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Legal Education Calendar

Writs of Certiorari

2005 Annual Meeting - Back to the Basics: Building Blocks to a Better Practice
Thursday - Saturday, September 22-24, 2005
Ruidoso Convention Center - Ruidoso, NM

Thursday, September 22
5 – 6:30 p.m. Registration/Welcoming Reception
5 – 6:30 p.m. President’s Reception
5:30 – 6:30 p.m. Atkinson & Kelsey Reception honoring New Mexico Lawyers listed in “Best Lawyers in America”

Friday, September 23
7 a.m. – Noon Registration/Exhibits Open
7 – 8 a.m. Continental Breakfast
7 – 10 p.m. Dinner and Entertainment at the Flying J Ranch
8 – 10 a.m. Plenary: Seven Keys to Maintaining a Safe and Successful Practice (Professionalism)
Dustin A. Cole, President and Master Practice Advisor
Attorneys Master Class

Saturday, September 24
7 a.m. – Noon Registration/Exhibits
7 – 8 a.m. Continental Breakfast
8 – 10 a.m. Plenary: Ethics Rock!
Jack Marshall and ProEthics, Ltd.

Note: All events will be held at the Ruidoso Convention Center unless otherwise noted.

7.5 General, 1.8 Ethics and 2.4 Professionalism CLE Credits - Plus optional add-on General Credits TBA (Video Replay)
Schedule is subject to change without notice
2005 Annual Meeting - Back to the Basics:
Building Blocks to a Better Practice
Thursday - Saturday, September 22-24, 2005
Ruidoso Convention Center - Ruidoso, NM

Name ______________________________________________________ NM Bar No. __________________________
Name for Badge (if different than above) ____________________________ __________________________
Address ______________________________________________________________________________________
City ____________________________ State __________________________ Zip __________________________
Phone __________________________ Fax __________________________ Email __________________________

Guest 1 _______________________________________________ Guest 2 ______________________________________

EARLY REGISTRATION FEE (Must be postmarked by September 1)  Price Qty Subtotal

☐ Standard $295  ____ ________
☐ Paralegal $275  ____ ________
☐ Guest (includes all of the above except CLE tuition and materials) $60  ____ ________
☐ Add $10 to registration fee if postmarked after September 1. $10  ____ ________

SEPARATELY TICKETED EVENTS (Transportation will be provided to the Flying J Ranch and Alto Country Club from Hawthorn Suites)

☐ Friday Guest Event to Spencer Theater and Lincoln, 8 a.m. - noon (Non-registered attendee) $5  ____ ________
☐ Awards Luncheon, Friday, Sept. 23 (Non-registered attendee) $15  ____ ________
☐ Dinner & Entertainment, Friday, Sept. 23 $35  ____ ________
☐ Check here if you are interested in transportation to the Flying J Ranch from Hawthorn Suites
☐ Child Dinner (12 & Under), Friday, Sept. 23 $15  ____ ________
☐ Saturday Guest Event to St. Joseph’s Mission and Eagle Ranch Pistachio Farm, 8 a.m. - noon (Non-registered attendee) $5  ____ ________
☐ Awards Luncheon, Saturday, Sept. 24 (Non-registered attendee) $15  ____ ________
☐ Golf Tournament (9-hole), Saturday, Sept. 24 (2-5 p.m.) $65  ____ ________
☐ The Links at Sierra Blanca (Handicap ________) $60  ____ ________
☐ Dinner & Entertainment, Saturday, Sept. 24 $35  ____ ________
☐ Check here if you are interested in transportation to the Alto Country Club from Hawthorn Suites
☐ Child Dinner (12 & Under), Saturday, Sept. 24 $15  ____ ________

Total __________________________

PAYMENT OPTIONS

☐ Enclosed is my check in the amount of $ __________________________ (Make Checks Payable to: State Bar of NM)
☐ VISA  ☐ Master Card  ☐ American Express  ☐ Discover  ☐ Purchase Order (Must be attached to be registered)
Credit Card Acct. No. ____________________________ Exp. Date __________________________
Signature __________________________________________

Internet: www.nmbar.org  Mail: SBNM, P.O. Box 92860, Albuquerque, NM 87199-2860
Phone: (505) 797-6036; Monday - Friday, 9 a.m. - 4 p.m.  Fax: (505) 797-6019; Open 24 Hours
( Please have credit card information ready).
( Please include credit card information.)

Cancellations & Refunds: If you find that you must cancel your registration, send a written notice of cancellation via fax by 5 p.m., one week prior to the program of interest. A refund, less a $50 processing charge will be issued.
Registrants who fail to notify CLE by the date and time indicated will receive a set of course materials via mail following the program.

MCLE Credit Information: Courses have been approved by the New Mexico MCLE Board. CLE will provide attorneys with necessary forms to file for MCLE credit in other states. A separate MCLE filing fee may be required.

Hotel information is available on the State Bar Web Site at www.nmbar.org or the February 28th Bar Bulletin.
2005 Professionalism
Lawyers Concerned for Lawyers
Substance Abuse and Addiction Issues in the
New Mexico Legal Community
May 25, June 8 and June 22 • 10 a.m. - Noon
State Bar Center • 2.0 Professionalism CLE Credits
Co-Sponsor: SBNM Commission on Professionalism

The 2005 Commission on Professionalism course, LAWYERS CONCERNED FOR LAWYERS: Substance Abuse and Addiction Issues in the New Mexico Legal Community, will focus on the serious issue of addiction and substance abuse. Over 15 million Americans suffer from the disease of alcoholism — roughly 10 percent of the general population. The percentage of professional men and women, including lawyers and judges who are chemically dependent, appears to be even higher with estimates as high as 15 to 20 percent for attorneys.

The 2005 Commission on Professionalism program will feature justices of the New Mexico Supreme Court and members of the State Bar’s Lawyers Assistance Committee in an informative and broad look at substance abuse. Participants will also receive a perspective from the UNM School of Law and the Disciplinary Board. The program will give participants the tools necessary to help identify abuse and addiction problems, address confidentiality issues, provide resources for how to handle such situations and offer guidance to those who may be suffering through an illness.

☐ Standard Fee $59

Basics of a New Mexico Divorce Case
9 a.m. • State Bar Center
5.3 General and 1.0 Ethics CLE Credits

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

☐ Standard Fee $179
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**Professionalism Tip**

With respect to the courts and other tribunals:

I will voluntarily exchange information and work on a plan for discovery as early as possible.

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**Meetings**

**May**

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

25 Legal Services & Programs Committee, 1:30 p.m., State Bar Center

**June**

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

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

9 Public Law Section Board of Directors, noon, Risk Management Division, Santa Fe

10 International and Immigration Law Section Board of Directors, 1:30 p.m., State Bar Center

**State Bar Workshops**

**May**

25 Social Security Disability, 1 p.m., Lordsburg Senior Center, Silver City

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

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

26 Lawyer Referral for the Elderly Workshop, 1:15 p.m., Meadowlark Senior Center, Albuquerque

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

**June**

4 Estate Planning/Probate/Elder Law Workshop, 10 a.m., VFW Las Vegas, 148 Mills Ave., Las Vegas

8 Social Security Disability, 1 p.m., Doña Ana Senior Center, Las Cruces

8 Family Law 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.
Courthouse News

Law Library Closure

The Supreme Court Law Library will be closed May 28-30 for Memorial Day Weekend. Call (505) 827-4850 for more information.

NM Board of Legal Specialization

Comments Solicited

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

Trial Specialist – Civil Law
Eric Sedillo Jeffries

Second Judicial District Court
Announcement of Vacancy

A vacancy on the Second Judicial District Court will exist as of July 1 due to the creation of a new judgeship position by the NM State Legislature. The chair of the Second Judicial District Court Nominating Commission now solicits nominations and applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site: http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed by calling Reva Chapman, (505) 277-4700. The deadline for applications/nominations has been set for 5 p.m., June 3. Applications received after that time are not considered.

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

Destruction of Exhibits: Criminal and Children

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the Second Judicial District Court will destroy exhibits filed with the court in the criminal cases for years 1980 to 1991, and children cases for years 1985 to 1989, included but not limited to cases which have been consolidated. Cases on appeal are excluded. Exhibits may be retrieved from May 16 to July 16. Attorneys who have cases with exhibits should verify exhibit information with the Special Services Division, at 841-7356/7405, from 8 a.m. to noon, and from 1 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.

Destruction of Exhibits: Domestic

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the Second Judicial District Court will destroy exhibits filed with the court in the domestic cases for years 1980 to 1985, included but not limited to cases which have been consolidated. Cases on appeal are excluded. Exhibits may be retrieved from May 23 to July 22. Attorneys who have cases with exhibits should verify exhibit information with the Special Services Division, at 841-7356/7405, from 8 a.m. to noon, and from 1 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.

Destruction of Tapes: Criminal

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedule, the Second Judicial District Court will destroy tapes filed with the court in the criminal cases for years 1980 to 1984, included but not limited to cases which have been consolidated. Cases on appeal are excluded. Attorneys who have cases with tapes, and wish to have duplicates made, should verify tape and log information with the Special Services Division, (505) 841-6717, from 8 a.m. to noon, and from 1 to 5 p.m., Monday through Friday. Aforementioned tapes will be destroyed after June 3.

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 June 6. Contact Sandra Partida, (505) 841-7531, for more information or to have an item placed on the agenda.

Third Judicial District Court
Judicial Vacancy

A vacancy on the Third Judicial District Court will exist as of May 30 upon the resignation of the Hon. Grace B. Duran. The chair of the Third Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site, http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed by calling Reva Chapman, (505) 277-4700. The deadline for applications is 5 p.m., June 6. Applications received after that date are not accepted.

Seventh Judicial District Court
Nominating Commission

Eight applications were received in the Judicial Selection Office as of 5 p.m., May 13 for the judicial vacancy on the Seventh Judicial District Court due to the resignation of the Hon. Thomas G. Fitch. The Seventh Judicial District Nominating Commission will meet May 23 at 9 a.m. at the Socorro County Courthouse in Socorro, Courtroom No. 1, to evaluate the applicants for the judicial position. The Commission meeting is open to the public. The names of the applicants in alphabetical order are:

Lee Deschamps
John R. Gerbracht
Wesley David Jensen, Jr.
Ron E. Lopez
Patsy D. Reinard
Matthew G. Reynolds
Ray E. Sharbutt
Cynthia Rose Wimberly
**Ninth Judicial District Court**

**Announcement of Vacancy**

A vacancy on the Ninth Judicial District Court will exist as of July 1 due to the creation of a new judgeship position by the NM State Legislature. The chair of the Ninth Judicial District Court Nominating Commission now solicits nominations and applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site, http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed by calling Reva Chapman, (505) 277-4700. The deadline for applications/nominations has been set for 5 p.m., June 3. Applications received after that time are not considered.

**Sandoval County Magistrate Court**

**Judicial Vacancy**

Gov. Bill Richardson is seeking candidates from Sandoval County who are interested in serving as magistrate. This judgeship was created through the governor's efforts in the 2005 Legislature to create additional judgeships in the districts with the most crowded dockets. The new magistrate appointed by the governor will begin serving on July 1 and will stand for election in 2006. Each interested candidate must send a letter of interest, resume and letters of recommendation to Gov. Bill Richardson, Attention Legal Division, State Capitol Building, Suite 400, Santa Fe, New Mexico 87501 by 5 p.m., May 24. Materials may be sent via U.S. Mail or by fax to (505) 476-2207. After submitting their letters of interest, candidates may be required to undergo a criminal background check.

**Eleventh Judicial District Court**

**Announcement of Vacancy**

A vacancy on the Eleventh Judicial District Court will exist as of July 1 due to the creation of a new judgeship position by the NM State Legislature. The chair of the Eleventh Judicial District Court Nominating Commission now solicits nominations and applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site, http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed by calling Reva Chapman, (505) 277-4700. The deadline for applications/nominations has been set for 5 p.m., June 3. Applications received after that time are not considered.

**Bernalillo County Metropolitan Court**

**Announcement of Vacancy**

Two judicial vacancies on the Bernalillo County Metropolitan Court will exist as of July 1 due to the creation of a new judgeship position by the NM State Legislature. The chair of the Bernalillo County Metropolitan Court Nominating Commission now solicits nominations and applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site, http://lawschool.unm.edu/judsel/index.htm, or e-mailed/faxed/mailed by calling Reva Chapman, (505) 277-4700. The deadline for applications/nominations has been set for 5 p.m., June 3. Applications received after that time are not considered.

**HasMaxLength(315,829) STATE BAR NEWS**

**Attorney Support Group Monthly Meeting**

The next Attorney Support Group meeting will be held at 5:30 p.m., June 6 at the First United Methodist Church at Fourth and Lead SW in Albuquerque. The group meets regularly on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

**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 June 1. (Lunch is not provided.) For information about the section, visit the State Bar Web site, www.nmbar.org, or call Cindy Lovato-Farmer, section chair, (505) 667-3766.

**Paralegal Division**

**Brownbag CLE**

Bring a lunch and join the Paralegal Division for their monthly CLE from noon to 1 p.m., June 8 at the State Bar Center. Registration begins at 11:30 a.m. and the cost is $16 for attorneys and $15 for paralegals, legal assistants and secretaries. The topic for this month's CLE is “Children’s Law: A Survey,” presented by Liz McGrath, co-director of Pegasus Legal Services for Children. For more information, contact Debi Shoemaker-Scott, (505) 243-1443.

**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 non-refundable 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, 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.

**Public Law Section**

**Board Meeting**

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

**Taxation Section**

**Annual Meeting**

The Taxation Section will hold its annual meeting immediately following the Third Annual Tax Symposium June 17. The Tax Symposium is a full-day CLE and will be held from 8:30 a.m. to 5 p.m. at the State Bar Center. Contact Marjorie Rogers, (505) 848-1844 or mrogers@modrall.com, to place an item on the agenda.

**OTHER BARS**

**Albuquerque Bar Association**

**Monthly Luncheon**

The Albuquerque Bar Association’s monthly luncheon will be held June 7 at noon at the Albuquerque Petroleum Club. “Miranda in a Post-911 Climate” will be the topic of guest speaker Gary Stuart, president of the University of Arizona Board of Regents and author of Miranda: The Story of America’s Right
to Remain Silent. The CLE program will be “Appellate Update” with Ed Ricco of Rodey Law Firm and Tom Bird of Kelchet & McLeod. The CLE will begin following the lunch at 1:30 p.m. for 1.0 general CLE Credits. Lunch is $20 for members and $25 for non-members; lunch and CLE cost is $40 members and $55 for non-members. Register online at www.abqbar.com, by e-mail to abqbar@abqbar.com, by phone at (505) 243-2615, or by mail to 400 Gold SW, Suite 620, Albuquerque, NM 87102.

