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2005-NMSC-001: State v. Rodrigo Dominguez
2005-NMCA-017: State v. Douglas Frawley
Save the Dates - September 22-24, 2005

State Bar of New Mexico Annual Meeting

“Back to the Basics: Building Blocks for a Better Practice”

RUIDOSO CONVENTION CENTER
Ruidoso, NM

Hotel Blocks:

Inn of the Mountain Gods
287 Carrizo Canyon Road
(800) 545-9011
($149 - $179)

Hawthorn Suites
107 Sierra Blanca Dr.
(866) 211-7727
($109 - $129)

Comfort Inn of Ruidoso
2709 Sudderth Drive
(866) 859-5146 or (505) 257-2770
($89.99 to $109.99)

Holiday Inn Express
400 W. Highway 70
(800) 465-4329 or (505) 257-3736
($79.95)

Swiss Chalet Inn
1451 Mechem Drive
(800) 477-9477 or (505) 258-3333
($65)

Condotel Corp.
(For condo, cabin and house rentals)
Cindy or Susie (800) 545-9017
(rates from $120/night)

(Be sure to mention State Bar of New Mexico Room Block to receive the group rate.)

For exhibitor and sponsorship information, please contact Mary Patrick at (505) 797-6059.
1:00 pm  Registration and Check-in

1:15 pm  Structured Settlements
         James P. Garrison, Ringler Associates
         Phoenix, AZ

2:05 pm  Trial Counsel and Mediation Counsel - The Differences
         and Considerations for Excellence in Both Venues
         Jay L. Welch, Esq. - Senior Trial Counsel, Locher, Cellilli,
         Pavelka & Dostal, L. L. C., Omaha, NE.

4:10 pm  Panel Discussion,
         David Levin, Esq., Sarah Bradley, Esq. and Hon. Wendy York

ADR in Civil Defense
March 16, 2005
Registration Form

__DLA Members $59
__Non-DLA Members $89

Name: ________________________________________________________
Address: _____________________________________________________
City/State/Zip _________________________________________________
Phone: _______________________________________________________

__Check  __MasterCard  __Visa  #_________________ Exp Date: _____

Mail or fax to:  
NMDLA
PO BOX 94116
Albuquerque, NM 87199
(505) 797-6021 phone - (505) 797-6017 Fax
www.nmdla.org
MARCH

4

The 20th Annual Bankruptcy Year in Review/Reception
8:30 a.m. • State Bar Center, Albuquerque
7.4 General and 1.0 Ethics CLE Credits

Co-Sponsor: Bankruptcy Law Section
The seminar will cover developments in case law on bankruptcy issues in 2004, both nationally and locally, with special emphasis on decisions by the U.S. Supreme Court, 10th Circuit, 10th Circuit BAP, and New Mexico bankruptcy judges. This year’s seminar adds a segment on significant developments on issues particularly affecting consumer cases. The seminar also include a presentation from one of the local bankruptcy judges and from the Clerk of the Bankruptcy Court in New Mexico, and an ethics panel discussion on use of contract attorneys paid from estate funds. A reception sponsored by the Center for Legal Education will follow the conclusion of the seminar at 5 p.m. in the lobby of the State Bar Center.

☐ Standard and Non-Attorney $199
☐ Bankruptcy Section Member, Government & Paralegal $179

10

The ABC’s of Immigration Law
8:30 a.m. • State Bar Center, Albuquerque
4.2 General CLE Credits

Co-Sponsor: Immigration Law Section
What Happened To INS? Will This Criminal Conviction Affect My Immigrant Client? Can My Immigrant Client Get A Divorce? Do you find yourself asking these questions when an immigrant client walks through your doors asking for your representation? Immigration reform is happening on a daily basis. The impact of this reform on immigrant clients is evident in all areas of law, especially Criminal Law and Family Law. Join us for a CLE on March 10th as we explore current regulations in Immigration Law and how it affects you and your clients.

☐ Standard and Non-Attorney $99
☐ Government & Paralegal $89
☐ Immigration Law Section Member $79

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Effective Law Office Advertising, Technology Applications and Business Planning/Reception
9 a.m. • State Bar Center, Albuquerque
3.9 General, 2.0 Professionalism, 1.3 Ethics CLE Credits

Co-Sponsor: Solo and Small Firm Practitioner Section
In order to be successful in private practice, an attorney must create and maintain effective and meaningful client relations. In this full-day seminar, Roy S. Ginsburg will share his twenty plus years of experience in fostering client relationships in private practice and in corporate legal departments by focusing upon professional and ethical considerations that can be used to effectively create and maintain these relations through legal advertising, entertainment, referral fees, etc. He is the former President of the Minnesota chapter of the Association of Corporate Counsel and the recipient of the 2003 President’s Award from the Minnesota State Bar Association for his participation on its Task Force on the ABA Model Rules of Professional Conduct. Also included will be two sessions on practical office applications of electronic technology and business planning tips for the sage practitioner. This seminar will be followed by a reception co-sponsored by the Solo and Small Firm Practitioner’s Section in the lobby of the State Bar Center.

☐ Standard and Non-Attorney $169
☐ Government & Paralegal $159
☐ Solo and Small Firm Practitioner Section Member $145

FOUR WAYS TO REGISTER

PHONE: (505) 797-6020, Monday - Friday, 9 a.m. - 4 p.m.
(Please have credit card information ready)
FAX: (505) 797-6071, Open 24 hours
INTERNET: www.nmbar.org, click CLE, then Educational Programs
MAIL: CLE, PO Box 92860, Albuquerque, NM 87199

Name ____________________________
NM Bar # _________________________
Street ____________________________
City/State/Zip ____________________

Phone __________________ Fax ________
Email ____________________________

Program Title ____________________
Program Date ____________________
Program Location __________________
Program Cost ______________________
☐ Purchase Order (Must be attached to be registered)
☐ Check enclosed $ ______________
Make check payable to CLE of the SB NM
☐ VISA ☐ MC ☐ American Express ☐ Discover
Credit Card # ____________________
Exp. Date _________________________
Authorized Signature ______________
Contributions and announcements to the Bar Bulletin are welcome, but the right is reserved to select material to be published. Unless otherwise specified, publication of any announcement or statement is not deemed to be an endorsement by the State Bar of New Mexico of the views expressed therein, nor shall publication of any advertisement be considered an endorsement by the State Bar of the product or service involved. Editorial policy available upon request.

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Cite officially as Bar Bulletin (ISSN 1062-6611).
Subscription price $8.00 per year.
Subscriptions are nonrefundable once purchased.
Published weekly by the State Bar, 5121 Masthead NE, Albuquerque, NM 87109
(505) 797-6000
1-800-876-6227
Fax: (505) 828-3765
E-mail: bb@nmbar.org
www.nmbar.org

Periodicals postage paid at: Albuquerque, NM 87101 • © 2005, State Bar of New Mexico Postmaster send address changes to: Systems Manager • Bar Bulletin • PO Box 92860, Albuquerque, NM 87199-2860

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Professionalism Tip
With respect to opposing parties and their counsel:
I will consult with opposing counsel before scheduling depositions and meetings or before rescheduling hearings.

Meetings
February
28 Membership Services Committee, noon, State Bar Center

March
2 Employment & Labor Law Section Board of Directors, noon, State Bar Center
2 Committee on Women and the Legal Profession, noon, Lewis and Roca
2 Trial Practice Section Board of Directors, 4:30 p.m., State Bar Center
4 Board of Editors, noon, State Bar Center
7 Attorneys Support Group, 5:30 p.m., First Methodist Church

State Bar Workshops
March
9 Family Law Workshop, 6 p.m., State Bar Center
11 Elder Law/Estate Planning Workshop, 10 a.m., Sacramento Mountain Senior Services, Cloudcroft
15 Lawyer Referral for the Elderly Workshop, 10 a.m., Ruidoso Downs Zia Senior Center, Ruidoso Downs
23 Consumer Debt/Bankruptcy Workshop*, 6 p.m., State Bar Center

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

COURT NEWS
NM Supreme Court
Notice of Vacancy on the Rules of Criminal Procedure Committee for District Courts

One attorney vacancy exists on the Rules of Criminal Procedure Committee for District Courts due to the recent resignation of one member. Attorneys interested in volunteering their time on this committee may send a letter of interest and/or resume to Kathleen Jo Gibson, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Deadline for letters/resumes is March 14.

Proposed New Rule 24-107 of the Rules Governing the New Mexico Bar

The Supreme Court is considering a new Rule 24-107 NMRA of the Rules Governing the New Mexico Bar concerning lawyer limited liability companies. If you would like to comment on the proposed new rule, send your written comments to: Kathleen J. Gibson, Chief Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, NM 87504-0848.

For reference: The proposed new rule was printed on page 34 in the Feb. 21 (Vol. 44, No. 7) Bar Bulletin.

Statewide Alimony Guidelines Committee Pilot Projects

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

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

Albuquerque:
Muriel McClelland
murielmcclelland@aol.com

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

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

Taos:
Catherine E. Oliver
coliver@newmex.com

NM Compilation Commission
Volume 135 of NM Reports and 2004 NM Taxation Handbook Available

Volume 135 of the New Mexico Reports is now available for sale. The cost is $63. The New Mexico Selected Taxation and Revenue Laws and Regulation and CD ROM are also available. The price is $36.75.

To order, send a check to the New Mexico Compilation Commission, PO Box 15549, Santa Fe, NM 87592-5549.

First Judicial District Court
Almost Free MCLE Credit

The First Judicial District Court invites any attorney who practices in the district to earn almost-free MCLE credit by attending a one-day seminar, “Turn Your Stumbling Blocks into Building Blocks: Conflict Management in Settlement Facilitation,” on March 18 in Santa Fe. The only charge to attendees will be the optional MCLE filing fee of $1 per credit hour. In return, the court requests that all attendees register to participate in the court’s ADR program by acting as a volunteer settlement referee in one or two cases per year. Due to space limitations, the court requests that only those attorneys who reasonably expect to be able to participate in the ADR program this year attend. To register, or for more information, call Celia Ludi, ADR Program Director, (505) 827-5072.

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 on March 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.

Destruction of Exhibits

Pursuant to the Judicial Records Retention and Disposition Schedule, the Second Judicial District Court will destroy tapes filed with the court, in the criminal cases for years 1981 to 1983 including but not limited to cases that have been consolidated. Cases on appeal are excluded. Attorneys who have cases with tapes, and wish to have duplicates made, should verify tape information with the Special Services Division, (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by order of the court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by order of the court.

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 March 7. Contact Sandra Partida, (505) 841-7531, for more information or to have an item placed on the agenda.
Fifth Judicial District Court
Notice of Move

Beginning March 8 through March 11 the Fifth Judicial District Court of Chaves County, Roswell, and court administration for the Fifth Judicial District, will be moving back to the Chaves County Courthouse and will not be open for business except for emergency filings. Clerks will be available at 1597 S. Main Street, Roswell, to take emergency filings on March 8 only. Thereafter, emergency filings only will be taken at the Chaves County Courthouse, 400 N. Virginia, Roswell. Telephones will be operational most of the time. Questions should be directed to (505) 622-2212.

The Fifth Judicial District Court of Chaves County will be open to conduct all normal business on March 14 at the Chaves County Courthouse. The mailing address of PO Box 1776, Roswell, NM 88202-1776 and all telephone numbers for the District Court Clerk’s Office, the District Court Judges, and Court Administration remain unchanged.

U.S. Bankruptcy Court
Brownbag Support Staff Discussion

A brownbag session for Chapter 13 attorneys’ support staff is scheduled for 11:30 a.m. to 1:30 p.m., March 4 at the Chapter 13 Trustee’s office, 625 Silver SW, Suite 350, Albuquerque. Attendees should bring their own lunch. The discussion will touch on various topics of importance to both debtor and creditor attorney staff members. Members of the Chapter 13 Trustee’s staff will present the session. The event is an opportunity for legal assistants and paralegals to meet and to determine how best to work together. Call (505) 243-1335, ext. 3020 for more information or to R.S.V.P.

Creditors Meetings
Rescheduled

All creditors meetings pursuant to 11 U.S.C. §341 scheduled for hearing on March 4 at 421 Gold Avenue, S.W., Room 103, Albuquerque, have been rescheduled. The creditors meetings will be held on March 10 at the same time originally listed. For example, a meeting scheduled for 9:30 a.m. on March 4 will now be held at 9:30 a.m. on March 10. The location of the meetings will remain the same. Any questions should be directed to Kathy Rodden, Office of the U.S. Trustee, (505) 248-6550.

STATE BAR NEWS
14th Summer Law Clerk Program

The State Bar of New Mexico is partnering with major New Mexico law firms and governmental law departments to provide employment opportunities for diverse and deserving law students at the University of New Mexico School of Law. The Summer Law Clerk Program provides law students with capable research and writing skills the opportunity to demonstrate the drive and excellence that law firms and agencies value most in making employment decisions.

The State Bar and its participating firms and agencies recognize that differences in the social, educational and economic backgrounds of individual law students can often create barriers to employment that have nothing to do with performance or the potential for success as an attorney. The rigorous application and interview process combines a unique learning experience for law students with a unique insight into the qualifications and potential of our applicants.

Working with law firms and agencies who are committed to the ideal of diversified applicant pools, the Summer Law Clerk Program has been bringing down artificial barriers to employment, producing quality law clerks and diversifying attorney applicants for nearly a generation.

Law firms or agencies interested in participating in the 2005 Summer Law Clerk Program should contact Art Jaramillo, ajaramillo@aol.com by 5 p.m. March 1. Interviews will be held at UNM on March 5.

Attorney Support Group
Monthly Meeting

The next Attorney Support Group meeting will be held at 5:30 p.m., March 7 at the First United Methodist Church at Fourth and Lead SW in Albuquerque. The group meets regularly on the first Monday of the month.

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

Bankruptcy Law Section
Notice of Annual Meeting

The Bankruptcy Law Section will hold its annual meeting and a board meeting at noon, March 4, in conjunction with the 20th Annual Bankruptcy Year in Review Seminar at the State Bar Center. Look to page 4 of this issue for more information on the seminar. Section members are encouraged to attend the annual meeting whether or not they attend the seminar, and members need not be registered for the seminar in order to attend the meeting. For more information or to have an item placed on the agenda contact the section chair, Alice Nystel Page, at alice.n.page@usdoj.gov.

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 March 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.

International and Immigration Section
Section Meeting

The International and Immigration Section will hold its next meeting at 1 p.m., March 10, following “The ABC’s of Immigration Law” at the State Bar. The meeting is open to both current section members and those considering joining the section. Since the section has been recently reactivated, the new board encourages section members to attend and provide input on future activities.

The CLE begins at 8:30 a.m. and attendees will receive 4.2 general CLE credits. The cost is $79 for section members, $89 for government and paralegals and $99 for standard and non-attorneys. Refer to page 43 of this Bar Bulletin for more information.

Lunch will be provided free of charge to section members attending the 1 p.m. meeting. To assist in planning, R.S.V.P. to thorvat@nmbar.org by March 8.
Paralegal Division
Brownbag CLEs for Attorneys, Paralegals and Legal Assistants

The Paralegal Division of the State Bar is offering lunchtime brownbag CLEs at the State Bar Center the second Wednesday of every month. The cost is $16 for attorneys and $15 for paralegals, legal assistants and office staff. Each meeting has 1.0 general CLE credit pending, except for May 11, which is pending 1.0 ethics credit. Registration begins at the door at 11:30 a.m. each month, and the presentation will follow from noon to 1 p.m. For more information contact Debi Shoemaker-Scott at Rothstein Donatelli, (505) 243-1443.

March 9: “Conservatorship & Guardianship”, presented by Larry M. Reecer, Attorney at Law
May 11: Rules Governing Paralegal Services: Changes in the New Mexico Supreme Court Rules; presented by Leigh Anne Chavez, Attorney at Law, TVI Paralegal Studies Instructor
June 8: “Children’s Law: A Survey”, presented by Liz McGrath, Co-Director of Pegasus Legal Services for Children

Pro Hac Vice

The New Mexico Supreme Court has established a new rule for practice by non-admitted Lawyers before state courts (Pro Hac Vice). The new Rule 24-106 NMRA, is effective for cases filed on or after Jan. 20, 2005. Attorneys authorized to practice law before the highest court of record in any state or territory wishing to enter an appearance, either in person or on court papers, in a New Mexico civil case should consult the new rule. This rule requires non-admitted lawyers to file a registration certificate with the State Bar of New Mexico, file an affidavit with the court and pay a nonrefundable fee of $250. Fees collected under this rule will be used to support legal services for the poor. For more information on the rule, a copy of the registration certificate and sample affidavit, please go to www.nmbar.org. For questions about compliance with the rule, please contact Richard Spinello, Esq., Director of Public and Legal Services, State Bar of New Mexico, (505) 797-6050, (800) 876-6227, or rspinello@nmbar.org.

Prosecutors’ Section
Annual Awards

The State Bar Prosecutors’ Section is soliciting nominations for awards that the Section will present to five prosecutors at the Association of District Attorneys’ 2005 Spring Conference on May 12. The five award categories are: Prosecutor of the Year, Law Enforcement Prosecutor, Community Service Prosecutor, Legal Impact Prosecutor and Rookie Prosecutor.

