members who RSVP to thorvat@nmbar.org or 797-6033 by Jan. 17. Non-members are welcome with a $5 payment for lunch.

Other News

Center for Civic Values Judges Needed

Judges are needed for the regional rounds of the high school mock trial competition in Albuquerque and Las Cruces. Nationals are Feb. 19 and 20. Attorneys interested in participating, should register online at www.civicvalues.org/MT_registration.htm.

The mock trial program is a cosponsored activity of the Center for Civic Values, the State Bar of New Mexico and the UNM School of Law.

Mock Trial Coaches Needed

Attorney coaches are needed for the Del Norte High School mock trial team in Albuquerque, the Pojoaque High School team and the Lordsburg High School team. Attorneys interested in participating in this exciting and rewarding program, should call 764-9417, extension 13, or send e-mail to mocktrial@civicvalues.org. The mock trial program is a cosponsored activity of the Center for Civic Values, the State Bar of New Mexico and the UNM School of Law.

UNM Foundation Estate Planning Seminar

The Planned Giving Office at the UNM Foundation will be sponsoring a seminar on Charitable Estate Planning/Charitable Remainder Trusts and Charitable Lead Trusts from 7:30 to 11 a.m., Jan. 25 in the Pete McDavid Lounge at The Pit. Speakers at the event will be Kenneth Leach and David Finlayson. The $20 cost of the event includes parking and a box lunch. Contact Patricia Brkich, (505) 277-6543 or pbrkich@unm.edu, for more information. CLE credits for the event are pending.
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<th>Event Description</th>
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<td>18</td>
<td>2004 Professionalism: An Historical Perspective</td>
<td>VR - State Bar Center, Albuquerque Center for Legal Education of SBNM</td>
<td>2.0 P</td>
<td>Discovery Skills for Legal Staff</td>
<td>(505) 797-6020, <a href="http://www.lorman.com">www.lorman.com</a></td>
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<td>19</td>
<td>Junk Science or Scientific Evidence? Telephone</td>
<td>TRT, Inc.</td>
<td>2.4 G</td>
<td>Workers’ Compensation in New Mexico</td>
<td>(800) 672-6253, <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>20</td>
<td>Personal Injury Case Evaluation and Intake - Make Your Accountant and Malpractice Insurer Happy</td>
<td>TRT, Inc.</td>
<td>2.4 G</td>
<td>The Basics of Real Estate Transactions from Negotiation to Closing</td>
<td>(800) 672-6253, <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>21</td>
<td>Fundamentals of Arbitration</td>
<td>TRT, Inc.</td>
<td>2.4 G</td>
<td>Section 1031 Exchanges</td>
<td><a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td>21</td>
<td>Discovery Skills for Legal Staff</td>
<td>Lorman Education Services</td>
<td>7.2 G</td>
<td>2004 Professionalism: An Historical Perspective</td>
<td>(505) 833-3940, <a href="http://www.lorman.com">www.lorman.com</a></td>
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<td>21</td>
<td>They Took My Stuff! How Do I Get It Back?</td>
<td>TRT, Inc.</td>
<td>2.4 G</td>
<td>2004 Professionalism: An Historical Perspective</td>
<td>(505) 797-6020, <a href="http://www.lorman.com">www.lorman.com</a></td>
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<td>25</td>
<td>The Basics of Real Estate Transactions from Negotiation to Closing</td>
<td>State Bar Center, Albuquerque Paralegal Division and Center for Legal Education of SBNM</td>
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<td>2004 Professionalism: An Historical Perspective</td>
<td><a href="http://www.nmbar.org">www.nmbar.org</a></td>
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**G = General, E = Ethics, P = Professionalism, VR = Video Replay. Programs have various sponsors; contact appropriate sponsor for more information.**
25 Sales Representation and Distributor Agreements: What Attorneys Advising Business Should Know
   Teleseminar
   Center for Legal Education of SBNM
   1.2 G
   (505) 797-6020
   www.nmbar.org

27 Problem Employees: Using Employment Laws to Your Advantage
   Albuquerque
   Sterling Education Services
   8.0 G
   (715) 855-0495
   www.sterlingeducation.com

25 The Tangled Webs of Impaired Lawyers
   Teleconference
   TRT, Inc.
   2.4 P
   (800) 672-6253
   www.trtcle.com

27 What Puts Government Lawyers in a Class by Themselves
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

28 Engagement Letters: The Gateway to Better Client Relations and Professionalism
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

1-2 Estate Planning With Life Insurance Products (Part I & II)
   Teleseminar
   Center for Legal Education of SBNM
   2.4 G
   (505) 797-6020
   www.nmbar.org

1 How to Help Your Client Survive a Child Custody Evaluation in New Mexico
   Albuquerque
   National Business Institute
   6.7 G, 0.5 E
   (715) 835-8525
   www.nbi-sems.com

2 Sanctions and the Goldilocks Test - Too Soft, Too Hard, or Just Right?
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

7 What Puts Government Lawyers in a Class by Themselves
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

8 Burden of Representing Financially-challenged Companies
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

4 The High Price of Billables
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

7 New Mexico Wage and Hour Regulations and Recent Developments
   Albuquerque
   National Business Institute
   6.7 G, 0.5 E
   (715) 835-8525
   www.nbi-sems.com

2 Confidentiality of Medical Records
   Albuquerque
   Lorman Education Services
   7.2 G
   (715) 833-3940
   www.lorman.com

9 Demonstrative Evidence in Your Personal Injury Trial - When, What, Why and How Much?
   Teleconference
   TRT, Inc.
   2.4 G
   (800) 672-6253
   www.trtcle.com

February

1 Justice in the Jury Room
   Teleconference
   TRT, Inc.
   2.4 E
   (800) 672-6253
   www.trtcle.com

7 New Mexico Wage and Hour Regulations and Recent Developments
   Albuquerque
   National Business Institute
   6.7 G, 0.5 E
   (715) 835-8525
   www.nbi-sems.com

8 Reorganization Bankruptcies for Small Businesses in New Mexico
   Albuquerque
   National Business Institute
   6.7 G, 0.5 E
   (715) 835-8525
   www.nbi-sems.com
EFFECTIVE JANUARY 12, 2005

PETITIONS FOR WRIT OF CERTIORARI FILED AND PENDING:

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<tr>
<th>No.</th>
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<td>29,020</td>
<td>State v. Honeycut (COA 25,021)</td>
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<td>29,019</td>
<td>Wheeler v. State (12-501)</td>
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<td>State v. Jade G. (COA 23,810)</td>
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<td>29,015</td>
<td>Salopek v. Hoffman (COA 24,018)</td>
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<td>State v. Williams (COA 24,865)</td>
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<td>State v. Saiz (COA 24,063)</td>
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<td>State v. Argujo (COA 24,985)</td>
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<td>Salaz v. Janeka (12-501)</td>
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<td>State v. Schoonmaker (COA 23,927)</td>
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CERTIORARI GRANTED BUT NOT SUBMITTED:

(Submission = date of oral argument or briefs-only submission)

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<td>State v. Sharpe (COA 23,742)</td>
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<td>State v. Bellon (COA 24,234)</td>
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CERTIORARI GRANTED BUT NOT SUBMITTED:

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**WRITS OF CERTIORARI**

**AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT**

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

**EFFECTIVE JANUARY 12, 2005**

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**CERTIORARI GRANTED AND SUBMITTED:**

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**PETITION FOR WRIT OF CERTIORARI DENIED:**

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**UNPUBLISHED DECISION FILED:**

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CLERK CERTIFICATES
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### Clerk Certificates

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<tbody>
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### Clerk’s Certificate of Reinstatement To Active Status

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<tr>
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### In Memoriam

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### Clerk’s Certificate Of Correction

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### Clerk’s Certificate Of Withdrawal

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RULES/ORDERS
From the New Mexico Supreme Court

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

The Supreme Court is considering proposed revisions to the District Court Criminal 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 February 4, 2005, to be considered by the Court.

