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Writs of Certiorari

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2004-NMSC-039: Deanna Nava v. City of Santa Fe

2004--NMCA-001: State v. Bryan Baca

William A. Vincent
State Bar President - 1886

Special Insert:
CLE AT-A-GLANCE
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.

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(Check the box after the DATES AND TIMES you want to sign up for)

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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
Wanted – Bilingual Attorneys! The State Bar of New Mexico and KLUZ Channel 41 would like to host a legal call-in program for Spanish-speaking viewers. Spanish-speaking attorney volunteers are needed to answer telephone inquiries on a wide range of legal issues.

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.

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(Immigration Only)

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(Name)       (Telephone Number)

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

PLEASE RETURN TO:  Lizeth Cera-Cruz
Public & Legal Services Department
State Bar of New Mexico
P.O. Box 92860
Albuquerque, NM 87199-2860

OR FAX TO: (505) 797-6074

For further assistance call (505) 797-6068 or e-mail lcera-cruz@nmbar.org
Evidentiary Issues at Trial
Video Replay • 9 a.m. - 3 p.m.
5.3 General & 1.0 Ethics CLE Credits


This seminar addressed current legal issues concerning the rules of evidence and related case law. It will specifically address topics such as evidence regarding hedonic damages, the current law concerning experts, computer and electronic evidence, objections and evidentiary motions, a hearsay refresher, as well as an ethics component.

☐ $169 Standard and Non-Attorney

The Basics of a NM Divorce Case
Video Replay • 9 a.m. - 3 p.m.
5.3 General & 1.0 Ethics CLE Credits

Presented by: John Bannerman, Esq.

This seminar provided a basic overview of the primary issues that legal professionals are likely to encounter in representing a divorce case in the state of New Mexico. Included are discussions about ethics, client screening and the interview process, dispute resolution alternatives, tools of discovery, use of a financial expert witness, and other issues unique to family law.

☐ $169 Standard and Non-Attorney

Toil and Trouble: Avoiding Common Pitfalls in the Practice of Law
Video Replay • 9 - 11:30 a.m.
1.0 Ethics and 2.0 Professionalism CLE Credits


This seminar focused upon how to choose and satisfy clients, as well as how to avoid common ethical and professional pitfalls that result in equally common complaints.

☐ $99 Standard and Non-Attorney
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**Professionalism Tip**

With respect to my client:

I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees.

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**Meetings**

**January**

24 Public Legal Education Committee, noon, State Bar Center

25 Technology Utilization Committee, 4 p.m., State Bar Center

26 Natural Resources Section Board of Directors, noon, State Bar Center

27 Appellate Practice Section Board of Directors, 3 p.m., Tucker Law Firm, Santa Fe

28 Board of Bar Commissioners Meeting, 10:30 a.m., State Bar Center

**February**

2 Employment and Labor Law Section Board of Directors, noon, State Bar Center

2 Trial Practice Section Board of Directors, 4:30 p.m., State Bar Center

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**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, Deming

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

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

COURT NEWS

NM Supreme Court 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.

NM Board of Legal Specialization

Comments Solicited

The following attorneys are 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 identify the required 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.

Estate Planning, Trusts and Probate Law
James F. Beckley

Trial Specialist - Criminal Law
Douglas E. Couleur

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.

Nominating Commission

Fourteen applications have been received in the Judicial Selection Office for the judicial vacancy in the Second Judicial District Court, due to the resignation of the Hon. Wendy E. York. The District Judges Nominating Commission will meet Jan. 26 at the Bernalillo County Courthouse (Fourth and Lomas, SW corner), in Albuquerque, to evaluate the applicants for this judicial position. The Commission meeting is open to the public.

The names of the applicants in alphabetical order are:

Patrick D. Allen
Julie N. Altwies
Carl J. Butkus
Clay P. Campbell
Timothy V. Flynn-O’Brien
Stanley D. Harada
David N. Hernandez
Philip M. Krehbiel
Alan M. Malott
Kenneth H. Martinez
Kathleen M. Rhinehart
Frank A. Sedillo
Seth L. Sparks
N. Monica Zamora

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.

Fifth Judicial District Court Judicial Recommendations

The Fifth Judicial District Nominating Commission convened Jan. 13 in Roswell and completed its evaluation of the two applicants for the vacancy on the Fifth Judicial District Court. The commission recommends both applicants (in alphabetical order) to Gov. Bill Richardson:

Thomas E. Dow
Freddie J. Romero

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

119th Anniversary

The State Bar of New Mexico will celebrate its 119th anniversary at 4:30 p.m., Jan. 28 at the State Bar Center. Refreshments will be served and the oldest, youngest and longest serving attorneys will be honored in a joint reception with the Board of Bar Commissioners and UNM School of Law faculty.
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.

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.

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.

Public Law Section
Board Meeting

The next Public Law Section board meeting will be held at noon, Feb. 10 in the Risk Management Division Legal Bureau Conference Room on the first floor of the Montoya Building, 1100 St. Frances Dr., Santa Fe. Contact Deborah Moll, (505) 827-2000, for more information.

Nominations Sought for Public Lawyer Award

The State Bar Public Law Section is currently accepting nominations for the ninth annual public lawyer of the year award, which will be presented on Law Day, May 2. Prior recipients include Florence Ruth Brown, Frank Katz, Douglas Meiklejohn, Marty Daly, Nick Estes, Mary McNerny, Jerry Richardson, Peter T. White and Robert M. White. Send nominations by 5 p.m., March 1 to Doug Meiklejohn by e-mail, dmeiklejohn@nmelc.org or by mail to New Mexico Environmental Law Center, 1405 Luisa St. #5, Santa Fe. The selection committee (comprised of past chairs of the Public Law Section) will consider all nominated candidates and may nominate candidates on its own.

The following are factors that will be considered in making this award. An applicant need not meet all of these criteria. The work or service recognized by the award must have occurred in New Mexico. A candidate must be admitted to practice in New Mexico, but does not have to be a member of the Public Law Section to be eligible.

1. Significant length of service in government, which does not have to be continuous, or for one specific employer or for work as an attorney;
2. Excellence as an attorney/advisor and/or advocate;
3. Training or education of the public or bar concerning public issues;
4. Mentorship of junior attorneys in the public sector;
5. Role Model for other public lawyers;
6. Involvement in one particularly difficult or important case or negotiation that significantly advanced a governmental policy or purpose;
7. Service to social welfare organizations, charitable institutions or nonprofit entities connected with the practice or enhancement of an area of public law;
8. Advocacy of, or work on, issues or legislation of importance in the public sector, such as open meetings and public records, public procurement and administrative procedures;
9. A lawyer who is not likely to be recognized for his or her outstanding work as a public lawyer;
10. A lawyer whose personal character and dedication to public law and public service furthers the integrity and repute of the legal profession.

Taxation Section
Notice of Intent to Oppose/Amend Legislation

The Taxation Section Board of Directors hereby notifies all members of the Taxation Section of its intent to lobby in connection with a proposed amendment to Section 7-1-73 of the New Mexico Statutes Annotated 1978 (“NMSA”) that has been drafted by the New Mexico Taxation and Revenue Department (“Department”). The Department intends to introduce the amendment during the 2005 legislative session. The amendment proposed by the Department provides that any person who willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department that is knowingly fraudulent or that is knowingly false as to a material matter would upon conviction be guilty of a fourth degree felony. A copy of the proposed legislation may be obtained by sending an e-mail to Marjorie A. Rogers at mrogers@modrall.com.

The Taxation Section plans on contacting the Department as to the Taxation Section’s position that the legislation should exclude “willful counsel” counseling against fraud. If the proposed legislation is introduced in the legislature as is, the Taxation Section may lobby for clarifying language. Timothy Van Valen and Curtis W. Schwartz of the Modrall Sperling Law Firm have volunteered to represent the Taxation Section on this matter, at no cost to the Taxation Section.

Other Bars
National Lawyers Guild Meeting Notice

The New Mexico Chapter of the National Lawyers Guild will be meeting at 6 p.m., Jan. 27 at the Center for Public Interest Law, 122 Tulane SE, in Albuquerque. Pizza will be served. The meeting will plan the agenda for the coming year, adopt a democratic process for taking positions as a group and elect a new leadership council. Call Cindy Marts, (505) 262-1867 for more information.

Sandoval County Bar Association
Monthly Meeting

The Sandoval County Bar will be having its monthly meeting from noon to 1 p.m.,
Jan. 27 at the Pasta Café Italian Grill, 3201 Southern Blvd. SE, Rio Rancho. The program will feature Judge Louis P. McDonald and a report on the status of Sandoval County judicial funding at the legislature. Call (505) 892-1050 to R.S.V.P. or for more information.

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. Regionals 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 (505) 764-9417, extension 13, or send e-mail to mocktrial@civicvalues.org. The mock trial program is a cosponsored activity of the Center for Civic Values, the State Bar of New Mexico and the UNM School of Law.

Legal FACS

Open House
Legal Forms and Courthouse Services is hosting an open house from 3:30 to 6:30 p.m., Jan. 27 at 400 Gold Avenue SW; Suite 106 (entrance faces 4th Street). Tour Legal FACS newly expanded offices, visit with the staff and board, and share some light refreshments. Call (505) 256-0417 to R.S.V.P. or for more information.

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.

THANK YOU to the Board of Legal Specialization and the Specialty Committee members. Their efforts make this program possible.

For additional information regarding the Legal Specialization program including a list of Board Certified Specialists, go to www.nmbar.org - Other Bars/Legal Groups, use the Court Regulated Programs tab in the 2004-2005 Bench and Bar Directory, or call (505) 797-6057.

MCLE – mcle@nmbar.org or www.nmmcle.org

2004 MCLE Annual Compliance Reports will be sent to active licensed NM attorneys at the end of February. Did you complete your 2004 credit requirements?