Sandoval County Bar Association
April Monthly Meeting
The Sandoval County Bar Association will hold its next monthly meeting and offer a sneak preview of the new Sandoval County Courthouse from noon to 1 p.m., May 26 at the Sandoval County Judicial Complex, 1500 Idalia Road, Bernalillo. Lunch will be catered so anyone interested in attending should RSVP to (505) 892-1050 by May 24.

New Mexico Defense Lawyers Association
Member Luncheon
The New Mexico Defense Lawyers Association will host a member luncheon from 11:30 a.m. to 1 p.m., June 9 at the State Bar Center. Dr. Barry Diskant will make a presentation on “New Development in Invasive Spine Care - Artificial Disc Replacements.” Call Rhonda Dahl, (505) 797-6021 or visit the NMDLA Web site at www.nmdla.org.

OTHER NEWS
Albuquerque Association of Legal Professionals
Court Clerk’s Workshop
The Albuquerque Association of Legal Professionals is hosting the Annual Court Clerk’s Workshop from 7:45 a.m. to 3:30 p.m., June 4 at the UNM Continuing Education Complex, 1634 University Blvd. NE, Albuquerque. All members and interested persons of the legal community are welcome to participate. The workshop provides an opportunity for legal support staff to obtain the most current and up to date information about court procedures and rules from each of the local court clerks and their staff members. The workshop provides 5.75 general CLE credits. For further information about AALP/NALS, contact Vince Lipinski, (505) 315-9193 or lipinskv@hotmail.com.

Taxation and Revenue Department
Managed Audit Program
The New Mexico Taxation and Revenue Department is taking a closer look at individuals who legally should be filing New Mexico personal income tax returns as residents. There is a significant amount of income going unreported by people who live in New Mexico full time but claim their residence to be one of the seven states that does not have an income tax, despite the 185-day physical presence statute that went into effect in 2003. Attorneys may want to advise taxpayers who are concerned they should have previously filed resident New Mexico tax returns to take advantage of the Taxation and Revenue Department’s Managed Audit Program. Taxpayers can avoid paying both penalty and interest if eligible for the program and if the assessment is paid within 30 days from the assessment date. Call (505) 827-0929 for more information about the Managed Audit Program.

UNM Law Library
Summer Hours
Law Library hours through Aug. 21:
Mon. – Thurs. 8 a.m. to 9 p.m.
Fri. 8 a.m. to 6 p.m.
Sat. 9 a.m. to 6 p.m.
Sun. noon to 9 p.m.
Reference:
Mon. – Fri. 9 a.m. to 6 p.m.
Sat. noon to 4 p.m.
Sun. noon to 4 p.m.
Exceptions:
May 30 Closed
July 4 Closed

STATE BAR OF NEW MEXICO

2005 LEADERSHIP TRAINING INSTITUTE
Applications Being Accepted
Participants will learn what it means to be a leader and how to communicate, motivate, inspire and succeed.

The Institute takes place over four sessions, August 12-13, September 1-2, September 29-30 and November 3-4, with all but one session being held at the State Bar Center in Albuquerque. Class size is limited through a competitive enrollment process. Topics covered include:

- team building
- leadership principles
- communications and media skills
- New Mexico Judiciary
- emotional intelligence
- strategic planning
- quality of life
- time management
- public service
- fundraising

All active New Mexico licensed lawyers are welcome to apply, deadline is June 20. Tuition is $350. Limited financial assistance and scholarships are available. For a complete Leadership Training Institute brochure and to apply, visit www.nmbar.org. For more information, contact Executive Director Joe Conte, (505) 797-6099 or jconte@nmbar.org.
Dear Pat:
In your previous article, you wrote that some corporations are encouraging diversity in outside law firms by basing their decision to use those firms on the diversity of the firm’s lawyers. You also mentioned that Shell Oil Company requires the outside law firms it uses to report the number of women in the firm and the amount of Shell’s work that is done by those lawyers and awards the bulk of its work to firms with diversity and good lawyers. I was wondering whether there is some way to monitor diversity in New Mexico law firms and other venues?

Sincerely,
Curious in Las Cruces

Dear Curious:
The State Bar of New Mexico maintains statistics on the areas of employment of its 4,924 in-state, active members, 1,754 of whom are women. The most recent statistics reveal some interesting information. For example, of the 3,368 attorneys in private practice, female attorneys are fairly evenly distributed among firms of varying sizes. For example, 30 percent of solo practitioners are women, 36 percent of lawyers in firms with 20 to 49 attorneys are women and 31 percent of lawyers in law firms with more than 50 attorneys are women. Unfortunately, the State Bar does not keep statistics on the number of female partners in private firms, which would better indicate whether women are making progress on the partnership track.

Generally speaking, there are higher percentages of women in the government and corporate arenas than in private law firms. Of the 1,276 attorneys in the public sector, 38 to 48 percent of those attorneys are women, with the higher percentages working in the larger offices of 20 plus attorneys. Of the 115 attorneys practicing in the corporate arena, women make up 33 percent of the corporate offices with one attorney; 46 percent of those with two to four attorneys; 67 percent of those with five to nine attorneys; and 50 percent of those with 10-19 attorneys.

Most surprising is the percentage of women lawyers working for legal service providers. Of the 58 active lawyers in that area, women make up 80 percent of the attorneys in offices with 10-19 lawyers; 71 percent in offices with five to nine attorneys; 44 percent in offices with two to four attorneys, and constitute 100 percent of offices with one attorney.

There is an ongoing discussion at the national level on why women are not as well represented in private law firms as in other practice areas. The theories, many of which have been addressed in this column, range from women choosing to opt-out of the law firm career track to women being held back or even forced off the career track by discriminatory practices.

Sincerely,
Pat

Ask Pat is a feature provided by the Committee on Women and the Profession. This is a question and answer column with a twist – “Pat” will answer questions about gender bias in the legal profession. All of the letters are loosely based on real events. Readers are invited to send their comments or letters to “Ask Pat,” State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860. “Pat” responses are provided by members of the committee.
Legal FACS presented certificates of appreciation to Kelle Cochran, Darlene Jojola, Loida Leon and Maria Vaughn for “Outstanding Service on Behalf of Victims of Crime.” Legal FACS is a 501(c)(3) non-profit domestic violence advocacy and legal services provider whose primary focus since 1971 is assisting low-income individuals and families with domestic and small claims cases, and assisting victims of domestic violence. Legal FACS responds to crimes of domestic violence, sexual assault, stalking, dating violence and child victimization, provides advocacy and civil legal services to the victims of such violence, and strengthens safety of domestic violence victims living in Bernalillo, Sandoval, Torrance and Valencia Counties.

J. Douglas Compton has joined Lewis and Roca Jontz Dawe, LLP. A graduate of Mercer University School of Law, Compton focuses on medical malpractice, products liability, wrongful death and professional liability. Product experience includes drugs, medical devices, automobiles and components, and industrial and recreational products. He's been in private practice for more than 25 years.

Philip Davis and Alice Lorenz were honored by the New Mexico Law Review at its 5th annual Excellence in Jurisprudence Awards Banquet. The awards recognize legal professionals who have contributed to shaping New Mexico and/or federal jurisprudence through excellence in research, reasoning and writing.

Davis is a 1978 graduate of the UNM School of Law. Since 1981, he has been in private practice in Albuquerque representing plaintiffs. A sole practitioner since 1986, his practice is focused on federal civil rights litigation, including police misconduct, employment, First Amendment and disabilities law. He has been co-legal director of the American Civil Liberties Union of New Mexico since 1984. He is adjunct faculty at the law school and lectures frequently. For more than a decade he has served as a faculty for the National Institute of Trial Advocacy in Albuquerque and at NITA’s advanced programs in Colorado.

Lorenz is licensed to practice in New Mexico and before the United States District Court for the District of New Mexico, the Tenth Circuit Court of Appeals and the U.S. Supreme Court. She is a former member of the New Mexico Commission on Professionalism, the ABA Commission on Impaired Attorneys and the Lawyers’ Assistance Committee. Lorenz has been a lecturer at appellate practice and legal writing seminars and has been on faculty for the annual Visual Arts and the Law Seminar for several years as the speaker on legal ethics.

Caren I. Friedman was recently appointed by the New Mexico Supreme Court to serve as a member of the Appellate Rules Committee. The appointment is for a three-year term, through December 31, 2007. Friedman is a board-certified Appellate Specialist. Her practice focuses on civil and criminal appeals in federal, state and tribal courts.

Justin Horwitz has joined the Rodey, Dickason, Sloan, Akin & Robb law firm as an associate in the business department. Horwitz practices in mergers and acquisitions, business transactions, entity formation and governance issues, franchise development and intellectual property. He has experience in advising franchisers on the formation of franchise systems. Horwitz is a 2001 graduate of the University of Arizona School of Law and received a bachelor’s degree from Amherst College.

Arturo L. Jaramillo, State Regulation and Licensing Department superintendent, was honored with the 2005 Fighting for Justice Award by the University of New Mexico’s Mexican American Law Student Association (MALSA). Jaramillo was awarded for his efforts in establishing the State Bar Summer Clerkship Program and for his commitment to creating opportunities for minority law students.

Judge Roderick Kennedy of the New Mexico Court of Appeals received a certificate from New Mexico Tech’s Energetic Materials Research and Testing Center for completing the Prevention and Response to Suicide Bombing Incidents Awareness Training Course at the 2004 New Mexico Homeland Security Conference. The Office of Domestic Preparedness, U.S. Department of Justice, has certified Kennedy as an Awareness-level instructor in Incident Response to Terrorist Bombings. He serves on the Supreme Court’s Statewide Courthouse Security Committee, and is also the recipient of the 2003 Firth Memorial Medal from the Forensic Science Society of the United Kingdom.
The ceremonies took place recently at Mile High Baseball Fields. Challenger Little League promotes fitness among children with mental and physical disabilities. Opperman and other members of Lewis and Roca surprised the team with a full set of baseball equipment for the season.

Daniel Opperman, an attorney with Lewis and Roca who formerly pitched for the Albuquerque Dukes, threw out the first pitch at the Challenger Little League opening ceremonies.

Judge Helen L. Stirling has been appointed to serve a five-year appointment as a workers’ compensation judge for the New Mexico Workers’ Compensation Administration. By law, workers’ compensation judges are appointed for an initial one-year term, which may be followed by subsequent five-year appointments. Stirling completed her initial one-year appointment on April 12, 2005. Workers’ Compensation judges hear and decide disputes over benefits due to injured workers. In addition to her one-year as a judge with the administration, Stirling has been in workers’ compensation for numerous years as an attorney and is the immediate past president of the Workers’ Compensation Association of New Mexico. She received both a master’s degree in counseling and a Juris Doctorate degree from Drake University in Des Moines, Iowa.

Robert P. Tinnin, Jr., a shareholder in Tinnin Law Firm, PC, has been recognized in the field of labor and employment law by Best Lawyers in America, published by Woodward/White, Inc. Tinnin has been recognized as one of the Best Lawyers in America in every edition since the publication began in 1983. He is also recognized by the New Mexico Board of Legal Specialization as a specialist in labor and employment law.

Hilary Tompkins has been appointed as Gov. Bill Richardson’s new General Legal Counsel. Tompkins has served as the Deputy Legal Counsel for Richardson since the beginning of his administration. She was born in Zuni, and is an enrolled member of the Navajo Nation. She is a graduate of Dartmouth College, and earned a law degree from Stanford University. Tompkins has worked in the private sector representing pueblos and tribes in a general counsel capacity on a wide variety of issues. In addition to her experience with state and tribal governments, Tompkins began her law career as an honor program trial attorney for the U.S. Department of Justice. Prior to law school, she worked for the Navajo Nation Department of Justice as a tribal court advocate after passing the Navajo Nation bar exam. Tompkins replaces Geno Zamora, who left the office to join the Santa Fe law offices of Gallagher & Kennedy.

John Tull has been named general counsel of the New Mexico Economic Development Department. Tull, a business trial lawyer with 30 years of experience, and the founder and former director of the Insurance Fraud Division for the State of New Mexico has been a resident of Santa Fe for the past 13 years with his wife Lucinda Marker.

Vincent J. Ward has been appointed as Gov. Bill Richardson’s new Deputy Chief Counsel. Ward received a law degree from UNM, where he also earned a bachelor’s degree in political science. He has worked as an associate for Rodey, Dickason, Sloan, Akin & Robb in Albuquerque. Ward served as a Trial Counsel for the U.S. Navy Trial Service Office in San Diego, where he won convictions in complex cases including rape, child sexual abuse, drug distribution, fraud and national security. Ward received the Navy and Marine Corps Commendation Medal in 2004, the Helen S. Carter Prize for Outstanding Legal Writing and the Lewis R. Sutin Award for Excellence in Advocacy. He is a member of the American Bar Association, the New Mexico Black Lawyers Association and serves on the State Bar’s Diversity Committee.

Willow Misty Parks has opened Parks Law Office. She received a law degree from the University of New Mexico, magna cum laude. She has opened a small law office in downtown Albuquerque. She practices primarily in the areas of wills, trusts and estate planning. She also practices in copyright law and conducted a seminar last fall on “Copyright Basics for Filmmakers and Artists.”

Judge Daniel Ramczyk and Judge Victor Valdez, both from Bernalillo County Metropolitan Court, have successfully completed the two-week General Jurisdiction course at the National Judicial College on the campus of the University of Nevada at Reno. Judge Valdez has served at Bernalillo County Metropolitan Court since February 2004; Judge Ramczyk has been on the Metro Court bench since May 2003. The National Judicial College has been training American judges for 110 years. The two Albuquerque judges are now eligible to enroll for master’s degrees in judicial studies.

Raymond G. Sanchez was awarded the “Walking the Talk Lifetime Achievement Award” from the Latino Roundtable of New Mexico. Sanchez was selected for the award for supporting the drive of New Mexico’s Hispanics for parity and equality in New Mexico’s public institutions. He is a former speaker of the New Mexico House of Representatives and is currently a member of the UNM Board of Regents.