Public Law Section
Board Meeting

The next Public Law Section board meeting will be held at noon, March 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, or dsmoll@nmbar.org for more information.

Public Law Section
Annual Awards

The State Bar Public Law Section is currently accepting nominations for the 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, NM 87505. The selection committee (comprised of past chairs of the Public Law Section) will consider all nominated candidates and may nominate candidates on its own.

Nominations Sought for Public Lawyer Award

The State Bar Public Law Section is currently accepting nominations for the 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, NM 87505. The selection committee (comprised of past chairs of the Public Law Section) will consider all nominated candidates and may nominate candidates on its own.

Young Lawyers Division
2005 Summer Fellowship

The Young Lawyers Division (YLD) of the State Bar is currently accepting applications from law students interested in working in public interest law or the government sector during the summer of 2005. The purpose of the fellowship is to enable one law student to work in public interest law or the government sector in an unpaid legal position. The fellowship award is intended to provide the opportunity for a law student to work in a position that might not otherwise be possible because the position is unpaid. The fellowship award, depending on the circumstances of the position, could be up to $3,000 for the summer.

To be eligible for the fellowship, the applicant must be a current law student in good standing. Applications for the fellowship must include the following: a letter of interest from the applicant that details the student's interest in public interest law or the government sector; a resume of the applicant; and a written offer of employment to the applicant for an unpaid legal position in public interest law or the government sector for the summer of 2005. Applications must be submitted to the following address: J. Brent Moore, YLD Summer Fellowship Coordinator, Office of General Counsel, New Mexico Environment Department, 1190 St. Francis Dr., Suite N-4050, Santa Fe, New Mexico 87505.

Applications must be postmarked by March 31. Any questions regarding the fellowship should be directed to J. Brent Moore at (505) 476-3783.

Brownbag Lunch

The Young Lawyers Division will sponsor a Brownbag Lunch at noon, March 24, in the third floor conference room of the Second Judicial District Courthouse. The topic of the event will be “The Do’s and Don’ts of Practicing in the Second Judicial District Court.” Food will be provided and space is limited so attorneys are asked to R.S.V.P. by March 18 to Briana Zamora, (505) 884-0777, or bhzamora@btblaw.com.
OTHER BARS

Albuquerque Bar Association
Monthly Membership Luncheon

Helen Fox, the Albuquerque Public School Liaison for the APS Homeless Project will speak at the monthly membership luncheon of the Albuquerque Bar Association to be held at noon, March 1 at the Albuquerque Petroleum Club.

The nationally recognized Albuquerque Public Schools Homeless Project serves thousands of homeless children and youth each school year in Albuquerque by providing educational and other services to help them break the cycle of homelessness and poverty. Fox, coordinator of this program, has received several awards for her tireless efforts on behalf of these students, including Mayor Martin Chavez’s A+ Award, the Crystal Apple Award and the FBI Director’s Community Leadership Award. This autumn she was the keynote presenter in Saint Paul at the national convention for such projects.

For more information and to pre-register, please visit the ABQ Bar Web site at www.abqbar.com or call (505) 243-2615.

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

The New Mexico Women’s Bar Association’s next networking lunch will be from noon to 1:30 p.m., March 9 at Conrad’s in the LaPosada Hotel, Albuquerque. Members and visitors are welcome. Advance reservations are required. Lunch prices range from $6 - $11, and payment is made directly to the restaurant. Anyone interested in attending this meeting should R.S.V.P. to Rendie R. Moore, martren@eb-b.com.

OTHER NEWS

UNM Law Library
Spring Semester Hours

Hours through May 15:

<table>
<thead>
<tr>
<th>Day</th>
<th>Hours</th>
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<tbody>
<tr>
<td>Mon. – Thurs.</td>
<td>8 a.m. to 11 p.m.</td>
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<tr>
<td>Fri.</td>
<td>8 a.m. to 6 p.m.</td>
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<tr>
<td>Sat.</td>
<td>9 a.m. to 6 p.m.</td>
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<tr>
<td>Sun.</td>
<td>noon to 11 p.m.</td>
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</tbody>
</table>

Extended Exam Hours:

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours</th>
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<tbody>
<tr>
<td>Apr. 30</td>
<td>8 a.m. to 10 p.m.</td>
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<tr>
<td>May 1</td>
<td>9 a.m. to 10 p.m.</td>
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<td>May 7</td>
<td>8 a.m. to 10 p.m.</td>
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<td>May 8</td>
<td>9 a.m. to 10 p.m.</td>
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<tr>
<td>May 14</td>
<td>8 a.m. to 10 p.m.</td>
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</table>

Reference:
Mon. – Thurs.  9 a.m. to 9 p.m.
Fri.            9 a.m. to 5 p.m.
Sat.            noon to 4 p.m.
Sun.            noon to 4 p.m.

UNM Law School Minority Mentorship Mixer

The University of New Mexico School of Law will host the first Law School Minority Mentorship Mixer from 4 to 6 p.m. March 5 at the Law School’s Forum. The event is a chance for attorney’s to join high school and undergraduate students, judges, faculty and law students to help others learn about a potential future career in the legal field. Contact UNMMixer@aol.com for more details.

UNM Peace Studies Program
Peace Fair

The University of New Mexico Peace Studies program will host Albuquerque’s first Peace Fair, free and open to the public, from noon to 8 p.m., March 1 in the Student Union Building ballroom.

UNM’s School of Law, Students Organizing Action for Peace (SOAP), International Programs, Women Studies, Women’s Resource Center, the sociology, political science, anthropology and communication and journalism departments, Religious Studies and College of Arts and Sciences are co-sponsors.

Peace Studies is dedicated to the study of the causes of violence and alternatives to violence and the practice of conflict resolution on all levels — from the interpersonal to societal to international. Call (505) 277-4032 for more information.

Public and Legal Services Department

Lawyer Referral for the Elderly Program
1-800-876-6657
(505) 797-6005
Provides issue assessment, legal information, legal advice, brief services and referrals to all New Mexico residents 55 years old or older. LREP also conducts informational workshops throughout the state.

PLSD Referral Programs
1-800-876-6227
(505) 797-6066
Provides free public workshops throughout the state. Also provides pro bono, reduced fee, and full fee referrals to the private bar for lawyer referral for the elderly, legal aid, SSI, military clients and cancer and HIV/AIDS patients. PLSD strives to be a united, inclusive program serving the legal profession and the public.

Client Attorney Assistance Program (CAAP)
1-800-876-6227
(505) 797-6068
CAAP serves the legal community and the public by helping attorneys and clients resolve communication and other issues. CAAP encompasses the Fee Arbitration Program to help resolve fee disputes between attorneys and their clients, and helps with Peer Assistance, which fields complaints from both clients and attorneys regarding unprofessional conduct of an attorney that does not rise to an ethical violation.
<table>
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**Notes:**
- All events are held in Albuquerque unless otherwise noted.
- For more information, visit [www.nmbar.org](http://www.nmbar.org).
- Contact numbers and websites are provided for each event.

**More Information:**
- [www.nbi-sems.com](http://www.nbi-sems.com)
- [www.trtcle.com](http://www.trtcle.com)
15 The Tangled Webs of Impaired Lawyers
Teleconference
TRT, Inc.
2.4 P
(800) 672-6253
www.trtcle.com

18 Protecting Business Assets Through Effective Lawyering
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www.trtcle.com

24 Breaking Issues in New Mexico Insurance Coverage, Claims and Litigation
Albuquerque
National Business Institute
6.2 G, 1.0 E
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www.nbi-sems.com

15 Understanding the Allocation of LLC Financial and Tax Attributes
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22 DUI in New Mexico: Practical Problems and Possible Solutions
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24 Cashing Out: Six Ways Business Owner Clients Can Sell Their Businesses
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16 ADR for the Civil Defense Practitioner
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New Mexico Defense Lawyers Association
3.0 G, 1.0 E
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www.nmmdla.org

22 Junk Science or Scientific Evidence?
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24 Personal Injury Case Evaluation and Intake - Make Your Accountant and Malpractice Insurer Happy
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17 Electronic Discovery Needn’t Be Shocking
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22 Professional Liability Issues for Estate Planning Professionals
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Cannon Financial Institute
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24 They Took My Stuff! How Do I Get it Back?
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17 Limited Liability Entities - 2005
ALN - Satellite Broadcast
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22 The Financially Distressed Limited Liability Company: Substantive Legal and Tax Aspects
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28 Burden of Representing Financially-challenged Companies
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18 Beautiful Minds: Mental Health Issues and Recent Supreme Court Decisions
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New Mexico Criminal Defense Lawyers Association
8.1 G
(505) 986-9536
www.nmcdla.org

23 Fair Labor Standards Act
Albuquerque
Lorman Education Services
8.0 G
(715) 833-3940
www.lorman.com

29-1 Advocacy in Action Conference
Albuquerque
NM Crime Victims Reparation Commission
21.5 G
(505) 266-3451

18 How to Win Your Next Jury Trial Using the Power Trial Method
State, Bar Center, Albuquerque
Trial Practice Section and Center for Legal Education of SBNM
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23 Fundamentals of Arbitration
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29 Common Sense Ethics - Histories and Mysteries
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LEGAL EDUCATION

29 Legal Aspects of Preparing Small and Medium Businesses for Sale
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30 Legal Ethics Updates
Santa Fe
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31 Anatomy of Professionalism - Lessons from the Cinema
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31 DaVinci Code of Scientific Evidence
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31 Discipline of Students With Special Needs
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31 2005 Professionalism: Lawyers Concerned for Lawyers
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31 Demonstrative Evidence in Your Personal Injury Trial - When, What, Why and How Much?
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31 Fundamental Probate Procedures and Practice in New Mexico
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31 The Tangled Webs of Impaired Lawyers
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APRIL

1 2nd Annual Elder Law Seminar & Reception
State Bar Center, Albuquerque
Elder Law Section and Center for Legal Education of SBNM
4.2 G
(505) 797-6020
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7 Annual Spring Employee Benefits Law and Practice Update
ALN - Satellite Broadcast
State Bar Center, Albuquerque
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7 Burden of Representing Financially-challenged Companies
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www.trtcle.com

13 2005 Professionalism: Lawyers Concerned for Lawyers
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G = General  E = Ethics  P = Professionalism  VR = Video Replay
Programs have various sponsors; contact appropriate sponsor for more information.
**WRITS OF CERTIORARI**

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

Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court

PO Box 848 • Santa Fé, NM 87504-0848 • (505) 827-4860

**Effective February 23, 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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<td>29,075</td>
<td>Concerned Residents of Santa Fe North v. Santa Fe (COA 25,416)</td>
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<td>State v. Pamela R. (COA 23,497/23,787)</td>
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### Address:

Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court

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### WRITS OF CERTIORARI

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<td>Breen v. Carlsbad Schools (COA 22,858/22,859)</td>
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<td>28,038</td>
<td>Paule v. Santa Fe County Commissioners (COA 22,988)</td>
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<td>State v. Munoz (COA 23,094)</td>
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<td>27,817</td>
<td>Tomlinson v. George (COA 22,017)</td>
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<td>State v. Gallegos (COA 22,888)</td>
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<td>28,272</td>
<td>Lester v. City of Hobbs (COA 22,250)</td>
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<td>State v. Duran (COA 22,611)</td>
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<td>28,317</td>
<td>Turner v. Bassett (COA 22,877)</td>
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<td>State v. Graham (COA 22,913)</td>
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<td>Smith v. Bernalillo County Commissioners (COA 22,766)</td>
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<td>Angel Fire v. Wheeler (COA 24,295)</td>
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### Petition for Writ of Certiorari Denied:

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### Writ of Certiorari Quashed:

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<td>Address Details</td>
<td>Contact Information</td>
</tr>
<tr>
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<td>---------------------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Jared Abrams</td>
<td>6783 Via Campestre, Las Cruces, NM 88007</td>
<td>(505) 524-9864</td>
</tr>
<tr>
<td>Dawn T. (Penni) Adrian</td>
<td>Adrian &amp; Associates, P.C., 4300 Carlisle Blvd. NE, Ste. 4, Albuquerque, NM 87107</td>
<td>(505) 798-1014</td>
</tr>
<tr>
<td>Kelly P. Albers</td>
<td>Law Office of Kelly P. Albers, 650 Montana, Ste. D, Las Cruces, NM 88001</td>
<td>(505) 527-9064</td>
</tr>
<tr>
<td>Naomi Julia Barnes</td>
<td>PO Box 1931, El Prado, NM 87529-1931</td>
<td><a href="mailto:njbarnes@gmail.com">njbarnes@gmail.com</a></td>
</tr>
<tr>
<td>Dolph Barnhouse</td>
<td>211 Twelfth St. NW, Albuquerque, NM 87102</td>
<td>(505) 424-6123</td>
</tr>
<tr>
<td>Casey A. Barthel</td>
<td>1214 Caprock, Hobbs, NM 88240</td>
<td>(505) 527-9104 (fax)</td>
</tr>
<tr>
<td>Dawn Sturdivant Baum</td>
<td>University of Tulsa-Boesche Legal Clinic</td>
<td></td>
</tr>
<tr>
<td>Scott M. Becket</td>
<td>Office of the District Attorney, 520 Lomas Blvd. NW, Albuquerque, NM 87102</td>
<td></td>
</tr>
<tr>
<td>Mark L. Allen</td>
<td>Office of the City Attorney, 200 Lincoln Ave. (87501), PO Box 909, Santa Fe, NM 87504-0909</td>
<td>(505) 955-6511 (fax)</td>
</tr>
<tr>
<td>Heathl L. Anderson</td>
<td><a href="mailto:heather_anderson@aaahawk.com">heather_anderson@aaahawk.com</a></td>
<td></td>
</tr>
<tr>
<td>Lori Bauer Apodaca</td>
<td>PO Box 3230, Los Lunas, NM 87031-3230</td>
<td>(505) 866-1260</td>
</tr>
<tr>
<td>William V. Ballew, III</td>
<td>Datsopoulos, MacDonald &amp; Lind, P.C., 201 West Main Street, Missoula, MT 59802</td>
<td>(406) 631-5798 (fax)</td>
</tr>
<tr>
<td>CaraLyn Banks</td>
<td>Sandenaw, Piazza &amp; Anderson, P.C., 2951 Roadrunner Parkway, Las Cruces, NM 88011</td>
<td></td>
</tr>
<tr>
<td>Ingrid Bekhuys</td>
<td>Gerber &amp; Bateman, P.A., 417 East Palace Ave. (87501), PO Box 2325, Santa Fe, NM 87504-2325</td>
<td>(505) 988-9646</td>
</tr>
<tr>
<td>Leander Bergen</td>
<td>Bergen Law Offices, L.L.C., 4110 Volcott Ave. NE, Ste. A, Albuquerque, NM 87109</td>
<td>(505) 844-8434 (fax)</td>
</tr>
<tr>
<td>John J. Bogren</td>
<td>8400 Menaul Blvd. NE, Ste. A, Box 200, Albuquerque, NM 87112</td>
<td>(505) 221-1161</td>
</tr>
<tr>
<td>Keith Scott Burn</td>
<td>Cuddy, Kennedy, Albetta &amp; Ives, L.L.P., 7770 Jefferson NE, Ste. 440, Albuquerque, NM 87109</td>
<td>(505) 844-2863 (fax)</td>
</tr>
<tr>
<td>Mark S. Burtner</td>
<td>Office of the County Attorney, 500 E. San Antonio, Rm. 500, El Paso, TX 79901</td>
<td></td>
</tr>
<tr>
<td>Michael E. Cain</td>
<td>NM Children, Youth &amp; Families Dept., PO Box 2135, Las Cruces, NM 88004-2135</td>
<td>(505) 524-6433</td>
</tr>
<tr>
<td>Joseph M. Campbell</td>
<td>Office of the District Attorney, PO Box 2025, Las Vegas, NV 87701-2025 (505) 425-6746</td>
<td>(505) 425-9372 (fax)</td>
</tr>
<tr>
<td>Monica Christina Casias</td>
<td>Sturges, Houston &amp; Sexton, P.C., 6301 Indian School Rd. NE, Ste. 400 (87110), PO Box 36210, Albuquerque, NM 87176-6210</td>
<td>(505) 888-8929 (fax)</td>
</tr>
<tr>
<td>George Chandler</td>
<td>George Chandler Law, 1208 9th Street, Los Alamos, NM 87544 (505) 662-5900</td>
<td>(505) 662-5777 (fax)</td>
</tr>
<tr>
<td>Hon. Benjamin Chavez</td>
<td>formerly known as Benjamin Salvador Chavez, Metropolitan Court, 401 Lomas Blvd. NW, Albuquerque, NM 87102</td>
<td>(505) 844-2863 (fax)</td>
</tr>
<tr>
<td>Frank N. Chavez</td>
<td>Rosner and Chavez, Attorneys at Law, L.L.C., 619 North Alameda (88005), PO Box 241, Las Cruces, NM 88004-0241</td>
<td>(505) 524-4399</td>
</tr>
</tbody>
</table>

**From the New Mexico Supreme Court**
CLERK CERTIFICATES

Kristen Lockwood Cline
Cline Fine Art
4200 N. Marshall Way
Scottsdale, AZ 85251
(480) 941-1811
(480) 941-1812 (fax)
kcline@clinefineart.com