Yes - The Annual Report will indicate you completed the required 15 credits in 2004.

No, Help! - The Annual Report will indicate your status as non-compliant, and you will be subject to the $100 late compliance sanction. Access www.nmmcle.org for approved courses, access www.nmbar.org for upcoming CLE courses, and look in your weekly Bar Bulletin for approved courses.

I’m not sure - Access www.nmmcle.org to view your credits earned, contact MCLE at mcle@nmbar.org or (505) 797-6015.

Legal Specialization – ls@nmbar.org

ADVERTISING BOARD CERTIFIED SPECIALIST STATUS
If you want to advertise your status as a specialist, the proper wording pursuant to 19-202(G) of the Rule of Legal Specialization is “New Mexico Board of Legal Specialization Certified Specialist in _____” and states your area of specialization. This can be shortened to “Board Certified Specialist in _____.”

CREDIT FOR COURSES
Attorneys interested in maintaining their specialization or interested in applying for specialization should make sure the courses taken appear on their MCLE record. For continuing legal education (CLE) courses to count toward the requirements for specialization, the courses must be shown on the MCLE record for the attorney.
**LEGAL EDUCATION**

**JANUARY**

24  **Fundamentals of Arbitration**
   Teleconference
   TRT, Inc.
   2.4 G
   (800) 672-6253
   www.trtcle.com

24  **Section 1031 Exchanges**
   Albuquerque
   National Business Institute
   7.5 G, 0.5 E
   (715) 835-8525
   www.nbi-sems.com

25  **2004 Professionalism: An Historical Perspective**
   VR - State Bar Center, Albuquerque
   Center for Legal Education of SBNM
   2.0 P
   (505) 797-6020
   www.nmbar.org

25  **Charitable Estate Planning/Charitable Remainder Trusts & Charitable Lead Trusts**
   Albuquerque
   UNM Foundation
   3.6 G
   (505) 277-6543

25-28  **DNA: Witness to the Truth**
   Albuquerque
   American Prosecutors Research Institute
   22.7 G, 1.2 E
   (703) 519-1641

25  **Factual and Forensic Development of Evidence**
   VR - State Bar Center, Albuquerque
   Center for Legal Education of SBNM
   8.4 G
   (505) 797-6020
   www.nmbar.org

25  **Recent Trends Involving the Law of Arrest, Search and Seizure**
   Albuquerque
   Lorman Education Services
   7.2 G
   (715) 833-3940
   www.lorman.com

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

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

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

27  **Problem Employees: Using Employment Laws to Your Advantage**
   Albuquerque
   Sterling Education Services
   8.0 G
   (715) 855-0495
   www.sterlingeducation.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**
   VR - State Bar Center, Albuquerque
   Center for Legal Education of SBNM
   2.0 P
   (505) 797-6020
   www.nmbar.org

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

28  **Trial Techniques: Incorporating Credibility from Start to Finish**
   VR - State Bar Center, Albuquerque
   Center for Legal Education of SBNM
   3.9 G
   (505) 797-6020
   www.nmbar.org

**FEBRUARY**

1-2  **Insurance Planning and Strategies for Individuals and Estates, Part 1 & 2**
   Teleseminar
   Center for Legal Education of SBNM
   2.4 G
   (505) 797-6020
   www.nmbar.org

1  **Evidentiary Issues at Trial**
   VR - State Bar Center, Albuquerque
   Center for Legal Education of SBNM
   5.3 G, 1.0 E
   (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

G = General  E = Ethics  P = Professionalism  VR = Video Replay
Programs have various sponsors; contact appropriate sponsor for more information.
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<td>Sanctions and the Goldilocks Test - Too Soft, Too Hard, or Just Right?</td>
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<td>New Mexico Wage and Hour Regulations and Recent Developments</td>
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<td>The Basics of a NM Divorce Case</td>
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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 Fe, NM 87504-0848 • (505) 827-4860

**Effective January 19, 2005**

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

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### Certiorari Granted But Not Submitted:

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

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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 Fe, NM 87504-0848 • (505) 827-4860

EFFECTIVE JANUARY 19, 2005

CERTIORARI GRANTED BUT NOT SUBMITTED:

(Submission = date of oral argument or briefs-only submission)
ALL CASES HELD IN ABEYANCE PENDING DISPOSITION IN
NO. 28,698, STATE V. EUBANKS

Date Writ Issued
NO. 28,992 State v. Martinez (COA 24,986) 1/10/05

CERTIORARI GRANTED AND SUBMITTED:

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

NO. 27,950 Breen v. Carlsbad Schools (COA 22,858/22,859) 1/10/05
NO. 28,038 Paule v. Santa Fe County Commissioners (COA 22,988) 10/27/03
NO. 27,945 State v. Munoz (COA 23,094) 11/18/03
NO. 27,817 State v. Gallegos (COA 22,888) 2/3/04
NO. 28,225 Huntley v. Cibola General Hospital (COA 23,916) 2/29/04
NO. 28,272 Lester v. City of Hobbs (COA 22,250) 3/16/04
NO. 28,241 State v. Duran (COA 22,611) 3/31/04
NO. 28,312 Turner v. Bassett (COA 22,877) 4/2/04
NO. 28,286 State v. Graham (COA 22,913) 4/15/04
NO. 28,374 Smith v. Bernalillo County Commissioners (COA 22,766) 8/9/04
NO. 28,380 Angel Fire v. Wheeler (COA 24,295) 9/23/04
NO. 28,481 Jouett v. Gromney (COA 23,669) 10/8/04
NO. 28,486 Jouett v. Gromney (COA 23,669) 10/8/04
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NO. 28,249 Miller v. Brock (COA 24,125) 2/25/04
NO. 28,441 Gormley v. Coca Cola (COA 22,722) 6/11/04
NO. 28,462 State v. Ryon (COA 23,318) 7/2/04
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NO. 28,119 State v. Dominguez (COA 23,286) 1/13/05
NO. 28,253 Miller v. Brock (COA 24,124) 2/15/04
NO. 28,249 Miller v. Brock (COA 24,125) 2/25/04
NO. 27,409 State v. Rodriguez (COA 22,558) 9/15/04
NO. 28,016 State v. Lopez (COA 23,424) 9/15/04
NO. 28,471 State v. Brown (COA 23,610) 9/15/04
NO. 28,423 Marquez v. Allstate (COA 23,385) 9/15/04
NO. 28,438 Marquez v. Allstate (COA 23,385) 9/15/04
NO. 28,532 Spencer v. Health Force, Inc. (COA 22,702) 10/14/04
NO. 27,269 Kmart v. Tax & Rev (COA 21,140) 10/14/04
NO. 28,628 Herrington v. State Engineer (COA 23,871) 11/15/04
NO. 28,678 State v. Madrid (COA 23,822) 11/29/04
NO. 28,630 Archuleta v. Santa Fe Police Department (COA 23,445) 11/29/04
NO. 28,680 State v. Savage (COA 23,801) 11/29/04
NO. 28,500 Manning v. New Mexico Energy & Minerals (COA 23,396) 12/13/04
NO. 28,654 Baker v. BP America (COA 24,741) 12/13/04

PETITION FOR WRIT OF CERTIORARI DENIED:

NO. 28,959 State v. Briones (COA 24,657) 1/5/05
NO. 28,985 Mahaffey v. Marrujo (COA 24,580) 1/5/05
NO. 28,945 Sandoval v. Ulibarri (COA 23,282) 1/6/05
NO. 28,942 Malone v. Montoya (COA 24,773) 1/6/05
NO. 28,987 Sanchez v. Santa Ana Golf (COA 24,278) 1/6/05
NO. 28,977 State v. Duran (COA 24,994) 1/6/05
NO. 28,990 State v. Ortiz (COA 25,045) 1/10/05
NO. 28,979 Vinson v. Beninato (COA 24,847) 1/11/05
NO. 28,991 State v. Saiz (COA 24,063) 1/11/05

WRIT OF CERTIORARI QUASHED:

NO. 28,414 State v. O’Kelly (COA 23,272/23,364) 1/10/05

UNPUBLISHED DECISION FILED:

NO. 28,431 City of Albq v. Park & Shuttle, Inc. Dispositional Order of Affirmance 1/4/05
NO. 05-8300
IN THE MATTER OF THE AMENDMENTS OF RULES 12-202, 12-211, AND 12-213 NMRA OF THE RULES OF APPELLATE PROCEDURE

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Rules of Appellate Procedure Committee to adopt amendments to Rules 12-202, 12-211, and 12-213 NMRA, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 12-202, 12-211, and 12-213 of the Rules of Appellate Procedure hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rules 12-202, 12-211, and 12-213 of the Rules of Appellate Procedure shall be effective for cases filed on or after March 15, 2005;

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

DONE at Santa Fe, New Mexico, this 11th day of January, 2005.

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

12-202. Appeal as of right; how taken.
A. Filing the notice of appeal. An appeal permitted by law as of right from the district court shall be taken by filing a notice of appeal with the district court clerk within the time allowed by Rule 12-201 NMRA.

B. Content of the notice of appeal. The notice of appeal shall specify:
(1) each party taking the appeal;
(2) each party against whom the appeal is taken;
(3) the name and address of appellate counsel if different from the person filing the notice of appeal; and
(4) the name of the court to which the appeal is taken.

A copy of the judgment or order appealed from, showing the date of the judgment or order, shall be attached to the notice of appeal.

C. Additional requirements for appeals in criminal cases. In addition to the requirements set forth in Paragraph B of this rule, the following are required, when applicable, with a notice of appeal in criminal cases:
(1) a notice of appeal by the state under Section 39-3-3B(2) NMSA 1978 shall also include the certificate of the district attorney required by the statute;
(2) if the notice of appeal names the appellate division of the public defender department as appellate counsel, a copy of the order appointing the appellate division of the public defender department shall be attached to the notice of appeal; and
(3) if the appeal is an appeal taken from the district court in which a sentence of death or life imprisonment has been imposed, and the proceedings are not audio recorded, a designation of proceedings shall be filed at the same time as the notice of appeal in accordance with Subparagraph (5) of Paragraph C of Rule 12-211 NMRA.

