2006 License and Dues
- The 2006 license and dues forms have been mailed.
- License and dues are due on or before Feb. 1, 2006.
- Members who have not received the form by the end of December should notify the State Bar office, (505) 797-6092 or (505) 797-6035.
- For members’ convenience, dues may be paid online through secured eCommerce at www.nmbar.org.
- License and disciplinary fees are mandatory and must be paid to maintain license status.
- Without exception, dues and license fees are due regardless of whether you received your form.

Late fees may be assessed if payment is not postmarked by Feb. 1, 2006.

Inside This Issue:
Second Judicial District Court 7 Judicial Appointments
District Court Vacancies 7 Fourth Judicial District Court
Bernalillo County Metropolitan Court 7 Judicial Appointment
Young Lawyers Division 8 2005 Election Results
Hats Off to Our Volunteers 9

Mastering and Managing Documents in the State-of-the-Art Law Office 11
Congratulations to Gregory W. Chase

David Martinez, Mike Hart and MARTINEZ, HART & CHASE, P.C. announce that their friend Greg Chase was inducted into the American College of Trial Lawyers at its annual meeting October 22, 2005 in Chicago. In conferring this honor, the American College of Trial Lawyers recognized Greg’s career of outstanding trial work, legal skill, high ethical/moral standards and excellent character. Greg has also been listed in Best Lawyers in America for ten years in a row.
2006 New Mexico Rules are now available!

This official set contains all of the official rules of the State of New Mexico as well as official annotations, forms and official commentary.

New MexicoCompilation Commission
Marketed to the Private Bar by Conway Greene Company

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Also Available:
• 2005 New Mexico Advance Legislative Service
• New Mexico One Source of Law™
• 2005 New Mexico Criminal and Traffic Law Manual
• 2005 Updates to New Mexico Statutes Annotated 1978™
Bridge the Gap 2005:
Developing Winning Courtroom Strategy
Tuesday, December 20, 9 a.m.-5 p.m.
6.3 General, 2.0 Professionalism, and 1.2 Ethics CLE Credits

What is known about juror perceptions of people and situations that arise in various types of lawsuits? How can this information be used to develop winning case strategy? What is involved in preparing fact and expert witnesses in deposition and trial? What methods can be used to get the most out of voir dire? How can attorneys make sure that the listener gets the same picture, and comes to the same conclusions, that the attorney did about the information being presented? This and more will be presented at this year's newly revised format of Bridge the Gap.

$235

The Changing Law Regarding Church-State Issues
Tuesday, December 20, 1-5 p.m.
4.8 General CLE Credits

In a recent article entitled Death by Due Process (Wall Street Journal - May 24, 2003), Professor Lino A. Graglia of the University of Texas School of Law argued, in part, that rulings of unconstitutionality by judges is in violation, not enforcement, of the Constitution. How are the lines between federalism and judicial review to be interpreted? What can be made of recent court decisions and controversies involving the establishment clause of the First Amendment, faith-based funding, and other decisions involving what Thomas Jefferson once referred to as the "wall of separation between Church and State?"

$139

Lawyering with Emotional Intelligence
Tuesday, December 20, 1-3:45 p.m.
2.0 Professionalism and 1.2 Ethics CLE Credits

There are both professional and ethical considerations involved in the practice of law. The principles of emotional intelligence provide an innovative approach for attorneys that can be used to enhance communication skills, listening skills, and general effectiveness in presentations. The focus of this program will be on the fundamentals of emotional intelligence and how these learned competencies can be utilized to further one's practice.

$99

Dementia, Capacity & Undue Influence of the Elderly
Tuesday, December 20, 9 a.m.-12:30 p.m.
4.2 General CLE Credits

This seminar focuses upon legal and medical issues designed to help attorneys and their elder clients. The seminar features renowned speakers on the topics of dementia and its many causes, competency and capacity of the elder client and the practical treatment of these issues in legal cases.