Katherine Hite Closmann
4709 Timberline Drive
Austin, TX 78746
(512) 477-3555 Ext. 424
kclosmann@tsahc.org

Gerald L. Collins
The Collins Firm
3615 NM State Rd. 528 NW,
Ste. 100
Albuquerque, NM 87114
(505) 761-0900
(505) 761-0901 (fax)
gcollins77@comcast.net

J. Douglas Compton
Lewis and Roca, L.L.P.
201 Third St. NW, 19th Floor
PO Box 1027
Albuquerque, NM 87103-1027
(505) 243-3751
(505) 243-3750 (fax)
DCompton@lrlaw.com

William R. Conner
7 Juanita Lane
Algodones, NM 87001
(505) 867-4181
wrconner@flash.net

Nancy Cronin
formerly known as
Nancy Anne Cronin-Wagner
Duhigg, Cronin, Spring & Berlin, P.A.
620 Roma NW
PO Box 527
Albuquerque, NM 87103-0527
(505) 243-3751
(800) 221-1161
(505) 246-9797 (fax)

LaTonya Marie Crowell
11215 Oak Leaf Drive,
Unit 601
Silver Spring, MD 20901
(301) 593-0440
MsCrowell@aol.com

Sharron S. Davidson
NM Human Services Dept.
Child Support Enforcement Division
1015 Tijeras NW, Ste. 100
Albuquerque, NM 87102
(505) 222-9414
(505) 222-9431 (fax)

Tessa T. Davidson
Davidson Law Firm, L.L.C.
PO Box 2240
Corrales, NM 87048-2240
(505) 792-3636
(505) 792-5166 (fax)

Jaime L. Dawes
Sheehan, Sheehan & Stelzner, P.A.
707 Broadway NE, Ste. 300
PO Box 271
Albuquerque, NM 87103-0271
(505) 247-0411
(505) 842-8890 (fax)

cwden@qwest.net

Mandy Kaye Waldrop
Denson
412 Mechem Drive
Ruidoso, NM 88345
(505) 257-7373
(505) 257-6514 (fax)

Rosemary L. Dillon
Texas Tech School of Law
1802 Hartford Ave.
Lubbock, TX 79409
(806) 742-3990 Ext. 313
(806) 742-0901 (fax)
rodillon@law.ttu.edu

Maureen C. Donovan
4544 Post Oak Place, Ste. 220
Houston, TX 77027
mdonovan5@hotmail.com

Robert Marvin Doughty, II
Robert M. Doughty, II, P.C.
PO Box 1569
Alamogordo, NM 88311-1569
(505) 434-9155
(505) 434-3118 (fax)

David L. Duhigg
Duhigg, Cronin, Spring & Berlin, P.A.
620 Roma NW
PO Box 527
Albuquerque, NM 87103-0527
(505) 243-3751
(800) 221-1161
(505) 246-9797 (fax)

Theresa Duncan
Freedman, Boyd, Daniels, Hollander & Goldberg, P.A.
20 First Plaza NW, Ste. 700
PO Box 25326
Albuquerque, NM 87125-5326
(505) 244-7500
(505) 824-0761 (fax)

tmd@fbdlaw.com

Mark A. Earnest
Earnest Law Office
1421 Luisa St., Ste. N
Santa Fe, NM 87505
(505) 988-8048
(505) 989-9594 (fax)
earnestlaw@qwest.net

Douglas A. Echols
Miller Stratvert, P.A.
300 W. Arrington,
Ste. 300 (87401)
PO Box 869
Farmington, NM 87499-0869
(505) 326-4521
(505) 325-5474 (fax)

dechols@mstLAW.com

Hon. George P. Eichwald
Thirteenth Judicial District Court
100 Avenida de Justicia
Bernalillo, NM 87004
(505) 867-2861
(505) 771-8897 (fax)

Sandra Watkins Engel
9300 Fourth St. NW
Albuquerque, NM 87114
(505) 899-4343
(505) 899-4812 (fax)

Leonard G. Espinosa
Espinosa & Associates, P.C.
7770 Jefferson NE, Ste. 100
Albuquerque, NM 87109
(505) 242-5656
(505) 242-9869 (fax)
lgespinosa@qwest.net

Mark J. Fidel
PO Box 93923
Albuquerque, NM 87199-3923
(505) 249-4407
(505) 212-0084 (fax)
mfidel@comcast.net

James B. Foy
210 W. Broadway
PO Box 2615
Silver City, NM 88062-2615
(505) 538-9835
(505) 538-9840 (fax)

Rosalie Fragoso
Nix, Patterson & Roach, L.L.P.
2403 San Mateo Blvd. NE,
Ste. W-26
Albuquerque, NM 87110
(505) 883-1776
(505) 883-1775 (fax)

Keith Franchini
Keith F. Franchini & Associates
1020 Lomas Blvd. NW, Ste. 3
Albuquerque, NM 87102
(505) 242-6226
(505) 242-9268 (fax)

John Brady Garrity
321 Harrison Street
Oak Park, IL 60304
(312) 502-4223
(312) 502-4223 (fax)
JohnGarrity@hotmail.com

MaryLiz A. Geffert
Mueller Group, Inc.
110 Corporate Drive, Ste. 10
Portsmouth, NH 03801
(603) 422-8030
(603) 422-8035 (fax)
mgeffert@anvilintl.com

Elizabeth A. Glenn
NM Taxation & Revenue Dept.
1100 S. St. Francis Drive
Santa Fe, NM 87504-0630
(505) 827-0734
(505) 827-0915 (fax)
EGlenn@state.nm.us
Clerk Certificates

David A. Grabner, Jr.
2715 Hunlac Trail
Round Rock, TX 78681
(512) 231-9990
(512) 231-9961 (fax)
dgrabner@visualclick.com

Marc A. Grano
Law Firm of Baber, Silva & Grano
505 National Ave., Ste. 3
Las Vegas, NM 87701
(505) 426-8711
(505) 426-9011 (fax)
granoma@hotmail.com

Colin L. Hunter
1010 G Street NE, Apt. 205
Washington, DC 20002
(202) 225-6316
(202) 225-4975 (fax)
Colin.Hunter@mail.house.gov

Valerie Sanders Hulse
formerly known as Valerie S. Sanders
Cortner, McNaboe, Coliau & Elenius
600 N. Pearl, Ste. 1400
Dallas, TX 75201
(214) 220-5910
(214) 220-5902 (fax)
valerie.hulse@cna.com

William S. Keller
Office of the Attorney General
PO Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6360
(505) 827-6685 (fax)
wkeller@ago.state.nm.us

Margaret W. Lamb
PO Box 650
Queretaro, Mexico 76556-0650

Mary A. Lawendowski
formerly known as Mary A. Baca
Office of the District Attorney
5100 Second St. NW
Albuquerque, NM 87107
(505) 841-7670
(505) 841-7676 (fax)

Michelle S. Leighton
formerly known as Michelle L. Wykoff
Comeau, Maldegen, Templeman & Indall, L.L.P.
141 E. Palace Ave. (87501)
PO Box 669
Santa Fe, NM 87504-0669
(505) 982-4611
(505) 982-2987 (fax)
mleighton@cmisantafe.com

Sarae T. Leuckel
The Trust for Public Land
2nd Floor
Santa Fe, NM 87501
(505) 988-5967 (fax)
(505) 988-5922 Ext. 17
sarae.leuckel@tpl.org

Jonlyn Martinez
Slease & Martinez, P.A.
105 Fourteenth St. SW
Santa Fe, NM 87501
(505) 827-8015
(505) 476-0474 (fax)
jonlyn@sleaseandmartinez.com

Michelle J. Ritt Martinez
formerly known as Michelle J. Ritt
Law Office of Michelle J. Ritt Martinez
500 Oak St. NW, Ste. 216
Albuquerque, NM 87106
(505) 243-3320

Paul Maestas
Maestas and Suggett
201 Third Street NW, Ste. 1600
Albuquerque, NM 87102
(505) 247-8100
(505) 247-8125 (fax)
Paul_maestas@mrs-law.com

Bernadette M. Manning
Manning & Russo, L.L.C.
65 Ponderfield Road
PO Box 295
Bronxville, NY 10708-0295
(914) 793-2088
(914) 793-0670 (fax)

Jason A. Marks
NM Public Regulation Commission
1120 Paseo de Peralta (87501)
PO Box 1269
Santa Fe, NM 87504-1269
(505) 247-9488
(505) 247-9566 (fax)
jonlyn@sleaseandmartinez.com

Michelle J. Ritt
Law Office of Michelle J. Ritt
500 Oak St. NE, Ste. 216
Albuquerque, NM 87106
(505) 243-3320

Colleen Michele Clear McClure
9740 Barker Cypress Rd., Ste. 103, PMB #350
Cypress, TX 77433
(281) 703-0352
colleen.meclure@sbcglobal.net
CLERK CERTIFICATES

Sherrie A. Sanchez
Sherrie A. Sanchez Law Office
PO Box 40446
Albuquerque, NM 87196-0446
(505) 804-9893
(505) 254-4984 (fax)
sanchezs@justice.com

David Sandoval
PO Box 24093
Santa Fe, NM 87502-4093
(505) 699-0073
dvdesq@msn.com

Thomas G. Scarvie
Sedgwick, Detert, Moran & Arnold, L.L.P.
One Embarcadero Center, 16th Floor
San Francisco, CA 94111-3628
(415) 627-1574
(415) 781-2635 (fax)
thomas.scarvie@sdma.com

Ida Hernandez Sedillo
formerly known as Ida E. Hernandez
Hatch, Allen & Shepherd, P.A.
1111 Menaul Blvd. NE
PO Box 30488
Albuquerque, NM 87190-0488
(505) 341-0110
(505) 341-3434 (fax)
hernandez@hatchlaw.com

Vitalia May Sena-Baca
Prince, Schmidt & Korte, L.L.P.
2905 Rodeo Park Dr. East, Bldg. 2
Santa Fe, NM 87505-6313
(505) 982-5380
(505) 986-9176 (fax)
vtalian@yaho0.com

Robert Michael Shickich
Law Offices of R. Michael Shickich, L.L.C.
111 W. 2nd Street, Ste. 500
Casper, WY 82601
(307) 266-5297
(307) 266-1261 (fax)

Richard Shine
3835 Oxbow Village Lane NW
Albuquerque, NM 87120
(505) 831-5402
(505) 839-3787 (fax)
rshine60@earthlink.net

Joshua R. Simms
Joshua R. Simms, P.C.
PO Box 2376
Tijeras, NM 87059-2376
(505) 842-0392
(505) 247-0900 (fax)
sjrpc@qwest.net

Ethan Samuel Simon
6416 Concordia Rd. NE
Albuquerque, NM 87111-1211
(505) 858-3131
(505) 821-7171 (fax)
Ethan@Simon.name

William D. Slease
Slease & Martinez, P.A.
105 Fourteenth St. SW
(87102)
PO Box 1805
Albuquerque, NM 87103-1805
(505) 247-9488
(505) 247-9566 (fax)

Katherine Marie Souder
5670 N. Placita Favorita
Tucson, AZ 85750
(520) 529-5726
kgould04@comcast.net

Thomas J. Spahr
616 Via Posada SE
Albuquerque, NM 87123
(505) 292-0031
t.spahr@comcast.net

John B. Speer
2416 Cutler NE
Albuquerque, NM 87106
(505) 256-7803

Frank L. Spring
Duhigg, Cronin, Spring & Berlin, P.A.
620 Roma NW
PO Box 527
Albuquerque, NM 87103-0527
(505) 243-3751
(505) 246-9797 (fax)

Arlon L. Stoker, Jr.
217 N. Schwartz Ave.
(87401)
PO Box 658
Farmington, NM 87499-0658
(505) 326-0404
(505) 326-1461 (fax)

Joseph Edward Stowers
Tekell, Book, Matthews & Limmer, L.L.P.
1221 McKinney, Ste. 4300
Houston, TX 77010
(713) 222-9542
(713) 655-7727 (fax)
jstowers@tbml.com

Ashley D. Strauss-Martin
7314 Venice NE
Albuquerque, NM 87113
(505) 856-5148
astraussmartin@msn.com

Johnna L. Studebaker
PO Box 2918
Santa Fe, NM 87504-2918
(505) 920-3232
(505) 982-8043 (fax)
JStudebakerAttY@aol.com

Wayne Robert Suggett
Maestas and Suggett
201 Third St. NW,
Ste. 1600 (87102)
PO Box 1578
Albuquerque, NM 87103-1578
(505) 247-8100
(505) 247-8125 (fax)
Wayne_Suggett@mrs-law.com

Mirna Raquel Torres
1201 Braddock Place,
Apt. 112
Alexandria, VA 22314
mirna_torres@yahoo.com

Christine Tucker
formerly known as Christine Van Norman
Gregory M. Tucker
Gregory M. Tucker, P.C.
105 North Orchard Ave.
Farmington, NM 87401-4205
(505) 325-7755
(505) 564-8554 (fax)
greg@gretgbuckerlaw.com

Matthew Tucker
Shoobridge Law Firm, P.C.
701 North Grimes Street
Hobbs, NM 88240
(505) 397-2496
(505) 397-2497 (fax)

Anne Marie Turner
PO Box 387
Albuquerque, NM 87103-0387
(505) 980-4676
amtturnerlaw@aol.com

Mari P. Ulmer
1511 Pradera Dorada
Las Cruces, NM 88007

Matthew Alan Vance
Whitener Law Firm
300 Central Ave. SW,
Ste. 2000 West
Albuquerque, NM 87102
(505) 242-3333
(505) 242-3322 (fax)

Rosario D. Vega-Lynn
Noeding & Jarrett, P.C.
4300 San Mateo Blvd. NE,
Ste. B-260
Albuquerque, NM 87110
(505) 878-0515
(505) 878-0398 (fax)
vegallynn@nm-law.com

Rosalie A. Wallis
49 Crescent Circle
Rock Hill, NY 12775
(845) 791-7144
rwallis7@peoplepc.com

Vincent J. Ward
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third St. NW, Ste. 2200
PO Box 1888
Albuquerque, NM 87103-1888
(505) 766-7514
(505) 768-7395 (fax)
vward@rodey.com

Kristi A. Wareham
7658 Coldstream Drive
Cincinnati, OH 45255
(513) 232-3034
(513) 232-3008 (fax)
kristiwareham@aol.com
Clerk Certificates

Carolyn J. Waters  
formerly known as Carolyn J. Baca  
Carolyn J. Baca Waters, P.C.  
741 N. Alameda Blvd., Ste. 8  
Las Cruces, NM 88005  
(505) 524-2992  
(505) 524-0477 (fax)

John D. Watson  
NM Human Services Dept.  
Child Support Enforcement Division  
850 N. Motel Blvd.  
Las Cruces, NM 88007  
(505) 524-6118  
(800) 288-7207  
(505) 524-6539 (fax)  
John.Watson@state.nm.us

Jane A. Wells  
formerly known as Jane Wells Starke  
NM Children, Youth & Families Dept.  
1920 Fifth Street  
Santa Fe, NM 87505-5600  
(505) 476-5479  
(505) 476-0334 (fax)

Hartley B. Wess  
Hartley B. Wess & Associates, P.C.  
10400 Academy Rd. NE, Ste. 300  
Albuquerque, NM 87111  
(505) 243-6888  
(505) 842-6042 (fax)  
thartleywess@excite.com

Laura D. White  
Office of the District Attorney  
700 N. Main St., Ste. 16  
Clovis, NM 88101  
(505) 769-2246  
(505) 769-3198 (fax)  
lwhite@da.state.nm.us

Susan M. Williams  
Williams & Works, P.A.  
PO Box 1483  
Corrales, NM 87048-1483  
(505) 899-7994  
(505) 899-7972 (fax)

Matthew Justin Wilson  
NM Human Services Dept.  
Child Support Enforcement Division  
2542 Cerrillos Rd., Ste. A  
Santa Fe, NM 87505  
(505) 827-1965  
Matt.Wilson@state.nm.us

Jane B. Wishner  
PO Box 93758  
Albuquerque, NM 87199-3758  
(505) 858-1076  
(505) 858-1076 (fax)  
jbwish@aol.com

Sarah S. Works  
Williams & Works, P.A.  
PO Box 1483  
Corrales, NM 87048-1483  
(505) 899-7994  
(505) 899-7972 (fax)

Charles A. Wyman  
PO Box 90952  
Albuquerque, NM 87199-0952  
(505) 221-6260

Lawrence P. Zamzok  
6311 Montano Rd. NW  
Albuquerque, NM 87120  
(505) 898-6311  
(505) 898-7313 (fax)  
LPZ@lzamzok.com

Clerk’s Certificate of Name, Address, and/or Telephone Changes for Law Firms

The following attorneys and law firm can be found at the address below:  
Maddox & Holloman, P.C.  
205 E. Bender, Ste. 150 (88240)  
P.O. Box 2508  
Hobbs, NM 88241-2508  
(505) 393-0505  
(505) 397-2646 (fax)

