A MESSAGE FROM
CHIEF JUSTICE BOSSON

Dear Colleagues,

Please join me in attending this year’s State Bar of New Mexico Annual Meeting. The event will be held in beautiful Ruidoso, from September 22-24, and promises to be an outstanding opportunity for camaraderie, networking, and attending informative CLE programs.

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Advisory Opinion 2005-1: Destruction of Closed Files

Special Insert:

State Bar of New Mexico Annual Meeting
Back to the Basics: Building Blocks to a Better Practice
The Annual Meeting Planning Committee has done an excellent job producing this year’s program, entitled *Back to the Basics: Building Blocks for a Better Practice*. Featured speakers include Dustin Cole on the *Seven Keys of Maintaining a Safe and Successful Practice*, and Jack Marshall on *Ethics Rock!* These speakers have received great acclaim nationally and will provide dynamic and entertaining programs on professionalism and ethics. In addition, many of our State Bar Sections will provide substantive programs and updates on numerous areas of the law.

This year’s program also offers several evening entertainment events. The dinner theater at the Flying J Ranch presents a western stage show, and the Spencer Theater in Lincoln will also showcase a live performance. Tours of both the St. Joseph’s Mission and Eagle Ranch Pistachio Farm will also be available. A silent auction with many enticing items is also being organized to benefit the Equal Access to Justice Campaign for civil legal services.

I encourage all New Mexico lawyers and judges to attend the Annual Meeting. A preview is inserted into this issue of the *Bar Bulletin* that offers more information and a registration form.

I look forward to seeing you in Ruidoso.

Very truly,

Richard C. Bosson
Chief Justice

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**The State Bar of New Mexico**

2005-2006 *Bench & Bar Directory* has been mailed!

Order extra copies online at www.nmbar.org.

To request an order form call the State Bar of New Mexico at (505) 797-6000

or E-mail sbnm@nmbar.org.
Equal Access to Justice Campaign
Silent Auction

The Equal Access to Justice Campaign is a program that helps New Mexico families and individuals get the civil legal service help they need. Funds raised are used to make justice work for those who need it but cannot afford it - to give everyone a fighting chance.

To raise funds, Equal Access to Justice is holding a Silent Auction during the State Bar’s Annual Meeting in Ruidoso on September 23 at the Ruidoso Convention Center.

As a contributor to our silent auction, you and/or your organization will be promoted throughout the State Bar’s three-day Annual Meeting, in the event program, and in the State Bar’s weekly Bar Bulletin. Your donation is tax deductible.

We are looking for items such as:
• beauty/spa services
• sporting goods
• theatre and entertainment
• artwork
• food and wine
• travel
• jewelry
• clothes
• home decorating items
• or anything you think would be of interest.

Anything you can do will be greatly appreciated!

If you would like to donate an item or have a lead for us to contact, please contact Joe Conte at 797-6099, or jconte@nmbar.org.
2005 Professionalism Lawyers Concerned for Lawyers Substance Abuse and Addiction Issues in the New Mexico Legal Community Video Replay • Wednesday, July 27, Aug. 10 & 24, 2005 10 a.m. - Noon • State Bar Center 2.0 Professionalism CLE Credits The 2005 Commission on Professionalism course, LAWYERS CONCERNED FOR LAWYERS: Substance Abuse and Addiction Issues in the New Mexico Legal Community, focuses 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 features 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 also receive a perspective from the UNM School of Law and the Disciplinary Board. The program gives 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

Old Dogs, New Tricks: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 Friday, August 5 & Saturday, August 6, 2005 State Bar Center • 10.3 General and 1.2 Ethics CLE Credits Co-Sponsor: Bankruptcy Law Section Presenters: Nancy S. Cusack, Esq., Annette DeBois, Esq., Henry E. Hildebrandt, III, Esq., Hon. Keith M. Lundin, Prof. Nathalie Martin, Mary E. May, Esq., Norman Meyer, Robin E. Phelan, Esq., Kelley Skehen, Esq., and Gerald R. Velarde, Esq., Donald A. Fenstermacher, Esq. Congress recently enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). That act represents the most significant change in bankruptcy law since the passage of the Bankruptcy Code of 1978. All bankruptcy cases filed on or after Oct. 17, 2005, will be subject to the act. This will have a profound impact on consumer bankruptcies as well as business reorganizations. Join us as we learn how these changes will impact your practice and the rights of your clients.

An outstanding panel of experts will offer practical advise to debtors' counsel, as well as those attorneys whose clients may be creditors in a bankruptcy proceeding, regarding the requirements, risks and opportunities presented by the changes in the law. Due to the magnitude of new changes affecting bankruptcy law, the course materials for this seminar will include not only a complimentary redlined copy of the code, but also a complimentary copy of Recent Developments in Chapter 13 by Bankruptcy Judge Keith M. Lundin and Henry E. Hildebrandt, III, Esq.
□ Standard & Non-Attorney $269 □ Government & Paralegal $259 □ Bankruptcy Section Member $249

FOUR WAYS TO REGISTER

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

Name ____________________________
NM Bar # _________________________
Street ____________________________
City/State/Zip ______________________
Phone ____________________ Fax ______
Email ____________________________
Program Title _____________________
Program Date _____________________
Program Location __________________
Program Cost _____________________
□ Purchase Order (Must be attached to be registered)
□ Check enclosed $ __________
Make check payable to: CLE
□ VISA □ MC □ American Express □ Discover
Credit Card # _____________________
Exp. Date _________________________
Authorized Signature ________________

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* Professionalism Tip – With respect to the public and to other persons involved in the legal system:
I will keep current in my practice areas, and, when necessary, will associate
with or refer my client to other more knowledgeable or experienced counsel.

Meetings

July
26
Technology Utilization Committee, 4 p.m., State Bar Center
28
Appellate Practice Section Board of Directors, 3 p.m., Montgomery &
Andrews, PA, Santa Fe
29
Prosecutors Section Board of Directors, 3 p.m., State Bar Center

August
1
Attorney Support Group, 5:30 p.m.,
First Methodist Church
3
Employment and Labor Law Section
Board of Directors, noon, State Bar Center
3
Trial Practice Section Board of Directors, 4:30 p.m., State Bar Center
11
Public Law Section Board of Directors,
noon, State Bar Center

State Bar Workshops

July
27
Family Law Workshop, 5:30 p.m.,
Branigan Library, Las Cruces
27
Consumer Debt/Bankruptcy Workshop*, 6 p.m., State Bar Center
28
Consumer Debt/Bankruptcy Workshop*, 5:30 p.m.,
Branigan Library, Las Cruces

August
10
Landlord/Tenant Workshop - Landlords, 6 p.m., State Bar Center
11
Lawyer Referral for the Elderly
Workshop, 10 a.m., Belen Senior Center, Belen
24
Family Law Workshop, 5:30 p.m.,
Branigan Library, Las Cruces
24
Consumer Debt/Bankruptcy Workshop*, 6 p.m., State Bar Center

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

Contributions and announcements to the Bar Bulletin are welcome, but the right is
reserved to select material to be published. Unless otherwise specified, publication of
any announcement or statement is not deemed to be an endorsement by the State
Bar of New Mexico of the views expressed therein, nor shall publication of any adver-
tisement be considered an endorsement by the State Bar of the product or
service involved. Editorial policy available upon request.

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NOTICES

Supreme Court
Law Library Hours

The New Mexico Supreme Court Law Library is now open during the following hours:

Mon. – Fri. 8 a.m. to 5:30 p.m.
Sat. 10 a.m. to 3 p.m.

Commission on Access to Justice
Vacancy

One attorney vacancy exists on the Commission on Access to Justice. Attorneys interested in volunteering their time on this committee may send a letter of interest or resume to Kathleen Jo Gibson, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Deadline for letters and resumes is Aug. 8.

MCLE Board Vacancy

One attorney vacancy exists on the MCLE Board due to the resignation of one member. Attorneys interested in volunteering their time on this committee may send a letter of interest or a resume to Kathleen Jo Gibson, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Deadline for letters and resumes is Aug. 8.

NM Board of Legal Specialization
Comments Solicited

The following attorneys are applying for certification as a 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 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 any of the applicant’s qualifications within 30 days after the independent inquiry and review process is completed. The board and appropriate specialty committee. The board and specialty committee encourage attorneys and others to comment upon any applicant. Address comments to New Mexico Board of Legal Specialization, PO Box 92860, Albuquerque, NM 87199.

Estate Planning, Trusts and Probate
M. Dwight Hurst

Trial Practice – Civil Law
J. Edward Hollington

Second Judicial District Court
Children’s Court Monthly Judges’ and Managers’ Meeting

The Second Judicial District Children’s Court will hold its monthly judges’ and managers’ meeting at noon, Aug. 2 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.

Settlement Week 2005

The Second Judicial District Court’s 17th Annual Settlement Week is scheduled for Oct. 17 to Oct. 21. The deadline for requesting a referral of a civil or domestic relations case to Settlement Week 2005 is July 29. For complete details regarding referral requests, refer to LR2-602, Section C, of the Second Judicial District Court’s Local Rules governing the Settlement Facilitation Program. Blank request forms may be picked up in the civil clerk’s office, domestic relations clerk’s office or court alternatives. When using a settlement week request form, include names, addresses and phone numbers of all parties and attorneys (especially Pro Se parties) involved and any other individuals requiring notice of the settlement facilitation. For more information contact the court alternatives office, (505) 841-7412.

Thirteenth Judicial District Court
Sandoval County Court
Operations Moving

The new Sandoval County Courthouse is now ready for occupancy. The Thirteenth Judicial District Court was closed for moving July 21 and July 22. The court is now open at its new location. The new address is:

Thirteenth Judicial District Court
1500 Idalia Road, Building A
Bernalillo, NM 87004

All contact phone numbers will stay the same, but the court asks that attorneys be patient with communications as the new phone and computer systems come on line. For more information call Theresa Valencia, chief clerk, (505) 867-2376.

Bernalillo County Metropolitan Court Judicial Nominations

The Bernalillo County Metropolitan Court Judicial Nominating Commission has selected five applicants for two vacancies to forward to Gov. Bill Richardson to make the final selection. The nominees are:

Rosemarie L. Allred
Julie Altwies
Linda Mott
Clyde DeMerssemann
Sandra Engel

The two vacancies – one criminal and one civil – were created by the Legislature to address judges’ heavy caseloads, identified as a factor in the high DWI dismissal rate during a DWI summit earlier this year.

U.S. District Court for the District of New Mexico
Revised Criminal Justice Act (CJA)

Effective July 1, 2005, the U.S. District Court for the District of New Mexico revised its CJA Information Manual and amended its Attorney Information Manual. Also, a new Federal Bar Attorney Admission Form and processing information are now available. Visit the U.S. District Court Web site at www.nmcourt.fed.us to review copies of these documents in their entirety.

STATE BAR NEWS

Annual Meeting
Resolutions and Motions

The 2005 Annual Meeting of the State Bar of New Mexico will be held at noon, Sept. 23, at the Ruidoso Convention Center in Ruidoso. Resolutions and motions to be considered must be submitted in writing and received in the office of Joe Conte, executive director, PO Box 92860, Albuquerque, NM 87199; fax, (505) 828-3765; or e-mail, jconte@nmbar.org, by 5 p.m., Aug. 23.

Quality of Life Quote

“If one advances confidently in the direction of one’s dreams, and endeavors to live the life which one has imagined, one will meet with a success unexpected in common hours.”

– Henry David Thoreau
Appellate Practice Section
Annual Meeting
The annual meeting of the Appellate Practice Section will take place at 1 p.m., Aug. 19 at the State Bar Center. It will be held in conjunction with the 16th Annual Appellate Practice Institute, which will be held that day at the State Bar Center from 8:20 a.m. to 4:30 p.m. All members of the section and other interested persons are invited to attend and to participate.

Attorney Support Group Monthly Meeting
The next Attorney Support Group meeting will be held at 5:30 p.m., Aug. 1 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.

Board of Bar Commissioners Meeting Summary
The Board of Bar Commissioners met July 15 at the State Bar Center in Albuquerque. Action taken at the meeting follows:
• Approved the May 20, 2005 meeting minutes as submitted;
• Accepted the May 2005 financials and executive summary;
• Reviewed the accounts receivable aging report as well as the executive director’s travel reimbursements and credit card file;
• Approved a five-year lease on a new postage machine, as the old machine will not meet the standards of postmaster requirements in 2006;
• Approved upgrading the copy machine utilized by Court Regulated Programs and Public and Legal Services Department;
• Denied a request to enter into a contract with and provide a discount to Lorman if they guaranteed at least 45 days of room reservations;
• Accepted the Finance Committee report;
• Received a presentation from REDW on the 2004 audit and management letter; the State Bar is financially very stable for the 2004 audit and management letter;
• Accepted a recommendation from the Redmond Auditorium Roof Committee to remove language requiring half of the board members to represent employees and half to represent employers; and
• Approved cosponsoring an ABA Resolution regarding public attacks on the judiciary to encourage independence of the judiciary, for the ABA to increase public education efforts on the justice system and assist organized bars in responding to unjustified criticisms and inaccuracies regarding the judiciary.

Note: The minutes in their entirety will be available on the Bar’s Web site following approval by the Board at the Sept. 22 meeting.

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 Aug. 3. (Lunch is not provided.)

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

International and Immigration Law Section Annual Section Meeting
The International and Immigration Law Section will conduct its annual section meeting at 3 p.m., Aug. 26 at the State Bar Center. Section members are also invited to attend a happy hour and receive a free drink at the Pyramid immediately after the meeting. Attendees are asked to RSVP to Tony Horvat, (505) 797-6033 or thorvat@nmbar.org.

Lawyers Assistance Committee
Wanted: Lawyers in Recovery in Las Cruces
The Lawyers Assistance Committee is looking for attorneys in recovery in Las Cruces who are willing to make 12-Step calls. Attorneys who are able to help should call Bill Stratvert, (505) 242-6845.
Paralegal Division
Brownbag CLE
Bring a lunch and join the Paralegal Division for their monthly CLE from noon to 1 p.m., Aug. 10 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 “State and Municipal Sex Offender Registration Laws in New Mexico,” presented by Kari Morrissey, Esq. For more information, contact Debi Shoemaker-Scott, (505) 243-1443.

NM Paralegal Day
Gov. Bill Richardson has declared Aug. 26 as Paralegal Day in New Mexico. That date marks the 10th anniversary of the organizational meeting of the Paralegal Division of the State Bar of New Mexico. The Paralegal Division, formerly known as the Legal Assistants Division, was created by the New Mexico Supreme Court to serve the needs of paralegals throughout the state with the following specific goals: to encourage a high order of ethical and professional attainment; to further education among its members; to carry out programs within the State Bar; and to establish good fellowship among division members, the State Bar of New Mexico and the members of the legal community. The Division will honor its founders, current members and the legal community with a reception at the Albuquerque Museum from 2 to 5 p.m., Aug. 27. For more information about the Paralegal Division or the paralegal profession in New Mexico, visit its Web site at www.nmbar.org.

Pro Hac Vice
The New Mexico Supreme Court has established a new rule for practice by non-admitted lawyers before state courts (Pro Hac Vice). The new Rule 24-106 NMRA, is effective for cases filed on or after Jan. 20, 2005. Attorneys authorized to practice law before the highest court of record in any state or territory wishing to enter an appearance, either in person or on court papers, in a New Mexico civil case should consult the new rule. This rule requires non-admitted lawyers to file a registration certificate with the State Bar of New Mexico, file an affidavit with the court and pay a nonrefundable fee of $250. Fees collected under this rule will be used to support legal services for the poor. For more information on the rule, a copy of the registration certificate and sample affidavit, 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, Aug. 11 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.

Other Bars
Albuquerque Bar Association
Military Acknowledgement Luncheon
The Albuquerque Bar Association will host a luncheon on Sept. 6 acknowledging those attorneys who serve and have served in the U.S. military. The Albuquerque Bar will prepare a roster of attorneys with names, branch of military service, dates of service and rank. Attorneys are asked to send their relevant information as soon as possible. Contact Jeanne Adams, (505) 842-1151, abqbar@abqbar.com or Kathy Brandt, kathybrandt@qwest.net. Service members and veterans need not be members of the Albuquerque Bar Association to participate.

Doña Ana County Bar Association
Open World Program Luncheon
The Federal Bar Association and the Doña Ana County Bar Association are hosting a luncheon in honor of a Russian delegation of five judges who were selected to participate in the Open World Program. The luncheon begins at noon, Aug. 5 at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces. Supreme Court Justice Edward L. Chavez will be the featured speaker for the luncheon. Cost of the luncheon is $17 and business attire is encouraged. Attendees should RSVP to (505) 528-1460 or anita_dial@nmcourt.fed.us by July 26.

Hispanic National Bar Association
30th Annual Convention
Alan M. Varela, president of the Hispanic National Bar Association has announced the 30th Annual HNBA Convention in Washington D.C. at the Mandarin Oriental Hotel Oct. 16 to 20. The convention provides an opportunity to network with hundreds of the most influential Hispanics in the nation and will include world-class legal education seminars focusing on crucial issues facing the legal profession and the nation. On Oct. 19 a professional job fair will be held for law students and experienced attorneys seeking employment with Fortune 500 corporations and the nation’s most prestigious law firms. “Unidos in Washington” will feature social events at various venues, such as the Mexican Cultural Institute for a “Taste of Latin America and the Caribbean.”

Registration for the convention can be found at the HNBA Web site, www.hnba.com, and completed entirely online. The convention is open to all interested legal professionals. There are special discounted rates for HNBA members as well as those who sign up for the early bird rate now until Aug. 31. Job fair employers may also register online at the HNBA Web site for the job fair. The registration fee for job employers includes day passes for two interviewers, prominent listing in the convention program book and one full day of interviews with one of the highest caliber talent pools in the United States. The HNBA is a non-profit, national association that represents the interests of over 27,000 Hispanic American attorneys, judges, law professors, law students and legal professionals throughout the United States and Puerto Rico. For more information go to www.hnba.com or contact the HNBA Washington office, (202) 223-4777.