Ronald J. Segel, a trial lawyer at Sutin, Thayer & Browne, PC, has been elected to the New Mexico Anti-Defamation League’s statewide board of directors.

Robert P. Tinnin, Jr.

Judge Helen L. Stirling

Willow Misty Parks

Raymond G. Sanchez

Ronald J. Segel

Hilary Tompkins

Vincent J. Ward

John Tull

Robert P. Tinnin, Jr.
IN MEMORIAM

John Gregory Baugh, loving husband of Margaret Polito Baugh, and beloved father of Madeline Kathleen, Colin Timothy and Anna Pilar, died April 5.

Born to Kathleen and Jack Baugh on Feb. 28, 1951, he grew up in Dallas and graduated from Jesuit High school. He received a bachelor's degree from Loyola University in New Orleans in Theatre, Philosophy and Theology.

He was a member of the Jesuit seminary in Gran Cateau for four years. Baugh met his wife, Margie while working at St. Joseph's Center in Dallas as a residential counselor. They married in 1976, and moved to New Mexico in 1978. He put aside his life-long dream of performing in the Ice Follies to pursue a law degree, which he received from the University of New Mexico School of Law in 1984. He was a partner in Eaves, Bardake, Baugh, Kierst, and Larson law firm from its inception in 1991.

Baugh found great peace and strength from his practice of T'ai Chi. He was also a distinguished actor, appearing as Edmund in King Lear, Gogo in Waiting for Godot at The Vortex in 1991, and Lucky in the same play at Tricklock in 2003.

Baugh was preceded in death by his grandparents, and his mother, Kathleen. He will be deeply missed by his father, Jack; and siblings, Barbara, Mary, David, Chris, Michael, and their families; as well as Margie’s siblings, Cath, Chris, August, and their families; and by his many, many friends and colleagues.

Richard G. Boren, 79, of Farmington died April 27 at San Juan Regional Medical Center.

Boren was born April 6, 1926, in Helper, Utah, the son of Gilbert Reed Boren and Olive (McBride) Boren. He is survived by his wife, Melvona Boren; three daughters, Dana EchoHawk, Mara Maxwell and husband, Gary, and Naja Dollar and husband, Travis; son, Gib Boren and wife, Natilee; 10 grandchildren and four great-grandchildren.

Boren served in the U.S. Navy during World War II, graduated from the University of Idaho and held a law degree from the University of Utah. He was a clerk for the chief justice of the Utah Supreme Court. Boren moved to Farmington in 1954, to establish and operate the Beeline Refinery and was later involved with the Plateau Refinery and Canyon Refinery sold to Thriftway. Richard practiced law in Farmington for 32 years and retired in 2004.

Boren enjoyed restoring and flying antique airplanes and playing boogie-woogie and blues piano. He was very proud of his family and the closeness and love they all had for each other.

Summer Stanley “Stan” Koch, an attorney and resident of Santa Fe until 2004, passed away in Grand Rapids, Minn. Feb. 20.

Koch was the descendant of a long line of Swiss ministers and farmers. His grandfather immigrated to the United States from Tamins, Switzerland, in 1865, and eventually settled in Minnesota. Koch’s father, Clinton Humboldt Stegner Koch, was ordained as a minister in the Methodist Episcopal Church and went as a teacher and missionary to British India in 1905. Stan's mother, Grace Ostrander, received and accepted Clinton's written marriage proposal and joined him in India in 1907 and they were married in Calcutta.

Stan was born in the Province of Bengal, in the Himalayan hill town of Darjeeling, in 1917. The family left India in 1922 and came to New Mexico so that Clinton Koch could recuperate from tuberculosis. Clinton Koch held pastorates in Silver City and Clayton, New Mexico, before the family moved to Albuquerque, where Clinton Koch became professor of German at the University of New Mexico.

Stan graduated from Albuquerque High School in 1934 and received a bachelor's degree from UNM in 1938, where he was also editor of the Mirage and student body president. Upon graduation, Stan was awarded an internship with the National Institute of Public Affairs in Washington, and he also worked for the Budget Division in Richmond, Va., where he was first introduced to his future wife, Sarah Margaret (Margie) Tucker, a native of Virginia.

Stan served in the Marines during World War II, in the 1st Marine Air Wing, stationed in the South Pacific. In 1944, while back in the United States, he re-met Tucker in New York City, where she was a social worker in Harlem. They were married in the Unitarian Church in New York City on December 23, 1944.

After the War, Stan graduated from Harvard Law School in 1948. In that same year, Stan returned to Albuquerque. In 1950, he and Margie moved to Santa Fe where he became associated with the law firm of Gilbert, White & Gilbert, and in 1957 he became a partner there. The firm became White, Koch, Kelly & McCarthy in 1972.

Stan served on the Board of Bar Examiners from 1963 until 1980; he also held the post of Chairman of the Board of Bar Examiners. While Stan's 1961 post at the presidency of the Santa Fe County School Board may have cured any aspirations for higher political office, his many friends and colleagues will recall his deep love of, commitment to, and interest in politics, foreign policy, and the Democratic party and its principles. He was always proud to be called a liberal. He and Margie were also founding members of the Unitarian Church in Santa Fe.

He will always be remembered for his voluminous knowledge and love of history and the law, especially their arcane and esoteric corners, his keen, dry wit and sense of mischief, his beautiful swim stroke, his love of the outdoors, hiking in the Pecos Wilderness with his wife, children, and grandchildren, his ability to make unusual kites, and his engagement in and inspirational help with the homework assignments of his five adoring children.

He is survived by his wife, Margie, and by his daughters Gwen-dolyn Koch, Marilyn Koch, Kristin Koch Vogelgesang and her husband, Todd, and Karin Koch, and by his son, Summer J. Koch and his wife, Adilia, along with seven grandchildren.

Memorial Services will be held at 5:30 p.m., June 3 at the Unitarian Universalist Congregation of Santa Fe, 107 West Barcelona Road, in Santa Fe.
Paul A. Phillips, 88, beloved father, grandfather, great-grandfather, retired attorney and civil libertarian, passed away peacefully March 28 in Palo Alto, Calif.

He was born in Manhattan, N.Y. on Oct. 10, 1916 to Harold and Martha Phillips. He attended public school in New York City, then Princeton Preparatory School and later graduated from Princeton University in 1938 with a degree in classics. While at Princeton, he was a member of the varsity boxing team and the chess team. After college, he worked as a social worker in a settlement house before beginning night studies at Brooklyn Law School where he met his future wife, Casey. He married Estelle “Casey” Stengel Feb. 1, 1941.

Shortly thereafter, he enlisted in the Army where he was a member of the Office of Strategic Services, serving in Greece to aid the resistance and in Egypt. Following the war, he attended Columbia Law School, where he was an editor of the Law Review. He earned his law degree from Columbia in 1947 and went on to earn a master's degree in taxation from NYU Law School.

After graduation, Phillips practiced law in Manhattan and worked on revisions to the federal tax laws, which became part of the 1954 Code. He then taught at the University of Nebraska Law School before moving to Albuquerque 1957.

For the next 35 years, Phillips worked as an attorney with a varied and colorful practice in Albuquerque. He was a founding member of the New Mexico Chapter of the ACLU and was involved in numerous legal battles on behalf of civil liberties and civil rights.

Over the years he received several awards recognizing his many good works. His honors included the United Nations Human Rights award, an NAACP award, an award from the New Mexico Trial Lawyers' Association, and most recently, an award for lifetime achievement from the New Mexico chapter of the ACLU.

His courtroom achievements included invalidating the official seal of Bernalillo County which depicted an illuminated Latin cross and the words “Con Esta Vencemos,” New Mexico State University’s ban on the enrollment of the Iranian students, Albuquerque’s vagrancy ordinance, and overturning the firing of a college teacher for writing a letter critical of a legislator.

Outside of his legal work, Phillips was a true renaissance man, possessing a love of classical music, opera, history, literature and current affairs. Following his retirement in 1992, he lived in both Albuquerque and Sun City West, Ariz., sharing his time with his wife Casey, his children and his grandchildren. He enjoyed traveling the world, taking road trips and debating the issues of the day with his many friends.

His beloved wife preceded him in death. He is survived by his adoring family, including son, Benjamin Phillips and wife, Adrienne; daughter-in-law, Lynn Hathaway; daughter, Alice Zelkha and husband, Eli; daughter, Joyce Phillips and husband, Bill Syme; grandchildren, Meredith Phillips, Jonathan Phillips, Darius Zelkha, Jeremy Zelkha, Chloe Zelkha, Rachel Syme, and Noah Syme; and great-grandchildren, Isaac Zelkha, Avery Liu and Evan Phillips.

Call For Nominations
2005 Annual Awards

Nominations are being accepted for the 2005 annual awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar in 2004 or 2004. Awards will be presented at the 2005 Annual Meeting, Sept. 23-24 at the Ruidoso Convention Center, Ruidoso. A letter of nomination for each nominee should be sent to:
Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; or faxed to (505) 828-3765.

Deadline for nomination submissions is June 17, 2005.

For a full description of each award, see the May 2 (Vol. 44, No. 17) Bar Bulletin.

1. Professionalism Award
2. Seth D. Montgomery Distinguished Judicial Service Award
3. Outstanding Judicial Service Award
4. Courageous Advocacy Award
5. Robert H. LaFollette Pro Bono Award
6. Distinguished Bar Service Award - Lawyer
7. Distinguished Bar Service Award - Nonlawyer
8. Outstanding Contribution Award
9. Outstanding Section/Committee Award
10. Outstanding Local Bar Award
11. Outstanding Program Award
12. Pioneer Award
13. Outstanding Young Lawyer of the Year Award
14. Outstanding Contribution to People with Disabilities Award
15. Quality of Life - Legal Employer Award
16. Quality of Life - Lawyer Award
# Legal Education

## MAY

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<td>23</td>
<td>Protecting Business Assets Through Effective Lawyering</td>
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<td>TRT, Inc.</td>
<td>(800) 672-6253</td>
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<td><a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<tr>
<td>24</td>
<td>Discovery Practice in Employment Litigation</td>
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<td>Center for Legal Education of NMSBF</td>
<td>(505) 797-6020</td>
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<td><a href="http://www.lorman.com">www.lorman.com</a></td>
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<td>24</td>
<td>Junk Science or Scientific Evidence?</td>
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<td>TRT, Inc.</td>
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<td>24</td>
<td>Tax Considerations in Estate Planning</td>
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<td>VR - State Bar Center, Albuquerque</td>
<td>(505) 797-6020</td>
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<td>Coping with Sexual Predators Within the Profession</td>
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<td>TRT, Inc.</td>
<td>(800) 672-6253</td>
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<td><a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>25</td>
<td>Developments in New Mexico Eminent Domain</td>
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<td>Albuquerque</td>
<td>(715) 833-3940</td>
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<td>Key Issues in Estate Planning and Probate in New Mexico</td>
<td>Albuquerque</td>
<td>National Business Institute</td>
<td>(715) 835-8525</td>
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<td><a href="http://www.nbi-sems.com">www.nbi-sems.com</a></td>
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## JUNE

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<td>Equal Justice: Investigating and Prosecuting Crimes Against Individuals with Disabilities</td>
<td>Hobbs</td>
<td>New Mexico Coalition of Sexual Assault Programs</td>
<td>(505) 661-7345</td>
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<td>27</td>
<td>DaVinci Code of Scientific Evidence</td>
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<td>TRT, Inc.</td>
<td>(800) 672-6253</td>
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<td>28</td>
<td>Access and Visitation Conference</td>
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<td>Equal Justice: Investigating and Prosecuting Crimes Against Individuals with Disabilities</td>
<td>Roswell</td>
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<td>(800) 672-6253 / <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>International Education Conference</td>
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<td>(919) 715-6413 / <a href="http://www.lorman.com">www.lorman.com</a></td>
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<td>6</td>
<td>Basics of a New Mexico Divorce Case</td>
<td>VR - State Bar Center, Albuquerque Center for Legal Education of NMSBF</td>
<td>(505) 797-6020 / <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td>Demystifying Employee Retirement Plans: Guidance for the Non-Specialist</td>
<td>Teleseminar</td>
<td>Center for Legal Education of NMSBF</td>
<td>(505) 797-6020 / <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td>2005 Professionalism: Lawyers Concerned for Lawyers</td>
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<td>Burden of Representing Financially-challenged Companies</td>
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<td>Workers Compensation in New Mexico</td>
<td>State Bar Center, Albuquerque New Mexico Defense Lawyers Association</td>
<td>(505) 797-6021 / <a href="http://www.nmdla.org">www.nmdla.org</a></td>
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<td>11</td>
<td>24-Hour Workplace Mediation Training</td>
<td>Albuquerque</td>
<td>Common Ground Mediation Services</td>
<td>(505) 983-3344 / <a href="http://www.commonground-adr.org">www.commonground-adr.org</a></td>
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<td>14</td>
<td>Equal Justice: Investigating and Prosecuting Crimes Against Individuals with Disabilities</td>
<td>Las Cruces</td>
<td>New Mexico Coalition of Sexual Assault Programs</td>
<td>(505) 661-7345 / <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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**Courses by Topic:**
- **Mediation:** Major Issues in Mediation
- **Evidence:** Demonstrative Evidence in Your Personal Injury Trial - When, Why and How Much?
- **International:** International Education Conference
- **Scientific Evidence:** DaVinci Code of Scientific Evidence
- **Divorce:** Basics of a New Mexico Divorce Case
- **Employee Retirement:** Demystifying Employee Retirement Plans: Guidance for the Non-Specialist
- **Professionalism:** 2005 Professionalism: Lawyers Concerned for Lawyers
- **Financial:** Burden of Representing Financially-challenged Companies
- **Compensation:** Workers Compensation in New Mexico
- **Retirement:** Coping with Sexual Predators Within the Profession
- **Justice:** Equal Justice: Investigating and Prosecuting Crimes Against Individuals with Disabilities
- **Science:** Junk Science or Scientific Evidence?
**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 MAY 18, 2005**

**PETITIONS FOR WRIT OF CERTIORARI FILED AND PENDING:**

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<td>Upton v. Clovis</td>
<td>(COA 24,051)</td>
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<td>State v. Ransom</td>
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WRITS OF CERTIORARI

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

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

EFFECTIVE MAY 18, 2005

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Roderick T. Kennedy, Judge

{1} Defendant appeals his conviction for Criminal Sexual Penetration of a Minor (CSPM) committed against his stepdaughter (the child). He challenges the admissibility and effect of evidence contained in the second of two videotapes. In this second videotape, the child testified about similar conduct Defendant had perpetrated against her. These similar acts by Defendant had occurred after the conduct that was charged in this case and took place in Colorado (the Colorado acts). Defendant was not charged or on trial for the Colorado acts, only for acts that took place earlier when the family lived in Alamogordo, New Mexico (the Alamogordo or charged acts). Defendant also asserts that the trial court erroneously allowed Kimberly Otto, his former wife and the mother of the child (Mother), to testify concerning statements the child had made to her that Defendant had penetrated the child with his fingers in Colorado. Finally, Defendant appeals the trial court’s aggravation of his sentence by six years as an abuse of discretion.