$119

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________________________
E-mail____________________________

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______________

Technology, e-Commerce and the Practice of Law: A 2005 Update
Tuesday, December 20, 9 a.m.-4 p.m.
6.1 General and 1.1 Ethics CLE Credits

This special seminar features two leading international authorities in the area of technology and e-commerce law, Raymond T. Nimmer, Professor of Law at the University of Houston Law Center and Holly K. Towle of Preston Gates & Ellis LLP in Seattle. Also included are sessions on security issues and ethical responsibilities, as well as updates on joint ventures, drafting, telemedicine, and technology trends in New Mexico.

$205
Contributions and announcements to the Bar Bulletin are welcome, but the right is reserved to select material to be published. Unless otherwise specified, publication of any announcement or statement is not deemed to be an endorsement by the State Bar of New Mexico of the views expressed therein, nor shall publication of any advertisement be considered an endorsement by the State Bar of the product or service involved. Editorial policy available upon request.

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No. 24,811 and 24,795: State v. Shawn Monteleone

No. 25,017: State v. Robert Wilson

No. 23,515: Alto Eldorado Partnership, Joseph Miller, Alma Miller, Chris Miller, Matt Miller, Rancho Verano, L.L.C., Summit Partnership 2, and Santa Fe Partners 1 v. Amrep Corporation, an Oklahoma Corporation

**Advertising**

**Professionalism Tip**

With respect to other judges:

I will endeavor to work with other judges to foster a spirit of cooperation and collegiality.

**Meetings**

**December**

12 Section Chair Orientation Meeting
10 a.m., State Bar Center

14 Bankruptcy Law Section Board of Directors
noon, McGrath’s, Hyatt Hotel

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

16 International and Immigration Law Section Board of Directors
1:30 p.m., via teleconference

16 Natural Resources, Energy and Environmental Law Section Annual Meeting
noon, State Bar Center

20 Children’s Law Section Board of Directors
noon, Juvenile Justice Center

**State Bar Workshops**

**January**

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

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

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

**February**

22 Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar

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

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

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

COURT NEWS

NM Supreme Court Judicial Performance Evaluation Commission Improving The Performance of Judges

The Judicial Performance Evaluation Commission (JPEC), created by the New Mexico Supreme Court, evaluates the performance of appellate, district and metropolitan court judges standing for retention in New Mexico.

The commission’s work in 2005 focuses on conducting final evaluations of the 14 Bernalillo County Metropolitan Court judges standing for retention: Sandra Clifton, Kevin Fitzwater, Frank Gentry, Theresa Gomez, Victoria Grant, J. Wayne Grego, Cristina Jaramillo, Loretta Lopez, Anna Martinez, Judith Nakamura, Daniel Ramczyk, Frank Sedillo, Sharon Walton and Victor Valdez. At least 45 days before the November 2006 general election, JPEC will release the results of the evaluation to the media and the public.

Lawyers who have had direct experience with the above Bernalillo County Metropolitan Court judges between Aug. 1, 2004 and Sept. 26, 2005 will receive a questionnaire to complete in the beginning of January 2006. It is important to the project to get such feedback. The JPEC would like to see an increase in the response rates from attorneys with direct experience with the judges. Please take the time to complete and return the questionnaire.

The questionnaires are returned to Research and Polling, Inc., consultant to JPEC. Research and Polling puts together aggregate results by population group (lawyers, jurors, court staff and resource staff). The JPEC does not see individual results. Comments are retyped and submitted to JPEC for review and not provided to the judges. Research and Polling destroys the individual responses; thus, JPEC does not know who completed the survey.

For additional information, contact Felix Briones Jr., JPEC chair, (505) 325-0258.

Law Library December Hours

The New Mexico Supreme Court Law Library will be closed on the following dates and times.