James M. Maddox  
madlawjm@leaco.net  
Scotty A. Holloman  
scotty@leaco.net  
Lee Ann Kirksey  
lak@leaco.net  
Erin Leigh Sumrall  
esumrall@leaco.net

The following attorneys and law firm can be found at the address below:  
Narvaez Law Firm, P.A.  
601 Rio Grande Blvd. NW  
(87104)  
PO Box 25967  
Albuquerque, NM 87125-0967  
(505) 248-0500  
(505) 247-1344 (fax)

Henry F. Narvaez  
narvaez@narvaezlawfirm.com  
H. Nicole Werkmeister  
werkmeister@narvaezlawfirm.com  
Carlos M. Quiñones  
quirones@narvaezlawfirm.com  
Martin R. Esquivel  
esquivel@narvaezlawfirm.com  
Bryan Christopher Garcia  
garcia@narvaezlawfirm.com  
Ernestina R. Cruz  
tcruz@narvaezlawfirm.com  
Duane Z. Padilla  
dpadilla@narvaezlawfirm.com

The following attorneys and agency can be found at the address below:  
NM Human Services Dept.  
Child Support Enforcement Division  
1000 Eighteenth Street NW  
Albuquerque, NM 87104  
(505) 222-9944 (telecopier)

Pamela Kay Garcia  
(505) 222-9920  
Aaron Griego  
(505) 222-9933  
Rachelle Klump  
(505) 222-9902  
Ed Meintzer  
(505) 222-9913  
Jan Schoenhaus  
(505) 222-9956  
Theresa Storey  
(505) 222-9927  
Carl Tyler Will  
(505) 222-9964

The following attorneys and agency can be found at the address below:  
Office of the District Attorney  
201 West Hill, Ste. 100  
Gallup, NM 87301  
(505) 722-2281  
(505) 863-4741 (fax)

Karl L. Gillson  
Kgillson@da.state.nm.us  
Terence Michael Gurley  
Tgurley@ci.gallup.nm.us  
Peter S. Burns  
Pburns@da.state.nm.us  
Michael Edward Calligan  
Mcalligan@da.state.nm.us  
James I. Patterson  
Jpatterson@da.state.nm.us  
Peter A. Robertson  
Probertson@da.state.nm.us  
Harutiun Kassakhian  
HKassakhian@da.state.nm.us  
Kerry M. Comiskey  
Kcomiskey@da.state.nm.us  
Barry Klopf  
BKlopf@da.state.nm.us
The following attorneys and law firm can be found at the address below:

**Sutin, Thayer & Browne, P.C.**

317 Paseo de Peralta  
(87501-1860)  
PO Box 2187  
Santa Fe, NM 87504-2187  
(505) 988-5521  
(505) 982-5297 (fax)

**Benjamin Allison**  
**Saul Cohen**  
**Robert G. Heyman**  
**Rachel Sarah King**  
**Julia L. Peters**  
**Ray Shollenbarger**  
**Michael G. Sutin**

---

**CLERK’S CERTIFICATE OF CHANGE TO INACTIVE STATUS**

**Heather L. Anderson**  
8504 Cherry Hills Rd. NE  
Albuquerque, NM 87111  
(505) 797-1416

**Corry Catherine Andrews**  
1111 Rosedale Road NE  
Atlanta, GA 30306  
(404) 885-9286

**Barbara A. Ball**  
163 Francis Dr. NE  
Port Charlotte, FL 33952  
(941) 627-5907

**William V. Ballew, III**  
DML Law  
201 W. Main, Ste. 201  
Missoula, MT 59802  
(406) 728-0810

**Jennifer M. Barnett**  
111 W. Monroe St., Ste. 1107  
Phoenix, AZ 85003  
(602) 324-5440

**Roberta Beyer**  
PO Box 507  
Mesilla, NM 88046-0507  
(505) 977-4378

**Michael J. Bongard**  
Office of the District Attorney  
31 S. Main St.  
Yerington, NV 89447  
(775) 463-6511

**James M. Brandenburg**  
428 Theodora Street  
Taos, NM 87571  
(505) 758-3521

**Donn F. Brislen**  
1001 Richmond Dr. NE  
Albuquerque, NM 87106  
(505) 266-8514

**Monica Elizabeth Brock**  
1374-B Danielson Rd.  
Santa Barbara, CA 93108  
(805) 690-1612

**Courtney L. Brown**  
PO Box 1507  
Taos, NM 87571-1507  
(505) 751-0351

**Miles Leachman Buckingham**  
2670 Dahlia Street  
Denver, CO 80207  
(303) 941-4586

**Bruce Wesley Buirkle**  
PO Box 820031  
Dallas, TX 75382-0031  
(972) 716-0600 Ext. 328

**Herbert Maxwell Campbell, II**  
1612 San Patricio SW  
Albuquerque, NM 87104  
(505) 242-5612

**J. Lee Cathey**  
PO Box 37  
Carlsbad, NM 88220-0037  
(505) 887-7806

**Yvonne Janette Co**  
16-B Camino Calabasas  
Santa Fe, NM 87506  
(505) 438-2929

**Michelle S.Y. Cramer**  
3872 E. Allerton Ave.  
Cudahy, WI 53110  
(414) 483-2559

**Maria Delgado-Richardson**  
1581F Eglin Way  
Bolling AFB, DC 20032  
(202) 561-3209

**Barbara J. de Weever**  
PO Box 9423  
Santa Fe, NM 87504-9423  
(505) 986-5834

**Jaima Marie Jackson**  
530 S. Sixth St.  
Las Vegas, NV 89101  
(702) 386-0404

**Bernard Kolbor**  
955 Santo Nino Place  
Santa Fe, NM 87501  
(505) 986-8936  
(505) 986-6125 (fax)

**Beth Christine Kontny**  
9009 University Parkway,  
#223  
Pensacola, FL 32514

**Carrie Elizabeth Latham**  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, FL 32114  
(386) 947-1556

**George H. Libman**  
7466 W. Shining Amber Lane  
Tucson, AZ 85743  
(520) 572-4023

**Evi M. Licona**  
13215 35th Ave. NE, Apt. C  
Seattle, WA 98125

**Robert G. Marcotte**  
1422 San Carlos SW  
Albuquerque, NM 87104  
(505) 247-3502

**Judith A. Minnes McLeod**  
405 W. Congress St., #4800  
Tucson, AZ 85701  
(520) 620-7300

**Linda Gates Merrell**  
6032 Downey, NE  
Albuquerque, NM 87109  
(505) 888-5034

**V. Colleen Miller**  
Virginia Office for Protection and Advocacy  
1910 Byrd Ave., Ste. #5  
Richmond, VA 23230  
(804) 225-2042

**Frederic S. Nathan, Jr.**  
Think New Mexico  
1227 Paseo de Peralta  
Santa Fe, NM 87501  
(505) 992-1315
CLERK CERTIFICATES

Jessica Rae Nelson
PO Box 214
Tama, IA 52339-0214
(505) 870-5491

Anne Noel Occhialino
2726 Connecticut Ave. NW, #704
Washington, DC 20008
(202) 663-4724

David Matthew Overstreet
2801 Sunrise Ave.
Alamogordo, NM 88310
(505) 442-1562

Lynne Marie Paretchan
1120 N.W. Couch Street,
Tenth Floor
Portland, OR 97209
(503) 727-2076

William Lee Parrish
3029 N. Tulsa Drive
Oklahoma City, OK 73107
(405) 942-0570

Jack Dean Pickel
PO Box 630
Las Cruces, NM 88006-6370
(505) 525-0176

Rebecca L. Rose
69 Concord Rd.
Billerica, MA 01821
(617) 448-3736

Gary M. Feuerman
PO Box 3051
Ranchos de Taos, NM 87557-3051
(505) 776-8660

Heather RaChan Lawson
1215 East West Highway,
Ste. 617
Silver Spring, MD 20910
(301) 562-9436

Cassandra Stubbs
Office of the Public Defender
300 Gossett Drive
Aztec, NM 87410
(505) 334-1883 ext. 105
(505) 334-0612 (fax)
estubbs@nmrd.state.nm.us

Kurt W. Thunberg
1136 County Road 15
PO Box 187
South Fork, CO 81154-0187
(505) 264-5321

James Patrick Toomey
741 N. Dearborn Street
Chicago, IL 60610
(312) 482-8200

Sarah Y. Vogel
700 Stewart St., #5220
Seattle, WA 98101-1271
(206) 553-2074

Rosalie A. Wallis
49 Crescent Circle
Rock Hill, NY 12775
(845) 791-7144
rwallis7@peoplepc.com

Mary Emily Schmidt-Nowara
2605 Adams Mill Road NW,
#31
Washington, D.C. 20009-8729

Craig G. Thomas
10309 Woodland Avenue NE
Albuquerque, NM 87112

David Eric Lowry
PO Box 886
Sultan, WA 98294-0886

Mary Elizabeth Chavez
12201 Apache Ave. NE
Albuquerque, NM 87112

J. Winston Henderson
P.O. Box 30531
Albuquerque, NM 87110-0351

IN MEMORIAM

Allen Gerlach
1207 Sigma Chi NE, Fl. 1
Albuquerque, NM 87106-4541

Samuel Mandel
1609 Stagecoach Rd. SE
Albuquerque, NM 87123-4436

Robert B. Stephenson
3805 Riverview Rd. NW
Albuquerque, NM 87105

Randolph M. Toth
2200 Fulkerson Dr.
Roswell, NM 88203-4132

Timothy P. Woolston
158 Washington Street NE
Albuquerque, NM 87108-2731

Benjamin S. Eastburn
709 Orchard Homes Pl.
Farmington, NM 87401
(505) 325-1462

E. Virgil Falloon
1345 South 21st Street
Lincoln, NE 68502-1624
(402) 435-6701
(402) 435-6710 (fax)

Thomas J. Mescall
4300 W. 119th Place
Arlington, IL 60005

Sarah Y. Vogel
700 Stewart St., #5220
Seattle, WA 98101-1271
(206) 553-2074

Rosalie A. Wallis
49 Crescent Circle
Rock Hill, NY 12775
(845) 791-7144
rwallis7@peoplepc.com

Mary Emily Schmidt-Nowara
2605 Adams Mill Road NW,
#31
Washington, D.C. 20009-8729

Craig G. Thomas
10309 Woodland Avenue NE
Albuquerque, NM 87112

David Eric Lowry
PO Box 886
Sultan, WA 98294-0886

Mary Elizabeth Chavez
12201 Apache Ave. NE
Albuquerque, NM 87112

J. Winston Henderson
P.O. Box 30531
Albuquerque, NM 87110-0351

IN MEMORIAM

Allen Gerlach
1207 Sigma Chi NE, Fl. 1
Albuquerque, NM 87106-4541

Samuel Mandel
1609 Stagecoach Rd. SE
Albuquerque, NM 87123-4436

Robert B. Stephenson
3805 Riverview Rd. NW
Albuquerque, NM 87105

Randolph M. Toth
2200 Fulkerson Dr.
Roswell, NM 88203-4132

Timothy P. Woolston
158 Washington Street NE
Albuquerque, NM 87108-2731

Benjamin S. Eastburn
709 Orchard Homes Pl.
Farmington, NM 87401
(505) 325-1462

IN MEMORIAM

Allen Gerlach
1207 Sigma Chi NE, Fl. 1
Albuquerque, NM 87106-4541

Samuel Mandel
1609 Stagecoach Rd. SE
Albuquerque, NM 87123-4436

Robert B. Stephenson
3805 Riverview Rd. NW
Albuquerque, NM 87105

Randolph M. Toth
2200 Fulkerson Dr.
Roswell, NM 88203-4132

Timothy P. Woolston
158 Washington Street NE
Albuquerque, NM 87108-2731

Benjamin S. Eastburn
709 Orchard Homes Pl.
Farmington, NM 87401
(505) 325-1462

IN MEMORIAM

Allen Gerlach
1207 Sigma Chi NE, Fl. 1
Albuquerque, NM 87106-4541

Samuel Mandel
1609 Stagecoach Rd. SE
Albuquerque, NM 87123-4436

Robert B. Stephenson
3805 Riverview Rd. NW
Albuquerque, NM 87105

Randolph M. Toth
2200 Fulkerson Dr.
Roswell, NM 88203-4132

Timothy P. Woolston
158 Washington Street NE
Albuquerque, NM 87108-2731

Benjamin S. Eastburn
709 Orchard Homes Pl.
Farmington, NM 87401
(505) 325-1462

IN MEMORIAM

Allen Gerlach
1207 Sigma Chi NE, Fl. 1
Albuquerque, NM 87106-4541

Samuel Mandel
1609 Stagecoach Rd. SE
Albuquerque, NM 87123-4436

Robert B. Stephenson
3805 Riverview Rd. NW
Albuquerque, NM 87105

Randolph M. Toth
2200 Fulkerson Dr.
Roswell, NM 88203-4132

Timothy P. Woolston
158 Washington Street NE
Albuquerque, NM 87108-2731
RULES/ORDERS
From the New Mexico Supreme Court

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

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

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

Your comments must be received by the clerk on or before March 18, 2005, to be considered by the Court.

5-703. Predisposition report procedure.
A. Ordering the report. The court may order a predisposition report at any stage of the proceedings.
B. Inspection. The report shall be available for inspection by only the parties and attorneys by the date specified by the district court, and in any event, no later than [two (2) working] ten (10) days prior to any hearing at which a sentence may be imposed by the court.
C. Hearing. Before a sentence is imposed, the parties shall have an opportunity to be heard on any matter concerning the report. The court, in its discretion, may allow the parties to present evidence regarding the contents of the report.

PROPOSED NEW RULE:
5-805. Probation; violations.
A. Probation. The court may suspend or defer a sentence and impose conditions of probation during the period of suspension or deferral as provided by law.
B. Violation of probation. At any time during probation if it appears that the probationer may have violated the conditions of probation:
   (1) the court may issue a warrant for the arrest of a probationer. The warrant shall order that the probationer be taken into custody. If conditions of release are provided in the warrant, the probationer may appear on conditions of release, within five (5) days of the arrest of the probationer the sentencing judge or a judge designated by the sentencing judge shall review the notice of arrest or warrant and set conditions of release pending adjudication of the probation violation. If no conditions of release are set, the probationer may file a motion to appear before the judge to set conditions of release as provided in Rule 5-401 NMRA of these rules.
   (2) the court may issue a summons to answer a charge of violation of probation. If conditions of release are provided in the warrant, the court may suspend or defer the sentence and order that the probationer waives the right to appearances and reports pursuant to a program approved pursuant to Paragraph L of this rule and to submit to sanctions in accordance with the local rule and to the conditions of probation and parole of the probationer arrested for a technical violation of probation.
   (30) days after the latest of the following events:
   (a) the date of the filing of a motion to revoke probation;
   (b) if the proceedings have been stayed to determine the competency of the probationer, the date an order is entered compelling the probationer to participate in the revocation proceedings;
   (c) if an interlocutory or other appeal is filed, the date the mandate or order is filed in the district court disposing of the appeal;
   (d) if the probationer is not in custody within this state, within six (6) months after the latest of the events listed in Subparagraph (2) of this paragraph.
I. Waiver of time limits. The probationer may waive the time limits for commencement of a probation revocation hearing.
J. Extensions of time. Extensions of time for commencement of a hearing on a motion to revoke probation may be granted in the manner provided by Rule 5-604 NMRA for extension of time for commencement of trial.
K. Dismissal. If an adjudicatory hearing on the alleged probation violation is not held within the time limits prescribed by this rule, the motion to revoke probation shall be dismissed with prejudice.
L. Discovery. The parties shall exchange witness lists and disclose proposed exhibits no less than five (5) days before the adjudicatory hearing.
M. Standards of incarceration. A judicial district may by local rule approved by the Supreme Court in the manner provided by Rule 5-102 NMRA of these rules, establish a program for specified sanctions for probationers who agree to submit to automatic sanctions for a technical violation of the conditions of probation. For purposes of this program, a “technical violation” means any violation that does not involve new criminal charges or that does not involve the issuance of an arrest warrant after the probationer failed to report as required.
N. Applicability. Paragraphs C, F and G of this rule are not applicable to revocation of probation proceedings that are initiated by the district attorney without a prior recommendation of the probation office to revoke probation.
OPINION
PATRICIO M. SERNA, JUSTICE

{1} Following a jury trial, Defendant Rodrigo Dominguez was convicted of voluntary manslaughter, contrary to NMSA 1978, § 30-2-3(A) (1994), aggravated battery, contrary to NMSA 1978, § 30-3-5 (1969), two counts of shooting at or from a motor vehicle, contrary to NMSA 1978, § 30-3-8(B) (1993), and conspiracy to commit tampering with evidence, contrary to NMSA 1978, §§ 30-22-5 (1963, prior to 2003 amendment), -28-2 (1979).  