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

E. Service on party. If a party is not represented by counsel, service shall be made by mailing a copy of the notice of appeal to the party’s last known address.

F. Joint or consolidated appeals.
(1) If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in an appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant.
(2) Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties.

12-211. Transcript of proceedings.
A. Transcript of proceedings. As used in these rules:
(1) “transcript of proceedings” includes audio recordings of the proceedings and stenographic transcripts of the proceedings; and
(2) “audio recording” includes any tape, digital or other electronic recording of the proceedings. Audio recordings must comply with standards established by the Supreme Court.
B. Audio recorded proceedings.

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

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

C. Proceedings not audio recorded.

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

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

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

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

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

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

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

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

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

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

1. Stipulated transcript of proceedings. The parties may agree upon a statement of facts and proceedings and stipulate that they deem the statement sufficient for purposes of review, and the statement shall be filed as a transcript of proceedings within sixty (60) days of service of the general calendar assignment, unless otherwise ordered by the appellate court.

J. Separate appeals. When separate appeals are taken by more than one party, only one transcript of proceedings shall be required.

K. Supplemental transcript of proceedings. After the transcript of proceedings has been filed, the appellate court may, upon its own motion or upon motion of either party and for good cause shown, order or allow a supplemental transcript of proceedings. The appellate court shall set the time for filing the supplemental transcript of proceedings in the appellate court.

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

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

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

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

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

B. **Answer brief.** The answer brief of the appellee shall conform to the requirements of the brief in chief, except that a summary of proceedings shall not be included unless deemed necessary.

C. **Reply brief.** The appellant may file a brief in reply to the answer brief. Such brief shall conform to the requirements of Subparagraphs (2) and (4) of Paragraph A, and shall be directed only to new arguments or authorities presented in the answer brief.

D. **Supplemental briefs and authorities.**

(1) Except for those briefs specified in this rule, no briefs may be filed without prior approval of the appellate court.

(2) When pertinent and significant authorities come to the attention of counsel after counsel’s brief has been filed, or after oral argument but before decision, counsel shall promptly advise the appellate court clerk, by letter and without argument, with a copy to all counsel, setting forth the citations and attaching a copy thereto, if available. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain.

E. **Citations.** All New Mexico cases shall be cited from the official reports, with parallel citations if available. As to other authorities, any consistent method or form which adequately identifies the authority may be used.

F. **Length, preparation and service of briefs.** Except by permission of the court, the portion of a brief in chief and answer brief consisting of the summary of proceedings and the argument shall not exceed thirty-five double-spaced typewritten pages. Except by permission of the court, the argument portion of the reply brief shall not exceed fifteen double-spaced typewritten pages. Briefs shall comply with Rule 12-305 NMRA and be served in accordance with Rule 12-307 NMRA.

G. **Time of filing.** Unless otherwise ordered by the appellate court or as these rules prescribe, Rule 12-210 NMRA governs the time and order of filing briefs.

H. **Cross-appeals.** In cross-appeals, the brief in chief, the answer brief and the reply brief shall comply with this rule. The party who first files a notice of appeal or, if both parties file on the same day, the plaintiff in the proceedings below, shall be the appellant. The appellant’s brief in chief shall be filed as provided in Rule 12-210 NMRA. The appellee’s answer brief and brief in chief on any cross-appeal shall be filed simultaneously as separate documents and shall be filed within forty-five (45) days after service of the brief in chief of the appellant in cases assigned to a general calendar and within twenty (20) days after such service in cases assigned to a legal calendar. The appellant’s reply brief and the appellant’s answer brief to the brief in chief on any cross-appeal shall be filed simultaneously as separate documents within forty-five (45) days after service of the answer brief and the brief in chief on cross-appeals in cases assigned to a general calendar and within twenty (20) days after such service in cases assigned to a legal calendar. A cross-appellant may file a reply brief within twenty (20) days after service of the answer brief responding to cross-appellant’s brief in chief.
ADVANCE OPINIONS
FROM THE NEW MEXICO SUPREME COURT AND COURT OF APPEALS

Opinion Number: 2004-NMSC-039

Topic Index:
Attorneys: Fees, General
Civil Rights: Human Rights Act and Employment Discrimination
Judgment: Interest
Jury Instructions: Improper Jury Instructions
Remedies: Additur and Remittitur

DEANNA NAVA,
Plaintiff-Appellee-Cross-Appellant,
versus
CITY OF SANTA FE, a municipality under
state law,
Defendant-Appellant-Cross-Appellee.
No. 28,220 (filed Oct. 13, 2004)

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
JAMES A. HALL, District Judge

MARK D. JARMIE
Albuquerque, New Mexico

MICHAEL SCHWARZ
Santa Fe, New Mexico

for Appellee-Cross-Appellant

MARK L. ALLEN,
Assistant City Attorney
Santa Fe, New Mexico

for Appellant-Cross-Appellee

Opinion

PAMELA B. MINZNER, JUSTICE

{1} Defendant City of Santa Fe appeals directly to this Court from an adverse judgment in favor of Plaintiff Deanna Nava on her New Mexico Human Rights Act (NMHRA) claim. At trial, Plaintiff alleged her immediate supervisor discriminated against her because of her sex, and Defendant, as her employer, knew of this discrimination and failed to take remedial action. On appeal, Defendant claims that the district court erred in its instructions to the jury and that there was not substantial evidence to support the jury’s verdict. Plaintiff cross-appeals claiming that the district court erred by granting Defendant’s motion for remittitur, refusing to award statutory interest against Defendant, and reducing her attorney’s requested fees. We have jurisdiction in this case pursuant to NMSA 1978, § 28-1-13(C) (1987), which provides for direct appeal to the Supreme Court for claims made under the NMHRA. We affirm the district court on each of the issues raised in this appeal.

I

{2} Plaintiff has been employed by Defendant as a police officer since 1993. In January 1999, one of her first-line supervisors became Sgt. Clarence Gallegos. In July 2000, the Santa Fe police department was reorganized and Plaintiff was reassigned to a different squad. Therefore, she remained under the supervision of Sgt. Gallegos for approximately nineteen months. Plaintiff claims that during this nineteen-month period she was harassed by Sgt. Gallegos on an almost daily basis because of her sex, and this harassment resulted in a hostile work environment. At trial, Plaintiff testified that Sgt. Gallegos checked on her location more than other officers, raised his voice to her, denied her many of the same privileges male officers were afforded, followed her to her house to monitor how long she took on bathroom breaks, assigned rape calls to her when other officers were closer to the scene of the crime, and threw a file folder at her on one occasion. The jury found for Plaintiff and awarded her $285,000 in damages.

{3} Following the verdict, the district court ruled on several post-trial motions. The district court denied Defendant’s motion for a new trial, but granted a remittitur of the jury’s verdict to $90,250. The district court also refused to award Plaintiff post-judgment interest because Defendant, as a political subdivision of the State, was exempt from paying such interest. Finally, although Plaintiff’s attorney sought statutory attorney’s fees at a rate of $230 per hour, the district court determined that $200 per hour was the more appropriate rate. Both parties have appealed to this Court.

II


{5} The United States Supreme Court has interpreted the phrase “compensation, terms, conditions or privileges” in Title VII as prohibiting inter alia discriminatory conduct by employers that “has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” Meritor Savs. Bank, FSB v. Vinson, 477 U.S. 57, 64-65 (1986) (quoting 29 CFR § 1604.11(a)(3) (1985)). Recently, in Ocana, we gave the same interpretation to the NMHRA: “sexual harassment is actionable under a
hostile work environment theory when the offensive conduct becomes so severe and pervasive that it alters the conditions of employment in such a manner that the workplace is transformed into a hostile and abusive environment for the employee.” 2004-NMSC-018, ¶ 24.

{6} The elements of a hostile work environment claim against an employer have generally been stated as:

1. the employee was subjected to unwelcome sexual harassment;
2. the harassment occurred because of the employee’s sex;
3. the harassment was sufficiently severe or pervasive to create an abusive work environment affecting a term, condition, or privilege of employment, and;
4. the employer knew, or should have known, of the harassment and failed to take remedial action.

Lawrence Solotoff & Henry S. Kramer, Sex Discrimination and Sexual Harassment in the Work Place § 3.04[2], at 3-31 (2004). The discriminatory conduct does not have to be overtly sexual in order to constitute harassment; rather, a hostile work environment claim may arise from disparate treatment on the basis of sex. See Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80-81 (1998) (noting that a hostile work environment claim could be established by “direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace”); Penny v. Federal Home Loan Bank of Topeka, 155 F.3d 1257, 1261 (10th Cir. 1998) (“[A]ctionable conduct is not limited to behavior motivated by sexual desire.”). With these general principles in mind, we turn to the specific issues raised by this appeal.

A

{7} The first issue we address involves the instructions given by the trial court to the jury. The jury was instructed on each element of Plaintiff’s hostile work environment claim; however, Defendant argues that the jury was improperly instructed that it need only find that “plaintiff’s sex was a motivating factor in the treatment of the plaintiff” and that Plaintiff was “not required to prove that her sex was the Defendant City of Santa Fe’s sole motivation or even the primary motivation.” Defendant argues that instead, the jury should have been instructed that any harassment was “because of her sex” and the harassment would not have occurred “but for” the complainant’s sex. While not quite stated in these terms, Defendant appears to be arguing that Plaintiff’s sex must have been either the sole or primary motivation for any harassment. Thus, we must consider whether the mixed-motives instruction given to the jury in this case was appropriate.