{2} We hold that the use of the uncharged Colorado acts as evidence of the charged Alamogordo acts in this context is contrary to Rule 11-404(B) NMRA. Similarly, Mother may not testify as to what the child told her about the inadmissible Colorado acts. In this case, this evidence crossed the line from proper use of evidence of other bad acts to impermissible evidence of Defendant’s propensity to commit the crime with which he was charged. Additionally, we hold the admission of this evidence is more prejudicial than useful for a proper purpose; we accordingly reverse Defendant’s conviction and remand for a new trial.

{3} As we are remanding for a new trial, at which Defendant may or may not be convicted, we need not address the sentencing issue. We note, however, that we recently held that sentences may not be increased on the basis of aggravating circumstances unless those circumstances are found by the jury beyond a reasonable doubt. See State v. Frawley, 2005-NMCA-017, ___ N.M. ___, 106 P.3d 580, cert. granted State v. Frawley, 2005-NM.CERT.-002, ___ N.M. ___, ___ P.3d ___ [No. 29,011 (Feb. 8, 2005)].

FACTS

{4} The child testified by video deposition that Defendant penetrated her with his fingers while she was sleeping in bed between Defendant and Mother. This occurred in Alamogordo, in September or October of 2000. Mother also testified that while living in Alamogordo, Defendant had told her that he did not want the child sleeping in bed with him because he had awakened fondling the child. Mother testified that she took his statement to mean the child’s vaginal area. At that time, Mother did not report the incident because Defendant promised that it would not happen again.

{5} Shortly after this incident, Defendant and Mother moved to Colorado. The child soon came to live with them. Mother testified that after they had moved to Colorado, she had seen Defendant and the child in bed together. When Mother asked the child about what had happened, the child said to her that “[Defendant] comes in there just about every night” and that Defendant digitally penetrated her on these occasions. Mother then confronted Defendant about this accusation and in the course of a conversation that lasted about an hour and a half, Defendant cried and said he was sorry. Mother would later report the incidents to police.

{6} Defendant was charged with CSPM for the Alamogordo acts. Following his arrest, Defendant gave a statement to Detective Sanchez of the Otero County Sheriff’s Department. Detective Sanchez would later testify at trial that Defendant admitted having had contact with the child’s vaginal area that was “pretty damn close” to penetration, but did not remember any digital penetration taking place. According to Detective Sanchez, Defendant stated that, at the time the incident happened, he was “ready to finger [the child] but he woke up but he didn’t think that he did.” Detective Sanchez also said that when Defendant was questioned about the fact that the child claimed to have been penetrated and asked if she would lie, Defendant said that he did not believe the child would lie. Defendant said he knew the child had told the truth.

{7} Prior to trial, Defendant argued that although Mother could testify about the discussion she had had with Defendant regarding the

Certiorari Granted, No. 29,158, April 26, 2005

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-047

STATE OF NEW MEXICO, Plaintiff-Appellee,
versus
JESSE OTTO, Defendant-Appellant.
No. 23,280 (filed March 18, 2005)

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
FRANK K. WILSON, District Judge

PATRICIA A. MADRID,
Attorney General
Santa Fe, New Mexico
M. VICTORIA WILSON,
Assistant Attorney General
Albuquerque, New Mexico
for Appellee

JOHN BIGELOW,
Chief Public Defender
SUSAN ROTH,
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Santa Fe, New Mexico
for Appellant
sexual abuse in Colorado, she could not testify about the child’s statements that had precipitated this conversation. Defendant asserted that such statements were hearsay and inadmissible. Defendant conceded that Mother’s conversation with him and his admissions in those conversations were all admissible. The trial court ruled that, subject to a limiting instruction informing the jury that the child’s statements were not offered for their truth but to allow the jury “the complete picture as to how this all unfolded,” Mother could testify to the child’s statements to her about the Colorado acts.

{8} The child gave a two-part videotaped deposition in January 2002. The first tape concerned events that transpired in Alamogordo between September and October 2000; in the second tape the child testified to the similar Colorado acts occurring after Christmas of that year. Defendant sought to exclude the second videotape. The State sought to have the child’s statements about the Colorado acts admitted as evidence under Rule 11-404(B) to show a lack of mistake or accident on Defendant’s part and as evidence of his intent. The parties argued over the effect of Defendant’s statement that he had come “pretty damn close” to penetrating the child, the State urging that this statement left “some room for interpretation” regarding the issue of whether Defendant knowingly engaged in the Alamogordo acts. The State further argued that this statement showed that Defendant had “sought out the child” to repeat his conduct, which abuse then continued on an almost daily basis. Defendant countered that his defense was not rooted in any mistake but in different facts, namely that what had occurred was no more than contact, and not penetration. The trial court allowed the admission of the child’s testimony concerning Defendant’s actions in Colorado, ruling that “what went on in Colorado is part of this whole picture, that cannot be presented properly without all the pieces of the puzzle and all pieces of the picture,” and that its probative value would not be outweighed by its prejudicial effect.

{9} Trial commenced, Defendant’s motion in limine was denied, and the evidence of the Colorado acts was presented. The State presented both halves of the child’s deposition before calling Mother as a witness. The only other State witnesses were a state patrol officer, who conducted an initial interview with the child, and Detective Sanchez. The State rested its case, and the defense called no witnesses. Defendant was convicted of first degree CSPM.

STANDARDS OF REVIEW

{10} We review the admission or exclusion of evidence under Rule 11-404(B) for abuse of the trial court’s discretion. State v. Williams, 117 N.M. 551, 557, 874 P.2d 12, 18 (1994). We defer to the court’s admission of Rule 11-404(B) evidence. See State v. McGhee, 103 N.M. 100, 104, 703 P.2d 877, 881 (1985) (stating that “[t]he admission of evidence is within the trial court’s discretion and will not be disturbed absent a clear abuse of discretion”).

DISCUSSION

Admission of the Colorado Acts Was a Wrongful Introduction of Propensity Evidence Unjustified by the Application of Rule 11-404(B)

{11} Defendant was charged with criminal conduct occurring in Alamogordo. The child’s deposition concerning that conduct was explicit; his fingers had penetrated her, and it had hurt. Prior to trial, the State made it clear why it wanted to include evidence of his similar conduct in Colorado. Interpreting Defendant’s statement that he had not committed an act involving penetration as one in which he was mistaken as to what he had done, the State sought the admission of the child’s testimony concerning the later Colorado acts of penetration. The State maintained that the evidence of the Colorado acts showed Defendant’s “intent and it shows knowledge that [Defendant] knew what he was doing, and it shows that it’s not an accident because in this particular case in Alamogordo, the child had gotten in bed with the parents whereas in Colorado, [Defendant] sought out the child.” In its opening statement to the jury, the State was more explicit: “[W]hat happened in September or October of 2000 was not a mistake, it wasn’t an accident, but in fact, it was a purposeful, intentional act on the part of [Defendant] because he continued to do the same thing to her when they moved to Colorado.” (Emphasis added.)

{12} This view of the evidence was not borne out by the testimony, nor was it the way the case was argued in closing arguments. By the end of trial, the question came down to one of fact. The State said Defendant’s finger(s) penetrated the child’s vagina while she was between him and his former wife in Alamogordo; the defense said there was no penetration. We now look at the admission of the testimony about the Colorado acts to see if it was properly admitted, as the trial court believed, as “part of this whole picture, that cannot be presented properly without all the pieces of the puzzle.”

Rule 11-404(B) is a Rule of Exclusion

{13} Rule 11-404(B) is fundamentally a rule of exclusion. Williams, 117 N.M. at 557, 874 P.2d at 18 (stating that “[t]he purpose of Rule 404(B) is to exclude the admission of character traits to prove that a defendant acted in accordance with those traits”); but see State v. Jones, 120 N.M. 185, 187-88, 899 P.2d 1139, 1141-42 (Ct. App. 1995) (stating in dicta that in New Mexico, Rule 11-404(B) may be a rule of inclusion, since New Mexico allows more exceptions than those explicitly stated in the Rule). Rule 11-404(B)'s first words that “[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith” establishes a prohibition against using acts to prove a character trait from which it may then be inferred Defendant followed to commit the present crime. This general prohibition against character evidence is followed by a set of exceptions. The second sentence of Rule 11-404(B) establishes the proper purposes, other than proving character, for which evidence of prior bad acts may be admitted. See Rule 11-404(B) (stating in pertinent part that other bad acts may “be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident”); State v. Lamure, 115 N.M. 61, 70, 846 P.2d 1070, 1079 (Ct. App. 1992) (Hartz, J., concurring). “Thus, the issue in New Mexico is whether there is a probative use of the evidence that is not based on the proposition that a bad person is more likely to commit a crime.” Jones, 120 N.M. at 188, 899 P.2d at 1142. Yet even these admissible exceptions to “bad acts” evidence are subject to another general qualifier: prejudice to Defendant. Using Rule 11-404(B) to admit evidence requires its proponent to affirmatively demonstrate the consequential fact to which the proffered evidence is directed. State v. Lucero, 114 N.M. 489, 492, 840 P.2d 1255, 1258 (Ct. App. 1992). After the proponent has made an adequate showing, the court must then also be satisfied that the probative value is not “substantially outweighed” by other
Because evidence that Defendant acted in accordance with a propensity would be exceedingly probative evidence if admitted, even permitted uses of "bad acts" evidence are tempered in turn by the application of Rule 11-403 NMRA. Rule 11-403 requires a balancing of the evidence between its probative value and potentially prejudicial effect. State v. Ruiz, 2001-NMCA-097, ¶ 15, 131 N.M. 241, 34 P.3d 630. We recognize "the grave risk of unfair prejudice when evidence of multiple bad acts is introduced in a single trial." Id. ¶ 14. Rule 11-403 reinforces the very purpose of Rule 11-404(B). This purpose is to protect a defendant from the circumstantial use of other bad acts to establish a character trait or propensity that might be given more weight by the jury than it deserves, and might lead a fact finder to punish the defendant because he is a bad person. Ruiz, 2001-NMCA-097, ¶ 13. We hold that both rules were violated in this case, for the reasons below.

Denial Versus Mistake; Fact Versus Intent

In this case, despite the prosecution’s assertions, Defendant did not allege a mistake as to the character of his actions. At no point in the trial did Defendant deny having had contact with the child’s genitals. Defendant asserted that what had occurred was sexual contact with the child but not penetration, which is a factual proposition. In the course of the trial, sufficient evidence of Defendant’s factual proposition was presented to justify the trial court’s giving a jury instruction on criminal sexual contact as a lesser included offense of CSPM. The court also gave instructions factually distinguishing penetration into the child’s vagina from contact with the child’s vulva as elements of each offense, respectively, as well as an instruction providing separate definitions of “vagina” and “vulva.” The ordinary difference between sexual penetration and sexual contact, and external and internal anatomy, were well enough factually developed by the evidence to justify these instructions. With the uncontested admission of evidence from the child and other witnesses such as Detective Sanchez, the factual issues of contact versus penetration were well developed. The question presented by Defendant was factual—simply, while in Alamogordo did he commit one criminal act or the other? Not in issue was whether he did what he did accidentally or by mistake. In Ruiz, the defendant asserted that the events never happened or the girls accusing him were mistaken in their perceptions, and the State attempted to counter the defense with evidence of other acts. Ruiz, 2001-NMCA-097, ¶ 17. There, the use of the other acts was found to violate Rule 11-404(B), as being no more than evidence of the defendant acting in conformity with his propensity to molest girls, as is the case here. Ruiz, 2001-NMCA-097, ¶ 18.

Furthermore, though we sympathized in Ruiz with the State’s desire to bolster its victims’ testimony, the need to bolster the victim’s credibility, and the belief that sex crimes alone are more likely to follow a pattern based on the unique psychological profile of a likely perpetrator, are not recognized exceptions for admissibility under Rule 11-404(B), and they do not justify manipulating the categories in the rule to accommodate prior bad acts evidence.

The State’s use of the Colorado acts to, as it alleged, establish that Defendant committed the Alamogordo crime “because” he repeated it later was wrong, and the evidence should have been excluded. “Testimony which amounts to evidence of a defendant’s bad character or disposition to commit the crime charged is clearly inadmissible.” Lucero, 114 N.M. at 492, 840 P.2d at 1258.

Even if the evidence was offered, as it was accepted by the trial court, to show the “context” of other admissible facts, the Colorado acts as used at trial were intended by the State to show that Defendant had committed the act “because” he committed other similar acts at a later date. The “context” as set by the State at trial does no more than amount to character or propensity evidence to allow an inference of conformity of behavior. We have stated that “[w]hile we recognize the potential difficulty in prosecuting [CSPM] cases, then, we do not believe the appropriate solution is to wink at the dictates of Rule 11-404(B).” Id. at 494, 840 P.2d at 1260. Furthermore, this use of the Colorado acts is unduly prejudicial and Rule 11-403 should eliminate this evidence from admissibility. See Rule 11-403 (stating that even relevant evidence will be excluded if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury”). Additionally, there was a contextual difference between the Alamogordo acts and the Colorado acts—the Colorado acts involved allegations that Defendant purposely “sought out” the child to commit sexual acts, where in Alamogordo, the acts occurred after the child had climbed into bed between Defendant and Mother. To admit the Colorado acts, then, admits the implication of the added circumstantial element that the State used: That Defendant “sought out” the child to repeat his conduct. The invitation provided by the court to show “the complete picture as to how this all unfolds” is therefore a green light to expand both the nature and effect of the evidence beyond its probative value.