National Association of Counsel for Children
28th National Children’s Law Conference
This summer, the National Association of Counsel for Children will hold its annual national child advocacy training Aug. 25 to 28 at the Hollywood Renaissance Hotel in Los Angeles. Each year in America, over one million children suffer abuse and neglect. These are serious incidents of beatings, sexual assault, and the kind of neglect that results in serious health problems. NACC members serve as child advocates for these children and guide them through the difficult legal process that determines their fate. The NACC is a nonprofit agency that provides the professional training and technical assistance the child advocates need to do their work. For more information, contact NACC at (888) 828-6222, or visit its Web site at www.NACCchildlaw.org.
**New Mexico Defense Lawyers Association**

**2005 Outstanding Civil Defense Lawyers**

**Nominations**

Nominations are being accepted for the 2005 Outstanding Civil Defense Lawyer. The award will be presented at the 2005 DLA Annual Meeting Oct. 27 in Albuquerque. This award is given to one or more attorneys who, over long and distinguished legal careers, have, by their ethical, personal, and professional conduct, exemplified for their fellow attorneys the epitome of professionalism and ability. Letters of nomination should be sent to: NMDLA, PO Box 94116, Albuquerque, NM 87199, faxed to (505) 797-6017 or e-mail to nmdefense@nmdla.org. Deadline for nomination submissions is July 31.

**Advanced Trial Techniques**

The NM Defense Lawyers Association will present a CLE program Aug. 25 at the State Bar Center entitled “Advanced Trial Techniques.” Registration information will be available soon. Visit the NMDLA Web site at www.nmdla.org or contact Rhonda Dahl, (505) 797-6021, for more information.

**OTHER NEWS**

**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.

**YWCA**

**Women on the Move Awards**

Celebrate the Universe of Women with the YWCA by nominating someone for the Women on the Move Awards. Nominations are due by Aug. 12 for the Women on the Move Awards banquet Sept. 15 at the Embassy Suites Hotel and Conference Center in Albuquerque. Contact Elizabeth Armijo, (505) 254-9922 or EArmijo@ywca-nm.org for more information and a nomination packet.

---

**COURT REGULATED PROGRAMS**

**MCLE – mc@nmbar.org or www.nmmcle.org**

**MCLE Rule Changes**

Effective January 1, 2006 every active licensed New Mexico attorney shall complete twelve (12) hours of continuing legal education during each compliance year. One (1) hour (credit) of continuing legal education will be equivalent to sixty (60) minutes of instruction.

Of the (12) credits of approved continuing legal education, at least one (1) credit must be ethics and only one (1) credit must be professionalism.

**Self-Study:** No more than four (4) credits may be given during one (1) compliance year for self-study activities. Self-study credits may be applied only to the continuing legal education requirements for the year in which they are earned, and may not be carried over to subsequent year requirements or backward to prior year requirements.

**Carry-over:** Attorneys may carry up to twelve (12) credits earned in one (1) compliance year over to the next compliance year only. One (1) ethics credit may be carried over as part of the twelve (12) credits. One (1) professionalism credit may be carried over as part of the twelve (12) credits. While excess ethics credits can be converted to be used toward the substantive (general) requirement, excess professionalism credits cannot be converted. Self-study credits cannot be carried over.

Throughout 2005 information regarding the rule changes will be featured on www.nmmcle.org, and in the weekly Bar Bulletin. Attorneys will also receive direct mailings.

**LEGAL SPECIALIZATION – ls@nmbar.org**

**CONGRATULATIONS BOARD CERTIFIED SPECIALISTS**

The following attorneys were certified as specialists at the June 4, 2005 board meeting.

Local Government Law - Karen Townsend

Federal Indian Law - Stephanie Kiger

**ATTENTION SPECIALISTS**

The BLS is very interested in hearing your views about how you believe the BBC’s proposal may affect your practice as a board-certified specialist. Please respond to the correspondence sent July 8 by no later than August 1, 2005. Contact Anita Otero at ls@nmbar.org, by telephone at (505) 797-6015, or by mail at Legal Specialization, PO Box 92860, Albuquerque, NM 87199 with your comments, or if you have not yet received the correspondence and comment form. Thank you for your review and input.

For more information about the Legal Specialization program, including a list of board certified specialists, go to www.nmbar.org, Other Bars/Legal Groups, or call 797-6057.
THE GOVERNOR HANNETT CASE:
LAWYERS, JUDGES, POLITICS AND THE PRESS – 1927 STYLE

By Mark Thompson, Esq.

Likening the newspapers of the day to the bombastic extravangt of the carnival Barker, historian Frederick Lewis Allen named that period of time just before the stock market crash of 1929 “the ballyhoo years.”1 “When something happened which promised an appeal to the popular mind,” Allen wrote, “one had it hurled at one in huge headlines.”2 Just as significant to Allen, the press seemed to have the power “to excite the millions over trifles.”3 Ceromonial some local color.4

Journal a political columnist for the newspapers in 1927 saw most of the same headlines and the popular imagination, May, the month that Lindbergh captured created a stir that gave ballyhoo some local color.5

Arthur Thomas (“A.T.”) Hannett had lost his bid for reelection as governor in 1926. Instead of returning to Gallup, where he had practiced law and served as mayor, Hannett moved to Albuquerque and opened an office in January 1927. In its Sunday morning edition on the fifteenth of that month, the journal announced with great fanfare that Hannett would be writing a political column for its afternoon edition.6 Hannett’s page-one column, “New Mexico Day by Day,” contained the usual political fare, but on Jan. 24 he started a campaign, seemingly risky for a practicing lawyer, against the sitting judge of the First Judicial District, Reed Holloman. In that column he merely noted that Judge Holloman had the Republican Party “in his hand” and that he could “get the Legislature to his bidding.” And then on May 2, Hannett accused Holloman of “perverting his court into an engine of oppression,” alleging that Holloman had conspired to throw a Gallup utility into receivership. Hannett called for Holloman’s impeachment. He followed up on May 9 by accusing Holloman of threatening the Journal and alleging that he had “personally known [Holloman] to be intoxicated on the bench.”

Elected district judge in 1918 and re-elected in 1924, Reed Holloman was by 1927 no stranger to controversy. He had played a role, as a district court judge, in the efforts to discredit, or possibly imprison, the Albuquerque journalist, Carl Magee. According to one historian writing about the Magee cases, “Holloman remained on the bench and continued his partisan activities causing his legislative adversaries in 1925 to draft, although not use, articles of impeachment against him.”

The Journal wasted no time in stirring the pot. In an editorial on May 10 it declared that Holloman should respond to Hannett’s charges.7 Meanwhile, Hannett hired that ubiquitous company of “private eyes,” the Burns Detective Agency,8 to go undercover in Gallup and get evidence to back up Hannett’s allegations about the receivership conspiracy. Posing as an agent for a potential investor, the detective was on the job at least by May 20 according to his reports to Hannett.9 Apparently the detective played his role very well. Two legal actions were eventually brought by persons alleging that Hannett was the undisclosed principal and was bound by the act and representations of his agent, as if the activities of the detective were truly in connection with an attempt to buy the equity in the utility.10

With a headline only slightly smaller than the “Lindbergh in Paris” banner it had used on May 21, the Journal announced on June 9 that the Board of Bar Commissioners had passed a resolution directing its committee on ethics, grievance and discipline to prepare formal charges by June 15. The resolution also provided that Hannett should file a response by July 15 and then show cause at a hearing before the Commissioners on Aug. 2 why he should not be disciplined, absent proof that the statements about Holloman were true.11 Hannett and his lawyers saw an opening and not only filed an answer but also a “bill of particulars” with additional specific charges giving the Journal yet another opportunity to headline the case.12

It seems fair to say that the law of “lawyering” was unsettled in 1927. To begin with, both the legislature and the New Mexico Supreme Court each thought

2 Id., at p. 158.
3 Id., at p. 160.
4 From 1926 to 1933, the Journal published two daily editions, Monday through Saturday, and a morning edition on Sunday. The evening edition was probably published in an effort to adversely impact the other afternoon paper, the New Mexico State Tribune. After reading both editions for several days in 1927, I believe the editors worked on the assumption that both editions would be read by its subscribers. For convenience, I will identify citations to the Journal as either “Morning” or “Evening” edition.
5 In his autobiography, Hannett expressed his appreciation to the Journal publisher for giving him a job while he was trying to build a new practice. Arthur Thomas Hannett, Sagebrush Lawyer (New York: Pageant Press, 1964), pp. 183-86.
7 Morning ed., p. 4.
8 It sometime seemed that Burns was involved in every celebrity divorce in the country and in 1927 it had plenty on its plate, having been charged with causing the mistrial in the Fall/Sinclair trial, a part of the Teapot Dome scandal, by tampering with the jury. See e.g., Morning ed., 11/13/27, p. 1. Full disclosure: The author’s grandfather, one of the attorneys for New Mexican A.B. Fall, was implicated by a government agent as having some role in the jury tampering, but was never charged by the government. See e.g., Morning ed., 11/12/27, p. 1.
9 Hannett does not dwell at any length on this whole affair in his autobiography, but he does reprint the Burns’ reports as an appendix, apparently content to have his readers draw their own conclusions. Sagebrush Lawyer, appendix no. 9. It is possible that the Journal paid for the cost of hiring the detectives. See, Sagebrush Lawyer, at pp. 183-186.
11 Evening ed., 6/9/27, p. 1
12 Evening ed., 7/15/27, p. 1. The Journal used almost two complete pages of its eight column broadsheet to print the entire response, leading with a banner headline, “Holloman Sold His Influence for $500 in Franchise Deal, Hannett Charges.”

10 Bar Bulletin - July 25, 2005 - Volume 44, No. 29
it had the power to provide the procedure for lawyer discipline. The Board of Bar Commissioners proceeded in accordance with its understanding of the statute. In addition, there was no special substantive law. The American Bar Association Canons of Ethics, issued in 1908, were only treated as guidelines, without the force of law. Consequently, the Hannett case proceeded much like a defamation action, with the burden on the lawyer to prove the truth of his statements or face discipline.

Though perhaps not with the bang that the Journal had hoped for, the hearing opened on Tuesday, Aug. 2 in the chambers of the House of Representatives in Santa Fe. The Commissioners heard seven days of testimony and argument over the next two weeks, recessing for the Convention, and announced its decision on Tuesday, Aug. 16, “suspend Hannett 1 Year,” the banner headline screamed. In a written decision issued the next day, the Commissioners had something for everyone. It found that Hannett had failed to prove the truth of almost all of the statements he made about the judge. It found that the Board of Bar Commissioners did not have constitutional power to discipline lawyers. The Board promptly sought a writ of prohibition from the Supreme Court on the grounds that the district court had no jurisdiction to entertain the appeal. On Nov. 2, the Supreme Court held that the district court had jurisdiction and, on Nov. 12, Judge Kiker ruled that the discipline issued was null and void because the Board of Bar Commissions lacked constitutional authority.

The Board of Bar Commissioners voted to appeal the Kiker decision, but chose to use the vehicle of a disciplinary action already pending before the Supreme Court to argue its position on the constitution. In the meantime, the Journal kept the pot boiling by calling daily in its editorial column for Judge Holloman’s impeachment. On Nov. 22 a Journal editorial urged the Bar Commissioners to take disciplinary action against two of the attorneys involved in the Gallup utility “conspiracy.” Francis E. Wood and H.W. Yersin. This prompted Wood to file a defamation action against both Hannett and the Journal which was initially successful, but which eventually was a complete victory for the defendants.

On May 2, 1928, the New Mexico Supreme Court issued an opinion in the Charles Royall disciplinary case including the statement “[it] is not seriously contended by counsel for the board that the board can be lawfully empowered to make the order of disbarment.” Probably not wanting to subject its counsel to further embarrassment, the Board apparently gave the Hannett case a proper burial. Hannett himself merely noted the decision in Royall as part of his summarizing of the entire affair in his column of May 8, 1928. The Journal, on the other hand, did not allow the matter to take on an air of anticlimax. It continued a daily call for Judge Holloman’s impeachment through and including his last day on the bench, Dec. 31, 1930.

Articles printed in this publication are solely the opinion of the author. Publication of any article in the Bar Bulletin is not deemed to be an endorsement by the State Bar of New Mexico or the Board of Bar Commissioners of the views expressed therein.
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## WRITS OF CERTIORARI

**EFFECTIVE JULY 22, 2005**

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AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT
Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective July 22, 2005

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

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IN THE MATTER OF JAVIER LOZANO,
Municipal Judge, Village of Columbus, New Mexico

JAMES A. NOEL
RANDALL D. ROYBAL
Albuquerque, New Mexico

THOMAS GUERRA
Columbus, New Mexico

For Judicial Standards Commission

Per Curiam

{1} This matter came before the Court upon recommendation of the Judicial Standards Commission to approve a plea and stipulation agreement entered into between the Commission and Honorable Javier Lozano.


{3} Respondent is the part-time Municipal Judge for Columbus, New Mexico.

{4} Respondent had a business relationship with July McClure concerning J-Loz Auction Service, which had a contract with the Village of Columbus to conduct auction sales of vehicles that were impounded by the Columbus Police Department pursuant to Municipal Ordinance 12-12-18(F)(3). J-Loz Auction Services received a 17% commission or fee for conducting the auction sales.

{5} Respondent received monetary compensation for his work with J-Loz Auction Service. Said compensation payments were made from the profits that the business earned from the auction sales of impounded vehicles.

{6} As the Municipal Judge, respondent has jurisdiction to order the forfeiture or release of impounded vehicles pursuant to the municipality’s ordinance. However, impound cases are not routinely handled in respondent’s court.

{7} Respondent admits to exercising this jurisdiction once and ordered the release of an impounded vehicle.

{8} Respondent’s compensation from and business arrangement with July McClure and J-Loz Auction Service terminated in July 2004. The last vehicle auction that J-Loz Auction Service held for the Village of Columbus was on July 10, 2004, and its contract for such auctions expired on September 1, 2004. The contract was not renewed.

{9} Respondent’s conduct violated the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995 (judge shall uphold integrity and independence of judiciary); 21-200(A) and (B) NMRA 1995 (judge shall avoid impropriety and appearance of impropriety in all activities); 21-300(B)(2) NMRA 1995 (judge shall perform the duties of office impartially and diligently); 21-400(A)(3) and (A)(5)(c) NMRA 1995 (disqualification); and 21-500(A)(1)-(4) and (D)(1)(a) NMRA 1995 (a judge shall so conduct the judge’s extra-judicial activities as to minimize the risk of conflict with judicial obligations).

{10} Respondent’s conduct constituted willful misconduct in office.

{11} WE HEREBY FIND that the recommended disciplinary measures for respondent’s violations of the Code of Judicial Conduct are appropriate. Respondent shall comply fully with the requirements of the discipline imposed by this Court and with the Code of Judicial Conduct.

{12} NOW, THEREFORE, IT IS ORDERED that Honorable Javier Lozano is hereby disciplined as follows:

A. Respondent shall never again maintain employment, have business relationships, or engage in other financial dealings that (1) could be affected by proceedings that could come before him, or (2) may reasonably be perceived to exploit respondent’s judicial position or that involve respondent in frequent transactions or continuing business relationships with persons likely to come before respondent’s court.

B. Respondent shall receive a formal reprimand from this Court, which shall be published in the Bar Bulletin.

C. Respondent shall pay a $500.00 fine on or before July 15, 2005. Payment shall be by check made payable to the State of New Mexico. Respondent shall promptly file proof of payment with this Court and the Judicial Standards Commission.

D. Respondent shall be placed on supervised probation for the duration of his current term of office, which expires in March 2006. The Commission shall recommend a supervisor for appointment by this Court. Respondent shall meet in person or by telephone with the supervisor at the times and places (if in person) that the supervisor designates for counseling and assistance with the requirements of the Code of Judicial Conduct. The supervisor shall file a written report with this Court and the Commission concerning the results of respondent’s probation program.

E. Respondent shall abide by all terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

{13} IT IS FURTHER ORDERED that the parties shall bear their own costs and expenses incurred in this matter.

{14} IT IS SO ORDERED.

Chief Justice Richard C. Bosson
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Petra J. Maes
Justice Edward L. Chavez
OPINION

RODERICK T. KENNEDY, JUDGE

{1} Defendant appeals from a judgment awarding compensatory and punitive damages to Plaintiffs on their claims arising from the purchase of a mobile home, and from an order awarding attorney fees to Plaintiffs. Defendant challenges the trial court’s (1) award of compensatory damages to Plaintiffs for fraud, conversion, and violation of the Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -24 (1967, as amended through 2003); (2) award of punitive damages; (3) dismissal of Defendant’s counterclaim without prejudice; and (4) award of attorney fees to Plaintiffs under the UPA and the Insurance Code. On cross-appeal Plaintiffs challenge the trial court’s reduction of punitive damages and refusal to dismiss Defendant’s counterclaim with prejudice. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. In light of our disposition, we need not address the cross-appeal.

BACKGROUND

{2} Plaintiffs purchased a mobile home from Defendant through its Las Cruces sales office. Devin Pike and Bob Lancaster were, respectively, the sales agent and the sales manager of the Las Cruces office who conducted the sale of a three-bedroom mobile home to Plaintiffs. Although GreenPoint Credit (Lender) initially qualified Plaintiffs for a loan to buy a four-bedroom mobile home, Defendant told Plaintiffs that their loan application had been declined by Lender. Defendant then negotiated the sale of a three-bedroom mobile home to Plaintiffs. Pike and Lancaster falsified Plaintiffs’ income and employment information in order to qualify them for a higher loan on the three-bedroom home, also forging Plaintiffs’ signatures on a credit application and another loan document. The amount of the loan for the three-bedroom mobile home was virtually the same as the amount of the loan for the four-bedroom mobile home. Pike and Lancaster inflated the value of Plaintiffs’ existing mobile home and agreed to accept the trade-in as a 10% down payment on the purchase. They included in the loan amount the cost of constructing a garage and decks that were never provided to Plaintiffs but were falsely certified to Lender as having been constructed. They misrepresented certain features to be included in the mobile home. The mobile home was delivered to Plaintiffs with numerous defects that were never remedied by Defendant.

{3} Plaintiffs filed an action against Defendant in district court, alleging fraud, conversion, violation of the UPA, breach of warranty, excessive charges on interim construction loans in violation of NMSA 1978, § 56-8-9 (1980), and unlicensed sale of insurance in violation of the Insurance Code. Defendant counterclaimed to collect on the promissory note executed by Plaintiffs. The case was tried to the court. Following a three-day trial, the trial court found in favor of Plaintiffs on their claims, dismissed Defendant’s counterclaim without prejudice, and entered a judgment awarding Plaintiffs compensatory and punitive damages and other relief. The trial court also awarded attorney fees of almost $80,000 to Plaintiffs. Defendant’s two appeals and Plaintiffs’ cross-appeal followed, and have been consolidated.