{8} Turning to federal law for guidance on this issue, we note that Congress has recognized that there are often multiple causes for adverse employment actions. Title VII, 42 U.S.C. § 2000e-2(m) provides that “an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.” (Emphasis added). Thus, it appears under federal law that an employer is not required to prove that his or her sex was the sole or primary motivation for the suffered harassment. The employer must only establish that the adverse employment action was motivated in part by an illegitimate factor, such as sex.

{9} The NMHRA does not have a comparable provision to 42 U.S.C. § 2000e-2(m); however, we did recently note that the purpose behind the NMHRA is to prohibit all forms of employment sexual harassment. Ocana, 2004-NMSC-018, ¶ 23. Given this purpose, we believe the Legislature did not intend for an employer to be relieved from an otherwise valid hostile work environment claim simply because other factors aside from sex contributed to making the employee’s work environment hostile and abusive. Cf. Dan B. Dobbs, The Law of Torts § 171, at 416 (2001) (“It would be a windfall to the negligent defendants if they were to escape liability for the harm merely because another tortfeasor’s negligence was also sufficient to cause the same harm.”). We hold that the mixed-motives jury instruction given in this case was not erroneous. We now turn to Defendant’s next argument, whether there was substantial evidence to support the jury’s verdict.

B

{10} In reviewing the jury verdict for substantial evidence, “we examine the record for relevant evidence such that ‘a reasonable mind might accept as adequate to support a conclusion.’” Smith, 109 N.M. at 519, 787 P.2d at 438 (quoting Toltec Int’l, Inc. v. Village of Ruidoso, 95 N.M. 82, 84, 619 P.2d 186, 188 (1980)). “We resolve disputed facts in favor of the party prevailing below, indulging all reasonable inferences in favor of the verdict and disregarding contrary inferences, and we do not independently weigh conflicting evidence.” Id. Defendant argues that the jury verdict for Plaintiff must be reversed because there was no substantial evidence that the harassment was “because of” Plaintiff’s sex nor substantial evidence that the harassment was sufficiently severe or pervasive to support a hostile work environment claim.

{11} As for whether there was sufficient evidence the harassment was “because of” Plaintiff’s sex, a review of the record reveals that numerous witnesses at trial testified that Sgt. Gallegos treated the female officers differently from the way he treated the male officers. Plaintiff testified that Sgt. Gallegos would ask for the locations of women officers but not the locations of the male officers. Male officers were relieved by Sgt. Gallegos from standing post at crime scenes, even when they had been at their posts less time than Plaintiff. Sgt. Gallegos would collect the reports of male officers a couple of hours before their shift was over, but he would not collect Plaintiff’s reports until the end, or sometimes even after, her shift.

{12} A number of other employees of the Santa Fe police department testified that Sgt. Gallegos treated female officers differently from their male counterparts. Jeanette Sandoval, a dispatcher, testified that Sgt. Gallegos tended to monitor the whereabouts of female officers more than he did male officers. He also tried to keep female officers busier by reassigning to them calls initially assigned to male officers. Officer Sandra Gomez testified that Sgt. Gallegos made the environment “a nightmare” for female officers. More specifically, she testified that Sgt. Gallegos was always spying on female officers. Along those same lines, Officer Genevieve Lawson testified that the female officers were monitored more closely by Sgt. Gallegos than the male officers. She was assigned a larger workload than her male co-workers. Officer Della Murray testified that Sgt. Gallegos made snide comments when she was late for briefings but would refrain from making such comments when male officers were late. Sgt. Gallegos would make her get into his car to drop off reports, whereas the men would pull up beside his car and pass the reports through the window. Sgt. Gallegos would at times cancel backup for female officers. Even a male officer,
Detective Matthew Trujillo, testified to Sgt. Gallegos’ disparate treatment of female and male officers. He testified that Sgt. Gallegos would actively check dispatch to see where female officers were at any given time, and he would reassign calls from male officers to female officers. Based on the foregoing, there was substantial evidence to support a jury finding that any harassment Plaintiff suffered from Sgt. Gallegos was “because of” her sex.

{13} We next consider whether there was sufficient evidence that the harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of employment. In Ocaná, we stated:

In determining whether there was an abusive or hostile work environment, courts must look at the totality of the circumstances, including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”

2004-NMSC-018, ¶ 24 (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)). Alternatively, “[a] recurring point in [the United States Supreme Court’s Title VII] opinions is that simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.” Faragher v. Boca Raton, 524 U.S. 775, 788 (1998) (citation and internal quotation marks omitted). Defendant claims that any harassment in this case was not sufficiently severe and pervasive to support the jury’s verdict.

{14} Plaintiff testified to a number of incidents of harassment. She testified that Sgt. Gallegos would check her location more than other officers. He would raise his voice to her over the radio. He would allow male officers to leave their shift early if they missed their lunch, while not extending the same offer to her. She testified that on one occasion Sgt. Gallegos did not relieve her from her post at a crime scene when she had been there for five hours, but he relieved male officers who had not been at the scene as long. Sgt. Gallegos would follow Plaintiff to her house and then monitor how long she took on bathroom breaks. He would assign specific calls to her, especially rape calls, even though other officers were closer to the crime scene. He would not collect her reports until the end of her shift, or sometimes after her shift had ended, whereas he would collect other officers’ reports a few hours prior to the end of their shifts. At one briefing, he told the officers to clean out their files and then threw a file at Plaintiff. Plaintiff emphasized that these were merely examples of the ongoing harassment she received from Sgt. Gallegos for nineteen months.

{15} Each incident to which Plaintiff testified, when viewed in isolation, may not have been severe enough to support a hostile work environment claim. However, in their aggregate, the incidents reflect the severity and pervasiveness of the harassment. This is especially true considering the harassment was almost daily for a period of nineteen months. Thus, under the totality of the circumstances, we hold that a reasonable jury could conclude that the harassment was sufficiently severe and pervasive to alter the terms and conditions of Plaintiff’s employment. We now turn to Plaintiff’s arguments on cross-appeal.

C

{16} Plaintiff first argues that the trial court erred by reducing through remittitur the jury’s verdict in her favor from $285,000 to $90,250. In Allsup’s Convenience Stores, Inc. v. North River Ins. Co., 1999-NMSC-006, 127 N.M. 1, 976 P.2d 1, we set forth the analytical framework for reviewing the grant of a remittitur. We stated:

The trial judge . . . has limited superintendence when ordering a remittitur in that the exercise of such discretion must be supported by express reasons, and those reasons must establish the presence of passion, prejudice, partiality, sympathy, undue influence or some corrupt cause or motive. . . . [W]here the trial court sets forth certain reasons for which the appellant asserts there is a lack of support in the record, the burden then shifts to the appellee to show that the trial court was correct.

Id. ¶ 19 (quotation marks and internal citations omitted). Additionally, we note that remittitur is appropriate in NMHRA cases if the jury intended to punish the defendant. See Gandy v. Wal-Mart Stores, Inc., 117 N.M. 441, 443, 872 P.2d 859, 861 (1994) (holding that punitive damages may not be recovered under the NMHRA).

{17} In justifying remittitur in this case, the trial judge stated that he believed the jury’s verdict was based upon either sympathy or an improper motive to punish Defendant. He believed this because: (1) Plaintiff was not fired, demoted, suspended, or disciplined; (2) Plaintiff presented no evidence of concrete special damages; (3) Plaintiff received no professional mental health care; (4) the discrimination was limited to a nineteen-month period; and (5) Plaintiff received two-and-a-half times the amount requested in her closing argument. Thus, in this case, the trial judge expressly stated his reasons for granting remittitur. The specific issue raised by Plaintiff on appeal is whether those reasons established that the jury’s award was influenced by either sympathy or an impermissible motive to punish Defendant.

{18} At trial, Plaintiff presented no evidence of concrete damages, such as counseling expenses or lost time from work. Instead, Plaintiff argued that the jury should award damages equivalent to Plaintiff’s salary during the time of harassment, or at the very least nominal damages. These requested damages appear to be based on the emotional distress that she experienced while working under Sgt. Gallegos. The jury, however, awarded Plaintiff damages in an amount equal to Plaintiff’s salary for five years: $285,000. While a plaintiff’s request for damages certainly does not create a ceiling on a jury’s award, the plaintiff is nonetheless in the best position to evaluate the true extent of his or her damages.

{19} Furthermore, the record contains no evidence indicating that Plaintiff was entitled to damages greater than those requested. There was testimony at trial that due to the harassment she suffered, Plaintiff was distressed, depressed, and often resigned to tears. While we agree that this evidence was sufficient to support a damages award for emotional distress, the evidence was not sufficient to support an award of $285,000. Cf. Wulf v. City of Wichita, 883 F.2d 842, 874-75 (10th Cir. 1989) (holding that an award of $250,000 for mental anguish and distress was grossly excessive). Plaintiff did not present any evidence that she ever sought counseling for this emotional distress. She presented no evidence that she was physically harmed. At all times she remained an officer in good standing. Thus, we agree with the Fourth Circuit Court of Appeals, which when faced with similar facts stated that, “[s]imply put, the jury was presented with insufficient evidence to place a high dollar value on plaintiff’s emotional harm.” Hetzel v. County of Prince William, 89 F.3d 169, 172 (4th Cir. 1996) (quotation marks and quoted authority omitted).
Based on the foregoing, we hold that Defendant has met its burden in showing that remittitur was appropriate. The jury’s award in this case was “so unrelated to the injury and actual damages proven as to plainly manifest passion and prejudice rather than reason or justice.” Coates v. Wal-Mart Stores, Inc., 1999-NMSC-013, ¶ 53, 127 N.M. 47, 976 P.2d 999 (quotational marks and quoted authority omitted).

Thus, the trial court appropriately granted Defendant’s motion for remittitur. We now turn to Plaintiff’s argument that the trial court erred in denying her post-judgment interest on the verdict.