Where a defendant does no more than create a factual dispute where the issue is believability, other bad acts should not be admissible for the reasons stated above. The trial court therefore abused its discretion by failing to exclude them. “When there is error in admitting the other-crimes evidence under [Rule] 11-404(B), prejudice is established when there are convictions.” Jones, 120 N.M. at 190, 899 P.2d at 1144.
{27} I respectfully dissent from the majority opinion. I believe that the majority (1) has taken the State’s argument below for admission of the evidence out of context and (2) has improperly rested its rationale (a) on the incomplete justification articulated by the trial judge, as opposed to justifications that can be lawfully articulated based on the facts and evidence adduced below, and (b) on Defendant’s argument to the jury, as opposed to the evidence introduced below from which the jury could draw inferences that could be properly rebutted by evidence of the Colorado acts. I explain.

{28} First, the majority concentrates on one sentence in the State’s opening argument, during which the State used a shorthand version of its contention—that what happened in Alamogordo was not an accident or a mistake, but instead was intentional and purposeful “because” Defendant continued to do the same thing in Colorado. This shorthand version did not do justice to the State’s argument that it articulated to the trial court during the hearing on the motion in limine and during its closing argument. That argument concentrated on Defendant’s statement made to the police, in which he claimed that he was “ready to tell” you that what Defendant did in Alamogordo was unlawful and intentional. It was not an accident that Defendant did that on that first occasion. You know, not like he was in his sleep or anything, because this is something that continued to occur.”

{29} Second, in my view, the majority has violated one cardinal rule of appellate procedure and one basic rule of criminal law in rest-
The articulation should not be “based on the proposition that a bad person is more likely to commit a crime.”

If the true basis of the majority’s opinion is not the articulations of the prosecutor or the trial judge, then other bad acts evidence will never be able to be used in child sexual abuse cases, which I do not believe is the law.

The rule of criminal law is that we do not limit the State’s presentation of evidence to the narrow question of what a defendant has expressly put in issue. For example, we routinely uphold the admission of gory photographs even though a defendant concedes that the victim is dead or died in a particular way. See, e.g., State v. Hernandez, 115 N.M. 6, 19, 846 P.2d 312, 325 (1993); State v. Stephens, 93 N.M. 368, 370, 600 P.2d 820, 822 (1979); State v. Upton, 60 N.M. 205, 210, 290 P.2d 440, 442-43 (1955). Moreover, we apply this principle in the context of the admission of Rule 11-404(B) evidence. See State v. Martinez, 1999-NMSC-018, ¶¶ 30-34, 127 N.M. 207, 979 P.2d 718 (holding Rule 11-404(B) evidence admissible and not excluded by Rule 11-403 because a defendant’s offers to stipulate do not bind the state to the sanitized way that the defendant wants the case presented); State v. Nguyen, 1997-NMCA-037, ¶¶ 6-12, 123 N.M. 290, 939 P.2d 1098 (indicating, among other things, that the defendant’s willingness to stipulate that mistake or accident would not be defenses does not mean that the state does not have to prove intent and it may do so by offering other bad acts evidence).

Our Rule 11-404(B) jurisprudence permits the admission of other bad acts evidence if there is an “articulation or identification of the consequential fact to which the proffered evidence of other acts is directed.” Jones, 120 N.M. at 187, 899 P.2d at 1141. Moreover, the articulation should not be “based on the proposition that a bad person is more likely to commit a crime.” See id. at 188, 899 P.2d at 1142. Here, the evidence of the Colorado acts satisfies this test. The consequential facts were intent, lack of accident, mistake, and knowledge of what Defendant was doing, all put in issue by Defendant’s statement to the police. Moreover, the fact that the defense tactic was to admit that Defendant committed contact and urge the jury to convict of the lesser included offense did not mean that the jury would necessarily do so. With the evidence and inferences available from Defendant’s own statement, the jurors could easily have believed that whatever Defendant did, he did in his sleep and stopped as soon as he was awake and aware. The State should have the right to rebut Defendant’s statements as long as it can do so consistently with the rules of evidence.

Because I believe that the State did rebut Defendant’s statements consistently with the rules of evidence in this case, even though the majority has utilized certain statements by the trial judge and the prosecutor that make it seem that those rules were violated, I would affirm Defendant’s conviction. The rule requiring cases to be affirmed if the correct result is reached, regardless of the rationale articulated below, is one of judicial economy that is designed to spare the system and the people who deal with it the time, expense, and emotions of a new trial where the result would surely be the same. In this case, had the prosecutor and the trial judge more artfully articulated proper Rule 11-404(B) rationales, it appears that the case would have been affirmed. I would not put the judge and the prosecutor through another trial, nor the victim and her family through another emotional ordeal, on the grounds given by the majority. If the true basis of the majority’s opinion is not the articulations of the prosecutor or the trial judge, then other bad acts evidence will never be able to be used in child sexual abuse cases, which I do not believe is the law. See, e.g., State v. Jordan, 116 N.M. 76, 80-81, 860 P.2d 206, 210-11 (Ct. App. 1993).

LYNN PICKARD, Judge

22 BAR BULLETIN - MAY 23, 2004 - VOLUME 44, NO. 20
Stephen F. (Child) appeals the trial court’s finding that he is a delinquent juvenile and its judgment committing him to the custody of the Children, Youth and Families Department (CYFD) until the age of twenty-one. He requests a new trial, alleging that his jury trial was marred by evidentiary error and erroneous jury instructions. Alternatively, he argues the charges against him should be dismissed because his post-trial dispositional hearing occurred beyond the time limit provided in the Children’s Court Rules. Because this claim of procedural error is dispositive, we need not address Child’s other arguments.

We begin our analysis with Rule 10-101 of the Children’s Court Rules. The relevant portions of this rule provide as follows:

Applicability of Children’s Court Rules or Rules of Criminal Procedure

We apply de novo review. See In re Daniel H., 2003-NMCA-063, ¶ 8, 133 N.M. 630, 68 P.3d 176.

Child does not dispute that the State led a motion to dismiss for failure to comply with the forty-five day time for dispositional hearings as set forth in Rule 10-229(C). The State countered that the time limit had not been reached, arguing that the trial court should instead apply the ninety-day time limit for sentencing found in the Rules of Criminal Procedure. The trial court ruled in favor of the State, and this appeal followed.

BACKGROUND

A jury found Child guilty of two counts of criminal sexual penetration. Because of his statutory status as a youthful offender, see NMSA 1978, § 32A-2-3(I) (2003), the trial court ordered that Child receive an amenability to treatment evaluation. See NMSA 1978, § 32A-2-20 (2003). Approximately two months after this order, the dispositional hearing on amenability to treatment had not yet occurred, and Child filed a motion to dismiss for failure to comply with the forty-five day time for dispositional hearings as set forth in Rule 10-229(C). The State countered that the time limit had not been reached, arguing that the trial court should instead apply the ninety-day time limit for sentencing found in the Rules of Criminal Procedure. The trial court ruled in favor of the State, and this appeal followed.

DISCUSSION

Applicability of Children’s Court Rules or Rules of Criminal Procedure

We begin our analysis with Rule 10-101 of the Children’s Court Rules. The relevant portions of this rule provide as follows:

A. Scope. Except as specifically provided by these rules, the following rules of procedure shall govern proceedings under the Children’s Code [32A-1-1 NMSA 1978]:

1. The Children’s Court Rules govern procedure in the children’s courts of New Mexico in all matters involving children alleged by the state:
   a. to have committed a delinquent act as defined in the Delinquency Act;
   . . .

2. The Rules of Criminal Procedure for the District Courts govern the procedure:
   a. in all proceedings in the district court in which a child is alleged to be a “serious youthful offender”, as defined in the Children’s Code [32A-1-1 NMSA 1978];
   b. in all proceedings in the Children’s Court in which a notice of intent has been filed alleging the child is a “youthful offender”, as that term is defined in the Children’s Code [32A-1-1 NMSA 1978]. If the indictment or bond over order does not include a “youthful offender” offense, any further proceedings for the offense shall be governed by the Children’s Court rules.

Rule 10-101(A)(1)-(2). Because the procedural issue in this case turns on interpretation of this rule and other rules of procedure, we apply de novo review. See In re Daniel H., 2003-NMCA-063, ¶ 8, 133 N.M. 630, 68 P.3d 176.

Child does not dispute that the State filed a notice of intent alleging that Child was a youthful offender, nor does he dispute that the bond over order included allegations that Child committed a “youthful offender” offense. These undisputed facts bring this case within Rule 10-101(A)(2)(b), which means, according to the plain language of this rule, that the Rules of Criminal Procedure apply to the proceedings. See In re Michael L., 2002-NMCA-076, ¶ 9, 132 N.M. 479, 50 P.3d 574 ("We apply the same rules to the construction of..."
Supreme Court rules of procedure as we apply to statutes.”); see also State v. Rivera, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (explaining that courts must give effect to clear and unambiguous language in a statute). However, reading the Children’s Code and the Children’s Court Rules together, we conclude that the overall scheme contemplates that, while the Rules of Criminal Procedure govern the adjudicatory proceedings in youthful offender cases like the present one, the Children’s Court Rules govern all dispositional proceedings for all youthful offenders. See Quantum Corp. v. State Taxation & Revenue Dep’t, 1998-NMCA-050, ¶ 8, 125 N.M. 49, 956 P.2d 848 (holding that statutes governing the same subject matter must be read in connection with one another).

[6] We first look to the statutory context. The proceedings against Child were governed by the Delinquency Act (the Act), NMSA 1978, §§ 32A-2-1 to -33 (1993, as amended through 2003), which is a chapter within the Children’s Code. NMSA 1978, §§ 32A-1-1 to -21-7 (1993, as amended through 2003). The Act’s purpose, in part, is to protect society and hold children accountable for their acts. § 32A-2-2. At the same time, the Act’s stated purpose includes the goals of insulating children from adult consequences and providing rehabilitation. Id.

[7] Because Child’s status as a youthful offender is critical, we next consider the definition of youthful offender within the statutory scheme. When a child commits a delinquent act, the adjudication procedures and the available sanctions depend on whether the law defines the child as (1) a delinquent offender, (2) a youthful offender, or (3) a serious youthful offender. State v. Muniz, 2003-NMSC-021, ¶ 6, 134 N.M. 152, 74 P.3d 86. With respect to the consequences after a determination of guilt, offenders in the first category, delinquent offenders, receive only juvenile sanctions. § 32A-2-3(C). Those in the second category, youthful offenders, may be subject to either juvenile or adult sanctions, § 32A-2-3(1); adult sanctions apply to youthful offenders only where the State follows statutory procedures for seeking anadult sentence, and where the trial court subsequently finds that the offender is not amenable to treatment as a child. § 32A-2-20. The third category, serious youthful offender, encompasses individuals who are fifteen to eighteen years of age at the time of an offense that results in charges of first degree murder. § 32A-2-3(H). The definition of serious youthful offender is clear: from a legal perspective, these offenders are no longer considered children. Id.; see also Muniz, 2003-NMSC-021, ¶ 15 (holding that “the [l]egislature intended to treat children charged with first degree murder as adults”).

[8] The legislature obviously intended to create three categories of juvenile offenders subject to varying degrees of accountability. With respect to the youthful offender category at issue here, the Act further divides this category into three subcategories. A youthful offender is a child who is “fourteen to eighteen years of age at the time of the offense,” and who (1) is adjudicated for at least one of several specific offenses, or (2) has three prior felony adjudications within the past three years, or (3) has been adjudicated for first degree murder. § 32A-2-3(I). In the present case, Child’s youthful offender status resulted from his adjudication for the offense of criminal sexual penetration. § 32A-2-3(I)(1)(h).

[9] Against this statutory backdrop, we now return to the Children’s Court Rules. The Supreme Court apparently intended that application of the Children’s Court Rules and Rules of Criminal Procedure in youthful offender cases turns on the nature of the offenses charged. Rule 10-101(A)(2)(b) provides that the Children’s Court Rules govern proceedings involving youthful offenders “[i]f the indictment or bind over order does not include a ‘youthful offender’ offense.” The same rule provides that the Rules of Criminal Procedure govern proceedings involving all other youthful offenders. Referring back to the statutory definition of youthful offender, then, it is clear that only youthful offenders who may be subject to proceedings governed by the Children’s Court Rules are those who have three prior felony convictions within the past three years. The other two types of youthful offenders, defined by Subsections (1) and (3) of Section 32A-2-3(I), will, by definition, be subject to indictments or bind over orders alleging youthful offender offenses, and thus, their proceedings will be governed by the Rules of Criminal Procedure.

[10] Having said this, there is nevertheless a compelling argument that these subcategories of youthful offender proceedings—those governed by the Children’s Court Rules, and those governed by the Rules of Criminal Procedure—apply only to the adjudicatory stage of the proceedings. No matter what kind of Rule 10-101(A)(2)(b) youthful offender category a child falls under, that child is entitled to a dispositional hearing to determine whether he or she will be subject to juvenile sanctions or an adult sentence. § 32A-2-20(A) (“The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender.”); Muniz, 2003-NMSC-021, ¶ 6 (noting that in all youthful offender proceedings, “the children’s court must determine whether the child is amenable to treatment or rehabilitation as a child in available facilities”) (internal quotation marks and citation omitted)); cf. State v. Michael S., 1998-NMCA-041, ¶ 11, 124 N.M. 732, 955 P.2d 201 (noting that a child who agrees in a plea and disposition agreement that he could be sentenced as an adult has waived his right to a dispositional hearing). A youthful offender cannot be sentenced as an adult unless the children’s court makes specific findings that the child “is not amenable to treatment or rehabilitation as a child in available facilities” and that “the child is not eligible for commitment to an institution for the developmentally disabled or mentally disabled.” § 32A-2-20(B)(1)-(2). Consequently, because the Rules of Criminal Procedure do not provide for such a dispositional hearing, it would make sense that when the adjudicatory stage has been completed, the next stage of the proceedings should fall under the purview of the Children’s Court Rules. Then, if the child is found not to be amenable to treatment as a child, the sentencing procedures in the Rules of Criminal Procedure would be triggered once again. Therefore, we conclude that once a child is adjudicated a youthful offender, the Children’s Court Rules governing dispositional proceedings, not the Rules of Criminal Procedure, should apply in all cases.