5-115. Conduct of court proceedings.
A. Judicial proceedings. Judicial proceedings should be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the people and to the litigants, and in an atmosphere that bespeaks the responsibilities of those who are charged with the administration of justice.

B. Nonjudicial proceedings. Proceedings, other than judicial proceedings, designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be photographed in, or broadcast from, the courtroom with the permission and under the supervision of the court.

C. Appearance of the defendant before the court.
   (1) A defendant shall not be required to appear before the jury in distinctive clothing that would give the appearance that the defendant is incarcerated. Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains or stun belts, a visible bullet proof vest or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury.
   (2) A person appearing in court shall not be unduly restrained. At the time the defendant’s case is being heard on the record, the defendant shall not appear before the court in any restraint devices unless the court finds good cause to believe that the devices are necessary because the defendant poses a danger to the safety of others or presents a serious risk of escape.
Certiorari Granted, No. 28,917, Dec. 6, 2004
From the New Mexico Court of Appeals

Opinion Number: 2004-NMCA-137

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
MICHAEL PONCE,
Defendant-Appellant.
No. 23,193 (filed: Sept. 21, 2004)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
ALBERT S. “PAT” MURDOCH, District Judge

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Attorney General
PATRICIA GANDERT
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

JOHN B. BIGELOW
Chief Public Defender
LAUREL A. KNOWLES
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

OPINION

JONATHAN B. SUTIN, Judge

{1} While meeting his appointment with his probation officer, Defendant Michael Ponce was arrested for a probation violation. He had tested positive for alcohol three days earlier. The probation officer conducted a patdown search that produced vehicle keys which then ultimately led to a search of Defendant’s vehicle where cocaine was found. Defendant appeals the denial of his motion to suppress. We affirm.¹

BACKGROUND

{2} Defendant was on probation for prior aggravated assault and aggravated battery convictions. A special condition of his probation required him to participate in the Probation and Parole Division’s (PPD) Intensive Supervision Program (ISP). See NMSA 1978, § 31-21-13.1(A) (1991) (defining intensive supervision programs for probation). Another special condition of Defendant’s probation was that he was not allowed alcohol. When Defendant reported to the PPD office on February 8, 2001, he was arrested because a urinalysis performed three days earlier, on February 5, 2001, and received by the probation office on February 7 or 8, 2001, was positive for alcohol. The arrest was pursuant to an “arrest order” prepared by Probation Officer Garnand on which Officer Garnand checked off boxes indicating that Defendant was arrested both because he was a risk to himself and a risk to the public.

{3} A patdown was conducted after Defendant was arrested, producing $985 in cash, two cell phones, and a set of car keys. Officer Garnand asked Defendant how he came to get that kind of money, and Defendant said that he had picked up his last paycheck. The officer thought the sum of money was unusual because she thought based on a conversation with Defendant that Defendant was not employed.²

¹ This opinion follows our grant of the State’s motion for rehearing as to our opinion filed February 19, 2004. We withdrew that opinion by order entered April 2, 2004. We substitute this opinion in its stead.

² At the suppression hearing, the State stipulated that Defendant was in fact employed and his last paycheck in the sum of $558.38 was issued on February 2, 2001.

Defendant was then searched the vehicle and discovered contraband, after which a police officer was summoned and filed a criminal complaint against Defendant.

{4} Defendant sought suppression of the evidence obtained from the search of the vehicle on the grounds his rights under the United States and New Mexico Constitutions were violated. He asserted in his motion (1) that he was arrested in violation of New Mexico Probation and Parole Division (PPD) Administrative Regulation PPD-215 which sets out PPD policy and procedure regarding arrests of petitioners, and (2) that the searches of Defendant and his vehicle were conducted in violation of PPD Regulation PPD-214 which sets out policy and procedure regarding searches, in that the probation officer did not have reasonable cause to determine if one of the keys in Defendant’s possession unlocked any of the vehicles in the parking lot outside, and did not have reasonable cause to search inside the vehicle. After an evidentiary hearing, the district court denied Defendant’s motion to suppress on the ground that the probation officers had reasonable cause to arrest Defendant and search the vehicle.

{5} Defendant raises two points on appeal: (1) the arrest and searches were unconstitutional because they violated standards in the probation division regulations; and (2) the probation officers failed to read him his Miranda rights before questioning him after his arrest.
DISCUSSION

Standard of Review and Burdens

{6} We review the legality of a seizure and of a subsequent search questioned in a suppression hearing as mixed questions of law and fact, we review any factual questions under a substantial evidence standard, and we review the application of law to the facts de novo. State v. Reynolds, 119 N.M. 383, 384, 890 P.2d 1315, 1316 (1995); State v. Werner, 117 N.M. 315, 316-17, 871 P.2d 971, 972-73 (1994); State v. Attaway, 117 N.M. 141, 144-45, 870 P.2d 103, 106-07 (1994).

In reviewing the application of law to facts, we view the facts in a manner most favorable to the prevailing party. State v. Jason L., 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856; State v. Boeglin, 100 N.M. 127, 132, 666 P.2d 1274, 1279 (Ct. App. 1983).

{7} A defendant moving to suppress evidence has the burden to come forward with evidence to raise an issue as to an illegal search and seizure. State v. Gardner, 95 N.M. 171, 175, 619 P.2d 847, 851 (Ct. App. 1980). In the face of a defendant’s challenge to the constitutionality of a warrantless arrest or search, the State is required to present testimony or other evidence showing that the arrest or search met constitutional muster. See State v. Duran, 2003-NMCA-112, ¶ 15, 134 N.M. 367, 76 P.3d 1124 (“[D]efendants have the burden to raise an issue as to their illegal search and seizure claims. Once they have done so, the burden shifts to the [S]tate to justify the warrantless search [or seizure].” (alteration in original) (internal quotation marks and citation omitted)), cert. granted, Sup. Ct. No. 28,241, 134 N.M. 320, 76 P.3d 638 (Sept. 3, 2003); State v. Gallegos, 2003-NMCA-079, ¶ 12, 133 N.M. 838, 70 P.3d 1277 (“It is the State’s burden to prove the existence of circumstances justifying a warrantless search.”), cert. granted, Sup. Ct. No. 28,068, 133 N.M. 771, 70 P.3d 761 (Jun. 6, 2003); State v. Diaz, 1996-NMCA-104, ¶¶ 8-9, 122 N.M. 384, 925 P.2d 4 (stating that “[a] search and seizure conducted without a warrant is unreasonable unless it . . . fall[s] within one of the exceptions to the warrant requirement” and that under the consent exception, the State “has the burden of establishing common authority.”), State v. Valencia Olaya, 105 N.M. 690, 694, 736 P.2d 495, 499 (Ct. App. 1987) (“The government has a heavy burden when it seeks to justify warrantless arrests and searches.”).

Applicable Probation-Related Statutes, Regulations, and Orders

{8} “Probation is the release by the court without imprisonment of an adult defendant convicted of a crime.” State v. Chavez, 94 N.M. 102, 103, 607 P.2d 640, 641 (Ct. App. 1979) (internal quotation marks omitted). It constitutes “a form of conditional liberty intended to alleviate the aspects of punishment by incarceration,” and “[i]t offers rehabilitation and restoration to society.” Id. “The broad general purposes of probation are education and rehabilitation” of the defendant. State v. Donaldson, 100 N.M. 111, 119, 666 P.2d 1258, 1266 (Ct. App. 1983). It is an act of clemency and is not meant to be painless. Id. In order to effectuate a probationer’s rehabilitation, a sentencing court may impose conditions that have as their objective the deterrence of further misconduct. Id.

{9} The Legislature has expressly determined procedures to bring a person on probation before the court for violation of a condition of probation. Under NMSA 1978, § 31-21-15(A) (1989), three alternative procedures may be employed: (1) a court-issued warrant; (2) a court-issued notice to appear; and (3) arrest without a warrant by an authorized probation officer. The third alternative, in pertinent part, reads: the director [of the field services division of the corrections department or any employee designated by him] may arrest a probationer without warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the director, violated the conditions of his release. The written statement, delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention, is sufficient warrant for the detention of the probationer.