D

Plaintiff claims she is entitled to post-judgment interest, pursuant to NMSA 1978, § 56-8-4 (1993, prior to 2004 amendment). Subsection A of that statute provides for mandatory post-judgment interest; however, subsection D of the same statute states “[i]n any action or proceeding under this section except as otherwise provided by statute or common law.” Plaintiff argues that the NMHRA provides for post-judgment interest.

Section 28-1-13(D) provides that “[i]n any action or proceeding under this section the court in its discretion may allow actual damages and reasonable attorney’s fees, and the state shall be liable the same as a private person.” (Emphasis added). Specifically, Plaintiff argues that since a private party is responsible for post-judgment interest, government entities should likewise be responsible for post-judgment interest.

Regarding the issues raised by Defendant’s appeal, we hold that the trial court did not err in its instructions to the jury and that there was substantial evidence to support the jury’s verdict on liability. As for the issues raised by Plaintiff’s cross-appeal, we hold that the trial court did not err by granting remittitur, that Plaintiff was not entitled to post-judgment interest for her claim under the NMHRA because Section 28-1-13(D) does not explicitly waive the State’s immunity from post-judgment interest. Therefore, we affirm the trial court on this issue. We now turn to Plaintiff’s final argument that the trial court erred by reducing her attorney’s requested statutory fees.

E

Section 28-1-13(D) provides that “[i]n any action or proceeding under [the NMHRA] if the complainant prevails, the court in its discretion may allow actual damages and reasonable attorney’s fees.”

The district court should consider the following factors when setting attorney’s fees:

1. The time and effort required, considering the complexity of the issues and the skill required;
2. The customary fee in the area for similar services;
3. The results obtained and the amount of the controversy; and
4. The ability, experience, and reputation of the attorney performing the services.

{20} In this case, Plaintiff’s attorney sought fees at a rate of $230 per hour for 450.96 hours plus applicable gross tax receipts, which resulted in a requested total of $110,657.13. In support of her requested hourly rate, he submitted affidavits from other attorneys who had been awarded similar rates in previous cases. The trial court judge did not cut the number of hours Plaintiff’s attorney claimed and actually added five hours to the total for the attorney’s preparation in connection with Plaintiff’s motions for fees, costs, and interest. The judge then determined that in his experience $200 per hour was “the appropriate and reasonable hourly rate.” This ultimately resulted in an award for attorney’s fees of $97,290.47, which was approximately 34% of the total judgment rendered by the jury and was actually greater than the judgment following remittitur. We cannot conclude under the facts of this case that the trial court abused its discretion in its award of statutory attorney’s fees. See Lucero v. Aladdin Beauty Colleges, 117 N.M. 269, 271-72, 871 P.2d 365, 367-68 (1994). We affirm the trial court on this issue.

III

IT IS SO ORDERED.

PAMELA B. MINZNER, Justice

WE CONCUR:

PETRA JIMENEZ MAES, Chief Justice

PATRICIO M. SERNA, Justice

RICHARD C. BOSSON, Justice

EDWARD L. CHÁVEZ, Justice

WESTSTAR MORTG. CORP. v. JACKSON

2002-NMCA-009, ¶ 55, 131 N.M. 493, 39 P.3d 710, rev’d on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823. In this case, we are addressing post-judgment interest. Nonetheless, the second reason we advanced for our holding in Gonzales remains valid—“Section 28-1-13(D) makes no mention of the assessment of interest, and [the plaintiff] has offered no authority suggesting that the phrase ‘actual damages and reasonable attorney’s fees’ should be expanded to include interest.” 2000-NMSC-029, ¶ 38.

Furthermore, the result we reached in Gonzales is consistent with the analysis we set forth in Trujillo v. City of Albuquerque, 1998-NMSC-031, 125 N.M. 721, 965 P.2d 305. The plaintiffs in Trujillo claimed they were entitled to post-judgment interest against the City of Albuquerque for claims made under the Tort Claims Act (TCA). The relevant statute considered in that case, NMSA 1978, § 41-4-19(B) (1991, prior to 2004 amendment), provides that judgment against a government entity under the TCA could not include an award for pre-judgment interest. The plaintiffs argued that by excluding post-judgment interest from the scope of Section 41-4-19(B) the Legislature must have intended to allow recovery of post-judgment interest. We rejected that argument on the basis that Section 41-4-19(B) “does not expressly state that the immunity provided to the State and its political subdivisions for post-judgment interest is waived under the TCA.” Trujillo, 1998-NMSC-031, ¶ 47. In this case, Plaintiff is not entitled to post-judgment interest, and that judgment against a government entity under the NMHRA because Section 28-1-13(D) does not explicitly waive the State’s immunity from post-judgment interest. Therefore, we affirm the trial court on this issue. We now turn to Plaintiff’s final argument that the trial court erred by reducing her attorney’s requested statutory fees.

E

Section 28-1-13(D) provides that “[i]n any action or proceeding under [the NMHRA] if the complainant prevails, the court in its discretion may allow actual damages and reasonable attorney’s fees.”

The district court should consider the following factors when setting attorney’s fees:

(1) the time and effort required, considering the complexity of the issues and the skill required; (2) the customary fee in the area for similar services; (3) the results obtained and the amount of the controversy; (4) the ability, experience, and reputation of the attorney performing the services.

Smith, 109 N.M. at 522, 787 P.2d at 441.

“We review the award of attorney’s fees for abuse of discretion.” Gonzales, 2000-NMSC-029, ¶ 35.

In this case, Plaintiff’s attorney claimed and actually added five hours to the total for the attorney’s preparation in connection with Plaintiff’s motions for fees, costs, and interest. The judge then determined that in his experience $200 per hour was “the appropriate and reasonable hourly rate.” This ultimately resulted in an award for attorney’s fees of $97,290.47, which was approximately 34% of the total judgment rendered by the jury and was actually greater than the judgment following remittitur. We cannot conclude under the facts of this case that the trial court abused its discretion in its award of statutory attorney’s fees. See Lucero v. Aladdin Beauty Colleges, 117 N.M. 269, 271-72, 871 P.2d 365, 367-68 (1994). We affirm the trial court on this issue.

{26} Regarding the issues raised by Defendant’s appeal, we hold that the trial court did not err in its instructions to the jury and that there was substantial evidence to support the jury’s verdict on liability. As for the issues raised by Plaintiff’s cross-appeal, we hold that the trial court did not err by granting remittitur, that Plaintiff was not entitled to post-judgment interest, and that the trial court did not abuse its discretion in setting Plaintiff’s attorney’s fees. We therefore affirm the trial court on all issues raised in this appeal and cross-appeal.

{27} IT IS SO ORDERED.

PAMELA B. MINZNER, Justice

WE CONCUR:

PETRA JIMENEZ MAES, Chief Justice

PATRICIO M. SERNA, Justice

RICHARD C. BOSSON, Justice

EDWARD L. CHÁVEZ, Justice
No. 23,021 Certiorari Denied, No. 28,953, Dec. 30, 2004
No. 23,548 Certiorari Denied, No. 28,952, Dec. 30, 2004

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-001

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
BRYAN BACA,
Defendant-Appellant.
No. 23,021 (filed Oct. 22, 2004)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
JAMES F. BLACKMER, District Judge

PATRICIA A. MADRID
Attorney General
ANITA CARLSON
Assistant Attorney General
Santa Fe, New Mexico
for Appellee

JOHN B. BIGELOW
Chief Public Defender
THERESA M. DUNCAN
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

consolidated with

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
LANIE ALLEN,
Defendant-Appellant.
No. 23,548

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY
WILLIAM P. LYNCH, District Judge

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

JOHN B. BIGELOW
Chief Public Defender
KARL ERICH MARTELL
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

IRA ROBINSON, JUDGE

{1} Defendant Bryan Baca appeals from an order of the district court revoking his probation and sentencing him to three years in prison, arguing that the district court lacked the authority to revoke the probation. In an unrelated case, Defendant Lanie Allen also challenges an order revoking probation and imposing a six month sentence, based on the contention the district court was without authority to revoke his probation.

This Court has consolidated these two cases because they raise the same legal issue: interpretation of the statutory relationship between NMSA 1978, § 31-20-5(A) (1985, prior to 2004 amendment), and NMSA 1978, § 31-21-15(B) (1989). We affirm the district courts’ orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Defendant Baca.

{2} Baca was initially charged with fifteen crimes, thirteen of which were felonies involving cocaine possession and trafficking. In August 1991, he pleaded guilty to two counts of trafficking cocaine by distribution contrary to NMSA 1978, § 30-31-20(A) (1990), and the remaining charges were dismissed. Baca was then sentenced to a term of nine years on each count with the sentences to run consecutively, for a total sentence of eighteen years. The district court suspended Baca’s entire sentence and placed Baca on supervised probation for five years beginning in October 1991. See NMSA 1978, § 31-20-3(B) (1985); § 31-20-5(A). In addition to complying with the standard conditions of probation, Defendant was supposed to complete a drug rehabilitation program. Beginning in December 1993, the State filed a number of motions to revoke Baca’s probation and invoke the suspended sentence. Of the nine probation violations filed with the district court regarding Baca, the district court revoked his probation four times.

{3} The two revocations relevant to this appeal occurred in October 1995 and August 2001. On October 5, 1995, the district court revoked Baca’s probation for the third time, ordered him to serve five years in prison, and placed him on supervised probation for five years after his release. Baca did not appeal that order. After he had served only eight months of his five year sentence, the New Mexico Department of Corrections mistakenly released Baca in 1996. When he was arrested in March 1998 for another probation violation, the corrections department realized its error, and Baca resumed his five year sentence. The district court credited Baca for the time from his erroneous release until he was returned to prison.