[11] The State argues that the ninety-day sentencing time limit in Rule 5-701(B) NMRA of the Rules of Criminal Procedure applies instead of the forty-five day dispositional hearing time limit in Rule 10-229(C) of the Children’s Court Rules. To the extent that the State relies on State v. Todisco, 2000-NMCA-064, ¶ 31, 129 N.M. 310, 6 P.3d 1032 for this proposition, we are not persuaded. In Todisco, we considered a case where the trial court did not resume the continuation of a dispositional hearing for more than nine months after this Court clarified the factors to be considered in determining amenable-ability to treatment, and where the defendant, who was ultimately found not amenable to treatment, argued that the delay violated the six-month rule governing the time to begin trial. Id. ¶¶ 6-8, 31-35. The defendant’s argument failed because the six-month rule for the commencement of trial does not apply to sentencing. Id. ¶ 34. Although Todisco suggests that Rule 5-701(B) on sentencing might apply to a dispositional hearing, the opinion explicitly refrains from
deciding that issue. Id. ¶ 35. In addition, the opinion responds to arguments very different from those that we address today. See State v. Erickson K., 2002-NMCA-058, ¶ 20, 132 N.M. 258, 46 P.3d 1258 (stating that cases are not authority for matters not decided).

**Rule 10-229(C) Commitment for Diagnosis**

12) Having concluded that the Children’s Court Rules apply in this case, we now turn to Rule 10-229(C), which specifically provides that where the court orders diagnostic commitment under the Children’s Code, dispositional proceedings “shall be recommenced within forty-five (45) days after the filing of the court’s order.” We first observe that the rule refers to the recommencement of dispositional proceedings. A review of the Children’s Code convinces us that the proceedings at issue in the present case fit within the language of the rule.

13) The Code provides that “[T]he court may proceed immediately or at a postponed hearing to make disposition of the case.” NMSA 1978, § 32A-2-16(F) (1993) (emphasis added). Here, immediately upon the discharge of the jury following the adjudicatory stage, the trial court began proceedings of a dispositional nature. The court asked counsel for their positions on obtaining a diagnostic evaluation. Counsel concurred that such an evaluation was desirable, and the trial court stated that it would enter an order regarding the evaluation. When the trial court filed its written order on October 22, 2002 directing that Child be committed for a diagnostic evaluation, the time limit for recommencement of the dispositional hearing was triggered.

14) We next observe that the language of Rule 229(C) regarding the time limits for recommencing the proceedings is unequivocal and mandatory. See State v. Davis, 2003-NMSC-022, ¶ 7, 134 N.M. 172, 74 P.3d 1064 (stating that the word “shall” is mandatory language). Here, the trial court ordered a diagnostic commitment on October 22, 2002. Under Rule 10-229(C), therefore, the deadline for recommencement of the dispositional hearing was December 6, 2002. The rule provides that for good cause shown, the Supreme Court may grant an extension of this time limit. Rule 10-229(D). In this case, however, the State made no such request. Thus, the hearing held on February 21, 2003, was well past the time limit of the rule.

15) Because the dispositional hearing was held past the mandatory time limit in Rule 10-229(C), we must determine the proper remedy. The State argues that dismissal would be improper and points to Rule 10-117 NMRA, which states that “failure to comply with time limits is not grounds for . . . dismissing an action, unless refusal to take any such action appears to the court inconsistent with substantial justice or unless these rules expressly provide otherwise.” However, it is significant to us that the mechanism for obtaining an extension of the Rule 10-229 time limit is to request one from the Supreme Court by showing good cause. Rule 10-229(D). This suggests a valid parallel with the six-month rule, Rule 5-604 NMRA, and with the provisions for extending the time limits applicable to the commencement of adjudicatory hearings governed by the Children’s Court Rules. See Rule 10-226(E) NMRA (limiting the time for commencement of an adjudicatory hearing in a delinquency proceeding); Rule 10-320(C)(2) NMRA (limiting the time for commencement of an adjudicatory hearing in an abuse and neglect proceeding). Rule 5-604(D), Rule 10-226(E), and Rule 320(C)(2) all provide that time extensions, past the limited extensions the trial courts may grant, may only be obtained from the Supreme Court for good cause shown. In fact, as we discuss below, the wording of Rule 10-229(D) is virtually identical to the wording of Rule 5-604(D) and (E), Rule 10-226(E), and Rule 10-320(C)(2).

16) Rule 10-229(D) provides:

**D. Extension of time.** For good cause shown the time for commencing a disposition hearing may be extended by the Supreme Court, a justice thereof, or a judge designated by the Supreme Court. The party seeking an extension of time shall file with the clerk of the Supreme Court a verified petition for extension concisely stating the facts petitioner deems to constitute good cause for an extension of time to commence the dispositional hearing. The petition shall be filed within the applicable time limits prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limits if it is based on exceptional circumstances beyond the control of the state or children’s court which justify the failure to file the petition within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the Supreme Court. If the Supreme Court finds that there is good cause for the granting of an extension beyond the applicable time limit, it shall fix the time limit within which the dispositional hearing must be commenced.

Similarly, Rule 5-604(D) provides that “[f]or good cause shown, the time for commencement of trial may be extended by the Supreme Court or a justice thereof[,]” and Rule 10-226(E) provides that “[f]or good cause shown, the time for commencement of an adjudicatory hearing in a delinquency proceeding may be extended by the Supreme Court, a justice thereof, or a judge designated by the Supreme Court.” Rule 10-320(C)(2) states that the time for commencing an adjudicatory hearing in an abuse and neglect case may be extended by the “Supreme Court, a justice thereof, or a judge designated by the Supreme Court for good cause shown.” In addition, Rule 5-604(E), Rule 10-226(E), and Rule 10-320(C)(2) have provisions virtually identical to Rule 10-229(D)’s provisions relating to the procedure for seeking an extension of time from the Supreme Court.

17) Despite these notable similarities, Rule 5-604, Rule 10-226, and Rule 10-320 each has an additional provision that Rule 10-229 does not have. Rules 5-604(F), 10-226(F), and 10-320(D) all provide that noncompliance with the time limits of those rules or with the time limits of any extensions granted shall result in dismissal with prejudice of the charges against the accused. Rule 10-229 has no such provision. We find this fact puzzling. If time limits, in whatever context, are deemed so important that only the Supreme Court may extend them beyond a certain point, then it would seem logical that noncompliance with those time limits should have the same result in every context.

18) In an attempt to understand this apparent inconsistency, we have reviewed the history of Rule 10-229. See Key v. Chrysler Motors Corp., 121 N.M. 764, 768-69, 918 P.2d 350, 354-55 (1996) (“In interpreting statutes, we seek to give effect to the [l]egislature’s intent, and in determining intent we look to the language used and consider the statute’s history and background.”). Before the 1997
amendment, the rule provided that for a child in detention, dispositional proceedings “shall begin within twenty (20) days from the date the adjudicatory hearing was concluded or an admission of the factual allegations of the petition was accepted by the court[.]” Rule 10-229(B) NMRA 1996. It went on to state that a child could be transferred to a department of corrections facility for diagnosis and education, but for no more than sixty or ninety days, depending on the specifics of the child’s adjudication. *Id.* If a child was so transferred, “the dispositional hearing shall begin within twenty (20) days from the date the court receives the diagnostic report of the department.” *Id.*

The rule concluded:

If the hearing is not begun within the times specified in this paragraph, the petition shall be dismissed with prejudice after notice and hearing if:

1. the child has not agreed to the delay or has not been responsible for the failure to comply with the time limits; and
2. the child has been prejudiced by the delay.

Rule 10-229(B)(1)-(2). Thus, failure to comply with the rule’s time limits resulted in dismissal, but only if the child played no part in the delay and was prejudiced by the delay.

19 Following the 1997 amendment, the current version of Rule 10-229 is quite different. With respect to a child in detention, the current rule provides for more time—thirty days rather than twenty days—for a dispositional hearing to commence following the adjudicatory proceedings. Rule 10-229(B). If the hearing is not begun within this time, “unless the child has agreed to the delay or has been responsible for the failure to comply with the time limits, the child shall be released from detention on such conditions as appropriate until the dispositional hearing can be commenced.” *Id.* Thus, the exception for child-caused delay that was in the prior version of the rule was incorporated into the current version, but only with respect to a child in detention. In addition, failure to comply with the time limit for a child in detention results in release of the child in the current version, rather than dismissal as provided in the prior version of the rule.

20 The 1997 amendment also created a new paragraph devoted to the situation, like the one in the present case, where a child is committed for diagnosis. New paragraph (C) provides that the court may commit a child “to a facility for purposes of diagnosis and recommendations to the court as to what disposition is in the best interests of the child and the public.” Rule 10-229(C). If the court orders such a commitment, “the dispositional proceedings shall be recommenced within forty-five (45) days after the filing of the court’s order.” *Id.* Thus, the 1997 amendment considerably shortened the time permitted for diagnostic commitment. Under the prior version of the rule, a child could be committed to a facility for as long as ninety days, and the twenty-day time limit for commencement of the dispositional hearing was not triggered until the court received the diagnostic report. The current version of the rule requires commitment, diagnosis, and report to be completed within forty-five days of the court’s order of commitment. We can only conclude from this that the Supreme Court believed it was critical to strictly limit the amount of time a child could be committed for diagnosis.

21 The 1997 amendment’s reduction of the time limit to forty-five days also brought the rule into compliance with the Children’s Code, which provides that a “court may order that a child adjudicated as a delinquent child be transferred . . . for a period of not more than fifteen days within a three hundred sixty-five day time period for purposes of diagnosis[.]” NMSA 1978, § 32A-2-17(D) (1995).

Thus, it appears that the Supreme Court settled on a forty-five-day time limit applicable to children committed for diagnosis by adding the fifteen days permitted by Section 32A-2-17(D) to the thirty days adopted in Rule 1-229(B) for the commencement of dispositional hearings for children in detention.

22 The 1997 amendment also added the paragraph with which we are now confronted: the paragraph providing that “[f]or good cause shown the time for commencing a disposition hearing may be extended by the Supreme Court, a justice thereof, or a judge designated by the Supreme Court.” Rule 10-229(D). Significantly, the addition of this paragraph manifests a heightened emphasis on the importance of the time limits, as compared to the pre-1997 version. Yet, paradoxically, even though the prior version provided for dismissal of the petition in the event of noncompliance with the time limits under certain circumstances, the current version makes no provision dictating the consequences for noncompliance with the new, more stringent time limits.

23 Considering the current and prior versions of the rule and comparing the rule’s provision for Supreme Court extensions of time with virtually identical provisions in Rules 10-226, 10-320, and 5-604, we conclude that the appropriate remedy for noncompliance with Rule 10-229(C)’s time limit is dismissal. See *Quantum Corp.*, 1998-NMCA-050, ¶ 8 (explaining that a statute whose construction is in question is to “be read in connection with other statutes concerning the same subject matter”). The Supreme Court clearly provided for dismissal in the pre-1997 version of Rule 10-229 and inexplicably did not make a similar provision in the amended version, even though it enhanced the stringency of the time limits applicable to children committed for diagnosis. We surmise that when the Supreme Court added the provision permitting only the Supreme Court to grant an extension for good cause, it also intended to add a paragraph stating the consequences for noncompliance with the time limit, similar to Rule 10-226(F) and Rule 5-604(F). The absence of such a provision was likely an oversight. We note as an aside that the committee commentary to Rule 10-229 sheds no light on our inquiry because it was not changed in any way after the 1997 amendment significantly changed the rule.

24 We observe that while the 1997 amendment shortened the time limit for diagnostic commitment, it lengthened the time limit for children in detention and also provided that a child in detention must be released “if[ ]the hearing is not begun within the time specified[,]” Rule 10-229(B). Although this appears at first blush to be a less stringent consequence than the dismissal required by the pre-1997 version, we think the current version of Rule 10-229(D) permits the State to ask the Supreme Court for an extension of the thirty-day limit on detention; if the hearing does not begin within the extended time frame, then the consequence—dismissal—would be the same as the consequence for failure to comply with the forty-five day limit or any Supreme Court extensions on diagnostic commitment.

25 We acknowledge that Rule 10-117 provides that “failure to comply with time limits is not grounds . . . for dismissing an action . . . unless these rules expressly provide otherwise” and is clearly intended to be the default rule. The newer version of Rule 10-229 on dispositional hearings has no such express provision for failure to comply with the new deadlines. It is not the role of this Court to re-write the rules or to freely insert our view of the proper or ideal language. It is only after careful review of the overall scheme
of similar rules and the increasingly strict revisions made over time to Rule 10-229 that we conclude the dismissal clause is not only conspicuously absent, but unreasonably absent. Typically, the removal of an exception clause would indicate that the rule’s drafters intended for the default rule to apply. However, the stark inconsistency with similar rules, the new time extension via only the Supreme Court (compared to rules that allow lower court extensions), and the drastic change from the prior rule without any clarification convince us that the omission of the dismissal clause creates results that are not only different from the old rule, but that are unreasonable if literally applied. See Rivera, 2004-NMSC-001, ¶ 13 (explaining that courts have not relied on the literal meaning of statutes “when such an application would be absurd, unreasonable, or otherwise inappropriate”). See also State v. Doe, 93 N.M. 31, 33-34, 595 P.2d 1221, 1223-24 (Ct. App. 1979) (holding that dismissal was the appropriate remedy for violation of the time limits applicable to dispositional delinquency hearings under a prior version of the relevant rule in order “to insure prompt handling of children’s court matters”).

[26] In summary, despite the absence of an express provision requiring dismissal for noncompliance with the Rule 10-229(C) time limit, we hold dismissal is proper. Because the dispositional hearing in this case commenced more than forty-five days after the trial court’s order committing Child for diagnosis, the charges against Child must be dismissed.

CONCLUSION

[27] For the foregoing reasons, we reverse the trial court’s judgment and remand with instructions to the trial court to dismiss the charges against Child.

[28] IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

I CONCUR:

MICHAEL E. VIGIL, Judge

CELIA FOY CASTILLO, Judge (concurring in part and dissenting in part)

CELIA FOY CASTILLO, JUDGE

(Dissenting)

[29] I respectfully dissent. While I agree that Rule 10-229 of the Children’s Court Rules is the correct rule to use for the dispositional portion of this case, I do not agree that automatic dismissal is the sanction to be imposed when a dispositional hearing is not recommenced within forty-five days from entry of the order committing a child to a facility for diagnostic purposes.