DISCUSSION

Finality of Judgment

{4} The trial court entered a judgment awarding damages to Plaintiffs under three alternative theories of liability: fraud, conversion, and violation of the UPA. The judgment states in pertinent part:

IT IS HEREBY ADJUDGED AND ORDERED:

1. Plaintiffs are awarded $9,500.00 in actual damages for Defendant’s misrepresentations regarding the garage and decks, under the New Mexico [UPA]. Plaintiffs are awarded $17,900.00 in actual damages for fraud, regarding the garage, decks and trade-in. Plaintiffs are awarded $17,000.00 in actual damages for conversion, regarding the garage, decks and trade-in. After passage of time for appeal, or when an appeal concludes, plaintiffs must elect a remedy and choose which one of these three damage awards to accept.

2. Plaintiffs are awarded $150,000.00 in punitive damages for Defendant’s fraud and $150,000.00 in punitive damages for Defendant’s conversion, and $31,440.00 additional damages for Defendant’s willful violations of the New Mexico [UPA].
After passage of time for appeal, or when an appeal concludes, Plaintiffs must elect a remedy and choose whether to accept the additional damages for unfair trade practices, or to accept the punitive damages for fraud or the punitive damages for conversion.

(Emphasis added.) The judgment therefore awards Plaintiffs alternative relief, subject to their election, following the conclusion of this appeal.

5] On its face, the judgment does not appear final because as framed it leaves open the final remedy to be chosen by Plaintiffs. Generally, “an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992) (internal quotation marks and citation omitted). “Where a judgment declares the rights and liabilities of the parties to the underlying controversy, a question remaining to be decided thereafter will not prevent the judgment from being final if resolution of that question will not alter the judgment or moot or revise decisions embodied therein.” Id. at 238, 824 P.2d at 1040. In this case, an election made following the appeal would appear to “moot” decisions embodied in the judgment on the alternative grounds of recovery not pursued to satisfaction by Plaintiffs. In addition, because an election would require Plaintiffs to decide which substantive theory it ultimately relies on for recovery, we would hesitate to construe it as a purely ministerial act. See State v. Candy L., 2003-NMCA-109, ¶ 6, 134 N.M. 213, 75 P.3d 429 (recognizing that outstanding ministerial acts, involving no substantive determinations, do not defeat finality). Thus, due to our jurisdictional concerns, we requested supplemental briefing on the question of whether the judgment in this case is final and appealable. See Khalsa v. Levinson, 1998-NMCA-110, ¶ 12, 125 N.M. 680, 964 P.2d 844.

6] We agree with the parties that this case does not present a typical election of remedies problem. “The essence of the doctrine of election of remedies is the conscious choice, with full knowledge of the facts, of one of two or more inconsistent remedies.” Naranjo v. Pauli, 111 N.M. 165, 169, 803 P.2d 254, 258 (Ct. App. 1990) (internal quotation marks and citation omitted). The doctrine exists to prevent double recovery for a single wrong. See Liddle v. A.F. Dozer, Inc., 777 So. 2d 421, 422 (Fla. Dist. Ct. App. 2000). Thus, when one remedy depends on affirming a contract and another on repudiating the contract, the remedies are mutually exclusive, and the party seeking relief must elect one of them. See Smith v. Gallo, 95 N.M. 4, 8, 617 P.2d 1325, 1329 (Ct. App. 1980). The election of remedies doctrine does not apply when remedies are merely cumulative. Williams v. Selby, 37 N.M. 474, 476, 24 P.2d 728, 729 (1933). In this case, Plaintiffs were awarded alternative or concurrent damages, not inconsistent remedies. The judgment, by its terms, precludes double recovery because Plaintiffs must choose between alternative remedies and are entitled to but one satisfaction for their injuries. Therefore, the doctrine of election of remedies does not presently apply to this case.

7] We further acknowledge that the judgment in this case is not one that adjudicates liability but leaves undecided the question of damages. Our courts have firmly held that such judgments are not final and appealable. See, e.g., Valley Improvement Ass’n v. Hartford Accident & Indem. Co., 116 N.M. 426, 429, 863 P.2d 1047, 1050 (1993); Principal Mut. Life Ins. Co. v. Straus, 116 N.M. 412, 413-14, 863 P.2d 447, 448-49 (1993). Here, the judgment finally adjudicates the rights and liabilities of the parties and assesses damages against Defendant, which are quantified in the judgment. See id. (determining that a judgment that awards damages but fails to quantify them is not final). Thus, the judgment does not fall under the category of non-final judgments that leaves the award of damages unresolved.

8] The judgment, however, does impose an election upon Plaintiffs that has yet to be exercised, thus making the judgment seemingly inconclusive. Some courts have held that a judgment awarding alternative or conditional relief subject to an election by the prevailing party is not final until an election has been made. See, e.g., McKinney v. Gannett Co., 694 F.2d 1240, 1248-49 (10th Cir. 1982); Mid-State Homes, Inc. v. Beverly, 727 S.W.2d 142, 143 (Ark. Ct. App. 1987). However, as Defendant notes, this approach has been criticized by the authors of one prominent treatise as “unfortunately formalistic,” 15B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3915.3, at 292 n.14 (2d ed. 1992), since it ignores whether requiring an immediate election would “deflect an appeal, provide a better basis for appellate decision, or reduce the risk of further proceedings after appeal.” Id. at 291.

9] In this case, both parties argue that the judgment should be treated as final for purposes of appeal because doing so would promote the policies of avoiding piecemeal appeals and facilitating meaningful review of the appellate issues. See Kelly Inn No. 102, Inc., 113 N.M. at 239-40, 824 P.2d at 1041-42. Plaintiffs explain that the trial court entered the judgment as it did to allow Plaintiffs full recovery while also not permitting Defendant to raise all of its arguments on appeal. On appeal, Defendant challenges the trial court’s compensatory damages awards under all three theories and also attacks the basis of the punitive damages award. On cross-appeal, Plaintiffs claim that the trial court erred in reducing the amount of punitive damages. According to Plaintiffs, if a formal election of remedies were mandated by this Court prior to a consideration of the merits of the appeal, piecemeal appeals from multiple, successive judgments might result because Plaintiffs would be entitled to continue pursuing all remaining avenues of recovery until satisfaction of judgment is obtained. See Upstagrafi v. Dome Petroleum Corp., 764 P.2d 1350, 1355 (Okla. 1988) (“Where the remedies are alternate or concurrent there is no bar until satisfaction of the judgment has been obtained. The plaintiff may pursue concurrent remedies at the same time until there is satisfaction of the judgment.”).

10] Defendant also points out that, aside from its elective nature, “the judgment in this case is not materially different from a judgment awarding relief to claimants who have prevailed on multiple, alternative theories allowing different amounts of monetary recovery.” Defendant explains that the trial court “would ordinarily award judgment for the largest amount recoverable based on the most favorable theory on which the claimants had succeeded.” The party appealing would then challenge the award under that theory, and the claimants would not only defend recovery on that basis but would argue that the award is affirma ble under any theory of recovery considered below. See Manouchehri v. Heim, 1997-NMCA-052, ¶ 13, 123 N.M. 439, 941 P.2d 978. Thus, according to Defendant, because all the same issues would come before the reviewing court in any event, remand for a formal election would serve no purpose and would only delay resolution of the issues on appeal.

11] We appreciate the procedural complexities and the undue delay that remand for a formal election would likely cause in this case. Accepting the judgment as final would serve the purposes of preventing piecemeal appeals, promoting judicial economy, and facilitat-
ing meaningful review of the issues. See Executive Sports Club, Inc. v. First Plaza Trust, 1998-NMSC-008, ¶ 11, 125 N.M. 78, 957 P.2d 63. Because the concept of finality is “given a practical, rather than a technical, construction,” Kelly Inn No. 102, Inc., 113 N.M. at 236, 824 P.2d at 1038, we hold that the judgment in this case, while unorthodox in form and reserving a formal election until after appeal, is sufficiently final for purposes of appeal. Cf. Casumano v. Microsoft Corp., 162 F.3d 708, 712 (1st Cir. 1998) (discussing that “a court’s retention of jurisdiction in order to facilitate the consideration of possible future relief does not undermine the finality of an otherwise appealable order”). In so holding, however, we express no opinion or preference regarding when an election between alternative but concurrent remedies should be made by a prevailing party. Our holding is limited solely to the particular judgment and the unusual circumstances in the case before us. We therefore turn to the merits of the appeal.

Compensatory Damages for Fraud

{12} The trial court awarded to Plaintiffs compensatory damages of $17,900 for fraud. This award was based on the trial court’s findings that Defendant (1) fraudulently obtained the disbursement of $9,500 from Plaintiffs’ loan by falsely certifying the construction of nonexistent garage and decks, and (2) fraudulently induced Plaintiffs to trade in their existing mobile home for a credit of $8,400, for which they received no value.

{13} Defendant does not challenge the trial court’s finding that two of its employees committed fraud in the sale of the mobile home to Plaintiffs. Defendant, however, claims that Plaintiffs are not entitled to actual damages for fraud because they have made no payment on the promissory note held by Defendant, and thus have sustained no present financial injury. We disagree.

{14} As a result of Pike’s and Lancaster’s misrepresentations, Plaintiffs executed a promissory note in the principal amount of $82,688.75, covering the purchase price of the mobile home, the lot, the garage, the decks, and related expenses. Plaintiffs also signed a security agreement and mortgage to secure payment of the note. By signing the note, security agreement, and mortgage, Plaintiffs incurred a legal obligation in the amount of $82,688.75, plus interest. The note, security agreement, and mortgage were assigned by Lender to Defendant pursuant to a recourse agreement. Defendant has sought to enforce Plaintiffs’ financial obligation and filed a counterclaim in this action to collect on the note and foreclose the mortgage. Plaintiffs have been forced to defend the counterclaim, incurring legal expenses. By suing Defendant for fraud and seeking damages, Plaintiffs have opted to affirm, rather than rescind, the sale. See Everett v. Gilliland, 47 N.M. 269, 275, 141 P.2d 326, 330 (1943) (“It was the privilege of the plaintiff, thinking himself to have been defrauded, to determine his course of action. He could either bring an action to rescind the contract or affirm and sue for damages.”).

{15} Thus, even though Plaintiffs have not yet paid on the promissory note, by signing the note and affirming the sale, they incurred an enforceable legal obligation and thus have sustained actionable damage for fraud. See Anderson, Greenwood & Co. v. Martin, 44 S.W.3d 200, 212 (Tex. Ct. App. 2001) (“The word ‘damage’ should not be restricted to a monetary loss; that is, it need not be measured in money, but it is sufficient if the defrauded party has been induced to incur legal liabilities or obligations different from that represented or contracted for.”); 37 Am. Jur. 2d Fraud and Deceit § 275 (2001) recognizing that a “false statement that results in actual damage to the plaintiff’s economic or legal relationships will support an action for fraud”); 37 C.J.S. Fraud § 55, at 242-43 (1997) (explaining that “the fact that actual monetary loss has not yet occurred will not preclude recovery for fraud if such loss is inevitable, as where the defrauded party has incurred a binding legal obligation”); cf. Sharts v. Natelson, 118 N.M. 721, 725, 885 P.2d 642, 646 (1994) (defining “actual injury,” for the purpose of determining when cause of action for attorney malpractice accrues, as “the loss of a right, remedy, or interest, or . . . the imposition of a liability” and noting that it is immaterial “whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred” (internal quotation marks and citation omitted)). Moreover, Defendant has taken affirmative action to collect on the note, causing legal injury to Plaintiffs. Cf. Daniels v. Coleman, 169 S.E.2d 593, 597 (S.C. 1969) (holding that there is no legal injury or damage where the evidence established that the appellant had not sought to recover on the note and mortgage, and the note and the mortgage were returned to the appellees, but refused).

{16} Defendant further contends that the award of compensatory damages for fraud is premature because Defendant’s counterclaim was dismissed without prejudice, and Plaintiffs’ liability on the note now remains unresolved in another proceeding. Defendant claims that Plaintiffs’ damages cannot be ascertained until their liability on the note is adjudicated. We note that Defendant has not informed us how this argument was preserved in the trial court. See Rule 12-216(A) NMRA; Young v. Van Duyne, 2004-NMCA-074, ¶ 9, 135 N.M. 695, 92 P.3d 1269 (“We are under no obligation to search the record to locate information in order to save a party from lack of preservation of issues.”); Woolwine v. Furr’s, Inc., 106 N.M. 492, 496, 745 P.2d 717, 721 (Ct. App. 1987). However, even assuming that the issue was preserved, we conclude that Plaintiffs are entitled to recover damages for fraud even if the claim on the promissory note has not yet been determined. As we explained above, Plaintiffs sustained actual injury when they incurred the legal obligation on the note. Moreover, as Plaintiffs point out, the general rule is that damages for fraud are measured at the time of the transaction. See Anderson, Greenwood & Co. v. Martin, 44 S.W.3d 200, 212 (Tex. Ct. App. 2001) (“The word ‘damage’ should not be restricted to a monetary loss; that is, it need not be measured in money, but it is sufficient if the defrauded party has been induced to incur legal liabilities or obligations different from that represented or contracted for.”); 37 Am. Jur. 2d Fraud and Deceit § 275 (2001) (recognizing that a “false statement that results in actual damage to the plaintiff’s economic or legal relationships will support an action for fraud”); 37 C.J.S. Fraud § 55, at 242-43 (1997) (explaining that “the fact that actual monetary loss has not yet occurred will not preclude recovery for fraud if such loss is inevitable, as where the defrauded party has incurred a binding legal obligation”); cf. Sharts v. Natelson, 118 N.M. 721, 725, 885 P.2d 642, 646 (1994) (defining “actual injury,” for the purpose of determining when cause of action for attorney malpractice accrues, as “the loss of a right, remedy, or interest, or . . . the imposition of a liability” and noting that it is immaterial “whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred” (internal quotation marks and citation omitted)). Moreover, Defendant has taken affirmative action to collect on the note, causing legal injury to Plaintiffs. Cf. Daniels v. Coleman, 169 S.E.2d 593, 597 (S.C. 1969) (holding that there is no legal injury or damage where the evidence established that the appellant had not sought to recover on the note and mortgage, and the note and the mortgage were returned to the appellees, but refused).

{17} Defendant additionally claims that the trial court erred in awarding compensatory damages of $8,400 for the loss of Plaintiffs’ trade-in. Defendant claims that Plaintiffs are not entitled to damages for the trade-in because they received a credit of $8,400 for the trade-in, which was accepted as a down payment on the purchase. Plaintiffs, however, contend that because Defendant inflated the
purchase price of the mobile home to obtain additional financing from Lender, they did not receive any value for the trade-in because that amount was offset by the inflated and fraudulent charges to Plaintiffs. Defendant counters that, insofar as the purchase price was inflated, it was done so by $9,500, the cost of the nonexistent garage and decks, for which Plaintiffs have already been compensated, and therefore the award of $8,400 constitutes double recovery. We agree that the additional award for the trade-in is duplicative of the award for the fraudulent inclusion of the garage and decks. We therefore reverse the award of $8,400 for the loss of the trade-in. See generally Hale v. Basin Motor Co., 110 N.M. 314, 320, 795 P.2d 1006, 1012 (1990) (“New Mexico does not allow duplication of damages or double recovery for injuries received.”).

{18} On appeal, we review the trial court’s findings of damages to determine whether they are supported by substantial evidence. Moody v. Stribling, 1999-NMCA-094, ¶ 37, 127 N.M. 630, 985 P.2d 1210. “Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion.” Landavazo v. Sanchez, 111 N.M. 137, 138, 802 P.2d 1283, 1284 (1990). “When determining whether a finding of fact is supported by substantial evidence, we review the evidence in the light most favorable to upholding the finding and indulging all reasonable inferences in support of the trial court’s decision.” Robertson v. Carmel Builders Real Estate, 2004-NMCA-056, ¶ 20, 135 N.M. 641, 92 P.3d 653.

{19} In arguing that substantial evidence supports the award of $8,400, Plaintiffs rely on three exhibits: a series of advance calculation sheets prepared by Defendant in the course of negotiating the sale of a mobile home to Plaintiffs. The first of the exhibits pertains to the four-bedroom mobile home Plaintiffs originally sought to buy, and the other two exhibits pertain to two different three-bedroom mobile homes, including the one that Plaintiffs ultimately bought. Plaintiffs point out that the loan amount for all three proposals was roughly the same, approximately $82,400, although the adjusted invoice amount and the selling price on each one varied, thus establishing that Defendant sold Plaintiffs the three-bedroom home for essentially the same price as the four-bedroom home. Plaintiffs claim that Defendant should have charged Plaintiffs $18,000 less for the three-bedroom home they purchased, since the adjusted invoice amount of the three-bedroom home was $24,064, as compared to $42,090 for the four-bedroom home. Plaintiffs argue that Defendant “could not make up that $18,000 difference with the $7,500 garage alone; they had to pad the deal to make it look like they were giving the $8,400 trade-in value they promised when, in truth, Plaintiffs did not receive any actual value for the trade-in.” They also argue that the fraud related to the trade-in was entirely independent of the fraud related to the garage.

{20} Plaintiffs, however, do not point to any testimony to support their view that Defendant inflated the price of the three-bedroom home by $18,000, and that the fraud related to the trade-in is distinct from the fraud related to the garage. Our review of the uncontradicted testimony at trial indicates that Defendant artificially inflated the trade-in allowance to induce Plaintiffs to purchase the home and then attempted to recoup the difference by fraudulently including in the amount of the loan the cost of the fictitious garage. In other words, the evidence establishes that the fraud related to the trade-in and the fraud related to the garage are part of a single interconnected scheme.