{4} On August 13, 2001, the court revoked Baca’s probation for the fourth time, ordering that Baca serve three years in prison and receive an unsatisfactory discharge from probation after release. In September 2001, Baca filed motions for reconsideration of the sentence. Although he acknowledged that the court had ordered a probation period of five years in 1995, Baca contended that the court had no authority to revoke his probation and impose the suspended sentence in 2001 because he had completed five years of probation in the aggregate before the State filed the final motion to revoke the 1995 probation. Basing his argument on Section 31-20-5(A), Baca maintained that five years in the aggregate was the maximum period of probation. Following a hearing on Baca’s motions in January 2002, the district court concluded, relying upon Section 31-21-15(B), that it had the authority to revoke Baca’s proba-
tion and denied the motions to reconsider. Baca appeals from that decision.

B. Defendant Allen.

Five In December 1996, Allen was charged with twelve counts of forgery, all of which were third degree felonies. See NMSA 1978, § 30-16-10(B) (1963). He pleaded guilty to all twelve charges, and a judgment and sentence was filed in October 1997. Under the judgment and sentence, Allen was sentenced to three years in prison on each count. Four of the counts were ordered to run consecutively to each other, and the remaining counts were to run concurrently, for a basic sentence of twelve years. Because Allen was an habitual offender with two prior convictions, the sentence was enhanced by four years, for a total sentence of sixteen years. The district court then suspended all the sentences for the underlying crimes, resulting in a sentence of four years imprisonment for the enhancement, a suspended sentence of twelve years for the forgeries, five years of supervised probation, and two years of parole. After completing his prison term, Allen began supervised probation on March 21, 2000.

Preliminary reports alleging Allen had violated the conditions of his probation were filed on June 15, 2000 (arrest for battery on a household member and use of marijuana), and on July 6, 2000 (alcohol consumption and possession of marijuana). After the first two violations, the probation officer recommended that Allen be allowed to continue on probation, the district court concurred, and no action was taken. In August 2000, a probation violation report was filed for five additional violations. This time the probation officer recommended that Allen be declared an absconder, that a bench warrant be issued, and that he be remanded to the penitentiary for the balance of his sentence. At a hearing on September 11, 2000, Allen admitted to violating a condition of his probation. The district court imposed the balance of the original sentence and then suspended all but eighteen months of that sentence. The eighteen month period of incarceration was to be followed by five years of supervised probation.

Allen was released by the Department of Corrections on June 24, 2001. A probation violation report was filed on July 1, 2002, detailing four violations which included his having pleaded guilty to three charges for battery and to one charge for criminal damage to property arising from attacks on his neighbors. At a revocation hearing on August 11, 2002, Allen admitted that he had violated the conditions of his probation. The district court accepted Allen’s admission and issued an order imposing the balance of his sentence, suspending all but six months to be served in the county detention center, and authorizing supervised probation upon release. Allen appeals from that order, arguing that the court lacked authority under Section 31-21-15(B) to both sentence him and impose probation.

II. DISCUSSION

8. Defendants’ challenge to the actions of the district courts is based on their contention that the courts erred in applying Section 31-21-15(B). They also contend that this misapplication led the district courts into another error: imposing periods of probation that exceeded the five year “cap” on probation which they assert is to be found in Section 31-20-5(A).

A. Standard of Review.

9. The issues raised by Defendants call for this Court to construe Section 31-20-5(A) and Section 31-21-15(B). Statutory construction is a question of law which we review de novo. State v. McClendon, 2001-NMSC-023, ¶ 2, 130 N.M. 551, 28 P.3d 1092. “The first rule of statutory construction is that courts must ascertain and give effect to the Legislature’s intentions.” State v. Sinyard, 100 N.M. 694, 696, 675 P.2d 426, 428 (Ct. App. 1983). The statute at issue must be read as a whole, construing each section or part “in connection with every other part or section so as to produce a harmonious whole.” Id. at 697, 675 P.2d at 429. A reviewing court must also look to the function of a particular statute within a comprehensive legislative system. Sims v. Sims, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153.

B. Section 31-21-15.

10. Section 31-21-15(B) provides the courts with the following options for dealing with a probation violator:

If the violation is established, the court may continue the original probation, revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978, or require the probationer to serve the balance of the sentence imposed or any lesser sentence. Section 31-21-15(B) refers the reader to Section 31-20-5, which defines the circumstances in which probation should be ordered, and Section 31-20-6, which defines conditions to be imposed when a sentence is deferred or suspended. Section 31-20-5(A) states the following, in relevant part:

When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the . . . district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. Except for sex offenders . . . the total period of probation for district court shall not exceed five years . . . .

11. Defendants acknowledge that the courts, under Section 31-21-15(B), could revoke their probation and then require them to serve the balance of the sentence previously imposed, or to serve a sentence which is less than the balance of the sentence previously imposed. They contend, however, that the district courts erred because they ignored the “either” “or” language of Section 31-21-15. Rather, they argue, the district courts, after revoking Defendants’ probation, ordered both a new probation and a sentence. They claim that the district courts then compounded the error by imposing new probation which would exceed the five year limit they find in Section 31-20-5(A). Defendants assert that, after revoking a probation, the district court may only modify the conditions of probation such that the total period of probation does not exceed five years. Finally, they maintain that the district courts failed to properly credit the time that they spent on probation.

12. Our Supreme Court has stated that “the probation provisions of our state’s criminal code, especially Sections 31-20-5 and 31-21-15, [are] indicative of the Legislature’s intent to give trial courts broad discretion to sentence defendants to probationary terms and strictly monitor their compliance with an eye toward the goal of prompt and effective rehabilitation.” State v. Rivera, 2004-NMSC-001, ¶ 21, 134 N.M. 768, 82 P.3d 939; accord Sinyard, 100 N.M. at 697, 675 P.2d at 429 ("Read in their entirety, the sentencing statutes evidence a legislative intent that the trial court have a wide variety of options by which to sentence."). Defendants’ arguments regarding statutory construction fail
because they are contrary to this legislative intent. Defendants’ interpretation does not construe Section 31-20-5 and Section 31-21-15 in a manner that produces a harmonious whole. Rather, their narrow reading of the two statutes would serve to severely constrain the discretion of the court “to sentence defendants to probationary terms and strictly monitor their compliance with an eye toward the goal of prompt and effective rehabilitation.” See Rivera, 2004-NMSC-001, ¶ 21.

When Section 31-21-15 and Section 31-20-5 are read together, as Section 31-21-15(B) directs, it is evident that the district courts complied with the provisions of the two statutes. As described above, Section 31-21-15(B) presents a district court with several alternatives for dealing with a defendant who has violated the conditions of his or her release. The court may “continue the original probation, revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978, or require the probationer to serve the balance of the sentence imposed or any lesser sentence.” Section 31-21-15(B).

In both cases, Defendants’ sentences were initially suspended in full, and they were placed on supervised probation for five years under the conditions of Section 31-20-6. See State v. Leslie, 2004-NMCA-106, ¶ 7, 136 N.M. 244, 96 P.3d 805 (stating that, under Section 31-20-6, “the court must impose conditions upon a deferred or suspended sentence to ensure that the defendant abides by the law”). Defendants violated the conditions of probation numerous times. With the first violation reports, the district courts continued Defendants’ original probation. However, in both cases, Baca and Allen continued to manifest an inability, or unwillingness, to comply with their probation conditions. In the face of the repeated violation probation by Defendants, the respective district courts revoked each of their probation and imposed the balance of their original sentences.

“The sentencing court retains jurisdiction to revoke a suspended sentence for good cause shown at any time subsequent to the entry of judgment and prior to the expiration of the sentence.” Rivera, 2004-NMSC-001, ¶ 21 (quoting State v. Padilla, 106 N.M. 420, 422, 744 P.2d 548, 550 (Ct. App. 1987)). Each court then suspended the original sentence in part so that Baca and Allen were incarcerated for a lesser period of time. When Defendants were released, they still had time remaining to serve on their suspended sentences. As Section 31-20-5(A) directs, when a district court has suspended a sentence, “it shall order the defendant to be placed on probation for all or some portion of the period of . . . suspension if the defendant is in need of supervision, guidance or direction.” Neither Defendant has disputed the respective district court’s determination that a need for supervision, guidance, or direction existed in his case. We conclude that the district courts did not err when they relied on Section 31-21-15(B) to revoke Defendants’ probation and impose a period of incarceration to be followed by supervised probation, under Section 31-20-6, for a period that did not exceed five years, as provided in Section 31-20-5(A)

C. Section 31-20-5.

Defendants argue that the plain language of Section 31-20-5(A) indicates that the Legislature intended that the total term of probation for a defendant serving a deferred or suspended sentence be limited to five years in the aggregate. To discern the objective the legislature was seeking to accomplish, a reviewing court typically looks to the plain language of a statute. Wilson v. Denver, 1998-NMSC-016, ¶ 16, 125 N.M. 308, 961 P.2d 153. However, as Justice Montgomery advised us, “courts must exercise caution in applying the plain meaning rule. Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute’s meaning.” State ex rel. Helman v. Gallegos, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (1994). Defendants rely for support upon State v. Devigne, 96 N.M. 561, 564-65, 632 P.2d 1199, 1202-03 (Ct. App. 1981), in which this Court interpreted the meaning of the word “total” in the context of Section 31-20-5(A). However, we do not believe that a fair reading of Devigne supports Defendants’ assertions regarding the intent of the Legislature. In Devigne, the defendant was found guilty of five separate counts of burglary and sentenced to three years imprisonment on each of the counts. Id. at 564, 632 P.2d at 1202. The district court imposed consecutive sentences on two of the convictions and ordered concurrent sentences on the remaining three convictions, for a total sentence of six years. Id. The court then suspended the sentences and placed the defendant on probation for six years. Id. This Court remanded the case for further proceedings in district court, after holding that “the proviso of § 31-20-5 means that the maximum probation for the five sentences imposed upon defendant, for convictions that occurred at one trial, was five years.” Id. at 565, 632 P.2d at 1203. The State notes that in the cases at issue, both district courts complied with the proviso of Section 31-20-5(A) in their probation orders. Neither Defendant was placed on probation for longer than five years, either initially or in the later probation orders that followed Defendants’ release from incarceration on suspended sentences. The State argues that Devigne stands for the principle that the maximum period of probation that a district court may impose at sentencing is a total of five years, regardless of the number of convictions, not that five years is the total amount of time a defendant can serve on probation, regardless of the number of violations. We agree. Defendants’ misinterpretation of Section 31-20-5(A) arises from their failure to read it in concert with Section 31-21-15(B) to produce a harmonious whole. Under the construction of Section 31-20-5(A) proposed by Defendants, all the sentencing court could do, in effect, would be to continue the original probation for five years which would ignore the language in Section 31-21-15(B) that the sentencing court may continue the original probation, revoke that probation, and then either order a new probation or impose a sentence. Defendants’ interpretation of the Section 31-20-5(A) would render that language a nullity. A reviewing court does not “construe one provision of a statute in a manner that would make other provisions null or superfluous.” Rivera, 2004-NMSC-001, ¶ 18; cf. Leslie, 2004-NMCA-106, ¶¶ 9-10 (interpreting, in the context of conditional discharges, the relationship between NMSA 1978, § 31-20-13(A) (1994), and Section 31-20-5 and Section 31-20-6, “within the overall sentencing scheme”).