[30] The majority relies on two bases for their holding that dismissal is the proper sanction. First, they look to the history of the rule; second, they interpret the language of the rule as necessarily including the dismissal provision that is contained in Rules 5-604, 10-226, and 10-320. My view is different. I believe there is a distinction between not meeting the time requirements for the dispositional portion of the case and not meeting those for the adjudicatory portion. Over the years, our Supreme Court has refined how a court is to remedy the late commencement of a dispositional hearing, and the requirement of automatic dismissal with prejudice has been eliminated. Other bases for dismissal remain. Consequently, the absence of an express automatic dismissal provision is intentional, and we would be rewriting the rule if we included it through statutory construction.

HISTORY

[31] The Children’s Court Rules were first enacted in 1976. Since then, there have been numerous changes, including a renumbering and a recompilation. Two rules are applicable in this case: Rule 10-229, which deals with time limits for dispositional proceedings, and Rule 10-117, which deals with the consequences of not meeting the time requirements set out in the rules.

Rule 10-229

[32] In State v. Doe, 93 N.M. 31, 595 P.2d 1221 (Ct. App. 1979), our court first dealt with what is today Rule 10-229(B). At that time, it was designated as Rule 49(b), N.M.R. Child. Ct. (Repl. Pamp. 1979), and stated as follows:

(b) Time limits. When the respondent is in detention, the dispositional hearing shall begin within twenty days from the date the adjudicatory hearing was concluded or an admission of the factual allegations of the petition was accepted by the court, except as provided herein. The court may order that the respondent be transferred to an appropriate facility of the department of corrections . . . for a period of not more than sixty days for purposes of diagnosis. If the respondent is so transferred, the dispositional hearing shall begin within seventy-five days from the date the adjudicatory hearing was concluded or an admission of the factual allegations of the petition was accepted by the court.

Id.; Doe, 93 N.M. at 32, 595 P.2d at 1222. This rule established the time limits for commencement of a dispositional hearing (1) when a child was in detention and (2) when the child had been transferred to an appropriate facility for purposes of diagnosis. It was silent regarding the sanction for exceeding the time requirements. In holding that the consequence for violation of this rule was automatic dismissal, this court rejected the argument that a child should have to demonstrate prejudice before dismissal could be imposed. Doe, 93 N.M. at 33-34, 595 P.2d at 1223-24.

[33] We again considered Rule 49(b), N.M.R. Child. Ct. (Repl. Pamp. 1979), in State v. Doe, 94 N.M. 282, 609 P.2d 729 (Ct. App. 1980). We again upheld dismissal, this time rejecting the state’s argument that the child’s own actions in delaying the hearing acted as a waiver against the strict application of the time limits. Id. at 284, 609 P.2d at 731.

[34] In 1982, the rule was amended to read as follows:

(b) Time limits. When the [child] is in detention, the dispositional hearing shall begin within twenty days from the date the adjudicatory hearing was concluded or an admission of the factual allegations of the petition was accepted by the court,
except as provided herein. The court may order that the [child] be transferred to an appropriate facility of the department of corrections for a period of not more than sixty days with respect to a child adjudicated as a child in need of supervision and for a period of not more than ninety days with respect to a child adjudicated as a delinquent for purposes of diagnosis and education. If the [child] is so transferred, the dispositional hearing shall begin within twenty days from the date the court receives the diagnostic report of the department. If the hearing is not begun within the times specified in this paragraph, the petition shall be dismissed with prejudice after notice and hearing if:

1. the child has not agreed to the delay or has not been responsible for the failure to comply with the time limits; and
2. the child has been prejudiced by the delay.

Rule 49(b), N.M.R. Child. Ct. (Repl. Pamp. 1982). There are three major changes. First, the consequence of failure to meet time deadlines is express—dismissal with prejudice. Second, dismissal is no longer automatic but occurs if the child has not agreed to or been responsible for the delay and if prejudice is shown as a result of delay in the dispositional hearing. Third, commencement of the dispositional hearing for a child having been transferred for diagnostic purposes is no longer calculated from the date of the adjudicatory hearing, but rather from the date the diagnostic report is received. In the new language, the Supreme Court fashioned a rule that would take into consideration the reason for delay and prejudice, two factors that had been expressly rejected in interpreting the former rule. Doe, 94 N.M. at 284, 609 P.2d at 731; Doe, 93 N.M. at 33-34, 595 P.2d at 1223-24 (the Doe cases). The limitation for time spent in a diagnostic facility was treated separately from the time requirement for beginning the dispositional hearing.

{35} In 1986, the Supreme Court recompiled the rules, and Rule 49, N.M.R. Child. Ct. (Repl. Pamp. 1982), became Rule 10-229 NMRA 1986. The form of the rule we are considering today was amended effective April 1, 1997, and, as observed by the majority, appears to have no updated Committee Commentary. Majority opinion ¶ 22. The majority recognizes the substantial changes made to all of Rule 10-229 by the 1997 amendments. Id. ¶¶ 16-20.

{36} The 1997 amendments were based in part on the 1993 rewrite of the Children’s Code, wherein the categories of youthful offenders and serious youthful offenders were established. See Michael S., 1998-NMCA-041, ¶ 3. Rule 10-229(B) NMRA 1997 specifically refers to trials in youthful offender proceedings. This section also establishes time limits for the commencement of dispositional proceedings, and the entire rule is retitled “Dispositional proceedings.” The prior version of the rule used the more limited term of “hearing” in the title and in the text of the rule. Rule 10-229 NMRA 1986. The current rule further relaxes the consequence for failure to begin the dispositional hearing (in this part of the rule, “hearing” is used) of a child in detention. Rule 10-229(B). The remedy is no longer dismissal, but rather release “on such conditions as appropriate until the dispositional hearing can be commenced.” Id.

{37} The 1986 version of the rule calculated time limits from the conclusion of the adjudicatory hearing, from the date that the court accepts an admission of the petition allegations, or from receipt by the court of the diagnostic report. Rule 10-229(B) NMRA 1986. The period of time spent by a child in a diagnostic facility was limited to sixty or ninety days, depending on the adjudication. Id. The current version of the rule includes an entirely new subsection dealing with diagnostic commitment; this topic is no longer contained in the subsection dealing with time limits for commencement of dispositional proceedings. Rule 10-229(C). The language of Rule 10-229(C) allows the court to enter an order committing a child to a facility for diagnostic purposes and directs that the dispositional proceedings “shall be recommenced” within forty-five days after the filing of the court’s order. Id. The majority concludes that the Supreme Court, believing that it was critical to limit commitment time, intended to impose automatic dismissal as the remedy for violating the time requirements regarding commitment. Majority opinion ¶¶ 19, 22. While I agree that the time for commitment has been reduced, I do not agree this indicates that the remedy should be automatic dismissal. I will begin with the language of the statute. The operable words in this subsection are “shall” and “recommenced.” I will address them in reverse order.

{38} The word “recommence” means to commence or begin again. Webster’s Third New International Dictionary 1897 (3d ed. 1976). Thus the use of the word “recommence” indicates that dispositional proceedings have already commenced. As observed by the majority, the trial court began the dispositional proceedings immediately after the adjudication. Majority opinion ¶ 13. Rule 10-229(B) indicates that once begun, the “dispositional proceedings shall be concluded as soon as practical[,]” thereby supporting the conclusion that once commenced, reasonable time is allowed for the conclusion of proceedings.

{39} I agree with the majority that the word “shall” is mandatory. I agree that the dispositional proceedings in this case should have been recommenced within forty-five days from the filing of the court’s order of commitment. I also agree with the majority that the key question relates to the consequences of missing the deadline. The majority points to Rule 10-229(D), which sets out the procedure for obtaining an extension for “commencing a disposition hearing,” and concludes that this section refers to recommencement of dispositional proceedings after commitment. I disagree. By its very language, Rule 10-229(D) refers to commencement, not recommencement, and to proceedings, not hearings. Consequently, extensions for recommencing dispositional proceedings would be governed by the general rule for time extension. Rule 10-106(B)(2) NMRA. In this case, no motion was made, as required by this rule, because it appears that the court determined that the ninety-day period set forth in the Criminal Rules of Procedure applied. So we are left with a failure to comply with a deadline imposed by the rules, which is the subject of Rule 10-117.

**Rule 10-117**

{40} Following the Doe cases, the Children’s Court Rules have been amended to refine the consequences of missing the deadline for beginning dispositional hearings, as I have explained above. Effective in February 1982, the Supreme Court amended what is today Rule 10-117 to deal with those cases wherein the Children’s Court Rules are silent with regard to the sanction to be imposed when deadlines are missed. Rule 17, N.M.R. Child. Ct. (Repl. Pamp. 1982). The pertinent language of Rule 10-117 states that “[e]rror or defect in any ruling, . . . including failure to comply with time limits[,] is not grounds for . . . dismissing an action, unless . . . these rules expressly provide otherwise.” Rule 10-117.

{41} The Committee Commentary on Rule 10-117 indicates that the purpose of the amendment was to “clarify that failure to comply with time limits is not grounds for dismissal of an action unless expressly provided otherwise by the rules.” Id. Although the Commen-
tary lists Rules 10-226, 10-229, and 10-308 NMRA as specifically requiring dismissal with prejudice for not meeting the time limits in the rules, there has been no update to the Commentary, and it does not reflect the current status of the rules. For example, Rule 10-308 is now Rule 10-320 NMRA, and recent amendments to Rule 10-229 are not considered.

**Express Dismissal**

(42) The majority contends that inclusion of the language in Rule 10-229(D) setting out the method by which an extension may be granted for commencement of a dispositional hearing indicates that the Supreme Court meant to include a provision dismissing the case if the time limit for recommencement of a dispositional proceeding is not met. I disagree. The majority points to similar extension language in Rules 5-604, 10-226, and 10-320, all of which contain express dismissal provisions, and concludes that the Supreme Court meant to include express dismissal in Rule 10-229. Rules 5-604, 10-226, and 10-320 deal with adjudication and trial, not with disposition or sentencing. Time requirements for the commencement of the adjudicatory phase of a case are treated differently from time requirements for the dispositional phase. The content of Rule 10-117 is clear: absent an express provision requiring dismissal, failure to comply with time limits in the Children’s Court Rules is not a ground for dismissal of an action. We interpret rules in the same manner as we interpret statutes. *In re Michael L.*, 2002-NMCA-076, ¶ 9 (applying the same rules of construction to Supreme Court rules as to statutes). The legislature is also presumed to know its laws. *Bd. of Comm’rs of Doña Ana County v. Las Cruces Sun-News*, 2003-NMCA-102, ¶ 23, 134 N.M. 283, 76 P.3d 36 (stating that the court cannot say that the legislature “‘forgot’” to reassess a statute after amending another statute because the legislature is presumed to know the law). Similarly, the Supreme Court is presumed to know its rules; this supports the conclusion that the absence of an express provision for dismissal was intentional.

(43) The majority’s reading results in inconsistent applications of sanctions. If a child is in detention and there has been no conduct that would act as a waiver, failure to begin the dispositional hearing results in release from detention. If, however, a child has been committed for diagnosis and the proceedings are not recommenced as provided by the rule, the majority view results in dismissal of the entire case, regardless of waiver, prejudice, or any other factor that might bear on late commencement of the proceedings. The purpose of diagnosis is to help the court fashion a disposition that is in the best interests of the child and the public. § 32A-2-17(D). It makes little sense to require an automatic dismissal of a case for late recommencement of dispositional proceedings yet require release from detention in the general case. *See Rivera*, 2004-NMSC-001, ¶ 13 (observing that statutes are not to be read literally if such reading results in an unreasonable application). The history of the development of the rule points in the opposite direction. Automatic dismissal for failure to begin a dispositional hearing, as occurred at the inception of these rules, is no longer the case.

(44) While my reading of the rule would not allow dismissal for mere failure to comply with the time limit in Rule 10-229(C), my reading does not prevent a child from arguing for dismissal based on other grounds. For example, Rule 10-117 would allow dismissal when failure to meet the required deadline is inconsistent with substantial justice. There also may be cases wherein the facts would support a denial of due process or other constitutional violations. These alternative arguments were not made in this case.

(45) A child’s right to a speedy dispositional hearing is similar to the general right to speedy sentencing. This court has acknowledged the difference between the right to a speedy trial and the right to speedy sentencing in children’s court cases. In *Todisco*, we relied on *Perez v. Sullivan*, 793 F.2d 249, 254 (10th Cir. 1986), in stating that “a delay in sentencing involves considerations different from those related to pre-trial delay. The alteration of a defendant’s status from accused and presumed innocent to guilty and awaiting sentence is a significant change[,] which must be taken into account . . . .” *Todisco*, 2000-NMCA-064, ¶ 23 (quoting Perez, 793 F.2d at 254). We went on to say that “[m]ost of the interests designed to be protected by the speedy trial guarantee ‘diminish or disappear altogether once there has been a conviction.’” *Todisco*, 2000-NMCA-064, ¶ 23 (quoting Perez, 793 F.2d at 256). This type of language supports the interpretation that dismissal is not an automatic sanction when the forty-five-day deadline for recommencement of dispositional proceedings is not met.

**CONCLUSION**

(46) For the above reasons, I would not dismiss this case based on failure to comply with Rule 10-229(C).

(47) I therefore respectfully dissent.

**CElia Foy castillo,**

Judge
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New Mexico Public Defender Department Request For Proposals
The New Mexico Public Defender Department is issuing a Request for Proposals (RFP) for currently licensed New Mexico attorneys to serve as contract Public Defenders in the following areas: 1. Trial attorneys for felony, juvenile or misdemeanor cases in each of the thirteen judicial districts; 2. Appellate attorneys for criminal appeals; 3. Attorneys to handle habeas corpus petitions on a statewide basis; 4. Trial attorneys for lead counsel and second chair counsel on death penalty cases; 5. Trial attorneys for first-degree murder cases (non-death penalty) in each of the thirteen judicial districts or on a statewide basis. Contracts are for a term of twenty-four months from November 1, 2005 through October 31, 2007 with a renewal option for any period of 12 months or less, not to exceed a total of two years beyond the initial contracting period. Proposals must be submitted on forms provided by the Department. To receive a copy of the RFP, write to Marlene Foster, Director of Contract Counsel Legal Services, 301 North Guadalupe, Santa Fe, NM 87501. Requests for RFP’s may also be sent by facsimile to Annie McGarrah at 827-3803, by e-mail to amcgarrah@nmpdd.state.nm.us, or by telephone at 827-3931, ext. 126, or a copy of the RFP can be downloaded from www.state.nm.us/nmpdd. Hard copies of proposals must be received at the above address by 2:00 p.m. MST, July 11, 2005. Proposals may not be sent by facsimile or e-mail. Late proposals will not be accepted. This contract procurement conforms to the requirements of Section 13-1-191, NMSA 1978.