{2} The Court of Appeals affirmed Defendant’s convictions in a unanimous memorandum opinion. This Court granted Defendant’s petition for writ of certiorari to the Court of Appeals on four issues: (1) whether his convictions of voluntary manslaughter and shooting at or from a motor vehicle violate double jeopardy; (2) whether his convictions of aggravated battery and shooting at or from a motor vehicle violate double jeopardy; (3) whether, in the alternative to the first two arguments, the two convictions of shooting at or from a motor vehicle violate double jeopardy; and (4) whether the Court of Appeals erred in refusing to consider Defendant’s argument of an erroneous jury instruction. Defendant has waived the fourth issue raised in his petition. In his brief in chief, Defendant raises a new issue not presented in his petition to this Court or in his arguments to the Court of Appeals: whether giving jury instructions on two of the three theories of first degree murder contained in NMSA 1978, § 30-2-1(A) (1994), without phrasing them in the alternative, constitutes overcharging. See State v. Reyes, 2002-NMSC-024, ¶¶ 10-17, 132 N.M. 576, 52 P.3d 948 (rejecting a claim that “convictions under [two] theories of first degree murder resulted from ambiguous jury instructions because the jury was not told that it could not convict [the defendant] for both deliberate murder and felony murder”); see also State v. Salazar, 1997-NMSC-044, ¶¶ 41-42, 123 N.M. 778, 945 P.2d 996 (stating that first degree murder is a single crime, whether supported by a single theory or by multiple theories, and upholding a general verdict of first degree murder under two alternative theories on the basis that there is “no requirement that the jurors . . . unanimously agree on one of the alternative theories presented” and “[u]nanimity was only required with regard to the overall charge of first degree murder”).

{3} We reject Defendant’s first two arguments because, as this Court has squarely held, the Legislature intended to provide for multiple punishments for these crimes. We also reject Defendant’s third point of error because the conduct supporting the two convictions of shooting at or from a vehicle is not unitary. We do not consider the issue raised for the first time in Defendant’s brief in chief. See Rule 12-502(C)(2) NMRA 2005 (“[O]nly the questions set forth in the petition will be considered by the [Supreme] Court.”). We affirm Defendant’s convictions.

I. Facts

{4} Defendant’s convictions stemmed from an incident in which Defendant and several of his friends went to a convenience store late one night to fight another group of individuals. Each member of Defendant’s group was armed with a gun that was supplied by

1 We note that an apparent oversight is contained in the judgment listing one of Defendant’s convictions as tampering with evidence rather than conspiracy to commit tampering with evidence. The signed verdict forms and direct polling of the jurors by the trial judge indicate that the jury found Defendant not guilty of tampering with evidence and guilty of conspiracy to commit tampering with evidence. The district court shall correct this error on remand. See State v. Soliz, 79 N.M. 263, 267, 442 P.2d 575, 579 (1968) (“The error in the judgment obviously is a result of inadvertence and is subject to amendment to conform with the verdict.”); Rule 5-113(B) NMRA 2005 (discussing the correction of clerical errors and errors due to oversight or omission).
Defendant, while none of the members of the other group had a gun. Both groups arrived in cars, and Defendant was the driver in his group’s car. After one member of the other group exited their vehicle with a baseball bat, Defendant’s group opened fire. Charles McClaugherty was in Defendant’s group. See generally State v. McClaugherty, 2003-NMSC-006, 133 N.M. 459, 64 P.3d 486. There was evidence at Defendant’s trial that McClaugherty exited the vehicle Defendant was driving, fired numerous times into the other car, and killed the driver, Ricky Soliz. Another shooter hit and wounded the man who exited the other group’s car, Vince Martinez. Three witnesses, one from Soliz’s group and two from Defendant’s group who were in a different car than the one Defendant was driving, testified to seeing numerous flashes of gunfire from the driver’s side of Defendant’s car, which would have been where Defendant was sitting. Experts linked two separate Glock .40 handguns to the shootings, and the evidence was consistent with each victim being shot with a different Glock .40 handgun. A member of Defendant’s group testified that when Defendant and McClaugherty returned to McClaugherty’s apartment after the shooting each was carrying a handgun consistent with a Glock .40. This witness testified that Defendant and McClaugherty bragged about the shooting to their friends immediately after the incident.

II. Voluntary Manslaughter and Shooting at or from a Motor Vehicle

{5} Defendant contends that his convictions of voluntary manslaughter and shooting at or from a motor vehicle in relation to the death of Soliz violate the protection against double jeopardy. The Double Jeopardy Clause in the United States Constitution, applicable in New Mexico through the Fourteenth Amendment, provides that a defendant shall not “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. This provision protects against multiple prosecutions for the same offense and against multiple punishments for the same offense arising out of a single prosecution. However, for multiple punishments such as Defendant’s convictions of voluntary manslaughter and shooting at a motor vehicle, the Double Jeopardy Clause only prevents a court from imposing greater punishment than the Legislature intended. Swafford v. State, 112 N.M. 3, 7, 810 P.2d 1223, 1227 (1991). “[T]he sole limitation on multiple punishments is legislative intent.” Id. at 13, 810 P.2d at 1233. We have adopted a two-part test for determining whether multiple punishments violate the constitutional protection against double jeopardy. Id. We ask, first, “whether the conduct underlying the offense is unitary” and, second, “whether the [L]egislature intended to create separately punishable offenses.” Id.

{6} In this case, the parties do not dispute that the convictions of voluntary manslaughter and shooting at or from a motor vehicle are based on the unitary conduct of Defendant aiding and abetting McClaugherty’s shooting of Soliz. Our analysis therefore focuses on legislative intent. “If the [L]egislature expressly provides for multiple punishments, the double jeopardy inquiry must cease. Absent a clear expression of legislative intent, a court must determine whether each statute creates a separate offense.” State v. Gonzales, 112 N.M. 14, 810 P.2d at 1234 (citation omitted). This elements inquiry asks “whether each provision requires proof of a fact which the other does not.” Blockburger, 284 U.S. at 304.

The rationale underlying the Blockburger test is that if each statute requires an element of proof not required by the other, it may be inferred that the [L]egislature intended to authorize separate application of each statute. Conversely, if proving violation of one statute always proves a violation of another (one statute is a lesser included offense of another, i.e., it shares all of its elements with another), then it would appear the [L]egislature was creating alternative bases for prosecution, but only a single offense.

Swafford, 112 N.M. at 9, 810 P.2d at 1229. Based on this rationale, “[i]f that test establishes that one statute is subsumed within the other, the inquiry is over and the statutes are the same for double jeopardy purposes—punishment cannot be had for both.” Id. at 14, 810 P.2d at 1234. “Conversely, if the elements of the statutes are not subsumed one within the other, then the Blockburger test raises only a presumption that the statutes punish distinct offenses. That presumption, however, is not conclusive and it may be overcome by other indicia of legislative intent.” Id. These other indicia include “the social evils sought to be addressed by each offense” and “the language, structure, and legislative history” of the two provisions. Id. at 9, 810 P.2d at 1229.

{7} We have previously applied this double jeopardy analysis in a context closely resembling the present case. In State v. Gonzales, 113 N.M. 221, 223-25, 824 P.2d 1023, 1025-27 (1992), the defendant was convicted of first degree murder and shooting into an occupied vehicle based on the same conduct and argued that these convictions violated double jeopardy. We noted that “[t]he question of whether convictions under several statutes constitute the same offense for double jeopardy purposes is a matter of determining the legislative intent.” Id. at 224, 824 P.2d at 1026. Applying Blockburger, we concluded that each crime contained an element that the other did not, thereby raising a presumption that the Legislature intended to create separately punishable offenses. Id. at 225, 824 P.2d at 1027.

Clearly, each statute in question in this appeal requires proof of an element that the other statute does not require. The murder statute requires proof of the unlawful killing of a human being which need not be accomplished by shooting at an occupied motor vehicle. The shooting at an occupied motor vehicle statute requires proof of discharging a firearm at an occupied vehicle but does not require the killing of a human being. Thus, the greater offense—murder—does not subsume the lesser offense—shooting into an occupied vehicle—because each requires proof of an element absent in the other.

Id. at 224-25, 824 P.2d at 1026-27 (citations omitted). We further concluded that “the statutes protect different social interests,” with the murder statute directed at preventing unlawful killings and the shooting at a vehicle statute directed at protecting the public from the reckless shooting into a vehicle and possible resulting property damage and bodily injury. Id. at 225, 824 P.2d at 1027. “In addition, while the statutes in question here may be violated together, they are not necessarily violated together.” Id. “Therefore, we find that the [L]egislature intended for separate punishment for unitary conduct that violated both statutes,” and thus, there was no double jeopardy violation. Id.

{8} Gonzales is controlling precedent and is directly on point. As in Gonzales, voluntary manslaughter does not require the element of discharging a firearm at or from a motor vehicle, but this is a required element for the crime of shooting at or from a motor vehicle. In addition, voluntary manslaughter contains the same element as the first degree murder conviction at issue in Gonzales that distinguishes these crimes from the crime of shooting at or from a vehicle: the element of “the unlawful killing of a human being.” Section 30-2-3.
Defendant argues that this element is not truly distinct for voluntary manslaughter because the element of great bodily harm for shooting at a motor vehicle may include death. See State v. Varela, 1999-NMSC-045, ¶¶ 10-14, 128 N.M. 454, 993 P.2d 1280 (concluding that the element of great bodily harm for the crime of shooting at a dwelling or occupied building under Section 30-3-8(A) may include death). We reject this argument for two reasons.

{9} First, our analysis in Gonzales implicitly holds that the element of great bodily harm for shooting at a motor vehicle is distinct from the element of an unlawful killing for first degree murder. In Gonzales, the defendant was convicted of both first degree murder and shooting at a motor vehicle in relation to the death of a single victim. 113 N.M. at 223, 824 P.2d 1025. At that time, the shooting at a motor vehicle statute provided that the crime was a fourth degree felony if it did not result in great bodily harm and a third degree felony if it did result in great bodily harm. 1987 N.M. Laws, ch. 213, § 1. We take judicial notice of the record in Gonzales and note that the jury instruction for the crime of shooting at a motor vehicle in that case included the element of the victim suffering great bodily harm as a result of the shooting at a motor vehicle. See Miller v. Smith, 59 N.M. 235, 241, 282 P.2d 715, 719 (1955) (“This Court may take judicial notice under proper circumstances of other cases which are, or have been, on its docket . . . .”); State v. Turner, 81 N.M. 571, 576, 469 P.2d 720, 725 (Ct. App. 1970) (similar). In addition, in Varela, our interpretation of Section 30-3-8 relied on NMSA 1978, § 30-1-12(A) (1963), which defines great bodily harm as “an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.” Varela, 1999-NMSC-045, ¶ 12. This same statutory definition of great bodily harm was in existence at the time we decided Gonzales. Under these circumstances, we believe that our opinion in Gonzales implicitly assumes, as we later explicitly held in Varela, that evidence of death could support a jury finding on the element of great bodily harm. See Gonzales, 113 N.M. at 225, 824 P.2d at 1027 (“[D]eath may occur as a result of shooting into an occupied vehicle . . . .”); see also Varela, 1999-NMSC-045, ¶ 14. We nevertheless held in Gonzales that the element of an unlawful killing for first degree murder was distinct from the elements of shooting at a motor vehicle, including the element of great bodily harm. Thus, contrary to Defendant’s argument, Varela does not alter our holding in Gonzales, and there has been no change in the elements of the crime of shooting at a motor vehicle to distinguish our analysis in Gonzales from the Blockburger analysis in the present case.2

{10} Second, Defendant’s argument that death and great bodily harm are identical elements for purposes of a Blockburger test ignores the plain language of the Legislature. The shooting at or from a motor vehicle statute does not require proof of a death or include death as an alternative to great bodily harm. Section 30-3-8(B). Had Solisz survived his wounds, Defendant would still have been liable for the same crime of shooting at a motor vehicle resulting in great bodily harm, Section 30-3-8(B), and would still have received the same elements instruction for this crime. See UJI 14-344 NMRA 2005. However, in the same factual scenario, Defendant could not have been convicted of voluntary manslaughter because the element of an unlawful killing would be absent. As a result, proving the violation of shooting at a motor vehicle resulting in great bodily harm does not always prove the violation of voluntary manslaughter such that one crime subsumes the other. See Swafford, 112 N.M. at 9, 810 P.2d at 1229 (“[I]f each statute requires an element of proof not required by the other, it may be inferred that the [L]egislature intended to authorize separate application of each statute.”). These crimes have distinct elements under the Blockburger test.

{11} We recognize that we stated in Varela that “the Legislature equated ‘causing death’ and ‘great bodily harm.’” 1999-NMSC-045, ¶ 14 (emphasis added). It would perhaps have been clearer if we had stated that a rational jury could find the element of great bodily harm beyond a reasonable doubt based on evidence of death. “An injury that causes death, surely often, if not always, causes a high probability of death.” Id. Factually, evidence that an injury has actually caused death may be used to demonstrate the element of great bodily harm because, consistent with Section 30-1-12(A), it establishes an injury that creates a high probability of death. See Varela, 1999-NMSC-045, ¶ 13. However, this evidentiary use of the fact of death does not mean that death, as a statutory term, is interchangeable with great bodily harm for purposes of the Criminal Code.

{12} Comparing the voluntary manslaughter statute with the shooting at or from a motor vehicle statute and the statutory definition of great bodily harm in Section 30-1-12(A), it is clear that the Legislature does not “equate” death with great bodily harm. Otherwise, great bodily harm of any form as defined in Section 30-1-12(A) would be sufficient to prove an unlawful killing within the meaning of the voluntary manslaughter statute, which would be clearly contrary to the Legislature’s intent and would be an absurd result. Voluntary manslaughter, like first and second degree murder, requires a death; the second degree felony of shooting at or from a motor vehicle resulting in great bodily harm does not. Thus, while death may be one evidentiary means of proving great bodily harm under Section 30-3-8(B), death is not a statutory element of the crime. For a Blockburger same elements test, this distinction is critical. “[T]he proper inquiry focuses upon the elements of the statutes in question—the evidence and proof offered at trial are immaterial.” Swafford, 112 N.M. at 8, 810 P.2d at 1228; accord Illinois v. Vitale, 447 U.S. 410, 416 (1980) (“[T]he Blockburger test focuses on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial.”); Iannelli v. United States, 420 U.S. 770, 785 n.17 (1975) (“[A]plication of the test focuses on the statutory elements of the offense. If each requires proof of a fact that the other does not, the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.”).

{13} Because the statutory definition of shooting at or from a motor vehicle resulting in great bodily harm in Section 30-3-8(B) does

2 At oral argument, Defendant relied on two cases from the United States Supreme Court, Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) and Blakely v. Washington, 124 S. Ct. 2531, 2536 (2004), as establishing a change in the law since we decided Gonzales that would require the fact of great bodily harm to be submitted to the jury. However, even prior to these cases, as demonstrated by the jury instructions actually used in Gonzales, New Mexico courts treated great bodily harm as an element of shooting at a motor vehicle to be decided by the jury when this alternative of the crime is charged. These federal cases therefore do not modify our elements analysis in Gonzales.
not include death as an element of the crime, the fact that the State proved the element of great bodily harm with evidence of Solisz’s death does not require us to construe Section 30-3-8(B) as a homicide statute. Consistent with the statutory elements, and similar to the jury instructions in Gonzales, the jury instructions in this case listed the killing of Solisz as an element of voluntary manslaughter but listed only great bodily harm to Solisz as an element of shooting at or from a motor vehicle. Compare UJI 14-220 NMRA 2005 (listing the element of killing the victim for voluntary manslaughter), with UJI 14-344 (listing the element of causing great bodily harm for shooting at or from a motor vehicle). The jury also received an instruction defining great bodily harm that mirrors the statutory definition of the term in Section 30-1-12(A). See UJI 14-131 NMRA 2005. Therefore, the element of an unlawful killing for voluntary manslaughter is distinct from the elements of the crime of shooting at or from a motor vehicle.

Moreover, voluntary manslaughter has an additional element that differs from the elements of shooting at or from a motor vehicle. The mens rea required for voluntary manslaughter is the same as the mens rea required for second degree murder: objective knowledge that the defendant’s acts create a strong probability of death or great bodily harm. NMSA 1978, § 30-2-1(B) (1994) (defining second degree murder); State v. Brown, 1996-NMHC-073, ¶¶ 16-17, 122 N.M. 724, 931 P.2d 69 (stating that objective knowledge, rather than subjective knowledge, is required for second degree murder); UJI 14-220 (listing the elements for voluntary manslaughter). By contrast, shooting at or from a motor vehicle requires a reckless disregard, Section 30-3-8(B), which is defined as knowledge that the defendant’s “conduct created a substantial and foreseeable risk, that [the defendant] disregarded that risk and that [the defendant] was wholly indifferent to the consequences of [the] conduct and to the welfare and safety of others.” UJI 14-1704 NMRA 2005, incorporated by reference in UJI 14-344 use note 3. The mens rea for shooting at or from a motor vehicle, although requiring knowledge of a substantial risk and indifference to the safety of others, does not require knowledge of a strong probability of death or great bodily harm. Thus, as the Court of Appeals recently held in affirming separate convictions for second degree murder and shooting at or from a motor vehicle, the mens rea element for voluntary manslaughter is distinct from the elements of shooting at or from a motor vehicle. State v. Mireles, 2004-NMCA-100, ¶ 29, 98 P.3d 727, cert. denied, 2004-NMCERT-008; cf. Varela, 1999-NMHC-045, ¶¶ 16-18 (concluding, based on differing mens rea requirements, that the crime of shooting at a dwelling is not a lesser included offense of second degree murder for purposes of satisfying the strict elements test required for felonies to serve as a predicate for felony murder). Because voluntary manslaughter contains two elements that are not required for shooting at or from a motor vehicle and Section 30-3-8 requires the element of discharging a firearm at or from a motor vehicle, which is not required for voluntary manslaughter, we conclude that voluntary manslaughter and shooting at or from a motor vehicle resulting in great bodily harm have distinct elements under a Blockburger test, and there is a presumption that the Legislature intended to punish these crimes separately.