{10} The “board,” presumably the parole board, is required under NMSA 1978, § 31-21-21 (1963) to “adopt general regulations concerning the conditions of probation which apply in the absence of specific conditions imposed by the court.” See § 31-21-5(D); NMSA 1978, § 33-1-7 (1977). Section 31-21-21 further reads: All probationers are subject to supervision of the board unless otherwise specifically ordered by the court in the particular case. Nothing in the Probation and Parole Act [31-21-3 to 31-21-19 NMSA 1978] limits the authority of the court to impose or modify any general or specific condition of probation. The board may recommend and by order the court may impose and modify any conditions of probation. The court shall transmit to the board and to the probationer a copy of any order.

(Alteration in original.) In Gardner, in addressing differences between (1) search provisions contained in a State of New Mexico Probation Department’s Manual of Instructions for Officers and (2) a probation order entered in the case before the Court on appeal, this Court held that Section 31-21-21 authorized specific court-imposed conditions of probation, and that those conditions of probation override administrative regulations. Gardner, 95 N.M. at 173-74, 619 P.2d at 849-50.

{11} PPD Regulation 215 states a policy that PPD arrest orders “are authorized when there is sufficient evidence to indicate a possible serious or repeated pattern of violation of conditions of probation or parole and there is a compelling need for detaining the offender, or the offender is a risk to public or individual safety.” PPD Regulation 215 procedures are contained in PPD Regulation 215.1 and 215.2. The pertinent part of PPD Regulation 215.1 provides that officers who are authorized to arrest offenders may do so “in an emergency” when certain conditions exist, including:

3. Instances in which a serious violation of parole or probation is evident and circumstances preclude the arrest being carried out by a law enforcement officer.

4. The offender is an immediate threat of causing injury to himself or others.

The pertinent part of PPD Regulation 215.2 states that arrest orders are for use to detain “an offender for a serious or continued probation . . . violation[,] or when investigating such violation[.]” This regulation also provides that arrest orders “should not be used for any other purpose except as otherwise stated in Department policy and/or approved by the Director.” Defendant does not challenge the authority of Officer Germand to issue the arrest order.

{12} PPD Regulation 214 describes PPD’s policy and procedure for a search
of a probationer’s person and property. PPD Regulation 214 states the following policy:

Staff of the [PPD] may conduct searches of offenders, their homes, or other personal property, and seize evidence indicating violations of conditions of probation . . . when there is reasonable cause to believe that the offender is in possession of prohibited items or that evidence of a violation of their conditions of probation . . . will be found. Staff of the PPD may also conduct a pat search of the offender and search of the immediate area at the time of arrest . . . to ensure the officers’ safety and that no evidence of a violation is destroyed.

The regulation defines a reasonable cause search as “a search in which available evidence would lead a reasonable person to believe that the offender is in possession of prohibited items or that evidence of a violation will be found.” PPD Regulation 214 procedures are contained in PPD Regulation 214.1. This regulation states in pertinent part:

If an officer has reasonable cause to believe that an offender is in possession of prohibited items (either by condition or statute), or evidence of a violation will be found, and emergency conditions do not exist, the officer should promptly report the matter to their supervisor, and seek the assistance of a law enforcement agency in conducting the search.

{13} In the present case, Defendant signed a probation court order containing standard and special conditions. A special condition of the probation order was “No Alcohol.” Another special condition of the probation order required Defendant to participate in the ISP. See § 31-21-13.1(A) (enabling intensive supervision programs to “provide highly structured and intense supervision, with stringent reporting requirements, of certain individuals who represent an excessively high assessment of risk of violation of probation”). Defendant also signed an ISP agreement containing standards of intensive supervision. Defendant agreed to abide by the terms of the ISP agreement. The ISP agreement provided that Defendant was required to comply with his general and special conditions of probation, in addition to specific standards in the ISP agreement. The ISP agreement also provided that Defendant will not consume intoxicating beverages at any time.

{14} With regard to arrests, the probation order provided that a warrant could be issued for Defendant’s arrest for any probation violation and that “[w]hen acting in accordance with official policy and New Mexico law, your Probation Officer has the authority to have you arrested without a warrant.” The ISP agreement provided that the ISP officer can issue an arrest order at any time for a violation of the probation conditions or non-compliance with the ISP standards.

{15} With regard to searches, the probation order required Defendant to “permit a warrantless search, by a Probation Officer, of your person, automobile, residence, property and/or living quarters if he/she has reasonable cause to believe that such a search will produce evidence of a violation of your conditions of probation.” In the ISP agreement, Defendant agreed to “submit to a search of [his] person, residence and personal belongings, including automobile, by the Intensive Supervision Officer upon request.”

Constitutional Standards

{16} Warrantless probation searches and seizures must comply with the reasonableness components of the Fourth Amendment and of Article II, Section 10, of the New Mexico Constitution. See United States v. Knights, 534 U.S. 112, 122 (2001) (holding warrantless search of probationer’s home was reasonable within the meaning of the Fourth Amendment because it was supported by reasonable suspicion and authorized by a condition of probation); Griffin v. Wisconsin, 483 U.S. 868, 872-73 (1987) (holding warrantless search of probationer lawful where it was authorized by a condition of probation itself reasonable within the meaning of the Fourth Amendment); State v. Marquart, 1997-NMCA-090, ¶ 19, 123 N.M. 809, 945 P.2d 1027 (stating, in determining that the exclusionary rule applies to probation revocation proceedings under the New Mexico Constitution, that the “ruling . . . does not prevent a court from imposing as a condition of probation that the probationer give his or her consent to reasonable warrantless searches by a probation officer to ensure compliance with the conditions of probation” (emphasis omitted)); Gardner, 95 N.M. at 174, 619 P.2d at 850 (stating that when limiting a probationer’s rights by requiring the probationer to submit to a warrantless probation search, the search requirement must be reasonable “under the Constitution” and that “[t]he requirement to submit to a search at any time is subject to the requirement that the time be reasonable” (internal quotation marks omitted)).

The Validity of the Arrest

{17} The State presented testimony regarding the positive-urine test result and an arrest order prepared by Officer Gernand, together with the officer’s testimony that, with respect to the arrest order form, “[w]e usually check off risk to self, risk to public, repeated violations and things like that, whatever,” and in this case “we checked off risk to self and risk to public.” Also before the district court were the probation order and ISP agreement, which together permitted a warrantless arrest under certain circumstances pursuant to an arrest order issuable at any time for a violation of a condition of probation or non-compliance with the standards in the ISP agreement. Defendant does not contest the fact that his urine tested positive for alcohol. Nor does he contest the fact that the probation order together with the ISP agreement forbade him from consuming alcohol. Further, Defendant does not argue that PPD Regulation 215 is unauthorized or inconsistent with Section 31-21-15(A)(3). Defendant, in fact, asserts that PPD Regulation 215 is the minimum constitutional standard that applies with respect to his arrest.

{18} Defendant’s constitutional argument flows as follows: While “a probationer may be arrested for violating some condition of his probation by an act that would not constitute a crime in an ordinary situation,” such an arrest is reasonable only if “it can be shown that the person presents a danger to himself or the public, or that his conduct represented a serious or repeated pattern of violations danger,” as stated in PPD Regulation 215. Even in intensive supervision circumstances, the official policy in PPD Regulation 215 requires a possible serious or repeated pattern of probation violations or a risk to public or individual safety must be proven by the State in order to justify an arrest. The State failed to establish these required grounds for his arrest.

{19} Defendant further argues that the PPD set the constitutional standard of reasonableness when it adopted the Regulation 215 standard, irrespective of how broad the probation order and ISP agreement might be read, and because the State did not actually show, based on Defendant’s specific conduct prior to arrest, that there
existed “a possible serious or repeated pattern of violation of conditions of probation . . . and [that there was] a risk to public or individual safety,” the constitutional reasonableness standard was not met. Consequently, because his arrest was not in conformity with PPD Regulation 215, Defendant contends the arrest violated the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. We are unpersuaded.