{21} Because Plaintiffs did not have the cash to make the 10% down payment, they were allowed to trade in their existing mobile home and received a credit of $8,400 which was accepted as a down payment. Defendant assigned the NADA book value of $11,349 to the trade-in and subtracted the almost $3,000 that Plaintiffs still owed on the mobile home to arrive at the net amount of $8,400. However, the value assigned to the trade-in was substantially inflated because Defendant subsequently resold the mobile home for only about $1,500. According to the uncontradicted testimony of the district manager, William Kasprzyk, there was a “[d]irect correlation between the allowance on the trade-in and the inclusion of the garage in the loan. He testified that to make up for the loss of profit on the trade-in, Defendant improperly generated additional funds by including in the amount of the loan the cost of the fictitious garage.”

{22} The trial court’s findings of fact reflect that it accepted the evidence concerning the interrelationship between the trade-in and the garage. In particular, the trial court found that (1) Defendant inflated or misrepresented the value allocated to the trade-in; (2) Defendant “used the value and money from [the] non-existent, falsely-certified-as-completed garage to make up the difference between the value [Defendant] allocated to [Plaintiffs’] 1980 Melody trailer and the value [Defendant] reported to [Plaintiffs] and [Lender];” and (3) when Plaintiffs traded in their mobile home, Defendant intended to deprive them of $7,500 of the value of the mobile home, which was the same amount that the nonexistent garage cost. “Unless the district court makes findings of fact, or rejects specific uncontradicted testimony with reasons on the record, we presume the district court believed the uncontradicted evidence.” State v. Zamora, 2005-NMCA-039, ¶ 8, __ N.M. __, _P.3d __ [No. 23,436, filed February 11, 2005], cert. granted, 2005-NMCERT-004. Moreover, “when a trial court makes specific written findings of fact that are supported by substantial evidence, those findings prevail over any inconsistent conclusions of law or an inconsistent judgment.” State v. Walker, 1998-NMCA-117, ¶ 7, 125 N.M. 603, 964 P.2d 164; see also El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co., 2003-NMCA-113, ¶ 14, 134 N.M. 375, 77 P.3d 279. Therefore, because the trial court recognized the connection between the trade-in and the garage, and awarded Plaintiffs compensatory damages for the fraudulent inclusion of the garage and the decks, we conclude that the additional award for the loss of the trade-in amounts to double recovery. See Cent. Sec. & Alarm Co. v. Mehotel, 1996-NMCA-060, ¶ 11, 121 N.M. 840, 918 P.2d 1340 (“The purpose of compensatory damages is to make the injured party whole by compensating it for losses.”). Thus, we reverse the award of $8,400, but affirm the award of $9,500 under the benefit of the bargain measure of damages for fraud.

Compensatory Damages for Conversion

{23} Defendant further claims that the trial court erred in awarding to Plaintiffs compensatory damages for conversion. Because Plaintiffs would be entitled to no more than $9,500 in compensatory damages for conversion, even assuming that the claim was established, we need not address Defendant’s conversion arguments. This is because the same double recovery limitation that was discussed in connection with fraud also applies to compensatory damages for conversion.

UPA Claims

{24} The trial court awarded $1,720 to Plaintiffs as actual damages for Defendant’s unlicensed sale of property damage insurance to
Plaintiffs. The award was made pursuant to the UPA and therefore was also subject to trebling. Defendant acknowledges that Pike and Lancaster were not licensed to sell insurance to Plaintiffs, in violation of NMSA 1978, § 59A-12-6(D) (1984), but claims there was no evidence connecting the unlawful insurance practice to the damages awarded to Plaintiffs. We agree.

Section 57-12-10(B) of the UPA provides that any claimant “who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the [UPA] may bring an action to recover actual damages or the sum of one hundred dollars ($100), whichever is greater.” (Emphasis added.) Thus, to obtain financial recovery under the UPA, Defendant’s deceptive trade practice must have caused Plaintiffs to suffer actual damages. See UJI 13-1707 NMRA (instructing that plaintiffs “may recover damages proximately caused by the deception”); see also Bogle v. Summit Inv Co., 2005-NMCA-024, ¶ 36, 137 N.M. 80, 107 P.3d 520 (stating that “any person who suffers a financial loss as the result of another willfully engaging in an unfair trade practice may recover treble damages” under the UPA). However, as Defendant points out, the evidence presented at trial established that (1) property damage or hazard insurance was a requirement of the loan, as disclosed in the promissory note; (2) Plaintiffs wished to purchase the insurance from Defendant; (3) the price of the insurance was accurately disclosed to them; and (4) they received the policy for which they were charged. Plaintiffs do not directly respond to Defendant’s claim of lack of causation or actual injury, asserting only that “Defendant cannot be allowed to profit from its own wrongdoing.” We hold that the evidence is insufficient to establish that Plaintiffs sustained any actual injury as a result of the deceptive practice in question, and therefore reverse the award of damages for the sale of insurance.

Defendant also challenges the award of damages under the UPA for additional utility charges, inconvenience, and aggravation arising from the defects in the mobile home. During trial, Plaintiffs stipulated, for purposes of resolving an evidentiary dispute, that their breach of warranty claim based on defects in the mobile home was separate from their UPA claim concerning the sales transaction itself. Moreover, when introducing testimony concerning the damages resulting from the defects in the mobile home, counsel for Plaintiffs argued that it was relevant to their breach of warranty claim. The trial court, however, awarded only equitable relief on Plaintiffs’ breach of warranty claim. In light of Plaintiffs’ stipulation during trial that their breach of warranty claim is in no way “subsumed into the [UPA],” we hold that the trial court erred in awarding damages under the UPA for the additional utility charges, inconvenience, and aggravation arising from the defects in the home. We, however, note that the award of UPA damages for Defendant’s failure to deliver a home with certain custom features ordered by Plaintiffs remains unaffected, as those damages appear to relate to promises made by Defendant during the sale itself and thus are properly awarded under the UPA. Thus, we reverse the award of actual and treble damages related to the sale of insurance, and the award of actual and treble damages related to the additional utility charges, inconvenience, and aggravation.

**Punitive Damages**

The purpose of punitive damages is to punish and deter wrongful conduct and thus requires evidence of a culpable mental state, combined with conduct that is willful, wanton, malicious, reckless, oppressive, or fraudulent. *Enriquez v. Cochran, 1998-NMCA-157, ¶ 121, 126 N.M. 196, 967 P.2d 1136.* In New Mexico, a principal may be held vicariously liable for punitive damages when it “has in some way authorized, ratified, or participated in the wanton, oppressive, malicious, fraudulent, or criminal acts of its agent.” *Albuquerque Concrete Coring Co. v. Pan Am World Servs., Inc., 118 N.M. 140, 143, 879 P.2d 772, 775 (1994). “A corporation can ratify the acts of its agents by acquiescence in or acceptance of the unauthorized acts.” Id. at 144, 879 P.2d at 776. However, the ratification must be accompanied by the principal’s knowledge of the circumstances surrounding the agent’s misconduct. Id.; see also Beneficial Fin. Co. of N.M. v. Alarcon, 112 N.M. 420, 424, 816 P.2d 489, 493 (1991) (“A party held to a ratification shall have had full knowledge of all the material facts concerning the transaction.”); *Romero v. Bank of the S.W.,* 2003-NMCA-124, ¶ 19, 135 N.M. 1, 83 P.3d 288 (explaining that ratification occurs only when there is “full knowledge of all the material facts” and an “intent to ratify” the transaction, “either expressly or by conduct”).

Defendant claims that the trial court erred in imposing punitive damages because the evidence was inadequate to prove corporate misconduct by Defendant. The trial court awarded punitive damages on the basis that Defendant ratified the actions of Pike and Lancaster. The trial court found that Defendant ratified their conduct by (1) paying Pike his full commission on the sale of the mobile home to Plaintiffs, (2) not immediately terminating Lancaster upon discovering his and Pike’s misconduct, (3) authorizing the construction of a fence in place of a garage on Plaintiffs’ property without Plaintiffs’ permission, and (4) advancing positions in the lawsuit that deny wrongdoing or responsibility.

We conclude that the evidence upon which the trial court relied does not support ratification of Pike’s and Lancaster’s misconduct by Defendant. In urging us to affirm the trial court’s award, Plaintiffs point to evidence that the paperwork submitted by the local sales representative and manager contained discrepancies and irregularities that should have been detected and investigated by Defendant, but were not. However, as a matter of law, inaction alone is not sufficient to establish ratification of an agent’s conduct; ratification must be founded on knowledge of all facts material to the agent’s unauthorized action, and not on negligence in failing to discover them. See *Albuquerque Concrete Coring Co.,* 118 N.M. at 144, 879 P.2d at 776 (explaining that something more than the defendant’s “receipt of a document which supposedly represents culpable conduct must be shown to establish corporate complicity through authorization, ratification, or participation”); *Beneficial Fin. Co. of N.M.,* 112 N.M. at 424, 816 P.2d at 493; *Romero,* 2003-NMCA-124, ¶ 19. In this case, there is no evidence that Defendant had any knowledge of the circumstances surrounding the agents’ fraud when the documentation in question was submitted and reviewed by the Albuquerque and Houston offices, or when the sales commission was paid to Pike.

In support of ratification, Plaintiffs also rely on evidence that Defendant was aware of the problem of falsification in the mobile home industry, but ignored warnings by the Albuquerque zone office that local sales offices should not be allowed to submit financing documents directly to lenders, but should be required to have them reviewed and verified by the zone office. Although Defendant did not adopt the recommendation of the Albuquerque zone office, it is undisputed that Defendant instituted an alternative method of verification of sales information through a central finance office in Portland. Moreover, in response to the problems in the mobile home
industry, Defendant had adopted a corporate policy expressly prohibiting dishonest acts by sales personnel, and in 1999 convened a nationwide “Call to Integrity” meeting of managers to specifically address the problem of fraud in the industry. In light of this evidence in the record, which appears to be undisputed, we conclude that Defendant’s decision not to adopt the particular policy recommended by the Albuquerque zone office does not rise to the level of corporate indifference necessary to justify an award of punitive damages. See McNeill v. Rice Eng’g & Operating, Inc., 2003-NMCA-078, ¶ 40, 133 N.M. 804, 70 P.3d 794 (“We know of no precedent, and Plaintiffs cite none, which requires companies to take every means available, no matter how costly or how feasible to avoid any potential economic injury, even if it knows or has reason to know such may be the consequence.”); cf. Clay v. Ferrellgas, Inc., 118 N.M. 266, 269-70, 881 P.2d 11, 14-15 (1994) (affirming award of punitive damages where company’s negligent installation of propane conversion system in car, together with pattern of safety regulation violations by company, in the face of serious risks of danger, amounted to corporate indifference and reckless conduct).

{31} The trial court also based ratification on its finding that, when the fraud in the transaction was revealed to Defendant, the district manager directed the local sales manager to have a fence, instead of a garage, built on Plaintiffs’ property without their permission. However, we are unable to find support in the record for the trial court’s finding. Our review of the record indicates as follows. When Plaintiffs reported the defects in the home to Defendant, it sent district manager Kaspryzk to Las Cruces to investigate. Upon inspecting Plaintiffs’ home, Kaspryzk acknowledged the defects and poor condition of the home and arranged for repairs, which were apparently never done. Then when the falsification of Plaintiffs’ loan first came to light, Kaspryzk again went to Las Cruces and saw that, contrary to the loan documents, there was no garage on Plaintiffs’ property, which was too small to even fit a garage. After being apprised of the situation, the zone vice-president, Jim Gifford, asked Kaspryzk to find out what Plaintiffs wanted instead of the garage. Kaspryzk relied on Lancaster, as the local manager, to address the matter with Plaintiffs. During that meeting, Plaintiffs expressed a desire to use the money allocated to the garage to build a concrete slab, porch, and fence on the property instead. Without obtaining Plaintiffs’ permission, Lancaster arranged to have a fence, which was worth less than $1,000, built on Plaintiffs’ property. There is no evidence in the record, however, that this unauthorized act was done at Kaspryzk’s direction. Rather, Kaspryzk believed that an agreement had been reached with Plaintiffs to substitute the fence for the garage. Where the district manager and the zone vice-president had no knowledge of the unilateral actions of Lancaster, and sought only to settle the controversy with Plaintiffs, we cannot conclude that it was reasonable to find ratification. See Albuquerque Concrete Coring Co., 118 N.M. at 143, 879 P.2d at 775.

{32} The trial court also found that Defendant’s failure to immediately terminate Pike and Lancaster amounted to ratification. However, it is undisputed that Pike was terminated by Defendant approximately two months later based upon similar misconduct in another sale, and that Gifford ordered that Lancaster be terminated after an investigation of his misconduct in this transaction, but Lancaster resigned before he could be fired. Thus, the cumulative conduct of employees in this case does not support a finding of ratification by Defendant. See Clay, 118 N.M. at 270, 881 P.2d at 15 (recognizing that culpable mental state required for award of punitive damages may be based on the cumulative conduct of employees). Rather, the evidence in the record supports Defendant’s description of Pike and Lancaster as “renegade employees” whose egregious actions were neither ratified nor condoned by Defendant, but once discovered and investigated, were reasonably dealt with by their supervisors. See Gillingham v. Reliable Chevrolet, 1998-NMCA-143, ¶ 20, 126 N.M. 30, 966 P.2d 197 (explaining that “in order to impose punitive damages against an employer, its conduct must be found to be willful, reckless, or wanton, apart from the conduct of its employee” (emphasis added)); cf. Coates v. Wal-Mart Stores, Inc., 1999-NMSC-013, ¶ 48, 127 N.M. 47, 976 P.2d 999 (upholding award of punitive damages against employer for intentional infliction of emotional distress where the conduct of one employee was witnessed and condoned “by high level supervisory personnel”).

{33} In imposing punitive damages, the trial court also relied on Defendant’s litigation conduct or defense of this lawsuit. New Mexico case law, however, does not appear to recognize a principal’s litigation conduct as a basis for ratification for purposes of determining punitive damages. See Albuquerque Concrete Coring Co., 118 N.M. at 144, 879 P.2d at 776 (refusing to recognize breach of contract and party’s defense of contract claim “to the very end” as basis for punitive damages); Burguete v. G. W. Bond & Bro. Mercantile Co., 43 N.M. 97, 105, 85 P.2d 749, 754-55 (1938) (indicating that opposing party’s claims in litigation did not establish ratification since unresolved factual issues were for the court to decide); In re Estate of Duncan, 2002-NMCA-069, ¶ 25, 123 N.M. 426, 50 P.3d 175 (stating that the personal representative’s decision to litigate issues in estate matter did not amount to ratification of lease since litigation itself was intended to sort out respective interests of the parties, rev’d on other grounds, In re Estate of Duncan, 2003-NMSC-013, ¶¶ 1, 24, 133 N.M. 821, 70 P.3d 1260. Thus, we decline to treat Defendant’s position in this lawsuit as a basis for finding ratification by Defendant.

{34} Finally, Plaintiffs argue that the award of punitive damages should be affirmed because Lancaster, as local sales manager, was employed in a managerial capacity. In New Mexico, punitive damages may be imposed upon a principal if “the agent was employed in a managerial capacity and was acting in the scope of employment.” Albuquerque Concrete Coring Co., 118 N.M. at 145, 879 P.2d at 777 (internal quotation marks and citations omitted). This theory, however, was not specifically included in Plaintiffs’ requested findings and conclusions, and was not clearly raised by Plaintiffs until their response to Defendant’s motion to amend judgment. See Famiglietta v. Ivie-Miller Enter., 1998-NMCA-155, ¶ 21, 126 N.M. 69, 966 P.2d 777 (declining to review argument not made below). In imposing punitive damages, the trial court explicitly relied on Defendant’s ratification of its employees’ misconduct, and not the managerial capacity rule. An appellate court will not affirm the ruling of the trial court on a ground not relied upon by the trial court if doing so would be unfair to the appellant. Meiboom v. Watson, 2000-NMSC-004, ¶ 20, 128 N.M. 536, 994 P.2d 1154; Pinnell v. Bd. of County Comm’rs of Santa Fe County, 1999-NMCA-074, ¶ 14, 127 N.M. 452, 982 P.2d 503 (explaining that an appellate court will not assume the role of the trial court and delve into fact-dependent inquiries when opposing party has not had an opportunity to develop record in response and would therefore be prejudiced). Thus, we decline to address whether the managerial capacity rule applies under the facts of this case.

{35} We reverse the trial court’s award of punitive damages against Defendant based on insufficiency of the evidence to support a
finding of ratification by Defendant. Although an appellate court is required to view the evidence in the light most favorable to the prevailing party and indulge all reasonable inferences in support of the judgment, SunWest Bank of Albuquerque, N.A. v. Daskalos, 120 N.M. 637, 639, 904 P.2d 1062, 1064 (Ct. App. 1995), we conclude that no reasonable view of the evidence in this case supports a finding of ratification by Defendant. In light of our reversal of the punitive damages award, we do not address Plaintiffs’ claim on cross-appeal that the trial court erred in reducing the award.

Dismissal of Defendant’s Counterclaim Without Prejudice
{36} Defendant argues that the trial court erred in dismissing, without prejudice, its counterclaim to collect on the promissory note signed by Plaintiffs. At the close of the evidence, Plaintiffs moved for judgment on the counterclaim on the ground that Defendant failed to produce the original note and thus did not satisfy its burden of proof on the counterclaim. See NMSA 1978, § 55-3-308(a) (1992). They argued that because Defendant was not the original holder of the note, it was required to prove possession of the original note in order to collect payment, relying on the Arkansas case of McKay v. Capital Resources Co., 940 S.W.2d 869, 871 (Ark. 1997). Defendant argued below, and continues to argue on appeal, that Plaintiffs waived objection to the failure to produce the original note because the issue was not raised until the close of trial, and Plaintiffs had previously stipulated to the admissibility of all exhibits, including a copy of the note. Although Defendant admitted that it did not have the original note at trial, it allegedly obtained possession of the original note from Lender when it later moved for reconsideration. We agree that Plaintiffs waived any objection to the non-production of the original note at trial.

{37} Plaintiffs do not respond directly to Defendant’s claim of waiver, but argue only that Defendant failed to meet its evidentiary burden under the Uniform Commercial Code. However, in a collection action, the failure to produce the original note or instrument may be waived or excused by stipulation or admission of the parties. Recreation Servs., Inc. Defined Benefit Plan v. Utah Mortgage Co., 720 F. Supp. 124, 125 (N.D. Ill. 1989); see also Tassock v. Hogan, 538 P.2d 910, 912 (Or. 1975).