In rejecting this argument below, the district court hearing Baca’s motion for reconsideration observed that “Defendant and his counsel contend that Defendant’s original five year period should simply be allowed to run to its conclusion, regardless of the number of violations he commits.” We agree with the district court’s assessment of this argument. Adopting Defendants’ theory of statutory construction would defeat the legislative purpose behind the statute of giving sentencing courts broad authority to achieve the goal of rehabilitation. See Sinyard, 100 N.M. at 697, 675 P.2d at 429 (stating that “the sen-
tencing judge is afforded broad discretion in fashioning sentences appropriate to the offense and the offender”); see generally State v. Ogden, 118 N.M. 234, 245, 880 P.2d 845, 856 (1994) (“[C]riminal statutes should be construed to further their purpose.”).

{20} “The broad general purposes of probation are education and rehabilitation, without the requirement of serving the suspended period of incarceration.” State v. Donaldson, 100 N.M. 111, 119, 666 P.2d 1258, 1266 (Ct. App. 1983). “Probation assumes that the offender can be rehabilitated without serving that portion of the sentence which is suspended.” Sinyard, 100 N.M. at 696, 675 P.2d at 428. Under Defendants’ interpretation of Section 31-20-5(A), a sentencing court’s authority “to tailor probation conditions to the offense and to the probationer’s individual rehabilitative needs,” id. at 697, 675 P.2d at 429, would be severely restricted. In addition, if there were a five year limitation on probation, as Defendants claim, it would work to the disadvantage of defendants with multiple violations, such as Baca and Allen. As the State argues, under Defendants’ interpretation, courts would be forced to make a decision relatively early in a case whether to “risk another period of probation or to incarcerate the defendant who has still not shown that he can get through a substantial uninterrupted period of probation.” With such a limited period of probation, courts would be reluctant to give defendants additional chances to successfully complete probation, knowing that the courts would soon lose the effective means to provide the supervision, guidance, and direction called for in Section 31-20-5(A).

{21} Finally, Defendants maintain that they were not credited for the time that they spent on probation. This argument is based on their perception of probation as being a discrete entity, separate from their sentence, which is limited to a total of five years. However, as discussed previously, probation is part of a suspended or deferred sentence. See Section 31-20-5(A); Sinyard, 100 N.M. at 696, 675 P.2d at 428; Donaldson, 100 N.M. at 119, 666 P.2d at 1266. A probationer whose sentence has been suspended is entitled to credit against his or her sentence for the time served on probation. State v. Reinhardt, 79 N.M. 36, 38, 439 P.2d 554, 556 (1968). The record indicates that the district courts properly credited Defendants’ time on probation against their sentences, and Defendants do not argue otherwise.

D. Remaining Claim.

{22} Lastly, Allen asserts that when the district court revoked his probation in 2000, it sentenced him to a lesser sentence of eighteen months without reserving any of the initial suspended sentence. He contends that, as a result, the court was without authority to order a period of probation after he completed his sentence. See State v. Nolan, 93 N.M. 472, 478, 601 P.2d 442, 448 (Ct. App. 1979) (concluding that a defendant cannot be placed on probation in the absence of a deferred or suspended sentence). Allen’s contention is based on an unsound reading of the court’s order revoking his probation in September 2000. The order stated, in part, the following:

IT IS, THEREFORE, THE ORDER OF THE COURT that probation be, and the same is hereby revoked and the sentence suspended on September 19, 1997, be, and the same is hereby imposed. The defendant is to be remanded to the Department of Corrections for EIGHTEEN (18) MONTHS followed by FIVE (5) YEARS of supervised probation under the direction of the Field Services Division of the Department of Corrections. With the special condition that upon release from the Department of Corrections the defendant enter and successfully complete the Amnity [sic] Program [a drug treatment program] at Fort Stanton, New Mexico.

The order specifically imposes the original September 1997 sentence of sixteen years. Although the order might have been more artfully drafted, the district court’s intent is clear: it imposed the balance of the original sentence and then suspended all but eighteen months of that sentence which was to be followed by five years of supervised probation. In addition, the record reflects that Allen was aware of the meaning of the district court’s order. At the hearing when the order was imposed in September 2000, the court discussed the contents and meaning of the order with the prosecutor; Allen, and his defense attorney. During the course of this exchange, Allen’s defense attorney made the following statement:

Your honor, if we understand right that he [Allen] would be doing essentially the one and a half years parole revocation time along with probation revocation time. At the completion of that, go to the Amnity Program for the first six months of the new five year period of probation. And, as I would understand it, there would be only ten and a half years of sentence, maybe even less than that because of the time that has already come off that since March–maybe even ten years of sentence remaining. That’s a disposition that Mr. Allen has indicated to me seems appropriate to him and is what he would be pleading to.

The attorney’s statement indicates that the defense attorney and Allen understood the meaning of the district court’s order and knowingly agreed to its terms.

{23} At the revocation hearing on August 12, 2002, when Allen advanced his argument, the district court disagreed with Allen’s interpretation of the September 2000 order. The court restated that it had suspended Allen’s initial sentence except for the eighteen month sentence, which was a lesser sentence than imposing the balance of the sentence. Allen’s claim that the trial court’s order ordered him to simply serve eighteen months without reserving any of the original sixteen year suspended sentence is without merit.

III. CONCLUSION

{24} The district courts had the authority, under Section 31-21-15 and Section 31-20-5, to revoke Defendants’ probation and impose sentences of incarceration to be followed by another five years of probation. Further, the district court did not err when it denied Baca’s motions for reconsideration. We affirm the orders of the district courts.

{25} IT IS SO ORDERED.

IRA ROBINSON, Judge

WE CONCUR:

JAMES J. WECHSLER, Chief Judge
CYNTHIA A. FRY, Judge
Harris is the only New Mexico patent lawyer listed in all eight of those editions of The Best Lawyers in America which have listed the intellectual property law practice category (1991-1992 through the 2005-2006 editions). He also has the highest category legal ability rating in Martindale-Hubbell.


His scientific background, helpful in patent work, includes nine years as a physicist at Sandia National Laboratories, a Ph.D. in physics from Rice University, and a B.S. in physics (with honors) from the University of Texas.

In 2003 he spoke on intellectual property law at the New Mexico Bar Convention (where he was rated 4.67 out of 5) and taught a patent law course at the UNM School of Law.

* Cited in leading treatise, CHISUM ON PATENTS (Matthew Bender)
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ATTORNEYS AND COUNSELORS AT LAW

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Positions

Contract Trial Attorney
The Law Offices of Craig A. Orraj, staff counsel for Farmers Insurance Exchange and Affiliates, is accepting resumes from attorneys with a minimum of three years insurance defense experience. This is an excellent opportunity to expand your trial abilities and enhance your legal career. We provide an enjoyable working environment with an independent caseload. Salary will be commensurate with experience and competitive. EEOC employer. Please submit or fax your resume to Craig Orraj, 500 Marquette N.W., Ste 525, Albuquerque, NM 87102; fax # (505) 246-2924. All inquiries will be kept confidential.

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 Alb, NM 87120, fax 833-3040, or e-mail admin@roselittle.com.

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.

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. 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 Lambertson 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.

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.

Attorney
The Western Environmental Law Center, a regional non-profit, public interest environmental law firm, is seeking an attorney with two or more years experience to work in our Taos, New Mexico, office. The attorney filling this position will carry a diverse caseload. The position will have a substantial focus on assisting traditional western communities in their efforts to protect the local environment and promote the sustainable management of local natural resources. Accordingly, the attorney filling this position will work with land use and water law as well as more conventional federal and state environmental laws. The Western Environmental Law Center’s programs and employment are open to all. We value diversity and do not discriminate on the basis of age, gender, race, national origin, ethnicity, religion, sexual orientation, or disability in any of our policies or programs. We offer a friendly, team-based environment, highly competitive salaries, and an excellent benefits package. We plan to fill this position as soon as possible. Please send cover letter, resume, references, and writing sample to: Western Environmental Law Center, P.O. Box 1507, Taos, NM 87571. “Attention: Attorney Position,” or email to taos@westernlaw.org, www.westernlaw.org.