As we concluded in Gonzales, other indicia of legislative intent support the presumption of permissible multiple punishments. Most notably, the voluntary manslaughter statute and the shooting at or from a motor vehicle statute serve different legislative purposes. See Gonzales, 113 N.M. at 225, 824 P.2d at 1027 (describing the different purposes served by the murder statute and the statute shooting at a motor vehicle statute). Also, “while the statutes in question here may be violated together, they are not necessarily violated together.” Id.; see State v. Sosa, 1997-NMHC-032, ¶ 36, 123 N.M. 564, 943 P.2d 1017 (“The fact that each statute may be violated independent of the other will also lend support to the imposition of sentences for each offense.”).

Despite these persuasive indicia of legislative intent, Defendant contends that the presumption of multiple punishments is rebutted by our prior statement that “one death should result in only one homicide conviction.” State v. Santillanes, 2001-NMHC-018, ¶ 5, 130 N.M. 464, 27 P.3d 456 (quotation marks and quoted authority omitted). We disagree. We applied this principle in Santillanes because, for the applicable alternatives of the statutes at issue, vehicular homicide and child abuse resulting in death, it was “the death of another that the Legislature intended to punish, not the manner in which it was accomplished.” Id. (quotation marks and quoted authority omitted); accord State v. House, 2001-NMCA-011, ¶ 20, 130 N.M. 418, 25 P.3d 257 (“[T]he subject of punishment of vehicular homicide is the killing of another, not the unlawful operation of a motor vehicle.”). This common legislative purpose between the two homicide statutes rebutted the presumption in favor of multiple punishments that had been created by an application of the Blockburger test. Santillanes, 2001-NMHC-018, ¶ 23. Contrary to this analysis, however, the statutes at issue in the present case do not contain this identity of purpose. As we have just explained, the crime of shooting at or from a motor vehicle has a different purpose than punishing the death of another; it “is more narrowly designed to protect the public from reckless shooting into a vehicle and the possible property damage and bodily injury that may result.” Gonzales, 113 N.M. at 225, 824 P.2d at 1027; accord State v. Highfield, 113 N.M. 606, 608, 830 P.2d 158, 160 (Ct. App. 1992) (rejecting the argument that Section 30-3-8 is “addressed to bodily integrity” and stating that, “[i]n enacting Section 30-3-8, we believe the [L]egislature was concerned with conduct typically designed to terrorize or intimidate”).

While death may occur as a result of shooting into an occupied vehicle, we must strictly construe the social purpose protected by each statute.” Gonzales, 113 N.M. at 225, 824 P.2d at 1027; accord Swafford, 112 N.M. at 14-15, 810 P.2d at 1234-35 (“[C]are must be taken in describing the evils sought to be prevented—social evils can be elusive and subject to diverse interpretation. Accordingly, the social evils proscribed by different statutes must be construed narrowly . . . .”) (footnote omitted). As a result, the crime of shooting at or from a motor vehicle cannot be construed as a homicide crime within the meaning of Santillanes. Voluntary manslaughter is the only homicide conviction Defendant received for Solisz’s death, and thus, the double jeopardy principle from Santillanes is inapposite. Applying the one death/one homicide conviction rule from Santillanes to the conviction of shooting at or from a motor vehicle would frustrate the Legislature’s intent to address a different social evil than homicide. We thus apply our holding in Gonzales and conclude that the Legislature intended to create separately punishable offenses in enacting these two statutes.

III. Aggravated Battery and Shooting at or from a Motor Vehicle

As with the convictions related to the death of Solisz, Defendant argues that his convictions of both aggravated battery and shooting at or from a motor vehicle for the unitary conduct of shooting Martinez violates double jeopardy. For reasons similar to those expressed above, we reject this argument.
{18} Our analysis of this claim again focuses on legislative intent. Applying the Blockburger same elements test, we agree with Defendant’s concession that each of these crimes contains an element that the other does not. Aggravated battery requires an intent to injure, which is not an element of shooting at or from a motor vehicle. The crime of shooting at or from a motor vehicle requires the discharge of a firearm at or from a motor vehicle, which is not an element of aggravated battery. Thus, there is a presumption that the Legislature intended to create separately punishable offenses.

{19} Other indicia of legislative intent support this presumption. These two statutes have different social aims. “The aggravated battery statute is directed at preserving the integrity of a person’s body against serious injury.” State v. Valles, 2000-NMCA-075, ¶ 18, 129 N.M. 424, 9 P.3d 668. As noted above, the purpose of the shooting at or from a motor vehicle statute is not principally to protect bodily integrity, Highfield, 113 N.M. at 608, 830 P.2d at 160; it has a narrower goal of protecting the public from reckless shooting at or from a vehicle. Gonzales, 113 N.M. at 225, 824 P.2d at 1027. This crime reflects the Legislature’s judgment that traditional homicide and assault and battery crimes are inadequate to respond to the particular dangers involved with motor vehicle shootings. For shootings from a motor vehicle, including drive-by shootings, the Legislature was concerned with the heightened risk of harm to a larger number of people from firing out of a moving object and the ease of escape from use of a vehicle during the commission of the crime. For shooting at a vehicle, the Legislature directed its attention at the substantial dangers associated with firing on an enclosed space that is likely to be occupied by people. Addressing an analogous question, we concluded in Sosa that the crimes of aggravated assault with a deadly weapon and shooting into a vehicle proscribe different evils. 1997-NMSC-032, ¶ 38; accord People v. Rivera, 550 N.W.2d 593, 595 (Mich. Ct. App. 1996) (allowing convictions for the crimes of assault with intent to commit murder and discharge of a firearm from a vehicle in part because “[t]he social norms protected by the respective statutes differed markedly”). Similarly, in Highfield, the Court of Appeals, relying on Gonzales, determined that assault with intent to commit a violent felony and shooting at a dwelling protect different social norms and achieve separate legislative policies. 113 N.M. at 608-09, 830 P.2d at 160-61.

{20} As another indicator of legislative intent, it is possible to commit each of these crimes without committing the other. If an individual fires a gun out of a car with reckless disregard but without a specific intent to injure, as by shooting randomly or in the air, and causes great bodily harm, the individual will have violated Section 30-3-8(B) but will not have committed aggravated battery. There are also, of course, a multitude of ways to commit aggravated battery without the involvement of a motor vehicle.

{21} We conclude that the Legislature intended to create separately punishable offenses by enacting the aggravated battery statute and the shooting at or from a motor vehicle statute. We therefore reject Defendant’s claim that these two convictions violate double jeopardy.

IV. Two Convictions for Shooting at or from a Motor Vehicle

{22} As an alternative to his first two double jeopardy arguments, Defendant contends that his two convictions of shooting at or from a motor vehicle violate the protection against double jeopardy. This argument relates to multiple convictions under a single statute, which has been described as a unit of prosecution claim and distinguished from the double description claims addressed above relating to multiple convictions under separate statutes. See Swafford, 112 N.M. at 8, 810 P.2d at 1228. For unit of prosecution cases, “[t]he relevant inquiry . . . is whether the [L]egislature intended punishment for the entire course of conduct or for each discrete act.” Id. In this context, there is “a presumption of lenity that, absent an express indication to the contrary, the [L]egislature did not intend to fragment a course of conduct into separate offenses.” Id. Before addressing whether the Legislature intended to divide unitary conduct into multiple units of prosecution, however, we must first determine whether the conduct underlying the two convictions is unitary or discrete. “Clearly, if the defendant commits two discrete acts violative of the same statutory offense, but separated by sufficient indicia of distinctness, then a court may impose separate, consecutive punishments for each offense.” Id. at 13, 810 P.2d at 1233.

{23} We believe that the facts in this case support a conclusion that Defendant’s conduct with respect to each conviction under Section 30-3-8 was distinct rather than unitary. In assessing whether conduct is unitary or distinct in a unit of prosecution case, we look to a number of indicia of distinctness. It is firmly established in New Mexico law that the existence of multiple victims is an important factor both in assessing whether conduct is unitary and in determining, in accordance with legislative intent, the appropriate unit of prosecution for crimes of violence. Herron v. State, 111 N.M. 357, 361, 805 P.2d 624, 628 (1991) (stating that “multiple victims will likely give rise to multiple offenses”); State v. Roper, 2001-NMCA-093, ¶¶ 10-13, 131 N.M. 189, 34 P.3d 133; State v. Castaneda, 2001-NMCA-052, ¶¶ 12-14, 130 N.M. 679, 30 P.3d 368; House, 2001-NMCA-011, ¶ 24; State v. Morro, 1999-NMCA-118, ¶ 19, 127 N.M. 763, 987 P.2d 420; State v. Barr, 1999-NMCA-081, ¶¶ 17-23, 127 N.M. 504, 984 P.2d 185; State v. Johnson, 103 N.M. 364, 374, 707 P.2d 1174, 1184 (Ct. App. 1985). In addition to this factor, other indicia of distinctness include the temporal proximity of the acts, the spatial proximity of the acts, the similarity of the acts, the location of the victim at the time of the acts, the identity and number of victims for each act, the identity and number of perpetrators for each act, the existence of any intervening events, the sequence of the acts, and the defendant’s mental state or objective during each act. See Swafford, 112 N.M. at 13-14, 810 P.2d at 1233-34; Herron, 111 N.M. at 361, 805 P.2d at 628; Barr, 1999-NMCA-081, ¶ 16.

{24} In Gonzales and Varela, we determined that the firing of multiple bullets from a single gun without any separation of time and space was a unitary act. Varela, 1999-NMSC-045, ¶ 39; Gonzales, 113 N.M. at 224, 824 P.2d at 1026. However, in the present case, the evidence of distinctness extends far beyond the firing of multiple bullets. In addition to this fact, this case involves the important factor of multiple victims. The evidence further supported a finding that each victim was shot with a different gun. There were also multiple perpetrators, with a reasonable inference that different principals shot different victims. Cf. State v. Perez, 2002-NMCA-040, ¶¶ 31-32, 132 N.M. 84, 44 P.3d 530 (concluding that the defendant’s conduct was not unitary because “there were two victims and four perpetrators”). The two victims, as well as the two shooters, were separated by space. Cf. Mireles, 2004-NMCA-100, ¶¶ 27-28 (concluding that conduct supporting convictions for second degree murder and shooting at or from a motor vehicle was separated by time and space, and thus not unitary, because the defendant initially shot the victim from inside a car and then pursued the victim in order to shoot him again); Barr, 1999-NMCA-081, ¶ 20 (“[C]ertain of the criminal acts were separated in time and space from each other, they involved...”).
these two criminal statutes, one statute is not subsumed by the other; the elements of each are different. That point, however, proves little. The majority tries to have it both ways. For a single death, Defendant was convicted of both voluntary manslaughter and shooting at or from a motor vehicle. We also conclude that Defendant’s conduct supporting his two convictions for the crime of shooting at or from a motor vehicle was non-unitary. For these reasons, we reject Defendant’s double jeopardy claims and affirm the Court of Appeals. We remand to the district court for correction of the judgment in conformity with the verdict.

V. Conclusion

Based on different statutory elements and purposes, we conclude that the Legislature intended to provide for multiple punishments for the crimes of voluntary manslaughter and shooting at or from a motor vehicle and for the crimes of aggravated battery and shooting at or from a motor vehicle. We also conclude that Defendant’s conduct supporting his two convictions for the crime of shooting at or from a motor vehicle was non-unitary. For these reasons, we reject Defendant’s double jeopardy claims and affirm the Court of Appeals. We remand to the district court for correction of the judgment in conformity with the verdict.

IT IS SO ORDERED.

PATRICIO M. SERNA, Justice

WE CONCUR:
PAMELA B. MINZNER, Justice
PETRA JIMENEZ MAES, Justice
RICHARD C. BOSSON, Chief Justice (concurring in part and dissenting in part)
EDWARD L. CHÁVEZ, Justice (dissenting)

RICHARD C. BOSSON, CHIEF JUSTICE
(Concurring In Part And Dissenting In Part)

The principle enunciated in State v. Santillanes, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456 expresses a long-standing tenet of our criminal jurisprudence that, for a single death, there can be only one death conviction. In my view, the majority opinion seriously erodes this vital principle. It reaffirms State v. Gonzales, 113 N.M. 221, 824 P.2d 1023 (1992), while professing continuing loyalty to Santillanes. The majority tries to have it both ways. For a single death, Defendant was convicted of both voluntary manslaughter and shooting from a motor vehicle causing that same death. By concluding that Defendant’s double jeopardy rights were not violated, the majority walks an invisible line. Respectfully, I am compelled to dissent. I concur with the majority on all remaining issues.

The majority stresses that under the Swafford/Blockburger analysis, these two criminal statutes—manslaughter and shooting from a vehicle—do not violate double jeopardy. Using that test, I agree, and easily so. Under Blockburger, when comparing the elements of these two criminal statutes, one statute is not subsumed by the other; the elements of each are different. That point, however, proves little. The Blockburger analysis only creates a presumption in favor of multiple punishment. The presumption is not conclusive and can be overcome by other indicia of legislative intent. See State v. Santillanes, 2000-NMCA-017, ¶ 7, 128 N.M. 752, 998 P.2d 1203 [hereafter Santillanes 1].

In both the Court of Appeals opinion in Santillanes and the opinion of this Court, we acknowledged that the two statutes involved in that particular case, vehicular manslaughter and child abuse resulting in death, punished “distinct offenses.” 2001-NMSC-018, ¶ 5. As with the present situation, the two criminal statutes created offenses with different elements under the Blockburger analysis. Applying only Blockburger, double jeopardy did not bar multiple convictions. But that was not the end of the matter. Judge Apodaca, writing for the Court of Appeals in Santillanes, concluded that the Blockburger presumption “is rebutted by the generally accepted notion that one death should result in only one homicide conviction.” Santillanes 1, 2000-NMCA-017, ¶ 8, adopted by Santillanes, 2001 NMSC-018, ¶ 5. In other words, it does not matter that the two criminal statutes possess distinctive elements under Blockburger. Death is different, we said. For one death, there can only be one death conviction, we said. This is settled law.

Importantly, that “generally accepted notion” is not confined to Santillanes; it has been affirmed in several opinions both before and after Santillanes was decided. See State v. Reyes, 2002-NMSC-024, ¶ 18, 132 N.M. 576, 52 P.3d 948; State v. Mor, 1997-NMSC-060, ¶ 64, 124 N.M.346, 950 P.2d 789; State v. Cooper, 1997-NMSC-058, 124 N.M. 277, 949 P.2d 660; State v. Pierce, 110 N.M. 76, 85, 792 P.2d 408, 417 (1990); State v. Crain, 1977-NMCA-101, ¶ 15, 124 N.M. 84, 946 P.2d 1095; State v. Landgraf, 1996-NMCA-024, ¶ 31, 121 N.M. 445, 913 P.2d 252. Several times in the past we have stated that it is “the death of another the legislature intended to punish, not the manner in which it was accomplished.” Santillanes, 2001-NMSC-018, ¶ 5; see State v. Landgraf, 1996-NMCA-024, ¶ 31. That “notion” is now a mainstay of New Mexico law and merits our respect.

The majority opinion seeks to rationalize its betrayal of Santillanes by stating that the shooting from a vehicle statute, Section 30-3-8, is intended only to punish the act of shooting from a motor vehicle, rather than the resulting injury, and therefore there is no
double conviction or punishment for the same death. This argument is belied by the very language of the statute. Other than the basic, lesser offense of shooting from a vehicle regardless of consequence (a fourth degree felony), punishment in Defendant’s instance is grounded on the harm actually inflicted. Defendant received an enhanced sentence for this harm. Therefore, the statute evinces a specific legislative intent to punish not just the act of shooting from a car, but also the degree of personal injury imposed, in this case death. Clearly, for the drive-by shooter, the greater the harm inflicted, the greater the punishment. Defendant is living proof of that fact.

[33] Defendant’s situation is far from unique; today’s opinion has far-reaching implications. There are other, similarly phrased criminal statutes. If shooting from a vehicle causing great bodily harm can be charged simultaneously with homicide for the same resulting death, then this changes the paradigm for other criminal statutes that have a “great bodily injury” or “death” enhancement. Unless we limit the present case to the present statute, these other statutes become fair game for overcharging based on multiple offenses for a single death. See NMSA 1978, § 30-3-9 (1989) (battery of school personnel, “great bodily harm or death”); NMSA 1978, § 30-3-9.1 (2001) (battery of sports officials, “death or great bodily harm”); NMSA 1978, § 30-3-16 (1993) (aggravated battery against a household member, “great bodily harm or death”). NMSA 1978, § 30-17-6 (1963) (aggravated arson, “causing a person great bodily harm”); NMSA 1978, § 30-22-17 (1963) (assault by prisoner, “causing or attempting to cause great bodily harm”). Future defendants could be charged under boutique criminal statutes describing the manner in which the person was killed, in addition to the traditional degrees of homicide. As a matter of sound judicial policy, we should avoid any shift in that direction.