{38} In this case, Plaintiffs admitted in their answer to the counterclaim that they signed the note. They admitted that the note was assigned to Defendant and that Defendant was the current owner of the note. The pretrial order does not indicate that Plaintiffs challenged Defendant’s status as the owner or holder of the note. Moreover, unlike the situation in McKay, 940 S.W.2d at 869-70, Plaintiffs in this case stipulated to the introduction and use of the copy of the note in evidence at the start of the trial, acknowledging that it was an “original exhibit.” When Plaintiffs moved for dismissal of the counterclaim at the close of evidence, Defendant and even the trial judge were surprised by Plaintiffs’ objection. Under these circumstances, we conclude that Plaintiffs waived any challenge to Defendant’s failure to produce the original promissory note. See Recreation Servs., Inc. Defined Benefit Plan, 720 F. Supp. at 125; Tassock, 538 P.2d at 912; cf. Apodaca v. AAA Gas Co., 2003-NMCA-085, ¶ 58, 134 N.M. 77, 73 P.3d 215 (noting that party’s contention on appeal that the opposing party failed to authenticate the file introduced into evidence ignores the fact that the party stipulated to the file’s authenticity). We therefore reverse and remand for further proceedings on Defendant’s counterclaim.

{39} Because we reverse on the basis of waiver, we need not address Defendant’s remaining challenge to the dismissal of the counterclaim, which was admitted but not preserved below. We note that Defendant further argues that the trial court erred in ruling, following the dismissal of the counterclaim, that Defendant forfeited interest on the promissory note pursuant to NMSA 1978, § 56-8-9(D) (1980). Defendant admits that this issue was not raised below, but argues that it is an issue of general public interest which may be excluded from the preservation requirement. We disagree. Defendant’s issue, which pertains to the particular terms of the financing in this case, is not likely to affect the public at large or a great number of cases and litigants in the near future. See Azar v. Prudential Ins. Co. of Am., 2003-NMCA-062, ¶ 28, 133 N.M. 669, 68 P.3d 909. Thus, the public interest exception does not apply, and we decline to reach Defendant’s argument raised for the first time on appeal. Finally, because we reverse and remand on Defendant’s counterclaim, we need not address Plaintiffs’ contention on cross-appeal that the counterclaim should have been dismissed with prejudice.

Award of Attorney Fees
{40} Defendant argues that the trial court erred in determining the amount of attorney fees to award to Plaintiffs under the UPA and the Insurance Code. The trial court awarded fees of approximately $80,000 to Plaintiffs. Defendant claims that the trial court failed to adequately apportion counsel’s efforts between Plaintiffs’ UPA claim and their other, non-fee generating claims. Specifically, Defendant contends that the trial court improperly awarded Plaintiffs attorney fees for their claims related to (1) the unlicensed sale of insurance under the Insurance Code, (2) the violation of statutory limits on interim construction loan charges, and (3) punitive damages against Defendant. Defendant acknowledges that it did not raise below its argument that Plaintiffs are not entitled to attorney fees under the Uniform-Purchase Act. Defendant’s argument raised for the first time on appeal. Finally, because we reverse and remand for further proceedings on Defendant’s counterclaim, we need not address Defendant’s argument raised for the first time on appeal.


{42} In awarding attorney fees to Plaintiffs, the trial court entered, in part, the following findings:

5. The litigation of this entire case centered around [Defendant’s] misrepresentations.
6. The same conduct which pertained to the fraud claims also was the conduct that violated the [UPA].
7. All of the time and work performed by Plaintiffs’ attorneys proving their fraud claim also was performed in proving the [UPA] claim.
8. The time and work performed by Plaintiffs’ attorneys, proving entitlement to punitive damages under the fraud claim, also was performed in proving the entitlement to treble damages for willful [UPA] claim.
9. The time and work Plaintiffs’ counsel spent litigating the arbitration issue pertained to all claims, including the [UPA] claim.
10. No additional time was spent on the arbitration issue that did not include the work spent on the [UPA] claim.

11. In their fee application, Plaintiffs’ counsel already deleted the time they spent working on the breach of warranty claim, which was not compensable.

12. The commission of unfair trade practices was an element of the usury claim that required presentation of evidence at trial. Plaintiffs’ success in proving the violations of the [UPA] was directly related to their success in prevailing under the New Mexico usury statute.

13. A portion of the work of Plaintiffs’ counsel on their usury claim, primarily their work on the legal issues, is not compensable.

14. The portion of the work of Plaintiffs’ counsel, on the Truth in Lending Act claim in the original complaint, is not compensable.

{43} When a plaintiff asserts a UPA claim along with a number of other distinct claims, the trial court must “separate the claims and determine the amount of time spent on each.” Jaramillo v. Gonzales, 2002-NMCA-072, ¶ 41, 132 N.M. 459, 50 P.3d 554. Even when “some facts are common to all the claims,” the trial court must still “separate the claims and the proofs required for each” to the extent possible. Id. ¶ 40. Thus,

when the attorney’s services are rendered in pursuit of multiple objectives, some of which permit an award of fees and some of which do not, the court must make a reasoned estimate, based either on evidence or on its familiarity with the case at trial, of the proportion or quantum of services that are compensable and award fees only for those services.


{44} We conclude that the trial court met its obligation of separating the claims and estimating with reason the proportion of services compensable under the UPA based on the evidence submitted and its familiarity with the case. Defendant claims that the trial court erred in awarding fees related to work done under the UPA that promoted the success of Plaintiffs’ usury claim, which is not compensable. The trial court, however, may properly award fees for UPA work that overlaps factually with another claim. See Jaramillo, 2002-NMCA-072, ¶ 40. Here, the trial court found that proof of an unfair trade practice “was an element of the usury claim that required presentation of evidence at trial” and deducted from its fee determination a portion of the time spent on other aspects or legal issues related to the usury claim. We defer to the trial court’s reasoned estimate of the amount of work attributable to the UPA in this regard.

{45} Defendant also argues that the trial court erred in finding that the proof required for punitive damages under common law fraud is the same as the proof required for treble damages under the UPA. According to Defendant, because entitlement to punitive damages requires an additional showing of Defendant’s vicarious liability, the trial court’s award of fees under the UPA should be reduced accordingly. We, however, have difficulty discerning any appreciable difference in the levels of proof between the two claims in this case, particularly in light of our determination that the evidence of Defendant’s ratification is insufficient. Moreover, as this Court has pointed out in the past, “the same conduct that violates the UPA may also form the basis of another cause of action that permits an award of punitive damages.” McLelland v. United Wisconsin Life Ins. Co., 1999-NMCA-055, ¶ 11, 127 N.M. 303, 980 P.2d 86. Thus, we cannot say that the trial court’s finding was “contrary to logic or reason.” Roselli, 109 N.M. at 512, 787 P.2d at 431. We therefore affirm the award of attorney fees.

{46} Nonetheless, because we reverse the award of certain damages under the UPA as discussed above, we remand to the trial court with instructions to redetermine the amount of attorney fees to be awarded Plaintiffs without counting any time and work required of counsel on the unsuccessful portions of the UPA claim. See Klinkskie v. Klinkskie, 2005-NMCA-008, ¶ 29, 136 N.M. 693, 104 P.3d 559 (recognizing that remand for reconsideration of attorney fee award is appropriate when the trial court’s order is reversed in part); Rabie v. Ogaki, 116 N.M. 143, 149, 860 P.2d 785, 791 (Ct. App. 1993). The parties have apparently stipulated that remand is appropriate in such an event. Finally, in light of our reversal in part of the UPA claim, we deny Plaintiffs’ request for appellate attorney fees.

CONCLUSION

{47} The judgment and orders of the trial court are affirmed in part and reversed in part, and the case is remanded for further proceedings in accordance with our opinion.

{48} IT IS SO ORDERED.

RODERICK T. KENNEDY,
Judge

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

JONATHAN B. SUTIN, Judge

[1] Defendant Calvin Parson unlawfully transported elk heads. He appeals his convictions under felony statutes outlawing “transporting...stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof,” NMSA 1978, § 30-18-6 (1963), and conspiring to commit that crime, see NMSA 1978, § 30-28-2(A) (1979). He grounds his appeal on the view that he should have only been charged with a misdemeanor under the more specifically applicable game and fish laws in NMSA 1978, §§ 17-2-7 and -20.3 (1979), and NMSA 1978, § 17-2-10 (1999). We agree with Defendant and reverse.

BACKGROUND

[2] In presenting its case, the State put on testimony regarding an unlawful, multimillion dollar elk head and antler trophy business. The testimony included a description of a joint investigation into waste of wildlife and illegal antler trade by the New Mexico Department of Game and Fish and the Colorado Division of Wildlife. In the investigation, Department personnel discovered the carcasses of two decapitated mature bull elk. The investigation led to a possible poacher by the name of Zach Romero and then to Defendant. Each was charged with a violation of Section 30-18-6 and charged with conspiracy to violate Section 30-18-6, pursuant to Section 30-28-2(A). These crimes are fourth degree felonies. §§ 30-18-6, 30-28-2(B)(3).

[3] The linking of firearm shell casings found at the sites of the killed elk with cartridges in Defendant’s home, the linking of DNA from blood of the elk and blood found in Defendant’s van, and testimony of Romero in Defendant’s trial that the two shot the elk in question out of season and transported the elk heads, led to Defendant’s convictions on both charges. Before he testified against Defendant, Romero pled guilty to the same charges.

[4] Defendant sought dismissal of the charges on the ground that he was improperly charged under Section 30-18-6 instead of under the more specific statutes. Defendant’s argument on this issue centered on a statute that the State was required to prosecute him under the more specific statutes. Defendant’s argument on this issue centered on Section v. Cleve, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23, in which the Court held that NMSA 1978, § 30-18-1 (1963, repealed 1999) (amended 2001) (cruelty to animals), one of the many animal-related statutes in Article 18 of the New Mexico Criminal Code (Chapter 30), did not apply to Defendant’s conduct in “snaring two deer.” Cleve, 1999-NMSC-017, ¶ 37. The Supreme Court construed the words “any animal” in Section 30-18-1 to mean “domestic animals and wild animals in captivity,” and determined that the conduct was covered under the more specific statute.

[5] The district court denied Defendant’s motions to dismiss, distinguishing Cleve on the basis that Section 30-18-1 in Cleve and Section 30-18-6 in the present case were different statutes. In making the distinction, the Court focused mostly on the proscribed conduct of “transporting” a game animal or a part of a game animal in Section 30-18-6.

[6] Defendant asserts on appeal that: (1) Section 30-18-6 applies only to elk when elk are being raised as livestock, and not to free-roaming, wild elk and, therefore, the State failed to prove that Defendant stole livestock as defined by the statute; (2) under a plain meaning analysis, the State was required to charge Defendant under the game and fish statutes; and (3) if the plain meaning rule is inapplicable, then Cleve’s determination of legislative intent that the game and fish laws are an exception to the animal-related statutes in Article 18 of the Criminal Code controls.

DISCUSSION

I. Standard of Review


II. The Statutes

[8] We preface our discussion of Defendant’s points on appeal by discussing Chapter 30, Article 18 of our statutes, and by setting out the various statutes on which Defendant relies, together with a fuller discussion of Cleve.
Article 18

[9] Article 18 of Chapter 30 relates to “animals” generally. Several specific statutes relate to cruelty to animals and the seizure, disposition, and award of costs in connection with animals endangered from cruel treatment. See § 30-18-1; NMSA 1978, §§ 30-18-1.1, -1.2, -1.3 (1999). Several of the other sections in Article 18 expressly mention “livestock” or obviously cover livestock by referring to “cattle” or “cow.” See NMSA 1978, § 30-18-3(C) (1963); NMSA 1978, §§ 30-18-4, -5, -6, -8, -12, -14 (1963, as amended through 2001). One of these sections relates to injury to livestock that is the property of another and defines “livestock” as “used in the taking of property from another.” See Merriam Webster’s Collegiate Dictionary 1150 (10th ed. 1996) (defining “steal” to mean “to take the property of another wrongfully”). Section 30-18-7 relates to misrepresentation of the pedigree of an animal. Section 30-18-15, the last section in Article 18, proscribes certain injections by personnel of an animal control service or facility, animal shelter, or humane society.

[10] Several provisions in Article 18 that do not expressly or exclusively relate to clearly domesticated animals such as livestock, cattle, dogs, equines (horse, pony, mule, donkey or hinny), are nevertheless obviously or likely meant to cover only domesticated animals. See §§ 30-18-3; -4(D), (E), (F); -6; -7; -15. Section 30-18-3 covers unlawful branding. Section 30-18-4 covers the unlawful disposition of animals that are owned or are the property of others. Section 30-18-6, which proscribes transporting “stolen” livestock and defines this as transporting “stolen or unlawfully possessed livestock or any unlawfully possessed game animal,” by use of the word “stolen” implies the taking of property from another. See Merriam Webster’s Collegiate Dictionary 1150 (10th ed. 1996) (defining “steal” to mean “to take the property of another wrongfully”). Section 30-18-7 relates to misrepresentation of the pedigree of an animal. Section 30-18-15, the last section in Article 18, proscribes certain injections by personnel of an animal control service or facility, animal shelter, or humane society.

[11] Only two provisions in Article 18 use the words “game animal.” Section 30-18-6, as indicated earlier in this opinion, proscribes the transporting of an unlawfully possessed game animal. Section 30-18-10 excludes from Article 18 proscriptions “the taking of game animals, game birds or game fish by use of dogs” under certain circumstances.

The Livestock Code

[12] Defendant turns to the Livestock Code, NMSA §§ 77-2-1 to -18-4 (1869, as amended through 2004), which states that, “[a]s used in The Livestock Code . . . ‘animals’ or ‘livestock’ means all domestic or domesticated animals that are used or raised on a farm or ranch, including . . . farmed cervidae upon any land in New Mexico.” § 77-2-1.1(A). Based on these definitions and pointing out that “cervidae” are elk and deer, Defendant contends that “game animals” as used in Section 30-18-6 do not include free-roaming animals.

Game and Fish Laws

[13] The game and fish laws are found in Chapter 17 of the statutes. See NMSA 1978, §§ 17-1-1 to 17-8-6 (1912, as amended through 2003). Defendant contends that the State’s evidence established nothing more than that the elk in question were free-roaming, wild animals protected under the game and fish laws. Defendant cites, in particular, Sections 17-2-3(A)(4), -7, -10, and -20.3. Section 17-2-3(A)(4) lists certain “game mammals” as protected wildlife species. Among the game mammals listed is “the family Cervidae.” Id. Under Section 17-2-7(A)(1) and (2), unless permitted under regulations or law, “it is unlawful to[] hunt, take, capture, [or] kill . . . any game animal,” and it is unlawful to “possess . . . all or any part of any game animal.” Section 17-2-10(A) states that it is a misdemeanor to violate any provision of Chapter 17 or any regulations “that relate to the time, extent, means or manner that game animals . . . may be hunted, taken, captured, killed, possessed, sold, purchased or shipped.” Section 17-2-20.3 states that the “illegal possession or transportation of big game during closed season” is a misdemeanor, and, further, that “taking or attempting to take big game during closed season,” and “selling or attempting to sell big game or parts thereof” without a permit, are misdemeanors. § 17-2-20.3(A), (B), (D).

State v. Cleve

[14] In Cleve, only the cruelty to animals provision in Article 18, namely, Section 30-18-1, was at issue. Cleve, 1999-NMSC-017, ¶ 7. The defendant in Cleve was convicted of cruelty to animals under Section 30-18-1 and unlawful hunting under Section 17-2-7(A). Cleve, 1999-NMSC-017, ¶¶ 5-6. In regard to Section 30-18-1, the question in Cleve was whether “any animal” in that statute meant all animals, including game animals. 1999-NMSC-017, ¶¶ 7, 9. Interpreting Section 30-18-1, the Court read the three subsections of the statute as it then existed to “prohibit behavior that could only apply to domesticated animals or wild animals previously reduced to captivity[].” Cleve, 1999-NMSC-017, ¶ 12. The Court concluded that “the Legislature intended that the phrase ‘any animal’ denote domesticated animals and wild animals in captivity throughout Section 30-18-1.” Cleve, 1999-NMSC-017, ¶ 12. The Court also “conclude[d] that the Legislature enacted the entire [Article 18] with the exclusive purposes of controlling certain human behavior in relation to domesticated animals and protecting the property rights of the owners of domesticated or previously captured wild animals.” Id. ¶ 13. Section 30-18-6 was among the statutes in Article 18 specifically referred to by the Court that paved the way for the Court’s statement that, “[e]ach of these other statutes exclusively concern livestock and other animals possessed by humans[].” Cleve, 1999-NMSC-017, ¶ 13. As to Section 30-18-1, in studying the context surrounding its enactment, the Court concluded that the Legislature intended to exclude wild animals from its protection. Cleve, 1999-NMSC-017, ¶ 15.

[15] The Court in Cleve then turned to game and fish laws, including the unlawful hunting statute under which the defendant was charged, Section 17-2-7. Cleve, 1999-NMSC-017, ¶¶ 16, 31, 29-34. The Court looked at these laws in the context of the general/specifc rule of statutory construction. Id. ¶¶ 16-36. Cleve concluded “that the Legislature did not intend for Section 30-18-1 to apply to hunting activities contemplated by New Mexico’s specific laws governing game and fish.” Id. ¶ 18. The Court held:

"The overall statutory scheme governing hunting and fishing demonstrates a legislative intent to preempt the application of Section 30-18-1 to game and fish with respect to conduct contemplated by game and fish laws. We believe that the general/specific statute rule therefore provides additional support for our interpretation of Section 30-18-1."
The Court further concluded that:

[E]ven if the Legislature had intended to protect wild animals in Section 30-18-1, the Legislature, having dealt with the subject of the hunting of game animals more particularly in the game and fish laws, intended to create an exception from the cruelty-to-animals statute for hunting and fishing activity contemplated by game and fish laws.

The general/specie statute rule discussed and applied in Cleve was reconfirmed as a rule to “determine legislative intent in the context of potentially conflicting laws” in State v. Santillanes, 2001-NMSC-018, ¶ 11, 130 N.M. 464, 27 P.3d 456. The Cleve preemption analysis appears to have been disfavored in Santillanes as a label that “do[es] not serve [its] intended purpose of clarifying the general/specie statute rule.” Id.