{20} Defendant, a high-risk potential probation violator, was placed in a statutorily-backed highly structured supervision program with stringent reporting and compliance requirements, pursuant to the probation order and the ISP agreement. In our view, the determinative constitutional point is that Defendant’s arrest was based on sufficient cause to pass muster under federal and State constitutional reasonableness standards. The arrest was by no means arbitrary or otherwise without reasonable basis. The probation officer knew that Defendant’s urine had three days earlier tested positive for alcohol and knew that Defendant was prohibited under his probation conditions from consuming alcohol. The arrest having been based on this knowledge, we hold that the warrantless arrest was reasonable and constitutionally sufficient whether or not it was handled according to a more stringent administrative policy.

The Validity of the Patdown and Vehicle Searches

{21} Defendant contends that the probation officer did not have the reasonable cause required under PPD Regulation 214 to search his person or his vehicle. Like his arguments with regard to the arrest and PPD Regulation 215, Defendant asserts PPD set the constitutional standard for searches in PPD Regulation 214. Defendant does not attack the seizure of his keys during the patdown. He argues that the probation officer exceeded his patdown authority when he took the money from Defendant’s pocket, since that seizure could not have been done for safety reasons. Defendant also argues that the patdown search was impermissible because the officer did not have reasonable cause to believe that the search might produce evidence of a probation violation or to ensure that no evidence of a violation was destroyed.

{22} In regard to the vehicle searches, citing the “reasonable cause” requirement contained in both PPD Regulation 214 and the probation order, Defendant asserts that the probation officer’s insertion of one of the keys in the door lock of the Suburban was a search. Defendant argues that the fact he was carrying a set of keys with a car key and a substantial amount of money in his pocket did not give the probation officer reasonable cause to try the key in the vehicle lock. Implicit in Defendant’s argument is the later search inside the vehicle and the seizure of the contraband found in that search were the products of the illegal key-lock matching search.

{23} Again, we are unpersuaded. We hold that the patdown and searches were reasonable and constitutionally permissible. The warrantless patdown was reasonable and lawful as incident to the lawful arrest of Defendant for a violation of a condition of the probation order and a condition of his ISP agreement. See United States v. Robinson, 414 U.S. 218, 235 (1973) (holding a search incident to arrest to be an exception to the warrant requirement as well as reasonable); State v. Duffy, 1998-NMSC-014, ¶ 61, 126 N.M. 132, 967 P.2d 807 (stating search incident to arrest is one of the recognized exceptions to the warrant requirement); State v. Arredondo, 1997-NMCA-081, ¶ 27, 123 N.M. 628, 944 P.2d 276 (stating the rule that “[a] search incident to a lawful arrest may fall under an exception to the warrant requirement in the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution if the State meets its burden of proving that the search occurs as a contemporaneous incident to the lawful arrest of the defendant and is confined to the area within the defendant’s immediate control”), overruled on other grounds by State v. Steinzig, 1999-NMCA-107, 127 N.M. 752, 987 P.2d 409.

{24} In regard to the key-lock matching issue, we note that several jurisdictions have determined that this activity does not constitute a search within the Fourth Amendment. See United States v. Salgado, 250 F.3d 438, 456-57 (6th Cir. 2001) (holding that insertion of key found in vehicle used to transport drugs into lock in the defendant’s apartment door was not a search); United States v. Lyons, 898 F.2d 210, 212-13 (1st Cir. 1990) (holding that insertion of key obtained from the defendant in a search of his person into the lock securing a rented storage compartment not to be a search); United States v. DeBardeleben, 740 F.2d 440, 444-45 (6th Cir. 1984) (holding that insertion of key found in the defendant’s possession after his arrest into the door and trunk locks of a car found in a parking lot and suspected to belong to the defendant not to be a search); but see United States v. Portillo-Reyes, 529 F.2d 844, 847-48 (9th Cir. 1975) (stating insertion of key obtained from search of suspected drug smuggler into door lock of vehicle suspected as a drug “load car” parked in the area to be the “beginning of the search,” where the search of the vehicle occurred immediately upon the unlocking of the door).

{25} We do not deem it necessary to decide whether the matching of the key to the lock constituted a search within the Fourth Amendment and Article II, Section 10. We assume, arguendo, that the matching did constitute a search, and hold that it was reasonable. The matching was done merely for the purpose of determining whether Defendant’s key unlocked a vehicle, advancing an investigation following Defendant’s arrest and the probation officer’s reasonable suspicions aroused after the patdown. The match was to identify Defendant with a particular vehicle. Whether, at the point of the matching, the officers had reasonable suspicion of any violation of a further condition of probation is not a determinative issue. The issue is whether the search rose to a level of intrusion into Defendant’s privacy so that reasonable suspicion was required. It did not. The intrusion was minimal. Furthermore, not only is there “a reduced expectation of privacy in cars,” State v. Ruffino, 94 N.M. 500, 502, 612 P.2d 1311, 1313 (1980), Defendant’s status as a convicted criminal on probation under a court-ordered intensive supervision program, and the terms of his ISP agreement, substantially reduced to a minimum Defendant’s expectation of privacy as to the door lock of his vehicle for the purpose of exploring whether the vehicle was Defendant’s vehicle. Moreover, at the point of matching the key to the lock, the officers did not enter the vehicle, but only identified the vehicle with Defendant’s key.

{26} Under these circumstances, the matching activity was not unreasonable. See United States v. S109,179 In United States Currency, 228 F.3d 1080, 1087-88 (9th Cir. 2000) (distinguishing Portillo-Reyes and holding that insertion of key obtained in patdown search of the claimant into lock of a vehicle door for the sole purpose of aiding the police in the identification of an individual was not an unreasonable search); United States v. Concepcion, 942 F.2d 1170, 1172-73 (7th Cir. 1991) (holding that insertion of key obtained from the defendant after he was arrested into lock of apartment door did
not violate the Fourth Amendment); Lyons, 898 F.2d at 213 (concluding that insertion of key in padlock on storage unit was not an unreasonable search); Commonwealth v. Alvarez, 661 N.E.2d 1293, 209-10 (Mass. 1996) (holding that insertion of key obtained from premises where the defendant was arrested into a nearby parked vehicle door lock did not violate either the federal or state constitution).

{27} Defendant does not separately and independently attack the search inside the vehicle, apparently conceding that if the arrest, patdown, and key-lock matching searches were lawful, the later vehicle search that produced the contraband was lawful. He does not expressly set out an argument of illegality based on the factual basis underlying the officers’ search inside the vehicle. The closest he comes to attacking this search is the two broad headings he sets out for his points: (1) “The probation officer did not have ‘reasonable cause’ to search [Defendant’s] vehicle, as required under the probation regulation governing searches”; and (2) “The officers did not establish the required grounds for . . . the searches.” We therefore do not explore or decide whether the search inside the vehicle was constitutionally permissible. It suffices to say that that search was not a product of any preceding unlawful arrest or search.

{28} Even were we to rely on the legality of that search for our decision, we would hold that it was reasonable. Under the probation order and under his ISP agreement, Defendant represented “an excessively high assessment of risk of violation of probation.” § 31-21-13.1(A). His expectations of privacy, particularly as to his vehicle parked outside the probation of privacy, particularly as to his vehicle

tion status to consider the constitutionality of the arrest and searches, relying primarily on Knights and Gardner. The State says that because “Defendant agreed to the terms and standards of intensive supervision that allowed a warrantless search upon request[,] . . . it is not necessary to show the reasonableness of the probation officers’ actions.” In addition, for the first time in these proceedings, the State asserted, in a brief filed after this Court withdrew its first opinion, that Defendant’s consent in the probation order and ISP agreement “is a valid waiver of his Fourth Amendment rights.”