Attorney
Full time attorney. Resume, references and writing sample: 2019 Galisteo, Suite C3, Santa Fe, NM 87505.
Request for Proposals can be obtained from the Office of General Counsel of the New Mexico State Land Office. The proposal is mailed to the post office box marked “Request for Professional Scholarly/Research Services in Establishing State Trust Water Rights” No. 50-537-07-00578. The initial contract is anticipated to begin on or about March 6, 2005. Copies of the complete Request for Proposals can be obtained from the New Mexico State Land Office, Office of General Counsel, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501 (for in-person pick-up) or by writing to: P.O. Box 1148, Santa Fe, New Mexico 87504-1148, Attention: Matthew R. Hoyt, Esq., Procurement Manager, or on the Internet web site http://www.nmstatelands.org on January 21, 2005. All communications with the State Land Office in regard to the RFP should reference the “Request for Professional Legal Research Services in Establishing State Trust Water Rights.” The proposal may be mailed to the post office box listed above or hand-delivered to the physical address listed above. If the proposal is mailed, the sealed envelope should be placed in a larger mailing envelope. Deadlines for receipt of proposals is February 21, 2005. Proposals must be received no later than 4:00 p.m., Mountain Standard Time. Late proposals will not be considered. You may call (505) 827-5713 for more information.

State Land Office
Commissioner of Public Lands
Notice Of Request For Proposals for Professional Scholarly/Research Services in Establishing State Trust Water Rights
No. 50-537-07-00578

The Commissioner of Public Lands has determined to engage in multi-year research, development, preparation, and presentation of claims for Trust water rights being asserted or to be asserted by the Commissioner in various state and federal court water rights adjudications. The Office of General Counsel of the New Mexico State Land Office invites proposals to obtain the contract services of water rights experts in the area of legal and theoretical research with the Office of General Counsel of the New Mexico State Land Office for the Commissioner in developing the Commissioner’s claims. The contract will provide for payment of firm, fixed hourly rates and/or fixed charges for completed contract deliverables as the parties may agree. The work will consist primarily of development of legal and theoretical foundations for trust water rights but will require support of and cooperation with other contractors and Land Office staff involved in (1) the collection and presentation of supportive historical data and theories; (2) the assembly and presentation of existing data regarding past, present, and future water uses and availability on Trust lands; (3) the collection, development, and presentation of new/additional data regarding past, present, and future water uses and availability on Trust lands; (4) the development and preparation of arguments and authorities for trial, including the drafting of legal briefs. The issue date for this Request for Proposals is January 21, 2005.

The Ninth Judicial District Attorney’s Office has a position open to a Senior Trial Attorney with a minimum of 3 years experience in criminal law. This position will be available January 10th, 2005. Starting salary is dependent upon experience and the District Attorney Personnel and Compensation Plan. Salary range is $50,000 to $60,000. This position will allow an experienced attorney to gain additional jury trial experience as a prosecutor. Please send resume to Matthew Chandler, District Attorney, 700 North Main, Ste. 16, Clovis, NM 88101; or e-mail to matthewc@da.state.nm.us.

Assistant District Attorney
The Ninth Judicial District Attorney’s Office has a position open to a Senior Trial Attorney with a minimum of 3 years experience in criminal law. This position will be available January 10th, 2005. Starting salary is dependent upon experience and the District Attorney Personnel and Compensation Plan. Salary range is $50,000 to $60,000. This position will allow an experienced attorney to gain additional jury trial experience as a prosecutor. Please send resume to Matthew Chandler, District Attorney, 700 North Main, Ste. 16, Clovis, NM 88101; or e-mail to matthewc@da.state.nm.us.

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

Associate Attorney
The Nordhaus Law Firm is seeking an associate attorney with five or fewer years of experience for our Albuquerque, New Mexico office starting immediately. Experience and/or demonstrated interest in Indian law is preferred but not required. We represent Indian Tribes and Tribal entities on economic development projects, in financing transactions, in administrative and regulatory processes, on Tribal governance issues, and before national and state legislative bodies. The firm also handles complex litigation from trial through final appeal on a range of issues including trust responsibility enforcement, jurisdiction, taxation, and natural resource protection and development. To apply, please submit: (1) a cover letter describing your interest in and qualifications for the position, (2) a resume, (3) a legal writing sample, (4) a list of references, and (5) an official law school transcript to Hiring Partner – Albuquerque Office, c/o Vilma Ruiz, 1239 Paseo De Peralta, Santa Fe, NM 87501. You may submit your application by email to hiringpartner@nordhauslaw.com with the application documents in PDF, WordPerfect, or MS Word format.

Attorney
Solo practitioner needs full time associate with 3 years or more experience to assist in bankruptcy and commercial litigation practice. Court appearances will be required. Ability to use Lexis, MS Office and other computer programs required. Please fax or e-mail resume, cover letter stating reasons for interest and salary/benefits requirements, salary history and references to The Law Office of George “Dave” Giddens, P.C., Fax: (505) 271-4848; giddens@giddenslaw.com.
Notice of Vacancy
Grant County Attorney
Grant County seeks a full-time Attorney for a growing and vibrant community. The work is interesting and challenging, often focusing on the resolution of issues as opposed to routine litigation. Deadline for applications is March 1, 2005. Minimum Qualifications: Juris Doctor Degree; License to practice law in New Mexico; Minimum of four years experience in the general practice of law; Experience in land use, personnel matters and contracts helpful; Must have superior communication, negotiation and public relations skills; and Must possess ability to work in a fast paced office and interact with the public. Additional Qualifications. Send a substantive letter of interest and resume to the Grant County Manager. For additional information or a copy of the application packet please contact: Grant County Manager’s Office, 1400 Highway 180 East, Silver City, New Mexico 88061, (505) 574-0008. Salary: $60,000/year.

Staff Attorney
Enlace Comunitario, working to strengthen the immigrant community in Albuquerque seeks a fully bilingual (Spanish-English) Staff Attorney to provide civil legal representation to Spanish-speaking victims of domestic violence. Role includes recruitment and supervision of attorneys or Law student interns who will provide pro-bono civil legal assistance to victims. Candidate must be committed to social justice. For information call 246-8972, or fax resume and cover letter to 246-8973.

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. Litigation experience preferred. Must be detail-oriented, dependable and have excellent proofreading, communication and organizational skills. The ability 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.

Downtown
Beautifu adobe building near MLK on north I-25 on-ramp. Convenient to courthouses with free adequate parking for staff and clients. Conference room, reception room, employee lounge, utilities and janitor service included. Broadband access, copy machine available. From $240 per month. Call Orville, (505) 867-6566, or Jim, (505) 507-5145. Oak Street Professional Bldg., 500 Oak NE.

Positions Wanted
Got Work?
Paralegal 20+ years experience seeks part-time contract work, 15-20 hours per week, flexible. Excellent organizational, investigative, litigation skills; proficient in records management including medical/employment (collect, organize, summarize), state/federal rules application and appeals brief organization, tables, indices. Virginia 480-5428, 833-7011. Current references/resume available on request.

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.

Forensic Psychiatrist
Trained at Yale University in Forensic psychiatry. Board certified and licensed in New Mexico. Available for expert witness testimony. Experienced in criminal and civil matters. Call Dr. Kelly at 505-463-1228.

Services
CD and Tape Transcription
Call Legal Beagle @ 883-1960.

Office Space
6,525sf remodeled office building with large offices & support staff stations, kitchen, copy, & conference rooms near I-40 & San Pedro. Take advantage of today’s low interest rates! $675,000 Mike Contreras @ 888-1500 Sentinel Real Estate & Investment.

Custom Built Executive Office Suites
New, includes FT receptionist, digital phone system and phone line, DSL high speed internet, copy/fax, break room, upscale waiting and conference room. La Cueva Office Park. Only two left! (505) 797-5506.

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.

Professional Office Suites
Downtown
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.

Available Now
North Valley’s newest office development: charming casita-style space for sole practitioners. Includes receptionist area & storage. Lease or purchase potential. Red Sky Realty, owner/broker 247-5414 (office), 235-7667 (cell).

Potpourri
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.

Current and Complete NM Stats
Ann. & NM Rules Ann. $300 or OBO. Santa Fe (505) 986-8936.

For Sale
Executive desk suite in cherry, ideal for law partner or senior consultant. Desk with client kneepace (36 x 72”), credenza (22 x 72”) and connecting shelf (22 x 48”) with pull-out computer keyboard drawer together form an efficient and elegant workspace. $1,350. Santa Fe 505-820-3307.
Navajo Law and Practice, The Honorable Robert Yazzie, Chief Justice Emeritus of the Na ajo Nation. Wednesday, 5:00  7:00pm (January, 12 to April, 27). 32 General, 2 Ethics and 2 Professionalism Credits. Na ajo Nation Bar CLE credit approval pending.

The objectives of this course are to build student and practitioner proficiency in the areas of:

1. The background and context of Na ajo Nation law and practice;
2. The institutional structures of Na ajo Nation law;
3. Finding the law;
4. Western versus traditional or customary law;
5. The major substantive principles of Na ajo Nation law;
6. The major procedural provisions of Na ajo Nation law;
7. Ethics and the practice culture;
8. Na ajo Nation Code of Judicial Conduct;
9. NNBA Code of Ethics;
10. Na ajo Nation Governmental Code;
11. Trial Diplomacy; and
12. Building upon class lessons in the application of principles in a brief based on sample cases and oral argument.

- To register, lawyers may contact Gloria Gomez: (505) 277-5265, gomez@law.unm.edu or Mitzi Vigil: (505) 277-0405, igil@law.unm.edu
- Members of the UNM Clinical Law Program, Access to Justice Network may take the course for the $5.00 per credit. Members may attend the course NOT FOR CLE and pay $5.00 per session. For more information about the Access to Justice Network, visit http://lawschool.unm.edu/Clinic/pro_bono/index.htm or call Associate Dean Antoinette Sedillo Lopez: 277-5265.
- Non-members may take the course for $30.00 per CLE credit. (1 credit v 50 minutes of class attendance). Non-members may take course NOT FOR CLE and pay $10.00 per session or $100.00 per unlimited sessions.
- Fees are paid in advance and are not refundable.
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