Assistant District Attorney
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 thaake@da.state.nm.us.

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Positions

Associate Attorney
Established civil and criminal defense firm seeking associate to practice criminal defense including contract public defender work, as well as establishing one’s own private practice. 2 years experience preferred. Native American (Navajo) speaking preferred, but not required. Must be willing to submit name and resume for public defender bid by mid June, 2005, and be willing to relocate to Gallup, New Mexico to begin work by November 1, 2005. Salary based on experience. Benefits included. Send resume to: Associate Attorney, c/o Post Office Box 2254, Gallup, New Mexico 87305.

Commercial Transaction Attorney
Sutin Thayer & Browne is accepting resumes for a lawyer with 2 to 5 years experience in business and commercial law. Experience in entity formation and operation and mergers and acquisitions preferred. The position is in our Albuquerque office. Applicants must be licensed in New Mexico. All replies will be kept confidential. Please send a letter of interest, resume, writing sample and transcript to Recruiting Coordinator, Sutin Thayer & Browne, P. O. Box 1945, Albuquerque, NM 87103, or email to or fax to 505-888-6565.

Attorney - Santa Fe
Seeking an intelligent, motivated individual with excellent research and writing skills, to work primarily in the area of medical malpractice defense. Experienced preferred, but not required. Candidate must reside in or be willing to move to Santa Fe. Simons & Slattery, LLP is a 9-attorney firm located in Santa Fe, New Mexico. Please reply via email to freyes@simonsfirm.com or by fax to (505) 982-0185. All responses will be kept in confidence.

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Office of the State Engineer/Interstate Stream Commission State of New Mexico

The New Mexico State Engineers Office/Interstate Stream Commission is seeking a

Lawyer – Advanced Level to represent the OSE/ISC in federal & state court litigation & at administrative hearings, water right adjudications & natural resources issues. Work Experience/Education Requirements (minimum qualifications): REQUIRED - Licensure as an attorney by the Supreme Court of New Mexico. Must be a member in good standing of State Bar & eligible to obtain New Mexico Attorney General Commission. Experience in the practice of law in the area of administrative hearings matters, water right adjudications & natural resources totaling 4 years. The position is located in Santa Fe. Salary range is $42,322 to $75,240. This is a TERM position with an end date of 6/30/05 with excellent potential for extension. Please refer to job order # 62565 when applying. Applications are being accepted by the Department of Labor from May 5, 2005 to 5/20/05. Please send an additional copy of your resume, bar card & a writing sample to J. Schleicher at the OSE/ISC, P.O. Box 25012, Santa Fe, NM 87504-5102. Office of the State Engineer is an Equal Opportunity Employer.

Assistant Staff Attorney

The New Mexico Court of Appeals is seeking applications for a full-time Assistant Staff Attorney position in the Prehearing Division. Regardless of experience, the beginning salary is limited to $44,019, plus generous fringe benefits. New Mexico Bar admission is required, and some practice experience is desirable. As one of sixteen staff attorneys, this position will require managing a heavy caseload of appeals on the Court of Appeals’ summary and nonsummary calendars covering all areas of law considered by the Court. The position also requires extensive legal research and writing. Interested applicants should submit a completed New Mexico Judicial Branch Application for Employment, along with a letter of interest, resume, law school transcript, and short writing sample of no more than 5 pages to Joey D. Moya, Chief Staff Attorney, P.O. Box 2008, Santa Fe, New Mexico 87504, no later than 4:00 p.m. on Tuesday, May 31, 2005. To obtain an application for employment, please call 827-4875 or visit www.nmcourts.com and click on “Job Opportunities.” The New Mexico Judicial Branch is an equal opportunity employer.

Estate Planning Attorney

Albuquerque estate planning law firm looking for an attorney with at least 4 years of experience drafting wills, trusts and other ancillary documents. Medicaid experience a plus. Must have excellent communication and interpersonal skills. Comfortable, relaxed work environment with no monthly billable hour requirement (most legal work is done for flat fees). Salary commensurate with experience. All inquiries will be kept strictly confidential. Fax resume to 505-244-0020 or call Matthew Urrea at 505-244-0090.

Taxation and Revenue Department Office of the Secretary Legal Services Bureau

Refer to Job Order # NM 63037

The New Mexico Taxation and Revenue Department, Legal Services Bureau seeks a Lawyer-A to assist the Department in the administration of the state’s tax and related laws. Attorney will present cases to the Hearing Officer, district and appellate courts. Attorney will be directed by, and report to the Department’s General Counsel. Position is located in Santa Fe. Position is a Pay Band 80, hourly salary range $20,347 to $32,073. Some travel required. The classified position requires the following qualifications: Graduation from an accredited law school; licensure as an attorney by the Supreme Court of New Mexico, and experience in the practice of law totaling seven (7) years. Litigation experience and training in state and local tax matters preferred. As a Taxation and Revenue Department employee, Attorney should be current with all tax reporting and payment and Motor Vehicle licensure requirements. Attorney must apply through the New Mexico Department of Labor by June 3, 2005. Please send a duplicate resume, a writing sample and a clear copy of the New Mexico State Bar card to: Hiring Committee, Taxation and Revenue Department, Legal Services Bureau, Post Office Box 630, Santa Fe, New Mexico 87504-0630. Resumes and writing sample must be received by June 3, 2005.

Attorney

Albuquerque criminal defense attorney who handles many cases statewide is accepting resumes for one, or possibly two, associate attorneys with one to five years experience. Submit resume, references and, in particular, writing sample and salary request, to Billy R. Blackburn, 1011 Lomas Blvd. NW, Albuquerque, NM 87102. No phone calls please.

Contract Attorney Position

Downtown law firm has unique part time, independent contract positions available providing legal advice. Some flexibility in scheduling available, along with late afternoon/early evening hours. Great supplement to private practice. Positions require at least 3 yrs. practice experience, and you must like dealing with people. Work includes daily phone advice with clients, document review, and research in criminal and civil law in a friendly atmosphere. Computer skills and Spanish speaking helpful. Will train for position. Fax resume to 242-6225 or mail to Administrator, The Jaffe Law Firm, P.O. Box 809, Albuquerque, NM 87103-0809.

Family Law Attorney

Experienced family law attorney needed to serve as Guardian Ad Litem in divorce and domestic violence cases involving indigent families in Bernalillo and surrounding counties. This is NOT for abuse and neglect cases. Successful candidate will work closely with the 2nd Judicial District Court Domestic Relations Division through Legal FACS as part of a new innovative pilot project. The position is part-time for one year with the potential to develop into a full-time, long term commitment. Please send Resume to Donavon Roberts at Legal FACS, P.O. Box 2204, Albuquerque, 87103.

Attorney

The Oil Conservation Division (OCD) of the New Mexico Energy, Minerals and Natural Resources Department seeks assistant general counsel to provide legal services in the fields of oil and gas law and environmental law. Representative duties include representing the OCD before administrative bodies and in court in compliance and enforcement cases, and developing rules and policies in consultation with senior management. Substantial interaction with OCD employees and limited travel will be expected. Applicants must have a current license to practice law in New Mexico and four or more years of experience in one or more of the following areas: litigation, regulatory enforcement, rule promulgation and policy development, natural resource and environmental issues, oil and gas law. This classified, full-time position is at the Lawyer-Operational Technical Occupational Group Level, Pay Band 75, with an annual salary range of $37,525 - $66,712, depending on experience and budget availability. Applicants must be registered with the Department of Labor (DOL) by no later than June 10, 2005, under Tool # 521-07-70-00-00-00-50. In addition, applicants must provide a letter of intent and a resume to Joyce Medina, EMNRD, 1220 Saint Francis Drive, Santa Fe, New Mexico 87505. Applicants who have questions or need additional information may contact Ms. Medina at (505) 476-3211.

Part Time Associate

Part time associate with potential for full time employment. Minimum 5 years experience required. Send resume, references and writing sample: 2019 Galisteo, Suite C3, Santa Fe, NM 87505.
Full Time Attorney Position
Downtown law firm is looking for attorney with 3 to 25 yrs. experience, who likes dealing with people. Work consists of extensive phone advice to clients, document review, and research in criminal and civil law in a friendly atmosphere. Computer skills and Spanish speaking helpful. Will train for position. Fax resume to 242-6225 or mail to Administrator, The Jaffe Law Firm, P.O. Box 809, Albuquerque, NM 87103-0809.

Attorney Position
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Investigator
The NM Federal Public Defender seeks experienced Investigator for Las Cruces office. Duties include but not limited to conducting interviews, locating witnesses and experts, gathering records and evidence, photographing crime scene, working closely with attorney to discuss case and initiate new areas of investigation, maintain files and information reference systems. Qualifications include high school diploma, 3 years generalized and 3 years specialized experience, knowledge of criminal justice system, computer applications, self-starter with willingness to accept responsibility, use initiative, ingenuity and resourcefulness. Travel as required. Spanish proficiency preferred. Selected candidate subject to background check as condition of employment. Submit resume and references by May 31, 2005 to: Stephen P. McCue, Federal Public Defender, 111 Lomas Blvd NW, Suite 501, Albuquerque, NM 87102. EOE.

Legal Secretary/Assistant
Legal Secretary/Assistant for Sante Fe attorney. Requires exceptional secretarial and organizational skills with a commitment to consistent excellent quality of work. Must have superior computer skills, including WordPerfect 9.0, MS Word 2000, MS Office. Knowledge of litigation procedures also needed. Firm offers excellent benefit package, competitive salary and great work environment. For consideration, please send resume to HR Manager, Rodey Law Firm, P.O. Box 1888, Albuquerque, NM 87103 or e-mail to hr@rodey.com. EOE

Paralegal/Legal Secretary
Seeking experienced Paralegal/Legal Secretary with strong computer & organizational skills to assist two transactional real estate attorneys in an established Downtown Law Firm. Real estate experience preferred. Team environment, pay D.O.E. and benefits. Fax resume to 247-9109 or mail to M.O.P., 1401 Central NW, Alb. 87104 or email spickett@moplaw.com.

Legal Positions
Santa Fe’s finest firms are adding legal assistant/secertary blends to their talented teams. Solid history required, along with family or transactional law, legal software and exceptional word-processing skills. $34-39K + bonus + benefits. (p) 505-983-7775, (f) 505-983-1092, www.marciowenassoc.com.

Legal Research and Writing Instructor
The University of New Mexico School of Law seeks applications and nominations for a non-tenure track faculty position to begin in August 2005. The Lecturer III will teach in the Law School’s Legal Research and Writing Program. Minimum requirements are a J.D. degree and two years of full-time law practice experience. Desirable qualifications include demonstrated legal research and writing ability, experience teaching legal writing in a law school, demonstrated ability to work collaboratively with other faculty members, demonstrated ability to diagnose writing problems, and demonstrated ability to work with students from diverse backgrounds. Salary: Commensurate with qualifications. Term: Year to year. To apply, send a signed letter of interest that addresses your qualifications, a resume, names, addresses and phone numbers of three references, and a practice related writing sample to: Professor Gloria Valencia-Weber, Chair, Search Committee, UNM School of Law, MSC11 6070, 1 University of New Mexico, Albuquerque, NM 87131-0001. For best consideration, please submit applications by June 10, 2005. The University of New Mexico is an Equal Opportunity/Affirmative Action Employer and Educator.

Paralegal/Legal Assistant
Busy and growing downtown law firm seeks experienced paralegal. Contract or full-time for established lawyers. Must be experienced in obtaining, organizing and summarizing medical records and in assisting with other litigation related matters. This position demands extensive attention to detail. The successful candidate will possess a strong work ethic, versatility, exceptional communication and organizational skills, excellent analytical skills, and a commitment to consistent quality work. Additionally, experience in workers’ compensation cases a plus. We offer an excellent work environment, competitive salary package. For consideration, please forward your resume, references & salary requirements to: Office Manager, P.O. Box 1578, Albuquerque, NM 87103-1578, fax to 505-247-8125, or email to kchenowth@maestasandsuggret.com.

POSITIONS WANTED

Part-time or Contract Work
New Mexico licensed attorney w/ Navajo Nation license seeks part-time or contract work for one year or less. (will be attending graduate school in fall) Enjoy research and writing. Interest/experience in health law (including mental health, disability, HIPAA), elder law; employment (ADA, EEOC), medical malpractice; federal / tribal law; administrative law/hearings; Social Security; FOIA. Would be interested in supporting civil trial work (have been second chair on criminal cases). Contact nmlawyer@ispwest.com.

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The Third Annual Tax Symposium will feature problems currently facing the federal tax system and the role and response of the Taxpayer Advocate Service; new securities law requirements under Sarbanes Oxley and its effects on corporate tax departments; the IRS’s new tax shelter reporting requirements and its potential impact on attorneys, accountants, and financial advisors; an update on important tax cases and IRS decisions issued in the last year; recent legislative tax initiatives in New Mexico as well as court and administrative tax decisions, current hot topics specific to New Mexico, and a final session on the complexities of tax free section 1031 exchanges.

Schedule of Events

7:30 a.m.  Registration  1:00 p.m.  Sarbanes Oxley and Corporate Tax Departments
8:00 a.m.  The Role of the Taxpayer Advocate Service in an Enforcement Environment
            Nina Olson, National Taxpayer Advocate, I. R. S., Washington, DC
9:30 a.m.  2005 Federal Tax Law Update
            Ira Shephard, Professor of Law, University of Houston Law School
            IRS Tax Shelter Reporting Requirements: A Trap for the Unwary
            Edward Hymson, University of Texas at Brownsville Accounting Dept.
10:30 a.m. Break
10:45 a.m. 2005 Federal Tax Law Update (cont.)
            Ira Shephard, Professor of Law, University of Houston Law School
3:30 p.m.  Tax-Free Section 1031 Exchanges
            Bradley T. Borden, Washburn University School of Law
5:00 p.m. Adjourn

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