The version of Section 30-18-1 addressed in Cleve was repealed in the 1999 legislative session and reenacted in the same session with significant changes and as a considerably more comprehensive statute. See 1999 N.M. Laws ch. 107, ¶ 1; 2001 N.M. Laws ch. 81, § 1. Cleve, 1999-NMSC-017, filed March 11, 1999, does not mention this 1999 legislative activity. It would appear that the legislation was at least in part a reaction to this Court’s 1997 decision in Cleve, which interpreted Section 30-18-1 to apply to wild animals including the deer that the defendant in that case snared. See State v. Cleve, 1997-NMCA-113, ¶ 13, 124 N.M. 289, 949 P.2d 672, rev’d by 1999-NMSC-017. The 1999 reenacted Section 30-18-1 covers, in part, negligently “killing without lawful justification . . . an animal[,]” “intentionally . . . mutilating, injuring or poisoning an animal[,]” and “maliciously killing an animal.” § 30-18-1(B)(1), (E)(1), (2) (2001). The reenactment states, however, that the provisions of the section “do not apply to . . . fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978[.]” § 30-18-1(I)(1). The question is whether the change in Section 30-18-1 affects the precedential value of Cleve.

We see nothing in the 1999 reenactment of Section 30-18-1 that reflects a legislative intent to cover the hunting, capturing, or killing of free-roaming, wild elk or the transporting of such elk after being hunted, captured, or killed. To the contrary, that section contains the express statement that the section’s provisions do not apply to activities under Chapter 17. Chapter 17 is comprehensive regulatory legislation to protect free-roaming, wild game animals through State regulation of hunting, taking, capturing, killing, and possessing free-roaming, wild game animals, specifically including elk. See §§ 17-1-1, 17-2-1, -2, -3. We read the exclusion in Section 30-18-1(I)(1) to mean that Section 30-18-1 does not criminalize conduct regulated under Chapter 17. Thus, while Section 30-18-1 was substantially changed during the formation and filing of the Cleve opinion in 1999, we doubt that the Legislature was attempting to write Section 30-18-1 to apply to the hunting and killing of free-roaming, wild animals regulated under Chapter 17. Rather, we construe the legislative intent in enacting Section 30-18-1(I) to be in sync with the Supreme Court’s analysis and holding in Cleve.

We believe that Cleve’s assessment that Article 18 was intended to cover only “domesticated or previously captured wild animals” remains valid. The fact that reenacted Section 30-18-1(A) expressly also excludes “insects” and “reptiles,” and also expressly does not apply to the practice of veterinary medicine, or rodent and pest control, see § 30-18-1(I)(2), (3), does not raise a reasonable doubt as to the validity of Cleve’s assessment of the legislative intent behind Article 18.

III. The Parties’ Arguments

In his appellate arguments, Defendant first asserts that Section 30-18-6 proscribes only the transportation of elk being raised as livestock, and bases this assertion on the various statutes in Chapters 17 and 77 discussed earlier in this opinion. He next relies on Cleve’s general/specie legislative intent analysis, asserting that the State can charge him only with a more specific statute in Chapter 17. His third and final assertion is that if this Court were to conclude that Section 30-18-6 and statutes in the Chapter 17 game and fish laws give rise to legitimate, differing interpretations, requiring a contextual analysis (history, apparent object, statutes in pari materia), we are bound by Cleve’s holding that the game and fish laws demonstrate a legislative intent to preempt application of Section 30-18-6.

The State asserts that the words in Section 30-18-6 are plain and clear, making no distinction between farmed and free-roaming elk. The State argues that if the Legislature intended in Section 30-18-6 to exclude illegally possessed free-roaming, wild game, it could easily have expressed that intent in the statute. The State further argues that no provision in the game and fish statutes specifically addresses the acts of transporting unlawfully possessed game animal parts, whereas Section 30-18-6 does specifically address that activity. According to the State, Section 17-2-10 does not outlaw the transporting of trophy elk heads, and Section 17-2-20.3 does not outlaw the transporting of parts. The State’s only substantive law-related reference to Cleve is one parenthetically indicating that Cleve is contrary to the State’s view that “the [L]egislature’s intentional use of the phrase (or game animals) in the transporting stolen livestock statute, as opposed to simply using the term or ‘any animal’ or ‘livestock’, supports that conclusion that the [L]egislature intended for the transporting stolen livestock statute to concern more than just animals possessed by humans.”

IV. Defendant Was Chargeable Only Under the Game and Fish Laws

Section 30-18-6 was originally enacted in 1963 as part of an “Act Providing for a Revised Criminal Code.” See 1963 N.M. Laws ch. 303, § 18-6. The title and content of Section 30-18-6 have remained unchanged. The appearance of “game animal” in a statute titled “Transporting Stolen Livestock” that is surrounded by statutes intended for the most part, if not exclusively, to relate...
only to domesticated animals, gives appropriate pause in considering what animals the words “game animals” in that statute were meant to include. See Harriett v. Lusk, 63 N.M. 383, 388, 320 P.2d 738, 742 (1958) (stating that the title of an act may be utilized as an aid in determining legislative intent and to resolve doubts as to meanings); Serrano v. Dep’t of Alcoholic Beverage Control, 113 N.M. 444, 447, 827 P.2d 159, 162 (Ct. App. 1992) (stating that a legislatively enacted section heading may be useful in determining legislative intent in an ambiguously drafted statute). Cleve necessitates a cautious analysis. Cleve also provides the analytic basis for decision. The game and fish laws in Chapter 17 are expressly intended to cover free-roaming, wild game elk; the animal statutes in Article 18 of Chapter 30 are not. The game and fish laws more specifically apply to the elk and trophy-head hunting and transporting than do the animal statutes.

{23} As indicated earlier in this opinion, Section 17-2-3, which covers protected wildlife species, specifically defines “game mammals” to include “all of the family Cervidae (elk and deer).” § 17-2-3(A)(4). Under Section 17-2-7(A)(1) and (2), it is unlawful to hunt, take, capture, kill, or possess any game animal except as permitted by regulations or other laws. Section 17-2-10(A) prescribes up to six months imprisonment for any person who violates a Chapter 17 provision “relating to the time, extent, means or manner that game animals . . . may be hunted, taken, captured, killed, possessed, sold, purchased or shipped.” Further, Section 17-2-20.1(A)(1) and (A)(2) refers to the crimes of “illegal possession or transportation of big game,” and “taking big game during closed season.” Further, under Section 17-2-20.3(A), (B), (C), and (D), the following constitute misdemeanors: illegal possession or transportation of big game and the taking or attempting to take big game during closed season; and selling or attempting to sell big game or parts thereof, except by regulation of the State game commission.

{24} The evidence against Defendant proved that he transported the head of an elk. The State did not attempt to prove that the elk had been domesticated or was not a free-roaming, wild elk. The evidence was sufficient to charge Defendant with violating the game and fish laws. The Legislature intended the game and fish statutes to apply to Defendant’s actions and did not intend Section 30-18-6 to apply to Defendant’s actions. To the extent the public may be dissatisfied with only misdemeanor punishment for elk head trophy hunting and simultaneous carcass waste, the Legislature may want to consider increasing the penalty under the game and fish laws.

CONCLUSION

{25} We hold that Defendant could be convicted, if at all, only under the game and fish laws, and not under Section 30-18-6, for transporting heads of free-roaming, wild elk. We therefore reverse Defendant’s convictions.

{26} IT IS SO ORDERED.

JONATHAN B. SUTIN,
Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE,
Chief Judge

RODERICK T. KENNEDY, Judge
OPINION
LYNN PICKARD, Judge

[1] This case provides us with another opportunity to evaluate and interpret the bankruptcy-related documents of an entity emerging from bankruptcy. See Home & Land Owners, Inc. v. Angel Fire Resort Operations, L.L.C., 2003-NMCA-070, 133 N.M. 733, 69 P.3d 243 (hereinafter HALO) (involving the same entity and different portions of the same documents). The dispute here concerns whether Angel Fire Resort Operations, L.L.C. (the Resort) can sue landowners when those landowners do not pay their annual assessments. The documents designate that the annual assessments are to be used for the upkeep of a ski area, a golf course, and other amenities (the amenities). The trial court ruled as a matter of law that the Resort could not sue, and the Resort has appealed. We reverse.

BACKGROUND

[2] As indicated in HALO, 2003-NMCA-070, ¶¶ 2-3, Angel Fire is a resort community, previously owned by a corporation that underwent bankruptcy reorganization in the mid-1990s, as part of which the Resort purchased the corporation’s properties. The bankruptcy documents include the plan of reorganization and the Supplemental Declaration of Restrictive Covenants and Easements (Supplemental Declaration) that fixed annual dues assessments, both of which were at issue in HALO. See id. ¶¶ 3-6. They also include Articles of Incorporation of the Association of Angel Fire Property Owners, By-Laws of that organization, and a disclosure statement with exhibits. All together, these comprise more than 200 pages of documents.

[3] The case before us is a consolidation of a number of cases in which the Resort sued various landowners for past-due assessments, the landowners moved to dismiss the suits on the ground that the landowners’ position be rejected as a matter of law. After reviewing the motion, cross-motion, and attached documents, and after hearing argument and receiving requested findings and conclusions outlining the parties’ contentions, the trial court entered judgment for the landowners, dismissing the suits.

[4] Prior to the bankruptcy reorganization, the landowners’ properties were subject to covenants that provided:

Every person who shall become the legal or equitable owner of any lot in the Subdivision by any means, is, by the act of acquiring such title, or by the act of contracting to acquire such title, held to have agreed to pay the Association all charges that the Association shall make in accordance with these Restrictions. If such payment is not made when due, it shall bear interest from the due date at the rate of eight (8) percent per annum. Until paid, such charges together with costs and reasonable attorney’s fees required to secure payment thereof, shall constitute a perpetual lien on the property charged. The Association may publish the name of a delinquent member and may file notice that it is the owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorney’s fees and may foreclose the lien in accordance with the laws of the State of New Mexico.

10. REMEDIES

A. The Association, the Committee or any party to whose benefit these Restrictions inure, including Declarant, its successors and assigns, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions.[]

[5] The analogous part of the Supplemental Declaration provides in paragraph 3:

A. Declarant shall assess and the Property Owner of each Homesite shall pay to Declarant a nonrefundable annual assessment, plus gross receipts tax, if applicable, to be used only for the improvement, maintenance, upkeep, repair and operation of and additions to the Amenities. . . .

B. If any assessment is not paid in full when due, Declarant may charge a late fee of $15 per month and the unpaid portion shall bear interest from the due date at the rate of eight percent per annum . . . .

C. The property Owner’s obligations under this Paragraph 3 shall be a covenant running with the land and shall be binding upon the Property Owner and upon all parties having or acquiring any right, title or interest in a Homesite owned by Property
Owner. Declarant or the Association, as may be agreed between them, may enforce the provisions of this Paragraph 3.

The Supplemental Declaration is silent in paragraph 3 as to the manner of enforcement, and there is no comparable language to paragraph 10, the Remedies part of the previous covenants, in the Supplemental Declaration.

[6] However, the Supplemental Declaration provides that landowners’ rights to use the amenities may be suspended or terminated for failure to pay assessments. And in at least ten other places in the bankruptcy documents, landowners’ rights to use the amenities are tied to their payment of assessments. These statements of rights are usually in the form of language indicating that the landowners have rights to use the amenities “upon payment” of yearly dues or assessments. It is on the basis of (1) the presence of an express remedy involving a lawsuit in the prior covenants, (2) the apparent deletion of such an express remedy in the current covenants, and (3) the presence of an express remedy involving suspension of use of the amenities in the current covenants as well as the other bankruptcy documents that the landowners contend that the Resort cannot sue them for past-due assessments.

[7] On the other hand, the Supplemental Declaration, in the paragraph relating to the annual assessment, states that it may be “enforce[d].” The word “enforcement” is used in other places in the Supplemental Declaration, expressly indicating that such enforcement may be by an “action [that] shall be brought within” a certain time or be “forever time barred.” In addition, throughout the documents there are references to the landowners’ mandatory obligations to pay the assessments. The assessments are termed “required Annual Assessment[s]” and the documents state they “shall be paid by the landowners. As quoted above, the Supplemental Declaration allows the Association to “enforce” the provisions relating to payment of assessments. The Articles of Incorporation of the Association provide that the Association can “enforce” the covenants set forth in the Supplemental Declaration and can levy assessments and “enforce payment thereof” against the landowners. The Articles of Incorporation also give the Association the right to file or record liens upon any of the homesites to secure the payment of assessments and obligations due from the owners of said homesites to the Association, and to collect, foreclose or otherwise enforce . . . said liens, and do all things necessary to perfect the filing, enforcement and discharge of said liens.

The By-Laws of the Association permit the Board to levy yearly assessments “and to collect the same.” All of this, as explained in the Supplemental Declaration, is because the previous landowners had paid assessments to maintain the amenities such that the Resort’s obligation to maintain the amenities and the landowners’ obligations to pay assessments to continue the maintenance of the amenities are property interests that run with the land and that were restated expressly in the Supplemental Declaration as mutual obligations. Finally, the reorganization plan expressly provides that the Resort “shall be entitled to seek such orders, judgments, injunctions, and rulings as it deems necessary to carry out the intentions and purposes of, and to give full effect to the provisions of, the Plan.” It is primarily on the basis of this express language that the Resort claims entitlement to enforce the yearly assessments by these lawsuits.

**DISCUSSION**

[8] It is interesting and somewhat ironic that both parties rely on the HALO decision and that each party claims that the other’s arguments beg the question or amount to bootstrapping. Specifically, the landowners rely on the portion of the opinion indicating that the bankruptcy documents necessarily reflect negotiations that took place among the parties thereto. HALO, 2003-NMCA-070, ¶¶ 16, 30. Further, the Supplemental Declaration expressly states that it replaces and supersedes all of the original covenants dealing with assessments and amenities. Thus, the landowners argue that any recognition by the courts of a judicial remedy for nonpayment of the assessments would be contrary to what the parties negotiated for and got, which was a limited remedy of suspension of the right to use the amenities on the occasion of non-payment of assessments. On the other hand, the Resort relies on that portion of HALO, 2003-NMCA-070, ¶ 30, indicating that the purpose of the negotiations resulting in the bankruptcy documents was to insure that the debtor emerged from bankruptcy as a profitable enterprise. Thus, the Resort argues that it is not reasonable to view the bankruptcy documents as requiring the Resort to maintain the amenities while the landowners do not have to pay for them, particularly since their presence enhances the value of the landowners’ properties, even if the landowners do not use the amenities.

[9] In similar fashion, the Resort relies on the many times the documents use the word “enforce” and provide for various enforcement remedies, while the landowners counter with their view that enforcement is limited in the context of nonpayment of the assessments to the expressly stated remedy of suspension of rights to use the amenities. So, too, the Resort argues that it is a common-interest community as explained in the Restatement (Third) of Property—Servitudes, § 6.2(1) (2000) (defining a common-interest community as a real-estate development with individually owned lots that are burdened with a servitude that imposes an obligation that cannot be avoided by nonuse or withdrawal), while the landowners argue that this definition assumes the answer to the very question posed by this appeal. For the reasons expressed below, we believe that the Resort has the better argument.

[10] We begin by discussing the reasons why the Resort’s interpretation of the documents is the only reasonable one. We will then address the landowners’ specific arguments why the lawsuits should not be allowed.

[11] First, as background, we must repeat the overriding purpose of the bankruptcy documents, which was to settle the disputes between the debtor and creditors in such a manner that the debtor would emerge as an economically viable organization. See HALO, 2003-NMCA-070, ¶ 30. It is true, as the landowners suggest, that the Resort purchased the assets of the debtor on favorable terms compared to what the creditors claimed they were owed and that the Resort can earn money by marketing the amenities to the general public. But it is also true that the assessment structure adopted in the Supplemental Declaration was intended to provide substantial funds—approximately $2,000,000 per year—to the Resort that would enable the Resort to maintain and further develop the amenities.

[12] Second, the words “enforce” and “enforcement” that are found throughout the Supplemental Declaration and other documents typically involve the bringing of lawsuits. See, e.g., Patterson v. McLean Credit Union, 491 U.S. 164, 177 (1989) (indicating, in the context of 42 U.S.C. § 1981, that in prohibiting discrimination in the enforcement of contracts, a right to enforce a contract “embraces protection of a legal process, and of a right of access to legal process, that will address and resolve contract-law claims without regard to race”), superseded by statute on other grounds as stated in Doe v. Bd. of County Comm’rs, 783 F. Supp. 1379, 1383 n.11 (S.D. Fla. 1992); Fortier v. Doña Anna Plaza Partners, 747 F.2d 1324, 1338 (10th Cir. 1984) (speaking of enforcing a contract in terms of suits for breach of contract). We agree with the landowners that these cases do not mean that the words always must mean the bringing of lawsuits, but they lend support to the commonly understood usage of the term.

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Indeed, at two earlier places in the Supplemental Declaration, the word “enforcement” is expressly tied to legal actions. The landowners contend that by process of negative inference, the lack of reference to legal actions in other portions of the Supplemental Declaration, specifically the portion dealing with the payment of assessments, means that the drafters of the Declaration meant to exclude legal actions as a remedy for nonpayment of assessments. We cannot agree for two reasons. First, “[w]e may presume that words have the same meaning throughout the contract.” McLane & McLane v. Prudential Ins. Co., 735 F.2d 1194, 1195 (9th Cir. 1984). Second, the other portions of the Supplemental Declaration do not expressly enumerate the legal actions allowed or disallowed. The Declaration simply states that the Association may “seek enforcement” of the two paragraphs relating to the covenants and gives a time limit within which the Association may bring action.

Moreover, we believe that express language in other portions of the bankruptcy documents provides strong support for construing the express language concerning “enforcement” in the Supplemental Declaration as contemplating legal actions. As noted above, the reorganization plan allows the Resort to seek orders and judgments to carry out the intents and purposes of the plan. And the Association, which can, along with the Resort, enforce the payment of assessments, is expressly allowed to file, record, and foreclose liens to secure the payment of assessments from the landowners. Although the present lawsuits are not suits by the Association for foreclosure of liens, it is difficult to imagine why there would be a provision in the bankruptcy documents allowing such suits if, as the landowners contend is true, the only remedy for nonpayment of assessments is withdrawal of the right to use the amenities.