Note on Outstanding Search and Seizure Issues

{29} Defendant did not specifically or separately argue below and does not specifically or separately argue on appeal that he is entitled to a suppression order based on violations of the administrative regulations alone, irrespective of whether there were constitutional violations. Nor does Defendant cite authority on the issue. We therefore do not address this issue. We note that in Gardner, this Court concluded that a probation officer’s participation in a warrantless search of the trunk of a probationer’s vehicle, although in violation of administrative regulations, was nevertheless authorized under the probation order and passed constitutional muster because it was reasonable. 95 N.M. at 173-75, 619 P.2d at 849-51. In a related vein, nothing in this opinion is intended to set out any view of this Court as to whether an arrest or a search in violation of both (1) administrative regulations, and (2) probation orders and ISP agreements would require suppression even were we to determine that the arrest and/or search was reasonable under constitutional requirements.

{30} Defendant appears to suggest that Article II, Section 10 of the New Mexico Constitution affords greater protection than the Fourth Amendment by arguing that PPD Regulation 215 is similar to the need for exigent circumstances for a warrantless search of an individual not on probation as required in Campos v. State, 117 N.M. 155, 159, 870 P.2d 117, 121 (1994). In our view, for the reasons discussed in this opinion, the arrest and searches in the case at hand were reasonable under the requirements of both constitutional provisions.

{31} The State’s primary position throughout this appeal has steadily been that the probation order and ISP agreement control the outcome because Defendant agreed to be bound by conditions permitting carte blanche warrantless arrest and searches rather than be incarcerated. The State asserts that it is unnecessary to look beyond those documents and Defendant’s probation status to consider the constitutionality of the arrest and searches, relying primarily on Knights and Gardner. The State says that because “Defendant agreed to the terms and standards of intensive supervision that allowed a warrantless search upon request[,] . . . it is not necessary to show the reasonableness of the probation officers’ actions.” In addition, for the first time in these proceedings, the State asserted, in a brief filed after this Court withdrew its first opinion, that Defendant’s consent in the probation order and ISP agreement “is a valid waiver of his Fourth Amendment rights.”

{32} Because we determine that the arrest and searches at issue in this appeal were reasonable under the federal and State Constitutions, we do not analyze or decide the question whether Defendant’s probation status together with the probation order and his ISP agreement, are, without any consideration of reasonableness, sufficient to uphold the arrest and searches under requirements or rules that do not require consideration of constitutional reasonableness. For the same reason, and also because it was not presented until after we withdrew our first opinion in this appeal, we do not address the State’s argument that Defendant waived his Fourth Amendment rights by agreeing to abide by the terms of the probation order and the ISP agreement.

The Miranda Issue

{33} During the suppression hearing, the following exchange occurred between defense counsel and Officer Garnand:

Q. [W]hen you were questioning [Defendant], he admitted that the car was his; is that correct?
A. Yes.
Q. Did you beforehand read him Miranda rights?
A. Not before.
Q. Asking questions of him?
A. No, I didn’t read -- before asking questions about the vehicle?

Q. Okay. But after the handcuffs were placed on [Defendant], at any time was [sic] the Miranda rights given to him?
A. No.

Defendant contends that because Officer Garnand did not read Defendant his Miranda rights before she asked him questions about the vehicle, the contraband was the fruit of illegal questioning. The State raises lack of preservation.

{34} Defendant’s motion to suppress was not based on the asserted failure to give Miranda warnings. In the suppression hearing, Defendant’s counsel stated nothing regarding this issue in his opening remarks or in conversations with the court before the witnesses testified. Those remarks and discussion were about the basis for Defendant’s arrest and the searches. It was in the very last portion of his rather short redirect examination of Officer Garnand that Defendant’s counsel asked the officer about whether she read Defendant his Miranda rights. In his closing remarks, in between his discussion of Defendant’s
arrest and the searches, Defendant’s counsel stated that, “at the point of his arrest, Miranda warnings were not given to him and he was questioned” and that Defendant “made statements as far as being dropped off.” Defendant’s counsel then asserted that “he should have been Mirandized,” whereupon the court asked for authority, and counsel stated that:

under the state constitution it’s required in this particular case because he was facing probation violation charges. But in court today he’s facing trafficking charges, which is very serious, I do believe applies. So I question whether that particular evidence as far as the statement made by him without being Mirandized should be used against him. But going back to the main point, Your Honor, is the issue what happened with those keys.

The court and counsel then immediately moved back into a discussion of the circumstances surrounding the use of the key to unlock the vehicle. At no time did Defendant’s counsel specifically ask the court to suppress evidence based on the failure to give Miranda warnings, ask the court for any ruling as to the failure to give Miranda warnings, or discuss the matter again. The State’s counsel did not mention the Miranda issue in his closing argument. The court did not mention the Miranda issue either in its oral determination of the motion to suppress or in the order it entered denying the motion.

{35} We agree with the State that Defendant failed to preserve the Miranda issue. The issue was not raised in Defendant’s motion. Defendant did not alert the State or the court that this was an issue before he presented his witnesses. Defendant briefly questioned Officer Garnand about Miranda warnings, mentioned the testimony in closing argument citing no authority for the point other than “I believe that under the state constitution it’s required,” and then abruptly changed the subject, “going back to the main point,” and never asking for a ruling on the matter. The court did not mention the issue when ruling on the suppression motion. See Rule 12-216(A) NMRA 2004 (stating “[i]t is essential for review it must appear that a ruling or decision by the district court was fairly invoked”); State v. Varela, 1999-NMSC-045, ¶ 25, 128 N.M. 454, 993 P.2d 1280 (stating in order to preserve an issue for appeal, the defendant must make a timely objection that specifically informs the district court of the nature of the claimed error and invokes an intelligent ruling thereon); State v. Vargas, 1996-NMCA-016, ¶ 15, 121 N.M. 316, 910 P.2d 950 (holding that the defendants failed to preserve a pretrial entry issue when they did not request that the district court rule on that issue); see also State ex rel. Human Servs. Dep’t v. Martin, 104 N.M. 279, 280, 720 P.2d 314, 315 (Ct. App. 1986) (observing that the requirement of preservation of error for appellate review applies equally to constitutional questions).

{36} Defendant argues, without citation to authority, that the district court’s silence on the issue should be construed as a ruling against him. We will not address this assertion absent authority. See Rule 12-213(A)(4) NMRA 2004; Sonntag v. Shaw, 2001-NMSC-015, ¶ 2, 130 N.M. 238, 22 P.3d 1188 (“We do not address [the appellant’s] claim because he has failed to provide this Court with citations to relevant authority and has not argued this issue with sufficient particularity.”); Hall v. Hall, 114 N.M. 378, 386, 838 P.2d 995, 1003 (Ct. App. 1992) (“When parties fail to cite authorities in support of their contentions, we are entitled to assume that they could not find support after diligent search.”). Alternatively, Defendant asks for a remand for the district court to decide the issue, arguing that Defendant should not be penalized because the issue fell through the cracks. He cites United States v. Walters, 269 F.3d 1207, 1219 (10th Cir. 2001), in which the government conceded that the unruled upon issue was properly raised and preserved for the district court. However, unlike in Walters, in the present case the State has not conceded that the issue was properly raised and preserved, and we have determined that the issue was not preserved.

{37} Even were the issue to be determined on its merits, Defendant would not prevail. In Defendant’s counsel’s closing remarks to the district court, he mentioned only “statements [by Defendant] as far as being dropped off.” Therefore, any argument regarding alerting the district court to the Miranda issue would be limited to Defendant’s concern about his response to the question as to how he arrived at the probation office—a response by Defendant to a question asked before the key-lock matching occurred. Thus, even were we to address the issue, we do not think that the question asked at the time of Defendant’s arrest about how Defendant arrived at the probation office amounts to a question designed to elicit an incriminating response or likely to have that effect. See State v. Ferrari, 80 N.M. 714, 719, 460 P.2d 244, 249 (1969) (stating that “interrogating” under Miranda refers to questions “designed to elicit incriminating responses” or questions “likely to have that effect”). Although the conversation was initiated by the officer and not Defendant, in the context in which it was asked, the question does not constitute the type of custodial interrogation that requires application of the Miranda rule. Furthermore, Defendant’s arrest was not for independent criminal activity, but for breach of the no-alcohol condition of his probation which would result, at worst, in a revocation of Defendant’s probation, not in new criminal charges. Although he had been placed under arrest, at the time of the questioning Defendant was not in a setting that could be characterized as unfamiliar or an interrogation environment.