[34] The majority opinion attempts to differentiate Santillanes from Gonzales on the ground that the specific statute, shooting from a vehicle, does not use the word “death” in its enhancement, but only “great bodily harm,” unlike Santillanes. The majority seeks to draw a strict line of demarcation between “death” and “great bodily harm.” In the majority’s view, this is not a death statute, and accordingly, there is no conflict with the homicide statutes. But, of course, this Court has previously equated proof of death with proof of great bodily harm. See State v. Varela, 1999-NMSC-045, ¶ 14, 128 N.M. 454, 993 P.2d 1280. In this case, Defendant was found guilty of inflicting great bodily harm precisely because he aided in the shooting and killing of the victim. No matter the rationalization, Defendant is being punished twice for the same, single death.

[35] Because of this professed line of demarcation in the majority opinion, it appears that we agree on one point. If the language of this statute had actually contained the word “death,” then based on the majority’s view, Santillanes would preclude prosecution under both the drive-by shooting statute and general homicide. This is an important point because, according to the majority, it means that criminal statutes that enhance for “death” still fall within the “generally accepted notion” of Santillanes. Therefore, at least some of the statutes previously mentioned could not be charged in conjunction with a homicide prosecution, such as, Section 30-3-9 (battery of school personnel, “great bodily harm or death”), Section 30-3-9.1 (battery of sports officials, “death or great bodily harm”), and Section 30-3-16 (aggravated battery against a household member, “great bodily harm or death”).

[36] The real reason for conflict here is that this Court decided Gonzales well before Santillanes came down, it sharpened the focus of our double jeopardy analysis. It is clear that Gonzales could not have anticipated Santillanes, and that Santillanes did not discuss Gonzales. The circumstances in which the two opinions were decided did not directly address the conflict we now face. Given this conflict, both decisions cannot stand; one must yield to the other. Gonzales saw no double jeopardy problem in convicting both the murder and the drive-by shooting responsible for that murder. Santillanes held the opposite. Possibly, Gonzales could be limited to the language of the statute as it was then written, which has since been amended. However, I favor reversing outright the portion of Gonzales now in conflict, because the principles promulgated in Santillanes are so heavily entrenched in our case law. In my view, we have to choose, and for me, the choice is clear.

RICHARD C. BOSSON, Chief Justice

EDWARD L. CHÁVEZ, JUSTICE
(Dissenting)

[37] Because I do not believe the Legislature intended multiple punishments for the unitary conduct at issue in this case, I dissent. A defendant who kills the victim in a single homicidal act should only be prosecuted under the homicide statutes. I also believe the Legislature intended to punish shooting from or at a vehicle as an elevated form of aggravated battery precluding multiple punishments.

Voluntary Manslaughter and Shooting from or at a Motor Vehicle

[38] After finding that Defendant’s accomplice shot and killed Solisz in a single homicidal act, the majority concludes that this unitary conduct could violate both a homicide statute, NMSA 1978, § 30-2-3(A) (1994) (voluntary manslaughter), and a statute that does not have as an element, the death of a victim, NMSA 1978, § 30-3-8(B) (1993) (shooting from or at a motor vehicle). When a defendant’s conduct is not unitary, he may be convicted of both murder and shooting from or at a vehicle without violating the double jeopardy clause. See State v. Mireles, 2004-NMCA-100, ¶¶ 25-28, 98 P.3d 727 (finding no double jeopardy violation where defendant shot a victim from inside a car, seriously wounding the victim, then chased after the victim and shot the victim until he died). However, unless there are distinct acts, one resulting in great bodily harm and the other in death, a defendant cannot be punished for great bodily harm when his single homicidal act results in the death of the victim. See, e.g., State v. Reyes, 2002-NMSC-024, ¶ 19, 132 N.M. 576, 52 P.3d 948 (upholding, inter alia, Defendant’s convictions for armed robbery and felony murder after finding substantial evidence that distinct instances of force resulted in the armed robbery and killing). It is also appropriate to use Section 30-3-8(B) as the predicate felony for a felony murder count when a defendant allegedly shoots from or at a vehicle with the requisite mens rea, causing death. See State v. Varela, 1999-NMSC-045, ¶¶ 18-21, 128 N.M. 454, 993 P.2d 1280. Where a defendant’s conduct is unitary, a defendant’s conviction for both felony murder and shooting from or at a vehicle would result in double jeopardy. See id. at ¶ 38. Here the jury rejected felony
murder with shooting from or at a vehicle as the predicate felony. Instead, the jury found sufficient provocation and found Defendant guilty of voluntary manslaughter.

{39} The majority’s reasoning that death may prove great bodily harm leads to punishment that is greater than what I believe the Legislature intended. Under the majority’s approach, a defendant who kills a victim in one act of violence could be convicted of murder, aggravated battery, simple battery and assault. After all, if death proves great bodily harm, great bodily harm proves injury, injury proves assault—all technically different harms. Because the Legislature did not include death as an element in Section 30-3-8(B) while enumerating different levels of harm with correspondingly increased levels of punishment, in my opinion the Legislature did not intend Section 30-3-8(B) to apply to unitary conduct resulting in death other than under the felony murder doctrine. See Swafford v. State, 112 N.M. 3, 14, 810 P.2d 1223, 1234 (1991) (instructing courts to look to statutory language, history, subject matter and relative punishment as “several guiding, but by no means exclusive, principles for divining legislative intent” to rebut the Blockburger presumption). At the very least, given the Legislature’s lack of express language to allow both convictions, I believe the rule of lenity applies and the correct presumption is that the Legislature did not intend to pyramid punishments for the unitary conduct at issue in this case. See id. at 15, 810 P.2d at 1235; State v. Landgraf, 121 N.M. 445, 454-55, 913 P.2d 252, 261-62 (Ct. App. 1996) (emphasizing that absent clear legislative intent, doubt should be resolved against turning a single act into multiple offenses). As such, I would vacate the shooting from or at a motor vehicle conviction as it relates to victim Solisz.

Aggravated Battery and Shooting from or at a Motor Vehicle

{40} I would also find double jeopardy with respect to Defendant’s convictions of aggravated battery and shooting from or at a motor vehicle. The shooting from or at a motor vehicle statute contains many of the same elements as the base statute of aggravated battery but increases the punishment from a third degree felony to a second degree felony because the same conduct involves shooting from or at a vehicle. See § 30-3-8(B); NMSA 1978, § 30-3-5(C) (1969). Under Swafford I believe this sentencing structure evinces a legislative intent to punish shooting from or at a vehicle as an elevated form of aggravated battery. See Swafford, 112 N.M. at 15, 810 P.2d at 1235 (holding that even if an initial presumption is created that the Legislature intended multiple punishments for the same conduct under Blockburger, it may be inferred that the Legislature did not intend punishment under both statutes if “one statutory provision incorporates many of the elements of a base statute, and extracts a greater penalty than the base statute”).

{41} Moreover, having concluded it would violate double jeopardy to convict Defendant of both a homicide crime and a non-homicide crime raises a substantial doubt whether the Legislature intended to punish Defendant’s unitary act resulting in injury to Martinez as both aggravated battery and shooting from or at a motor vehicle. Otherwise, Defendant would be punished more severely for the injury of one victim than for the death of another victim. I do not believe the Legislature intended such a result. As such, I would vacate the aggravated battery conviction.

{42} For these reasons, I dissent from Parts II and III and need not reach the issue discussed in Part IV.

EDWARD L. CHÁVEZ,
Justice

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3 Here we confront differing canons of statutory construction for divining legislative intent: the Blockburger analysis on one hand, and the quanta of punishment and rule of lenity on the other. See Swafford, 122 N.M. at 15, 810 P.2d at 1235. I recognize that aggravated battery requires an intent to injure the victim, while shooting from or at a vehicle only requires reckless disregard for another. Nevertheless, the similarities between the two statutes, with the elevated punishment for shooting from or at a vehicle, suggest to me that the Legislature intended to punish a single act, if done with at least reckless disregard for another, under only one of the two statutes. See
OPINION

MICHAEL D. BUSTAMANTE, JUDGE

1) This interlocutory appeal presents two issues: (1) whether the waiver of rights provision of the Uniform Probate Code, NMSA 1978, § 45-2-407 (1995), which became effective July 1, 1995, can be applied retroactively to a post-nuptial agreement entered into by the parties in 1980; and (2) whether language in the post-nuptial agreement waives the family allowance, NMSA 1978, § 45-2-402 (1995), and the personal property allowance, NMSA 1978, § 45-2-403 (1999). We hold that the statutory waiver provision does not apply retroactively. We further hold that the post-nuptial agreement was not a common law contractual waiver. We therefore reverse and remand to the district court.

BACKGROUND

2) This interlocutory appeal is brought by Dacia E. Salopek (Wife), the surviving spouse of the decedent, John Salopek. Wife and decedent were married twice, the most recent time being from April 24, 1980, until the decedent’s death on April 15, 2002. Wife and decedent entered into a “Post-Nuptial Agreement” on June 30, 1980. Following the appointment of a special administrator for the estate, Wife filed a claim against the estate for the statutory family and personal property allowances. The special administrator neither allowed nor disallowed the claims. Wife filed her Petition for Allowance of Claims for Personal Property Allowance and for Family Allowance with the district court, and requested a hearing. Decedent’s children filed an objection to the claims, arguing that the claims had been waived by the post-nuptial agreement entered into by Wife and decedent.

3) The district court conducted a hearing and denied the petitions for the allowances. In so ruling, the district court relied on language in the post-nuptial agreement that provides the agreement “relates to any real or personal property now owned or hereafter acquired,” and that the agreement is “binding on personal representatives.” The district court applied the current waiver provision, Section 45-2-407(D), enacted in 1995, and ruled that the language in the post-nuptial agreement met the definition of waiver as defined by the statute.

DISCUSSION

4) We review issues of statutory interpretation de novo. Bd. of Comm’rs of Doña Ana County v. Las Cruces Sun-News, 2003-NMCA-102, ¶ 19, 134 N.M. 283, 76 P.3d 36. Our goal is to ascertain legislative intent, which is primarily indicated by the plain language of the statute. Id.

5) Wife first argues that Section 45-2-407, the waiver of rights provision, cannot be applied retroactively to the 1980 post-nuptial agreement. Wife relies on New Mexico rules of statutory construction which state that statutes, except those dealing with remedial procedures, are presumed to operate prospectively unless there is clear legislative intent to give the statute retroactive effect. Coleman v. United Eng’rs & Constructors, Inc., 118 N.M. 47, 52, 878 P.2d 996, 1001 (1994) (holding that ten-year statute of repose did not operate retroactively in precluding worker’s personal injury action against corporation); Quintana v. Los Alamos Med. Ctr., Inc., 119 N.M. 312, 314, 889 P.2d 1234, 1236 (Ct. App. 1994). When a law affects a vested or substantive right it should have prospective application only. Swink v. Fingado, 115 N.M. 275, 279, 290, 850 P.2d 978, 982, 993 (1993).

6) Wife points out that when the waiver of rights provision was enacted in 1995, the language of the allowance provisions was changed so that the waiver and allowance provisions could be read together. Prior to 1995, the family and personal property allowances could be repudiated by the decedent only through a testamentary instrument. After the 1995 changes, the allowances could be renounced or repudiated through a will “or other governing instrument.” §§ 45-2-402 and -403. The addition of this language indicates an intent to have the allowance provisions read together with the waiver provisions. The “other governing instrument” language presumably al-
This change in language is an indication that the legislature intended the provisions to apply prospectively because the language in effect in 1980 did not provide for waiver by a decedent other than through a testamentary instrument. Wife also points out that when New Mexico adopted the Uniform Probate Code in 1975, the legislature did not adopt the waiver provision. Wife contends that this is another indication that the 1995 waiver provision was not intended to apply retroactively.

This Court has declined to apply other provisions of the Probate Code retroactively. In re Estate of Kerr, 1996-NMCA-063, ¶ 8, 121 N.M. 854, 918 P.2d 1354. In Kerr, we ruled that in determining whether mutual wills existed, the wills did not need to meet the Probate Code requirement for mutuality because the wills were drafted three years before the Probate Code came into effect. Id. That is similar to the situation in this case, where the waiver provisions in question were not in effect until fifteen years after the post-nuptial agreement was signed.

Respondents also argue that Wife “knew or should have known as a reasonable college student that she was waiving all rights to decedent’s property by the contractual language [in the agreement].” Respondents rely on the language in paragraphs two and six of the post-nuptial agreement, which state:

2. The wife hereby agrees that she will make no claim to any of the real or personal property now owned or hereafter acquired by the husband, who may take title to any property hereafter acquired as his separate estate, nor will the wife make any claim that community property funds have been used to improve the separate property of the husband. The wife further recognizes and agrees that the husband will be required to execute mortgages on the real property which he owns or security agreements on the personal property which he owns in order to acquire operating funds, and the wife by the terms of this agreement represents that she will make no claim to any of the property, real or personal, now mortgaged or hereafter mortgaged by the husband to any lending institution. The wife further agrees that she will make no claim that any income received by the husband from crops grown on the husband’s farm, including any farms that may be operated in a partnership, and that such income shall not be considered as community income, notwithstanding that the husband may have labored in earning such income, it being specifically agreed that the same shall constitute separate income of the husband.

6. This agreement shall inure to and be binding on the parties, their heirs, and estate personal representatives.

Common law waiver is an “intentional relinquishment or abandonment of a known right.” J.R. Hale Contracting Co. v. United N.M. Bank, 110 N.M. 712, 716, 799 P.2d 581, 585 (1990). Respondents do not explain how Wife could have waived her right to allowances that she testified she did not even know existed at the time of the purported waiver. Furthermore, there is no language anywhere in the post-nuptial agreement indicating an intent to waive the statutory allowances. The terms “waiver” or “allowances” do not appear anywhere in the agreement. The post-nuptial agreement states that “the parties desire by this agreement to establish the property rights which shall exist between the parties during their marriage.” The agreement further states that “[s]hould either party commence proceedings consistent with this opinion.

Our decision is bolstered by the strong public policy underlying the statutory allowance. This Court had occasion to review the intent and policy behind the statutory allowances in In re Estate of Jewell, 2001-NMCA-008, 130 N.M. 93, 18 P.3d 334. We held that the family allowance and personal property allowance are not subject to offset or defenses and pass outside the will by operation of law. Id. ¶ 9. We found that in adopting the Probate Code, “our legislature supplanted the flexibility of discretionary relief in favor of the certainty of a fixed allowance which is afforded without conditions, in a set amount, and apparently without regard for the size or composition of the estate.” Id. ¶ 15. The clear policy behind the statutory allowances is to provide a minimum guarantee to the surviving spouse that is insulated from decedent’s intent so that a surviving spouse is not left penniless and abandoned. Id. ¶ 9. The allowances constitute a statutory entitlement even if it means recovery must be made from a decedent’s sole and separate property. Id. The policy behind the allowances argues against finding a waiver in the absence of clear explicit language. The terms of this post-nuptial agreement are simply too general and too ambiguous to support a finding of waiver.

CONCLUSION

Consistent with our rules of statutory construction and existing case law in New Mexico, as well as the strong public policy in favor of awarding the allowances, we hold that the 1995 waiver of rights statute cannot be applied retroactively. And, the post-nuptial agreement does not qualify as a common law contractual waiver. We reverse the decision of the district court and remand for further proceedings consistent with this opinion.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE,
Judge

WE CONCUR:
CYNTHIA A. FRY, Judge
CELIA FOY CASTILLO, Judge
OPINION

JONATHAN B. SUTIN, Judge

{1} This opinion is filed simultaneously with a memorandum opinion also filed in this appeal that addresses Defendant Douglas Frawley’s assertions of error in regard to his convictions of various crimes. The basic sentences for the crimes Defendant committed were enhanced under NMSA 1978, § 31-18-15.1 (1993). Defendant argues that Blakely v. Washington, __ U.S. ___, 124 S. Ct. 2531 (2004), makes it clear that a court cannot enhance a sentence pursuant to Section 31-18-15.1 based on facts not found by a jury. We agree.

BACKGROUND

{2} A jury convicted Defendant of two third degree felonies and one misdemeanor in June 2002. Section 31-18-15 enumerates the basic sentences for the different degrees of non-capital felonies. The basic sentence for a third degree felony is three years imprisonment. NMSA 1978, § 31-18-15(A)(7) (2003). The district court sentenced Defendant for the basic sentence of three years for each of the third degree felonies pursuant to Section 31-18-15(A)(7). Section 31-18-15.1 permits alteration of a defendant’s basic sentence by up to one-third of the basic sentence if mitigating or aggravating circumstances exist. The court sentenced Defendant to an additional year on each felony based on the court’s finding of aggravating circumstances pursuant to Section 31-18-15.1(A). Those circumstances were Defendant’s lack of remorse, the short period between his sentence for a similar offense and the commission of the offense for which he was sentenced, the pain and fear endured by the victims and their families, and Defendant’s flight to avoid prosecution and the circumstances surrounding the flight. Defendant appealed for reasons unrelated to sentencing.