The foregoing discussion is also consistent with a long line of authority that makes it clear that a suit for damages will lie when there is a breach of an obligation to pay money, at least when such a suit is not expressly excluded in the pertinent documents. “Every breach of contract gives the injured party a right to damages against the party in breach.” Restatement (Second) of Contracts § 346 cmt. a (1981); see also Dacy v. Vill. of Ruidoso, 114 N.M. 699, 704, 845 P.2d 793, 798 (1992) (citing Restatement (Second) of Contracts § 346(1)). “A servitude may be enforced by any appropriate remedy or combination of remedies, which may include declaratory judgment [and] compensatory damages[,]” Restatement (Third) of Property—Servitudes § 8.3(1) (2000). Moreover, the fact that a contract might include a provision for a nonjudicial remedy does not mean that judicial remedies are thereby excluded. See Roberson Constr. Co. v. Montoya, 81 N.M. 566, 567, 469 P.2d 715, 716 (1970) (holding that a seller could retain liquidated damages provided for in the contract and still obtain additional damages less the liquidated amount); Suttle v. Bailey, 68 N.M. 283, 285, 361 P.2d 325, 326 (1961) (holding that property owners could sue for violations of restrictive covenants even though the documents provided for the remedy of reversion in them). It is only when the contract limits the remedies, such as by providing that upon breach by one party, the other party may do either one thing or another, that the cases hold that the non-breaching party’s remedies are so limited. See Roberson, 81 N.M. at 567, 469 P.2d at 716 (distinguishing Hopper v. Reynolds, 81 N.M. 255, 466 P.2d 101 (1970), on this ground). The documents in this case do not contain the sort of language our courts have found to demonstrate an intent to limit the remedies.

Having found that the overwhelming weight of authority and sensible construction of the bankruptcy documents allow for the lawsuits that were dismissed below, we now proceed to answer the landowners’ specific argument that is not already answered by our discussion above. The landowners’ primary contentions appear to be that their construction of the bankruptcy documents was a reasonable one, supported by the doctrine of negative inference, see Patterson v. Globe Am. Cas. Co., 101 N.M. 541, 543, 685 P.2d 396, 398 (Ct. App. 1984) (indicating that when something is stated somewhere and is missing in other places, we may infer that its absence was intentional in the other places), superseded by statute on other grounds as stated in Journal Publ’g Co. v. Am. Home Assurance Co., 771 F. Supp. 632, 635 (S.D.N.Y. 1991), and that it would be inequitable to hold a judicial remedy available to collect the unpaid assessments when substantial consideration for that remedy is buried in a few places within hundreds of pages of documents. We have discussed negative inference above. Here, we are concerned with equitable considerations.

Regarding equitable considerations, we are compelled to disagree with the basic premises of the landowners’ argument. Their view that a judicial remedy is excluded is arrived at by looking at the bankruptcy documents in a most self-interested way and a way that is contrary to the bankruptcy becoming an economically viable entity. As we have outlined the documents and the purposes of them, it is clear to us that judicial remedies are not excluded. The facts that the Supplemental Declaration itself uses the term “enforcement,” that the term “enforcement” is coupled therein with legal actions, that the plan expressly allows legal actions, and that legal actions would be implied in any event indicate that it would not be inequitable to allow the Resort to sue for nonpayment of assessments that the landowners were mandated to pay. Contrary to the landowners’ arguments that the provision for suit is buried in 200 pages of documents and that express provision for suit is not contained in the disclosure statement, the requirement that they pay assessments or face enforcement proceedings in court was not a secret intent unexpressed in the language of the documents. See Wilcox v. Timberon Protective Ass’n, 111 N.M. 478, 484, 806 P.2d 1068, 1074 (Ct. App. 1990). Instead, the obligation and various methods of enforcement were repeatedly spelled out in the documents, as well as implied by law. In addition, based on our reasonable reading of the documents, there is no ambiguity requiring any interpretation in landowners’ favor. Under these circumstances, we cannot say that it would be inequitable or should come as any surprise to landowners to allow these suits.

CONCLUSION

We reverse the dismissal of the Resort’s lawsuits. The Resort asks that we direct that the landowners’ affirmative defenses based on the alleged inability to pursue a judicial remedy be dismissed. Upon the documents presented below, including inferences from the financial attachments, we agree with the Resort that a judicial remedy should be held to exist. We therefore remand with instructions to grant the Resort’s cross-motion.

IT IS SO ORDERED.
LYNN PICKARD, Judge

WE CONCUR:
CYNTHIA A. FRY, Judge
MICHAEL E. VIGIL, Judge
Certiorari Granted, No. 29,226, July 1, 2005

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-085

SAMUEL UPTON, as Personal Representative of THE ESTATE OF SARAH RENEE UPTON, Deceased; RENEE UPTON, Individually, and SAMUEL and RENEE UPTON, Jointly as the Parents of SARAH RENEE UPTON, Deceased, Plaintiffs-Appellants, versus CLOVIS MUNICIPAL SCHOOL DISTRICT, Defendant-Appellee.

No. 24,051 (filed April 20, 2005)

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY DAVID W. BONEM and TEDDY L. HARTLEY, District Judges

STEPHEN DOERR
DOERR & KNUDSON, P.A.
Portales, New Mexico
for Appellants

DANIEL J. MACKE
ELIZABETH L. GERMAN
BROWN & GERMAN
Albuquerque, New Mexico
for Appellee

JAMES J. WECHSLER, JUDGE

Section 41-4-6 of the Tort Claims Act, NMSA 1978, §§ 41-4-1 to 41-4-27 (1976, as amended through 2004) (TCA), provides a waiver of governmental immunity when damages flow from “the operation or maintenance of any building.” This case requires us to address the “exceedingly fine” distinctions drawn by cases decided under this section. See Baca v. State, 1996-NMCA-021, ¶ 12, 121 N.M. 395, 911 P.2d 1199. Plaintiffs’ fourteen-year-old daughter, Sarah, an asthmatic, was required by a substitute physical education teacher to continue exercising after she reported that she was having difficulty breathing and wanted to stop exercising. Shortly after the physical education class, she went to her next class, collapsed, and died. According to Plaintiffs, liability results from the school’s indifference to Sarah’s medical needs, as well as a fifteen-minute delay in calling an ambulance. The district court granted summary judgment, ruling that immunity had not been waived. We affirm.

Background

On August 30, 1999, however, a substitute physical education teacher was teaching Sarah’s physical education class. The class was more strenuous than usual. The students were required to run laps in the gym, followed by a version of a basketball game in which two students retrieved a basketball from the center of the court and then ran to opposite ends to see which one could make a basket first. Sarah ran about half the laps and walked the other half. She did two rounds of the basketball drill and then asked the teacher for permission to stop. The teacher denied permission and Sarah returned to the group, crying. According to several students, Sarah was having difficulty breathing and her face was red. Sarah may have done one more round of the game, but one of the other students stepped in for her on either the third or fourth round.

At the end of the class, Sarah used a special inhaler as she walked to the locker room. She went to her next class, science, which started at 2:28 p.m., and very shortly after class began she collapsed on her desk, at approximately 2:29 p.m. The science teacher called the front office, and the teacher, along with another teacher, tried to administer two inhaler treatments. Sarah’s mother was called. A licensed practical nurse who worked at the school arrived to help, checked Sarah’s vital signs, and told the front office to call 911. Call logs indicated that 911 was called at 2:44 p.m., approximately fifteen minutes after Sarah had collapsed. Medical attempts to revive her were unsuccessful and she died from her asthma attack.

Standard of Review

“Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.” Self v. United Parcel Serv., Inc., 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. We review the district court’s grant of summary judgment de novo. Godwin v. Mem’l Med. Ctr., 2001-NMCA-033, ¶ 23, 130 N.M. 434, 25 P.3d 273.

Section 41-4-6

Plaintiffs contend that immunity has been waived under Section 41-4-6, which reads: “The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings.”
Our cases that interpret the phrase “operation or maintenance” contained within Section 41-4-6 have not limited its applicability strictly to defects in the physical building. See Leithead v. City of Santa Fe, 1997-NMCA-041, ¶ 5, 123 N.M. 353, 940 P.2d 459. Waiver may also be triggered if the facility is negligently operated or maintained in a way that creates an unsafe or dangerous condition on the property or in the immediate vicinity. Id. “[T]he critical question is whether the condition creates a potential risk to the general public.” Espinoza v. Town of Taos, 120 N.M. 680, 683, 905 P.2d 718, 721 (1995); see Baca, 1996-NMCA-021, ¶ 9. This case does not involve a building defect. Therefore, if Plaintiffs are to succeed, they must demonstrate that their daughter’s death resulted from a dangerous or unsafe condition on the premises that created a potential risk to the general public.

[7] While we have admitted that the law in this area depends on “exceedingly fine” distinctions, id. ¶ 12, a survey of the cases animates the distinctions. On one hand are cases like Seal v. Carlsbad Independent School District, 116 N.M. 101, 860 P.2d 743 (1993), and Leithead, both swimming pool cases. Seal reversed a summary judgment granted on the ground of immunity based on a rationale that the claim was one of strict liability when the school district may have been negligent in failing to ensure the presence of a properly trained lifeguard and by failing to supply necessary safety equipment. Seal, 116 N.M. at 105, 860 P.2d at 747. Leithead found a waiver when the pool may have been operated without an adequate number of trained lifeguards, because “lifeguard services are so essential to the safety of a swimming pool that they seem akin to other kinds of safety equipment, such as lifelines and ladders, that are fundamental in making the premises reasonably safe for the swimming public.” Leithead, 1997-NMCA-041, ¶ 15.

[8] Contrasted against these cases are cases like Espinoza and Pemberton v. Cordova, 105 N.M. 476, 734 P.2d 254 (Ct. App. 1987). Espinoza held that immunity was not waived when a child fell off playground equipment while allegedly not being adequately supervised. Espinoza, 120 N.M. at 684, 905 P.2d at 722. Pemberton held that immunity was not waived when there was a fight between students and the claim was one of negligent supervision. Pemberton, 105 N.M. at 477-78, 734 P.2d at 255-56.

[9] Two prison cases, and a public housing case, also illustrate the dividing line. In Callaway v. New Mexico Department of Corrections, 117 N.M. 637, 642, 875 P.2d 393, 398 (Ct. App. 1994), we held that immunity was waived when prison officials allowed known, dangerous gang members to roam loose among the general prison population. Similarly, in Castillo v. County of Santa Fe, 107 N.M. 204, 207, 755 P.2d 48, 51 (1988), immunity was waived when a public housing project allowed dogs to run loose, creating a dangerous condition and placing the public at risk. In Archibeque v. Moya, 116 N.M. 616, 619, 866 P.2d 344, 347 (1993), however, our Supreme Court held that immunity was not waived when prison officials erroneously classified a single inmate.

[10] These cases highlight the distinction between the creation of a dangerous condition that places the general public at risk, which results in a waiver, and negligent supervision, which does not. To avoid this distinction, Plaintiffs deny that their claim is one for negligent supervision. They argue that the school’s failure to follow policy presents a danger to the general public, claiming that school officials did not follow policies in place designed to deal with medical emergencies. They further argue that the negligent conduct of the school employees “created the unsafe situation that resulted in the death of their daughter.” To establish a danger to the general public, they also suggest that any “negligent supervision” and failure as to their daughter “applies to any and all of the students” in the Clovis School District.

[11] On these facts, we disagree. We consider this case closer to Espinoza, Archibeque, and Pemberton, than to Seal and Leithead. The school had a policy in place, which required calling a parent, notifying the front office, and summoning a nurse. The nurse and the principal were to call 911 if necessary. The issues in this case involve the school’s failure to follow that policy for one child and its subsequent failure to respond to the child’s medical emergency more quickly. The school’s error, or errors, may have tragically affected Plaintiffs’ daughter, but did not present a dangerous condition to the public at large. No matter how Plaintiffs seek to couch their theory, it remains a failure by the school to properly supervise their daughter. Accordingly, immunity has not been waived.

[12] Plaintiffs rely on Gallegos v. School District of West Las Vegas, 115 N.M. 779, 781-82, 858 P.2d 867, 869-71 (Ct. App. 1993), for the proposition that decisions by school personnel constitute the operation of the school. Gallegos holds that the operation of a school bus includes the many decisions made by the bus driver and that the school district was not immune for any negligence by the driver. Id. at 781, 858 P.2d at 869. Plaintiffs argue that the substitute teacher, and those who failed to call 911 more quickly, were like the bus driver in Gallegos because operation of the school necessarily includes the myriad of decisions made by school personnel. We disagree that Gallegos governs the result in this case. Gallegos involved the operation of a school bus and was decided under the provision of the TCA waiving immunity for the negligent operation of a motor vehicle. Id.; see also § 41-4-5 (waiving sovereign immunity in the case of negligent torts committed by public employees who were “acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft”). It was not decided under Section 41-4-6. Additionally, Plaintiffs’ argument is too broad. If any decision by school personnel constituted the “operation or maintenance of any building” under Section 41-4-6, immunity would be waived in virtually any situation. Our cases have not adopted this position and have instead made it clear that administrative or supervisory functions do not equate with the “operation of any building” or call for a waiver of immunity.

**Conclusion**

[13] The TCA attempts to resolve the tension between encouraging the exercise of governmental powers, free of fear of lawsuits, yet on the other hand recognizing that the government must be encouraged to act responsibly to protect the public against injury. See Oldfield v. Benavidez, 116 N.M. 785, 789, 867 P.2d 1167, 1171 (1994) (recognizing that the concept of immunity demonstrates the conflicting concerns of government officials seeking freedom from personal liability and harassing litigation, and injured persons seeking redress for the torts committed by government). Our job in interpreting the TCA is to determine the intent of the legislature. See Cal. First Bank v. State, 111 N.M. 64, 73, 801 P.2d 646, 655 (1990); see also State ex rel. Taylor v. Johnson, 1998-NMSC-015, ¶¶ 21, 30-31, 125 N.M. 343, 961 P.2d 768 (stating that it is the domain of the legislature to make public policy and to choose from
the various options available those that are consistent with the policy chosen); State ex rel. Helman v. Gallegos, 117 N.M. 346, 352, 871 P.2d 1352, 1358 (1994) (stating that we must not second-guess the legislature’s resolution of competing policies).

{14} As we have discussed, our cases have interpreted Section 41-4-6 to waive immunity when there is a dangerous condition that places the general public at risk, but hold that the government is immune for negligent supervision. This tragic case falls within the ambit of negligent supervision and, consequently, the school district is immune. Summary judgment is affirmed.

{15} IT IS SO ORDERED.

JAMES J. WECHSLER,
Judge

I CONCUR:
MICHAEL D. BUSTAMANTE,
Chief Judge
JONATHAN B. SUTIN, Judge
(specially concurring)

JONATHAN B. SUTIN, JUDGE
(Specially Concurring)

{16} I concur in the opinion. My reason for writing separately is solely to express my view that the Legislature should consider a sovereign immunity waiver that covers negligence of primary and secondary school administrators who fail to have a set and distributed policy in regard to children who are known to be at serious health risk if required to engage in physical exercise, and of school teachers who ignore or disregard the policy or who negligently interpret or administer it. There does not appear to have been any excuse for the school administrators and teachers in the present case not to have assured that Child was protected from having to engage in exercise that was dangerous to her health. This Court is appropriately hesitant under the current state of the case law and the manner in which the Legislature has worded provisions in the Tort Claims Act to interpret “operation of any building” to cover policy failures, failures of communication, or negligent decisions, such as those in this case.

{17} As the opinion indicates, this Court and the Supreme Court have tried to reasonably and carefully apply the Act to the facts of cases that come before us. As the opinion also indicates, to hold in favor of Plaintiffs would be to open a door that the Legislature likely has not intended be opened. Whether in or outside of the school setting, the world can be a dangerous place for high health risk children who are not protected. Outside of school, damages for negligent conduct resulting in harm to otherwise unprotected children known to be at risk are recoverable. At the very least, damages ought to be available for conduct by school administrators and teachers resulting in harm to unprotected, at risk children when the school personnel know a particular child needs protection but negligently or even intentionally fail to provide the protection necessary.

JONATHAN B. SUTIN,
Judge
ETHICS ADVISORY OPINION
From the State Bar of New Mexico Ethics Advisory Committee

ADVISORY OPINION 2005-1
TOPIC: Destruction of Closed Files

DISCLAIMER:
The Ethics Advisory Committee is constituted for the purpose of advising lawyers on the interpretation of the Rules of Professional Conduct, as applied to the inquiring lawyer’s duties. The Committee’s opinions are not binding. The opinions expressed in herein are the consensus of the members of the Committee who considered the request. These opinions are meant to assist lawyers in their course of conduct. The rules of procedure for the Ethics Advisory Committee further provide that the Committee is not to render opinions on matters of substantive law.


QUESTIONS PRESENTED:
1. How long must a lawyer retain client files after representation of a client is complete?
2. What are the lawyer’s obligations to review the client files before they are destroyed?
3. What are the lawyer’s duties to communicate with a client about the lawyer’s intent to dispose of the client’s file?

SHORT ANSWER:
Under most circumstances, a lawyer must retain a client’s file for a period of five years after representation of the client is complete in order to meet obligations under the Rules of Professional Conduct. Before disposing of a file, the lawyer must review the file to determine which documents or other things are the client’s property and the client would expect returned. The lawyer must return those items to the client. The obligation of file review may be delegated to a non-lawyer, provided the non-lawyer receives adequate instruction and supervision from the lawyer. Finally, a lawyer is not required to seek client instruction on file retention or disposition. Instead, the lawyer is obligated to return documents or things which are the client’s property and the client would expect returned. Notwithstanding the fact that the lawyer does not have an obligation to seek client instruction on file retention or disposition, it may be necessary to explain to the client the importance of retaining certain documents or things returned to the client.

FACTUAL BACKGROUND:
The requestor has several closed client files and seeks guidance on the length of time a lawyer is required to retain files upon completion of representation of the client and the manner in which the lawyer may dispose of those files.

ANALYSIS:
Questions related to the disposition of client files raise three distinct issues for consideration by a lawyer intending to destroy or otherwise dispose of a client’s file. First, a lawyer must establish the length of time the lawyer is required to retain client files following the completion of the representation. Second, the lawyer must determine the extent of the lawyer’s obligation to review client files prior to their destruction. Finally, a lawyer planning to dispose of client files must determine the extent of the lawyer’s duty to communicate with a client about the lawyer’s intent to destroy that file.