{38} Under the foregoing circumstances, we do not think that Miranda warnings were necessary. Cf. State v. Gutierrez, 119 N.M. 618, 620-22, 894 P.2d 395, 397-99 (Ct. App. 1995) (holding that Miranda warnings were not necessary at a preliminary probable cause hearing on a parole revocation, likening the preliminary hearing to a non-custodial probation interview as in Minnesota v. Murphy, 465 U.S. 420, 421, 430 (1984), which held that a probationer meeting with his probation officer was not “in custody” for purposes of receiving Miranda warnings even though he was “subject to a number of restrictive conditions governing various aspects of his life,” and “in custody for purposes of federal habeas corpus” (internal quotation marks omitted)). While Murphy indicated that the issue might be different if the defendant were under formal, custodial arrest, 465 U.S. at 430, 433, the United States Supreme Court was obviously thinking of an arrest for criminal activity in a custodial interrogation setting, not an arrest in a setting such as that in the present case for non-criminal conduct that nevertheless violated a condition of probation.

CONCLUSION

{39} We affirm the denial of Defendant’s motion to suppress.

{40} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

I CONCUR:

JAMES J. WECHSLER, Chief Judge

MICHAEL E. VIGIL, Judge

(dissenting)
To pass constitutional scrutiny, a search must be reasonable. See Attaway, 117 N.M. at 149, 870 P.2d at 111 (1994) (noting that “the ultimate question in all cases regarding alleged search and seizure violations is whether the search and seizure was reasonable”). The search of Defendant’s vehicle was not reasonable, in my opinion. Therefore, I dissent from that part of the majority opinion holding that the search of Defendant’s vehicle did not violate his constitutional rights under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution.

The supervision of a person on probation “is a ‘special need’ of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large.” Griffin, 483 U.S. at 875. However, “[t]hat permissible degree is not unlimited.” Id.

Consistent with these principles, we require that limitations of a probationer’s rights concerning searches be reasonable. See Marquart, 1997-NMCA-090, ¶ 19 stating that a court may impose as a condition of probation that the probationer give his or her consent to “reasonable warrantless searches” by a probation officer “to ensure compliance with the conditions of probation”; Gardner, 95 N.M. at 174, 619 P.2d at 850 (“The requirement to submit to search ‘at any time’ is subject to the requirement that the ‘time’ be reasonable.”).

In Knights, the Supreme Court held that the warrantless search of the probationer’s apartment, supported by reasonable suspicion and authorized by a condition of probation, was reasonable within the meaning of the Fourth Amendment. Knights, 534 U.S. at 122. Allowing a probation officer to perform a warrantless search under a reasonable suspicion standard rather than the more stringent probable cause standard appropriately balances the special need of a probation system to supervise individuals on probation with a probationer’s constitutional right to privacy. Id. at 121 (“Although the Fourth Amendment ordinarily requires the degree of probability embodied in the term ‘probable cause,’ a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable.”).

A condition of probation which authorizes a probation officer to perform a warrantless search must be reasonably related to the probationer’s rehabilitation. See NMSA 1978, § 31-20-6(F) (2004) (authorizing conditions of probation reasonably related to rehabilitation); Gardner, 95 N.M. at 174, 619 P.2d at 850 (recognizing search requirement must be reasonably related to rehabilitation and concluding that requiring a prior narcotics offender to submit to search was proper). Warrantless searches are restricted to those instances necessary to advance the purposes of probation. A warrantless search not reasonably related to the probationer’s rehabilitation is not “reasonable.” Requiring individualized, reasonable suspicion of a probation violation as a prerequisite for conducting a warrantless search protects against standardless and unconstrained discretion, thus insuring that such searches are reasonable and within constitutional limits.

I therefore respectfully submit that the warrantless search of a probationer’s vehicle is not constitutionally reasonable unless: (1) it is authorized by the conditions of probation, and (2) there is a reasonable suspicion that evidence of a violation of probation will be found.

Defendant was previously convicted of aggravated assault and aggravated battery, and he was on probation. One of the standard conditions of probation stated:

You will permit any Probation Officer to visit you at your home or place of employment at any time and you will permit a warrantless search, by a Probation Officer, of your person, automobile, residence, property and/or living quarters if he/she has reasonable cause to believe that such a search will produce evidence of a violation of your conditions of probation.

Defendant was also required to serve his probation under a program of intensive supervision. See § 31-21-13.1(A) (defining “intensive supervision programs”). As part of his intensive supervision, Defendant agreed, “I will submit to a search of my person, residence and personal belongings, including automobile, by the Intensive Supervision Officer upon request.”

Defendant’s probation officer decided she was going to arrest him when he came to the probation office for a regular visit because a three day old urinalysis was positive for alcohol, and Defendant was not allowed to consume alcohol under the conditions of his probation. He was arrested for the probation violation and handcuffed. A search of Defendant’s person incident to the arrest produced cash, two cell phones, and keys. None of these are contraband or evidence of a separate probation violation. Defendant was asked how he came to the probation office, and he replied that his friends had dropped him off. Again, whether friends dropped him off or whether he drove to the office had no bearing on any possible additional probation violation. Without Defendant’s consent, a second probation officer took Defendant’s keys to see if they fit vehicles parked in a parking lot across the street. There is no evidence of what probation violation the officer expected to find. How many vehicles were tried is unknown. He unlocked a Chevrolet Suburban with Defendant’s key and told Defendant’s probation officer.

Defendant’s probation officer asked Defendant why he lied about how he came to the probation office. She could not remember what Defendant said, other than to admit that the Chevrolet Suburban was his. Defendant’s probation officer then requested fellow probation officers to search the vehicle. She told Defendant his vehicle was going to be searched. When asked during the suppression hearing what authority she had to order the search, she said, “under the authority of the probation and parole policy that he signed a probation order stating that he will submit to a warrantless search if reasonable cause — if we believe it may produce evidence of a violation.” However, Defendant was already handcuffed and under arrest for violating his probation. Further, Defendant’s probation officer never said what violation she had reasonable cause to believe would be proven by the search. Without Defendant’s consent and without a warrant, probation officers then searched inside Defendant’s vehicle. What they were looking for is unknown. They did find cocaine, leading to Defendant’s conviction for trafficking by possession with intent to distribute cocaine and his status as a habitual offender.

The first question is whether the searches of Defendant’s vehicle were authorized by Defendant’s standard condition of probation. It requires “reasonable cause” on the searching probation officer’s part that the search will produce evidence of a probation condition violation. I assume “reasonable cause” means “reasonable suspicion” as discussed later in this opinion, rather than the more stringent standard of “probable cause.” See Black’s Law Dictionary (8th ed. 2004) (stating that “probable cause” is also termed “reason-
Whether reasonable suspicion exists is reviewed de novo on appeal by looking at the totality of the circumstances. State v. Urioste, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. Probation officers possess reasonable suspicion when they are aware of specific articulable facts which, judged objectively, would lead a reasonable person to believe a probation violation occurred or was occurring. See id. (describing a reasonable suspicion of criminal activity). Reasonable suspicion is not satisfied by unsupported intuition, an inarticulable hunch, a gut instinct, or unpurticularized suspicion. See id. ¶ 10 (“A police officer cannot forcibly stop an individual for purposes of investigation merely on the basis of an inchoate and unpurticularized suspicion or hunch that criminal activity may be afoot.” (internal quotation marks and citation omitted)); State v. Cohen, 103 N.M. 558, 562, 711 P.2d 3, 7 (1985) (“Unsupported intuition is insufficient.”); State v. Galvan, 90 N.M. 129, 132, 560 P.2d 550, 553 (Ct. App. 1977) (“[A]n inarticulable hunch does not provide the basis for a reasonable suspicion.”). When a probation officer relies on her experience to establish a reasonable suspicion, she must provide more than a conclusion unsupported by any explanation as to the type of experience she has or how that experience provides a basis for her action. See id. Finally, reasonable suspicion must exist at the inception of the search; the probation officer cannot rely on facts which arise as a result of the search. See Jason L., 2000-NMSC-018, ¶ 20. Tested by these standards, reasonable suspicion to search Defendant’s vehicle was lacking.