{3} After Defendant’s appeal was submitted to a panel of this Court for decision, Defendant offered Blakely as recent supplemental legal authority under Rule 12-213(D) NMRA on the issue of the constitutionality of the alteration under Section 31-18-15.1 of Defendant’s basic sentence imposed under Section 31-18-15. We obtained supplemental briefs from the parties on that issue and now decide whether Blakely applies and, if so, how, if at all, it affects State v. Wilson, 2001-NMCA-032, ¶ 4, 130 N.M. 319, 24 P.3d 351, which holds that “Sections 31-18-15 and 31-18-15.1 should be read together to provide for a range of sentences, and that sentencing within this range, based on findings made on the record by the trial court, is constitutional.”

DISCUSSION

{4} The issue of the constitutionality of state sentence enhancement statutes received a magnified presence in Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi held: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id. at 490; Blakely, 124 S. Ct. at 2536 (quoting the Apprendi rule). If such facts are not submitted to the jury and proved beyond a reasonable doubt, then the Sixth Amendment’s “guarantee that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury” and the Fourteenth Amendment’s Due Process Clause are violated. Apprendi, 530 U.S. at 476-77 (internal quotation marks and citation omitted).

{5} In Wilson, the majority held the district court’s enhancement under Section 31-18-15.1 of the defendant’s basic sentence did not run afoul of Apprendi. Wilson, 2001-NMCA-032, ¶ 4. The majority interpreted Apprendi to apply to statutory enhancements that “define[] an element of a criminal offense,” and not to “the trial court’s traditional discretion to consider factors relating both to the offense and the offender in imposing a sentence within the range set by statute.” Wilson, 2001-NMCA-032, ¶ 12. Determining that “the findings required by Section 31-18-15.1 appear more like sentencing factors than elements of a crime,” the majority concluded that Sections 31-18-15 and 31-18-15.1 read together created “permissible ranges of sentences ... within which sentencing courts could exercise discretion.” Wilson, 2001-NMCA-032, ¶¶ 13, 15, 17; see Apprendi, 530 U.S. at 481, 494 n.19 (stating “that nothing in [common law] history suggests that it is impermissible for judges to exercise discretion--taking into consideration various factors relating both to offense and offender--in imposing a judgment within the range prescribed by statute”; and further noting “that the term ‘sentencing factor’ is [not] devoid of meaning [but can] appropriately describe[] a circumstance, which may be either aggravating or mitigating in character, that

Certiorari Granted, No. 29,012, Feb. 8, 2005
Certiorari Denied, No. 29,011, Feb. 3, 2005

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-017

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
DOUGLAS FRAWLEY,
Defendant-Appellant.
No. 23,758 (filed Dec. 15, 2004)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
RICHARD J. KNOWLES, District Judge

PATRICIA A. MADRID
Attorney General
Santa Fe, New Mexico

JOEL JACOBSEN
Assistant Attorney General
Albuquerque, New Mexico

John B. Bigelow
Chief Public Defender
Santa Fe, New Mexico

SUSAN ROTH
Assistant Appellate Defender
for Appellee

for Appellant
supports a specific sentence within the range authorized by the jury’s finding that the defendant is guilty of a particular offense.

[6] Reading Apprendi differently, the dissent in Wilson viewed Section 31-18-15.1 as constitutionally infirm, concluding that the statute permits factual findings allowing enhancement of the basic sentence in Section 31-18-15 “beyond what the jury verdict by itself allows” and “based on facts ‘found’ under no discernable standard of proof.” Wilson, 2001-NMCA-032, ¶¶ 52-53 (Bustamante, J., concurring in part and dissenting in part); see Apprendi, 530 U.S. at 490, 494 (stating that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt,” and indicating that the required finding for enhancement cannot “expose the defendant to a greater punishment than that authorized by the jury’s guilty verdict”).

[7] The conclusions of the majority and the dissent in Wilson were each drawn from language in Apprendi that could reasonably give rise to the different interpretations. In Blakely, based on a trial court finding that the defendant acted with “deliberate cruelty,” the defendant was sentenced under Washington state law beyond what the Supreme Court in Blakely labeled a fifty-three-month “statutory maximum” of a “standard range sentence” for the offense committed. 124 S. Ct. at 2537. Under Washington state law, the standard range could be increased upwards if the trial court found “substantial and compelling reasons justifying an exceptional sentence.” Id. at 2535, 2537 (internal quotation marks and citation omitted). The Supreme Court held this enhancement to violate the Apprendi rule even though another statute provided that no person convicted could be punished by confinement exceeding a term of ten years. Id. at 2535, 2537. The Washington Court of Appeals had held that the statutory maximum was ten years and that the statutory aggravating factors neither increased the maximum sentence nor decreased the range of allowable sentences. State v. Blakely, 47 P.3d 149, 159 (Wash. Ct. App. 2002), rev’d, 124 S. Ct. 2531. The Washington Court of Appeals therefore concluded that Apprendi was not triggered. Blakely, 47 P.3d at 159. The Supreme Court in Blakely rejected the Washington appellate court’s view of its own statutory scheme, interpreting the statutory maximum not to be ten years, but instead to be that in the state’s sentencing reform act specifying a “standard range” of sentence. The Washington Court determined that it was the standard range, and not the ten years, that constituted the maximum sentence that could be imposed based on the defendant’s plea without having to make additional findings. Id. at 2537-38. We think it noteworthy that the Washington Court of Appeal’s view of its own state sentencing scheme, a scheme not significantly dissimilar to that in New Mexico, was similar to the view taken by this Court in Wilson with respect to the New Mexico statutory scheme. Compare Blakely, 47 P.3d at 159 (reading statutes together to hold statutory maximum was ten years), with Wilson, 2001-NMCA-032, ¶ 4 (reading Sections 31-18-15 and -15.1 together to prescribe ranges of allowable sentences).

[8] The Blakely Court also rejected cases construing Apprendi to say “that the jury need only find whatever facts the legislature chooses to label elements of the crime, and that those it labels sentencing factors--no matter how much they may increase the punishment--may be found by the judge.” Blakely, 124 S. Ct. at 2539. For the Blakely Court, the issue transcended procedural formality, rising to “a fundamental reservation of power in our constitutional structure.” Id. at 2538-39. For the most part, the major concerns of the dissents in Blakely were practical ones. The dissents viewed the majority’s decision as one doing serious damage to existing laws and practice and the administration of criminal justice. See id. at 2543-62 (O’Connor, J., et al., dissenting).

[9] Several federal cases have expressed concerns about whether, and if so to what extent, Blakely affects federal sentencing statutes and the federal sentencing guidelines. See, e.g., United States v. Penaranda, 375 F.3d 238, 246 (2d Cir. 2004) (en banc); United States v. Booker, 375 F.3d 508, 511 (majority), 518-19 (dissent) (7th Cir. 2004), cert. granted, 125 S. Ct. 11 (U.S. Aug. 2, 2004); United States v. Fanfan, 47 P.3d at 159, 47 P.3d at 149, 159 (reading statutes together to hold statutory maximum was ten years), compare Blakely, 47 P.3d at 159 (reading statutes together to hold statutory maximum was ten years), with Wilson, 2001-NMCA-032, ¶ 4 (reading Sections 31-18-15 and -15.1 together to prescribe ranges of allowable sentences).

[10] In the case at hand, the State criticizes Apprendi for using ambiguous, undefined terms, and making incoherent distinctions, defects that have “made Apprendi so hard to apply in practice.” The State also criticizes Blakely for using ambiguous, undefined terms “to state a supposedly universal rule, then rephras[ing] the rule in subtly inconsistent ways.” The State argues that we should follow Wilson and conclude that Section 31-18-15.1 accords with Blakely for the same reasons we determined in Wilson the statute accorded with Apprendi. Moreover, the State sides with the dissenters in Blakely, and warns of threatened “major disruption in the administration of criminal justice in the . . . courts--[a] disruption that would be unfair to defendants, to crime victims, to the public, and to judges who must follow applicable constitutional requirements.” Penaranda, 375 F.3d at 246. Blakely cannot be so easily slighted.

[11] Blakely states that the Court’s precedents made it “clear . . . that the ‘statutory maximum’ for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” Blakely, 124 S. Ct. at 2537. Also, the Court explained, the relevant “statutory maximum” is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury’s verdict alone does not allow, the jury has not found all the facts “which the law makes essential to the punishment,” and the judge exceeds his proper authority.

Id. at 2537 (citation omitted). Holding the defendant’s sentence invalid, Blakely stated:

whether the judge’s authority to impose an enhanced sentence depends on finding a specified fact (as in Apprendi), one of several specified facts (as in Ring), or any aggravating fact (as here), it remains the case that the jury’s verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact.
Id. at 2538.

{12} We conclude that the Court in Blakely was attempting to provide more clarity to Apprendi and to clarify the constitutional boundaries for state statutory sentencing schemes, such as ours in New Mexico, that provide for a sentence such as a “basic” or “standard range” sentence which can be decreased or increased depending on circumstances outside of what a jury considers in determining guilt.

We read Blakely to say: When the jury considers the facts relevant to the elements of an offense in determining guilt or innocence, the criminal sanctions for that offense cannot be increased after the verdict based on facts the jury has not specifically considered in connection with its finding of guilt, whether or not the facts are labeled “sentencing factors,” and even if the facts are not material to the statutory elements of the offense.

{13} Blakely clarifies and extends Apprendi in a manner that requires us to hold that the district court’s enhancements under Section 31-18-15.1 of Defendant’s basic sentences violated the Sixth Amendment to the United States Constitution. Although it may have been correctly decided under Apprendi, under Blakely our Wilson decision can no longer control or be considered controlling authority.

CONCLUSION

{14} Because Defendant’s basic sentences imposed under Section 31-18-15 were increased under Section 31-18-15.1 based on the district court’s findings of aggravating circumstances, and not based on a jury’s findings and under a burden of proof beyond a reasonable doubt, we invalidate and reverse the Section 31-18-15.1 enhancements to Defendant’s basic sentences. We reverse and remand to the district court with instructions to enter a revised judgment and sentence in accordance with this opinion.

{15} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:
JAMES J. WECHSLER, Chief Judge
IRA ROBINSON, Judge
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The University of New Mexico
School of Law
Calendar of Events

March
4 A celebration of Lee Teitelbaum’s Life and Career Law School Forum 5:30 PM

April
1 Monte Carlo on the Rio APIL Fundraiser Doubletree Hotel Albuquerque
8 Law Review Banquet Doubletree Hotel Albuquerque 6:00 pm No host Cocktails 7:00 pm Dinner

For more information please call Herb Wright, (505) 277-1038
David Martinez and Michael Hart are pleased to announce that GREGORY W. CHASE has become a shareholder in the firm which is now known as:

MARTINEZ, HART & CHASE, P.C.
at Oso Del Rio
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Albuquerque, NM 87104
(505) 343-1776

and that ROGER V. EATON will continue to practice in limited cases at his new address:

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Albuquerque, New Mexico 87120-1810
(505) 264-9116
(505) 345-0148 (Fax)

A Celebration of the Life and Career of Lee E. Teitelbaum

The University of New Mexico School of Law will honor the memory of Lee Teitelbaum on Friday, March 4, 2005 - 5:30 pm at the School of Law.

Please join Herta Teitelbaum, faculty, staff and former students for this celebration of Professor Teitelbaum’s life and career as a teacher, scholar and mentor.

Contributions to the Teitelbaum Fellowship may be made to the School of Law.
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 3-7 years experience. We are building a new office in the Journal Center and need someone who is able to multi task 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.

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Lawyer Referral for the Elderly Program (LREP) is seeking an attorney outside Bernalillo County for rural contract work. The contract attorney will focus on providing enhanced LREP services for the elder population within a specific geographic area. Services will include but not be limited to: Promoting LREP, assisting with local referrals, conducting informational workshops and assisting with LREP workshops. Materials and training will be provided. Interested attorneys should send a letter of interest with proposed geographic region and resume to: LREP, Attn: Contract Manager, PO Box 92860, Albuquerque, NM 87199 or fax to (505) 797-6074. Position open till filled. EOE.

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Durango, Colorado law firm (AV Rated) seeks associate with litigation experience and knowledge of real estate and commercial law. Prefer a person with 2-4 years experience that is licensed in Colorado and New Mexico, but must be licensed in Colorado. Must have excellent academic and writing skills, be committed to make Durango their home, and have the ability to balance family, work and play. Competitive salary and excellent benefits. Submit resume to: Shand, Newbold & Chapman PC, P.O. Box 2790, Durango, Colorado 81302-2790, email: staylor@snc-law.com.

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IMPLIED CONSENT ACT HEARING OFFICER LAS CRUCES

The New Mexico Taxation and Revenue Department Hearing Bureau seeks a Hearing Attorney (Lawyer-O) to conduct administrative hearings to determine whether the driver’s license of persons who are arrested for driving while intoxicated (DWI) should be revoked pursuant to the Implied Consent Act. The position is located in Las Cruces and some travel is required. The position is at a pay band 75, with the hourly range from $18,041 to $32,073. This term position requires that the applicant be a graduate of an accredited law school and be a member in good standing of the New Mexico Bar. Experience in criminal law preferred. Applicants must apply through the New Mexico Department of Labor (DOL), 301 W. De Vargas Street, Santa Fe, NM 87501 or through any DOL Field Office. Refer to job order number NM 55179. Please send a duplicate resume, a copy of your NM State Bar card, and a writing sample to Albert J. Lama, Chief Hearing Officer, NM Taxation and Revenue Department, P.O. Box 630, Santa Fe, NM 87504-0630. Applications must be received no later than March 11, 2005.

ATTORNEY POSITION

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The Fifth Judicial District Attorney’s office has immediate positions open to new as well as experienced attorneys in Roswell, Chaves County and Hobbs, Lea County. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan with starting salary range of an Assistant District Attorney to a Senior Assistant District Attorney ($38,384.00 to $45,012.28) dependent upon experience. Please send resume to Floyd D. “Terry” Haake, District Attorney, 102 N. Canal Suite 200, Carlsbad, NM 88220 or e-mail to thetaake@da.state.nm.us.

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www.nmbar.org
**The ABC’S of Immigration Law**

**March 10, 2005 • State Bar Center, Albuquerque**

4.2 General CLE Credits

**Co-Sponsor:** Immigration Law Section

**Presenters:**
- Melissa Ewer, Esq., Catholic Charities of Central New Mexico
- Mary Ann Romero, Esq., Law Office of John W. Lawit, P.C.

What Happened To INS? Will This Criminal Conviction Affect My Immigrant Client? Can My Immigrant Client Get A Divorce? Do you find yourself asking these questions when an immigrant client walks through your doors asking for your representation? Immigration reform is happening on a daily basis. The impact of this reform on immigrant clients is evident in all areas of law, especially Criminal Law and Family Law. Join us on March 10th as we explore current regulations in Immigration Law and how it affects you and your clients.

**Schedule of Events**

<table>
<thead>
<tr>
<th>Time</th>
<th>Description</th>
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<tbody>
<tr>
<td>8:30 a.m</td>
<td><strong>Overview - Melissa Ewer and Mary Ann Romero</strong></td>
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<tr>
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<td><strong>Who is the Immigration Office?</strong></td>
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<td>• United States Citizenship and Immigration</td>
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<td>• Services (USCIS)</td>
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<td>• United States Immigration and Customs</td>
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<td>• Enforcement (ICE)</td>
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<td>• United States Customs and Border Protection</td>
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<td><strong>Immigration Lingo</strong></td>
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<td>• Who is a United States citizen (USC)?</td>
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<td>• Who is a Legal Permanent Resident (LPR)?</td>
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<td>• What is a nonimmigrant visa?</td>
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<td>• What is an immigrant visa?</td>
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<td>9:30 a.m</td>
<td><strong>Family-based Immigration - Melissa Ewer</strong></td>
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<td>• Who can file for whom?</td>
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<td>• How do the preference categories work?</td>
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<td>• What is a priority date?</td>
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<td>10:15 a.m</td>
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<td>10:30 a.m</td>
<td><strong>Family-based Immigration (continued)</strong></td>
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<td><strong>What is the process?</strong></td>
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<td>• Visa Processing</td>
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<td>• Length of time for processing</td>
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<td>11:00 a.m</td>
<td><strong>VAWA (Violence Against Women Act) – remedies available for immigrant victims of abuse</strong></td>
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<td>11:15 a.m</td>
<td><strong>Crime and the Immigrant - Mary Ann Romero</strong></td>
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<td>• Which crimes affect the immigrant?</td>
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<td>• What is an Aggravated Felony for immigration purposes?</td>
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<td>• What is a Crime Involving Moral Turpitude for immigration purposes?</td>
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<td>• How do plea bargains and sentencing guidelines affect the immigrant?</td>
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<td>• Requirement of criminal defense attorney under recent NM Supreme Court decision</td>
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<td>• Can convictions be forgiven?</td>
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<td>• Waiver eligibility for immigration purpose</td>
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**REGISTRATION – THE ABC’S OF IMMIGRATION LAW**

March 10, 2005 • 8:30 a.m. • State Bar Center • 4.2 General CLE Credits

- [ ] Standard and Non-Attorney - $99  
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