1. Duty to Safekeep Property
   a. Rules 16-115 and 17-204
   Rule 16-115(A) imposes a duty upon a lawyer to hold and properly safeguard property of a client that is in a lawyer’s possession. “Complete records of . . . account funds and other property shall be kept by the lawyer in a manner that conforms to the requirements of Rule 17-204 of the Rules Governing Discipline and shall be preserved for a period of five (5) years after termination of the representation of the client in the matter or the termination of the fiduciary or trust relationship.” NMRA (2005) 16-115(A).
   Similarly, Rule 17-204 requires a lawyer to maintain “complete records of . . . other property received from or on behalf of a client which [has] at any time come into his possession.” Furthermore, Rule 16-115(B) requires that a lawyer shall promptly deliver to the client, funds or other property that the client is entitled to receive. While Rules 16-115 and 17-204 deal primarily with client funds, it was the opinion of the Committee that their requirements to maintain complete records of “other property” for a period of five years following the termination of representation extends to client files or documents.

   b. Advisory Opinion 1988-1
   This Committee has previously interpreted Rule 16-115 in Advisory Opinion 1988-1. Advisory Opinion 1988-1 is based on current rules and remains good advice. Advisory Opinion 1988-1 recognizes a lawyer’s duty, under Rule 16-115(B), to return all property to a client, including any client documents which have not already been returned. That opinion suggests, and the Committee agrees, that the contents of each file should be reviewed and any original documents or documents which the client would expect to be returned should be removed and returned to the client in accordance with Rule 16-115(B).
   The lawyer contemplating destruction of a client file should note, however, that some instances may require that files be retained for a period of longer than five years in light of the circumstances surrounding the case. See, Adv. Op. 1988-1. On occasion, further litigation or legal proceedings regarding the subject matter of the case are likely or imminent. The most obvious of these situations is the preparation of a will or a trust by a lawyer, the interpretation of which may become an issue many years after it was prepared. To accommodate such situations, the lawyer should identify the types of files which should be kept beyond the five year period required by Rule 16-115(B) and retain any such files.

2. Duty to Provide Competent Representation (16-101)
As the Committee identified in Advisory Opinion 1988-1, a second concern raised by the destruction of client files is a lawyer’s obligation to review the file and return any original documents or

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1 As noted in the Disclaimer, this analysis sets forth considerations under the New Mexico Rules of Professional Conduct and does not consider obligations or requirements that may exist under applicable substantive law.
documents which the client would expect returned. Frequently, because of the volume of material to be reviewed when destroying client files older than five years, lawyers delegate these duties to non-lawyer staff members. The review of a file to determine which items should be returned to a client implicates the requirements of Rule 16-101, which mandates that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. NMRA (2005) 16-101. It is the opinion of the Committee that the review of client files to be destroyed may be performed by a non-lawyer; however, the lawyer must insure that the non-lawyer is competent to recognize and determine which documents must be returned to the client or retained beyond the five year period, by providing adequate instruction and supervision.

**3. Duty to Communicate with Clients (16-104)**

Finally, a lawyer contemplating the destruction of a client file must consider the lawyer’s obligation to notify all former clients whose files are to be destroyed to seek their instructions on file retention and disposition. Rule 16-104 requires that a lawyer shall keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. A lawyer had no obligation to send letters to clients for whom the lawyer held no original documents or other documents which are the client’s property and the client would expect returned.

With regard to clients whose files contained original documents or other documents which are the client’s property and the client would expect returned, the lawyer is obligated to return those documents to the client, as discussed above. See NMRA (2005) 16-115(B). Therefore, it is unnecessary to seek instructions on file retention and disposition from these clients, as the documents should simply be returned to the client. In some instances, however, it may be necessary to explain the importance of retaining such documents to the client. For example, the firm may wish to advise a client that the client should retain originals will so that it may be probated upon the client’s death.
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Are pleased to announce that Patricia A. Bradley has joined our firm as an Associate.

Patricia Bradley is a New Mexico native and received her law degree from the University of New Mexico. She practiced law in Las Cruces and Albuquerque with extensive experience in bankruptcy law. She represented large and small corporate entities, financial institutions, utilities, and individuals in complex bankruptcy and creditors’ rights matters.

In 2003, Patricia joined the United States Department of Justice, working with the Office of the US Trustee in San Francisco, where she assisted the Department’s trial attorney staff with bankruptcy matters including cases in Chapter 11, Chapter 7 and adversary litigation.

Patricia has now joined the Las Cruces office of Miller Stratvert P.A. and intends to continue her emphasis on bankruptcy law and to expand her practice to include business and estate planning.

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Classified

Positions

Associate Trial Attorney to Senior Trial Prosecutor
The 11th Judicial District Attorney’s office, Division I (San Juan County) is accepting resumes for positions of Associate Trial Attorney to Senior Trial Prosecutor. Salary is $36,000 to $46,000 DOE. Please send resume to: Kim Welch, Chief Financial Officer, 710 E. 20th St., Farmington, NM 87401. Equal Opportunity Employer.

Seeking attorneys with a minimum of 2 and a maximum of 5 years experience (litigation experience helpful) to work in a busy law firm, focusing in civil defense litigation, and general civil practice. We offer a very competitive salary and attractive benefits package. Please fax your resume to Stanley N. Hatch at (505) 341-3434 or mail to P.O. Box 94750, Albuquerque, NM 87199-4750.

Children, Youth and Families Department
Office of General Counsel
Refer to Job Order # NM 32595
The New Mexico Children, Youth and Families Department, Office of General Counsel, is seeking a Lawyer-A, to represent and advise the Department in a variety of legal areas, including presenting cases in district court and in administrative proceedings. Knowledge of children’s law and employment law desirable. Some litigation experience is mandatory. Minimum seven years of legal experience preferred. Interesting and rewarding work, helping CYFD protect children and assist families throughout New Mexico. Position located in Santa Fe. Some travel required. Hourly salary range $43,064 to $76,556. Applicant must be active member of the New Mexico Bar, in good standing, and have a current New Mexico driver’s license. Please send resume and writing sample to Daniel Pearlman, Chief General Counsel, CYFD, P.O. Drawer 5160, Santa Fe, NM 87502 AND apply through the New Mexico Department of Labor by July 29th, 2005.

Associate Attorney
The Santa Fe office of Hinkle, Hensley, Shanor & Martin seeks an associate attorney for civil litigation practice including environmental, natural resources, toxic tort, utility and employment law. Candidates should have strong academic background, excellent writing and research skills and the ability to work independently. Please send resume and writing sample to Hiring Partner, Post Office Box 2068, Santa Fe, NM 87504-2068.

Lawyer Positions
The New Mexico Environment Department has Lawyer A and Lawyer O positions available. Applicants for the Lawyer A position should have at least seven years of experience in the practice of law. Applicants for the Lawyer O position should have a minimum of three years of experience in the practice of law. Applicants for these positions should have strong legal skills in research, writing and oral advocacy; and a desire to learn all areas of environmental law and State Government. Send a copy of your resume and writing sample to: Karen Thomas, Office Manager, New Mexico Environment Department, 1190 St. Francis Dr., P.O. Box 26110, Santa Fe, NM 87502. To be referred for employment consideration, you must submit your resume and a copy of your bar card to your local Department of Labor (“DOL”). Contact person at DOL is Ben Lacey at 505-827-7434. These positions are open at DOL until 08/12/2005. The State of New Mexico is an equal opportunity employer.
Assistant City Attorney
Full-Time, Regular
Annual Salary (Minimum of pay range): $44,862.29 plus benefits. Initial review of applications will be July 22, 2005 and thereafter every Friday. Education: Juris Doctor Degree. Experience: Five (5) years as a law clerk or practicing lawyer or a combination of both. Licenses/Certification: Member of the New Mexico Bar Association; Member of District of New Mexico Federal Bar; Valid NM Class D drivers license is desirable. Essential Job Functions: Acts as a prosecutor in petty misdemeanor prosecutions in the City of Las Cruces Municipal Court. Represents the City of Las Cruces in a variety of legal proceedings at the local, state and federal levels. Attends meetings of municipal bodies and provides legal advice to City staff by interpreting laws, rulings, and regulations. Demonstrates excellent communication and prosecutorial skills necessary when interacting with customers, which must be conducted with courtesy and respect at all times. Excellent organizational skills. Technical level reading and writing skills. Working knowledge of personal computer with word processing and Legal Research software programs, copier, dictating device. For more information please visit our website: www.las-cruces.org. Apply at the Human Resources Division, 2300 Trinity Drive, Los Alamos, NM 87544 or call for an application to PO Box 20000, Las Cruces, NM 88004.

Los Alamos County
Assistant County Attorney
County Attorney's Office
Announcement #05-116
Annual salary: $63,490 to $95,236. Closing date Aug. 31, 2005 at 5:00 p.m. Minimum Qualifications: A Juris Doctorate or LLB from an accredited law school and active membership in the State Bar of New Mexico or ability to obtain admission to the New Mexico Bar within one year; Three (3) years experience in the practice of law, one year of which must have been directly associated with State and local government operations. Preferred Qualifications: Prior experience representing state or local governments(s); General knowledge of law relating to land use, utilities, real estate and public finance; General knowledge of legislative drafting. County Application Is Required: The information from your resume will not be used to determine if minimum qualifications are met. All qualifying information must appear on the application. Apply to the Human Resources Division, 2300 Trinity Drive, Los Alamos, NM 87544 or call for an application at 505-662-8040. Los Alamos County website address is www.lac-nm.us and the job line is 505-662-8039.

Special Assistant United States Attorney United States Attorney's Office District Of New Mexico Las Cruces Branch Office
The U.S. Attorney’s Office for the District of New Mexico is recruiting for a Special Assistant United States Attorney (SAUSA) to work under an annual contract for the High Intensity Drug Trafficking (HIDTA) Program in its Branch Office located in Las Cruces, New Mexico. The incumbent will assist with prosecutions of narcotics and immigration offenses. Prosecutions of narcotics offenses include enforcement of Title 21 and cases involving the trafficking of heroin, marijuana and cocaine. Immigration offenses include re-entry after deportation, transportation of illegal aliens and other crimes. Required qualifications: Applicants must possess a J.D. degree; be an active member, in good standing, of the bar (any jurisdiction); have 1-3 years post-J.D. experience; and demonstrate excellent computer literacy skills to include experience with automated research on the Internet, electronic court filing, and electronic e-mail and word processing systems. Travel: Moderate travel will be required. Salary Information: SAUSA’s pay is based, in part, on the number years of professional attorney experience. The range of pay for this position is $44,805 to $60,486. Relocation Expenses: Payment of relocation expenses will not be authorized. Application Process and Deadline Date: Please send cover letter and resume to: U.S. Attorney’s Office, P. O. Box 607, Albuquerque, NM 87103. No telephone calls please. Applications must be received by August 8, 2005. Security Clearance: Persons selected for employment will be required to pass a drug test, which screens for illegal drug use, prior to final appointment. Employment is also contingent upon the completion and satisfactory adjudication of a background investigation, including criminal and credit check.

Lawyer
Established Santa Fe, NM law firm seeks lawyer with at least three years of experience, specifically relating to investment companies and securities, with additional background in one or more other areas of commercial practice, including banking, real estate, transactional or lending/financing. Please contact Charles Thompson at cwn@wkkm.com or 505-982-4374.

Are you seeking?
We are in need of a smart, loyal, dedicated attorney to assist in a busy family law firm. Other functions will include some business formation and estate planning. Competitive salary and good benefits. Please fax letter of interest and resume to office manager at Standridge Law Firm, P.C. 880-8738 or email to dstand@standridgelawfirm.com.

Associate Attorney
Successful small litigation law firm is seeking an exceptional attorney with an excellent academic background, who is self disciplined, well organized, a team player, committed to growing the firm, and to providing the highest quality of legal services to the firm’s clients. We focus on insurance defense litigation. We offer an excellent salary and benefits package. Partnership track for right person. Please send resume to John S. Stiff & Associates, L.L.C. 400 Gold Avenue, Suite 1300W, Albuquerque, NM 87102, email jstiff@stifflaw.com or fax to (505) 243-5855.

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 is 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 karen@maestasandsuggett.com.

Legal Secretaries - Join The Team!
OfficeTeam, the leader in specialized administrative staffing is looking for qualified legal secretaries in the Albuquerque and Santa Fe areas. The ideal candidates must be self-starters with 1+ years legal experience. Experience putting together pleadings and litigations, and proficiency in Word or WordPerfect are required. OFFICETEAM, Specialized Administrative Staffing, Call Today, EOE. 505-888-4002, 6501 Americas Pkwy NE, Albuquerque, NM 87110, www.officeteam.com.

Legal Assistant
High volume Albuquerque plaintiffs’ firm seeks self-motivated legal assistant with 3-5 years personal injury litigation experience. Must possess strong typing, computer and organizational skills. We offer benefits, competitive salary and a great work environment. For consideration, kindly forward resume, references & salary requirements via e-mail to hlo@nm.net.
Legal Support
High Desert Legal Staffing seeks legal secretaries and paralegals with strong computer skills for both temporary and permanent positions with leading firms in Albuquerque and Santa Fe. E-mail: LBrown@highdesertstaffing.com; fax (505) 881-9089; or call (505) 881-3449 for immediate interview.

Part-Time Office Assistant
Busy uptown law firm has an immediate opening for PT office assistant. Duties include file management, general office tasks, back-up secretarial duties and occasional errands. Legal experience preferred. Word Perfect and Word. Fax resume to 842-0063.

Paralegal
F/T paralegal wanted for small downtown ABQ law firm practicing primarily family law. Minimum 3+ years experience required; experience specific to family law helpful but not necessary. Great salary and benefits. Send resume with references to Laurence J. Brock, P.C., 1001 Luna Circle NW, ABQ, NM 87102.

OFFICE SPACE
Three Offices Available
Best location in town, one block or less from the new federal, state, metropolitan courts. Includes secretarial space, phones and service, parking, library, janitorial, security, receptionist, runner, etc. Contact Thomas Nance Jones, (505) 247-2972.

North Valley
Casita-Style Office Space
Quick access to downtown. Charming sole proprietor space in intimate compound setting. Over 800 SF: office, reception area, storage & copies space. For lease or sale. Only a few spaces available. Red Sky Realty owner/broker 247-3424(ofc), 235-7667(cell).

Downtown
Beautiful adobe building near MLK on north 1-25 on-ramp. Convenient to courthouses with free adequate parking for staff and clients. Conference room, reception room, employee lounge, utilities and janitor service included. Broad band access, copy machine available. From $350 per month. Call Orville, (505) 867-6566; or Jon, (505) 507-5145. Oak Street Professional Bldg., 500 Oak NE.

Uptown Square Office Building
Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, two-story atrium, extensive landscaping, ample parking, full-service lease. 3747SF. Buildouts include reception counter/desk and separate kitchen area. Competitive Rates. Available Soon! Call Ron Nelson or John Whisenant 883-9062.

Offices Available
One, two or three attractive offices available in the downtown historic Hudson House. Rent includes telephone, equipment, access to fax, copier, conference rooms, parking, library and reference materials. Referrals and co-counsel opportunities. For more info., call the offices of Leonard DeLayo at 243-3300, ask for Jodi.

Santa Fe Office Building
Nice Santa Fe Office Building Space with 4 Attorneys. 1 1/2 block FROM COURT HOUSE WITH PARKING INCLUDED. Some shared services possible. (505) 471-2675 or (505) 660-4034.

New Listing!
4,893sf ground level & 6,041sf basement level office building in good condition and is centrally located close to I-25/I-40. List: $559K Mike Contreras 888-1500 Sentinel Real Estate & Investment.

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

Potpourri
Office Furniture and Equipment
Closing office, selling everything you need for yours! High quality maple office furniture, conference room furniture, fax, copier, office equipment and electronics, criminal and civil books, USCA set and more. Buy any or all. No Reasonable Offer Refused! Call 764-8587.

American Limousine

Seeking Information
Seeking information on the estate plan or Last Will and Testament of Ollie Frank Turpen, a/k/a Frank Turpen. Please contact William J. Lock, 5732 Osuna Road NE, Albuquerque, NM 87109 or call 880-1200.

Art Gallery Invite
James Rawley invites you to a show of his paintings in his gallery at 1014 Central SW on August 5, 2005 at 5:00 p.m. Please come!
THE ANNUAL REVIEW OF CIVIL PROCEDURE

State Bar Center, Albuquerque
Friday, August 12, 2005
7.5 General and 1.2 Ethics
CLE Credits

Co-Sponsor: UNM School of Law

This year’s annual review will feature an in depth look at significant changes in New Mexico civil procedure, New Mexico case law affecting civil procedure, and an ethics presentation entitled “Coming Attractions” in the New Mexico Rules of Professional Conduct.

Schedule of Events

8:00 a.m. Registration 2:00 p.m. 2004/2005 Update and Review of New Mexico Civil Procedure:
8:30 a.m. 2004/2005 Update and Review of New Mexico Civil Procedure: Case Law and Rule Changes, Part One Professor Ted Occhialino
10:30 a.m. Break 3:30 p.m. Break
10:45 a.m. 2004/2005 United States Supreme Court Decisions Affecting Civil Procedure Professor Michael Browde
Noon Lunch (provided at State Bar Center)
1:00 p.m. “Coming Attractions” in the New Mexico Rules of Professional Conduct (1.2 E) Professor Norman Bay
3:45 p.m. Class Action Litigation in New Mexico: Review of the New Case Law and Federal Statute Winds Sale of Goods, Adjunct Professor Andrew Schultz, Rodey Law Firm Professor Michael Browde
5:15 Adjourn

REGISTRATION – THE ANNUAL REVIEW OF CIVIL PROCEDURE
Friday, August 12, 2005 • State Bar Center, Albuquerque
7.5 General and 1.2 Ethics CLE Credits
☐ Standard and Non-Attorney - $209 | ☐ Government & Paralegal - $199

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Mail this form to: CLE, PO Box 92860 Albuquerque, NM 87199 or Fax to (505) 797-6071.
Please Note: This is a CLE Special Event. No auditors permitted.
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