I assume, as does the majority, that matching Defendant’s key with the Chevrolet Suburban constituted a search under the Fourth Amendment and Article II, Section 10. However, reasonable cause to believe that matching Defendant’s key with the Chevrolet Suburban would produce evidence of a violation of any condition of probation was absent. Reasonable cause to believe that a violation of probation would be discovered by searching the interior of the vehicle was also absent. Specifically, even if Defendant’s probation officer learned from the key matching search that Defendant lied about how he arrived at the probation office, this fact and her prior knowledge that he possessed cash, cell phones, and keys did not establish reasonable cause that a violation of a condition of probation would be discovered inside the vehicle. The State failed to establish what violation would be proven by the key matching search and subsequent search inside the vehicle, and it had the burden to prove the validity of these warrantless searches. See Gallegos, 2003-NMCA-079, ¶ 12 (“It is the State’s burden to prove the existence of circumstances justifying a warrantless search.”). The searches of Defendant’s vehicle were not authorized by the general conditions of probation.

Similarly, the searches were not authorized by the condition of Defendant’s intensive supervision. It states that Defendant will submit to a search “upon request.” Here, there was no “request” to search; the probation officers simply searched Defendant’s vehicle. Thus, the searches were invalid. See State v. Jeffers, 568 P.2d 1090, 1093 (Ariz. Ct. App. 1977) (stating search invalid as outside scope of probation condition when probation officer conducted search without a request and probation condition allowed search “when so requested” by probation officer (internal quotation marks omitted)).

Even if the requirement of a “request” is read out of the probation condition, the search violated the regulations of the New Mexico Probation and Parole Division. PPD Regulation 214, quoted by the majority in ¶ 12 specifically states its policy is that a search is allowed only when there is “reasonable cause” to believe the probationer is in possession of prohibited items or that evidence of a violation of the conditions of probation will be found. A “reasonable cause search” is in turn defined in Regulation 214 as “[a] search in which available evidence would lead a reasonable person to believe the offender is in possession of prohibited items or that evidence of a violation will be found.” The preceding analysis of reasonable suspicion demonstrates that there was no “reasonable cause search” as required by the PPD’s own regulations. That resulted in a violation of Defendant’s constitutional rights.

I am unable to agree with the majority that the searches of Defendant’s vehicle complied with the constitutional requirement of reasonableness. I therefore dissent.

MICHAEL E. VIGIL, Judge
In Memoriam

William Booker Kelly
September 1, 1934 - December 18, 2004

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Congratulations Darlene Armijo!

On January 21, 2005, Darlene Armijo will complete twenty-five years of working with Henry Narvaez of the Narvaez Law Firm, where she is currently the Office Administrator. Darlene is originally from Rio Chama, New Mexico, which is approximately 10 miles south of Abiquiu. Upon graduating from Española High School, she attended classes at New Mexico Highlands University before moving to Dallas, Texas. Shortly after her return to Albuquerque on January 21, 1980, she joined Henry Narvaez at the Keleher and McLeod law firm, where she worked until May 1994 as a Secretary and Legal Assistant. She is a member of the Association of Legal Administrators, and also serves on the Finance Committee of the Sacred Heart Catholic Church. Darlene coordinates and participates in several free legal clinics each year. She has been instrumental in providing free legal services to many individuals who cannot afford to pay. Darlene's latest work project has been the planning and carrying out of the move by the Narvaez Law Firm to its new location at 601 Rio Grande Blvd. N.W.

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Provides free public workshops throughout the state. Also provides pro bono, reduced fee, and full fee referrals to the private bar for lawyer referral for the elderly, legal aid, SSI, military clients and cancer and HIV/AIDS patients. The Expanded Referral Program offers fee based referrals from people calling the State Bar and an attorney page on the State Bar Web site for a small fee. PLSD strives to be a united, inclusive program serving the legal profession and the public.

Client Attorney Assistance Program (CAAP)
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(505) 797-6068
CAAP serves the legal community and the public by helping attorneys and clients resolve communication and other issues. CAAP encompasses the Fee Arbitration Program to help resolve fee disputes between attorneys and their clients, and helps with Peer Assistance, which fields complaints from both clients and attorneys regarding unprofessional conduct of an attorney that does not rise to an ethical violation.

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“Our goal is to create a beloved community and this will require a qualitative change in our souls as well as a quantitative change in our lives.”
– Dr. Martin Luther King, Jr.

In respect for Dr. Martin Luther King, Chestnut Law Offices will be closed on January 17, 2005.
Ci erolo, Gralow, Hill & Curtis
A Professional Association
Counselors & Attorneys At Law

Ci erolo, Gralow, Hill & Curtis, P.A., is pleased to announce that Lance D. Richards has been selected as a shareholder in the firm. Mr. Richards is a 1992 graduate of the University of New Mexico and a 1995 graduate of the University of Tulsa College of Law. Mr. Richards practices in the area of insurance defense and is a member of the American Board of Trial Advocates.

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Submit announcements for publication in the Bar Bulletin to notices@nmbar.org by 5 p.m., Monday the week of publication.

JOHN N. LIEUWEN & ASSOCIATES, P.A.
John N. Lieuwen § James La Fata § Janice E. Dale § Linda M. Quezada
is pleased to announce the admittance of

JAMES LA FATA, J.D., L.L.M.
as a shareholder to the firm. The practice will continue in the same location under the name of

LIEUWEN, LA FATA & ASSOCIATES, P.A.
4101 Indian School Road N.E., Suite 310N
Albuquerque, New Mexico 87110 § 505.262.6000 § Fax 505.262.6244

Bar Bulletin - January 17, 2005 - Volume 44, No. 2
Corporate/Business Attorney
The Law Firm of Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for an attorney with 2 to 4 years experience in the corporate/business area, including tax. A New Mexico practitioner with a LL.M. in Tax preferred. Excellent benefits and salary commensurate with experience. Please send resume, references and a writing sample to: Human Resources Manager, P.O. Box 1888, Albuquerque, NM 87103 or via e-mail to hr@rodey.com.

Associate/Transactions
We are looking for an associate to join our very busy and growing business transactions practice, 2+ years of transactional experience required. Securities, M&A or tax background a plus. Please apply only if you are qualified and want to work hard on the most challenging transactions around. Competitive salary and benefit package. Please submit resume in confidence by mail to Recruiting, Brownstein Hyatt & Farber, P.C., 201 Third Street, N.W., Suite 1500, Albuquerque, NM 87103, by email to abqjobs@bhf-law.com or fax to 505.244.9266. No telephone inquiries.

Associate Attorney
Very reputable law firm representing numerous large, nationwide banking/servicer clients in full range of creditors rights including foreclosures, replevins, bankruptcy, real estate, litigation seeks associate attorney with 0-3 years experience. We are building a new office in the Journal Center and need someone who is able to mul tasks in a high volume, fast paced practice. Submit in confidence cover letter, resume, sal his & req to: 3803 Atrisco Blvd Ste A Albu, NM 87120, fax 833-3040, or e-mail admin@roselittle.com.

Children’s Court Attorney
The Children, Youth and Families Department is seeking to fill a vacant Children’s Court Attorney position in Albuquerque, NM. The attorney will represent the department in abuse/neglect and termination proceedings and related matters in the Albuquerque area. The ideal candidate will have experience in the practice of law totaling at least four years. New Mexico licensure required. Benefits include medical, dental, vision, paid vacation, and a retirement package. The salary range is $37-$66K annually, depending on experience and qualifications. Contact Simon Romo at (505) 841-7989 or e-mail Sromo@cyfd.state.nm.us. The state of New Mexico is an EOE. Applicants need to contact their local Department of Labor office for a DOL job order number. All applications must be forwarded to Simon Romo, Managing Attorney, 1031 Lamberton Place, NE, Albuquerque, NM 87107.

Litigation Attorney
Insurance defense firm in Albuquerque seeking associate with three to five years experience in general civil litigation defense, including some complex litigation and insurance coverage issues. This person should have strong research and writing skills and the ability to work independently. Salary competitive and commensurate to experience. Inquiries will be kept confidential, please forward letter of interest and resume to: P.O. Box 92860, Albuquerque, NM 87199-2860, ATTN: Box A.

Attorney
Full time attorney. Resume, references and writing sample: 2019 Galisteo, Suite C3, Santa Fe, NM 87505.
Office Leader

Las Alamos National Laboratory is seeking a highly experienced attorney to provide professional legal services and to manage, under the direction of Laboratory Counsel, the practice group for intellectual property and tech transfer functions in the office of Laboratory Counsel at the Los Alamos National Laboratory. Responsibilities will be primarily in the area of patent law and patent prosecution, copyrights, CRADAs, funds-in- agreements, licenses of intellectual property, and other tech transfer agreements, and intellectual property matters in general. The position will entail the management of these issues for the Office of Laboratory Counsel and of I.C. staff dedicated to these functions. The attorney will be responsible for drafting or overseeing the drafting and review of legal documents, including licensing agreements, CRADAs, other tech transfer agreements, patent applications and other documents related to the patenting process. Other responsibilities include preparation of memoranda of law, legal opinions, management directives, memoranda, letters and other papers relating to intellectual property matters, legal advice and counsel to laboratory managers and employees. Substantial work experience in the area of patent law, intellectual property, licensing agreements, and tech transfer agreements. Knowledge of federal laws and regulations relating to intellectual property. Extensive experience in identifying and diagnosing problems involving legal issues, identifying alternative solutions and strategies, and developing and implementing action plans that will accommodate the achievement of organizational goals and satisfy legal requirements. Demonstrated skill in and knowledge in preparing for and conducting negotiations. Ability to obtain a Q clearance which normally requires US citizenship. J.D. from ABA accredited law school and be licensed or willing to obtain a license to practice law by the Supreme Court of New Mexico and the U.S.P.T.O. within 18 months from date of hire. For complete job description and application information: visit www.lnl.gov/jobs and search form job #209312. List “NMBB” as the referral source when applying.

Lawyer Position

Guebert, Bruckner & Bootes, P.C. seeks an attorney 1-3 years experience with an interest in defense litigation and commercial litigation. Please send resume and writing sample to: Hiring Partner, Guebert, Bruckner & Bootes, P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

Legal Secretary

The Albuquerque office of Lewis and Roca Jontz Dawe LLP is looking for a legal secretary with a minimum of 5 years’ experience for its regulatory agency/water law group. Applicant must type 75+ wpm with strong MS Word skills. Must be detail-oriented, dependable and have excellent proofreading, communication and organizational skills. Must be able to multi-task in a fast-paced environment with a heavy workload and short deadlines is needed. We offer an excellent benefits pkg, competitive salary and a great place to work. Send salary requirement, cover letter and resume by fax to Office Manager at 505-764-5480 or by email to KGodwin@lrlaw.com.

Legal Assistant/Secretary/Paralegal

Full-time position available for legal assistant/secretary/paralegal for small but extremely busy firm. Candidate should have a minimum of 5 years experience in public finance or transactional work, excellent typing skills and work well in a team setting. Competitive salary and benefit package. Please submit resume in confidence by mail to Recruiting, Brownstein Hyatt & Farber, P.C., 201 Third Street, N.W., Suite 1500, Albuquerque, NM 87103, by email to abjobs@bhf-law.com or fax to 505.244.9266. No telephone inquiries.

Legal Secretary/Assistant

Legal Secretary/Assistant for Santa Fe attorney practicing business/utility/water law. Requires exceptional secretarial and organizational skills with a commitment to consistent excellent quality of work. Must have ability to work under pressure and maintain flexibility. Position requires superior computer skills, including WordPerfect 9.0, MS Word 2000, MS Office. Knowledge of litigation procedures are also desirable. Minimum of five yrs experience in law firm setting. Firm offers excellent benefit package, competitive salary and great work environment. For consideration, please send resume to HR Manager, Rodey Law Firm, P.O. Box 1888, Albuquerque, NM 87103 or email to hr@rodey.com. EOE.

Positions Wanted

Short-Term/Contract Work

New Mexico attorney seeks short-term or contract work (on-site or off) Albuquerque area. Full or part-time through summer 2005. Excellent researcher. Legal experience – just under two years includes: employment, tribal, Social Security, medical malpractice, administrative hearings. Contact: nnmlawyer@ispwest.com.

Consulting

Legal Nurse Consultant

Certified Legal Nurse Consultant with over 10 years of experience assisting attorneys nationwide. Over 20 years of clinical experience. Able to assist with ANY case where injury, illness or medical care is at issue. Contact: MEDLEGALRN2004@yahoo.com or Toll-free 888-732-7779 for our FREE informational newsletter.

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

Law Offices for Rent
Two law offices for rent, $325 and $475, lower level, office sharing negotiable at 8010 Menaul NE, Albuquerque. Offices Contact: Hal Simmons, 299-8999.

For Lease
Lease 1,850 Sq. Ft. office building one block from court houses, 3 Exec. and 3 Sec. offices, reception and storage areas. 10+ off street parking. New carpet and paint will provide phone system and Cat 5 as needed. 842-0232.

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Large offices with separate secretarial area, free client parking, receptionist, library/conference room, kitchen, telephone, high-speed Internet connection, copier, fax, security. Call Lynda at 842-5924.

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Tired of writing motions?
Upstart publishing company seeking lawyer war stories for an anthology to be published November 2005. Contact Tom Asimou at thomas@asimou.xohost.com, or (602) 604-0011.

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Solid red oak desk, credenza, bookcase and file cabinet, plus leather chair, clients’ chairs and more. Must sell right away. Call Steve in Santa Fe at 982-3467.

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Free Confidential* 24-Hour Hotline
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*The NM Rules of Professional Conduct (Rule 16-803) and the NM Code of Judicial Conduct (Rule 21-300) provide for strict confidentiality.
State Bar of New Mexico

Bill Kitts Mentor Program

Creating Partnerships for Professional Development

Who was Bill Kitts?

Albuquerque lawyer Bill Kitts was a professional who loved and respected the law. He committed time and expertise in assisting young and new lawyers. A great loss to the community, Bill Kitts was killed in an automobile accident in 1982. The Bill Kitts Mentor Program was formed in the fall of 1992 to remember and honor this dedicated attorney.

For more assistance, or to become a mentor, contact the State Bar at membership@nmbar.org; or call (505) 797-6033.

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* Mentor volunteers acknowledge that they have been in practice for at least five years, have had no formal disciplinary sanctions during the past five years, maintain malpractice coverage, and are members in good standing of the State Bar of New Mexico.
Looking for Meeting Space?

The State Bar of New Mexico Professional Development Center has the following space available for use and/or rental by members and organizations:

**Auditorium**
Seats 161 theatre style, plus four wheelchair spaces. Equipped for multi-media presentations.

**Three small conference rooms**
Each has a conference table that seats eight.

**Visiting attorney offices**
Three private offices.

**Computer lab**
Eleven networked computers (individual or group training).

**Three classrooms/meeting rooms**
Each seats 30-55 and can be set up in a variety of configurations - classroom with tables, open square, or rows of chairs (theatre style). Folding walls between rooms can be opened for greater capacity.

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