December 23—Will close at 1 p.m.
December 24—Closed
December 26—Closed

December 30—Will close at 1 p.m.
December 31—Closed

First Judicial District Court Annual Family Law Potluck

The 1st Judicial Court will host its annual Family Law potluck at noon, Dec. 20, in the Grand Jury Room of the Steve Herrera Judicial Complex (second floor) in Santa Fe. Judge Raymond Z. Ortiz will be in attendance. Bring a dish to share. For more information contact Elege Simons, (505) 982-3610, or esimons@rubinkatzlaw.com.

Destruction of Tapes Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1976 to 1987

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy tapes filed with the court, in Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate cases for years 1976 to 1987, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Attorneys who have cases with tapes, and wish to have duplicates made, should verify tape information with the Special Services Division (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Aforementioned tapes will be destroyed after Dec. 14 by Order of the Court.

Destruction of Exhibits Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1978 to 1987

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy exhibits filed with the court, in Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate cases for years 1978 to 1987 included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits can be retrieved through Jan. 13, 2006.

Attorneys who may have cases with exhibits may verify exhibit information with the Special Services Division, (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Reassignment of Cases

Effective Dec. 16, a general reassignment of all civil and domestic cases in Division III and Division VII of the 1st Judicial District Court will occur due to a division transfer and judge appointment.

All cases assigned to District Judge Daniel Sanchez, Division VII, will be reassigned to District Judge Raymond Ortiz, Division III. All cases assigned to Division III (formerly District Judge Carol J. Vigil’s cases) will be reassigned to District Judge Daniel Sanchez, Division VII.

Parties who have not previously exercised their right to challenge or excuse will have ten days from Dec. 16 to challenge or excuse the judge pursuant to Rule 1-088.1.

Second Judicial District Court Destruction of Exhibits

Pursuant to the Supreme Court Ordered Judicial Records Retention and Disposition Schedules, the Second Judicial District Court will destroy exhibits filed with the Court in the civil cases for years 1991 to 1992, included but not limited to cases which have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved beginning Oct. 20 to Dec. 22. Verify exhibit information with the Special Services Division, (505) 841-7596/7405, from 8 a.m. to noon, and from 1 to 5 p.m., Monday through Friday. Aforementioned exhibits will be destroyed by Order of the Court.

Attorneys who may have cases with exhibits may verify exhibit information with the Special Services Division, (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.
Judicial Appointment

Governor Bill Richardson has announced his appointment of Carl J. Burktus to fill the vacancy of Division XVI at the 2nd Judicial District Court. Judge Burktus will assume Criminal Court cases assigned to Judge Richard J. Knowles effective Dec. 19.

Parties who have not previously exercised their right to challenge or excuse will have 10 days from Dec. 19 to challenge or excuse the judge pursuant to Supreme Court Rule 1-088.1.

Judicial Appointment

Governor Bill Richardson has announced his appointment of M. Monica Zamora to fill the vacancy of Division III at the 2nd Judicial District Court. Judge Zamora will assume Children’s Court cases assigned to Division III effective Dec. 19.

Parties who have not previously exercised their right to challenge or excuse will have 10 days from Dec. 19 to challenge or excuse the judge pursuant to Supreme Court Rule 1-088.1.

Fourth Judicial District Court

Announcement Of Vacancy

A vacancy on the 4th Judicial District Court will exist in Las Vegas as of Dec. 31 upon the retirement of the Honorable Jay G. Harris.

The chair of the 4th Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site: http://lawschool.unm.edu/judsel/index.htm, or call Reva Chapman, (505) 277-5665, to have an application e-mailed/faxed/mailed. The deadline for applications is 5 p.m., Dec. 22. Applications received after that date will not be considered.

Fifth Judicial District Court

Announcement of Vacancy

A vacancy on the 5th Judicial District Court will exist in Carlsbad as of Dec. 31 upon the resignation of the Honorable James L. Shuler.

The chair of the 5th Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site: http://lawschool.unm.edu/judsel/index.htm, or call Reva Chapman, (505) 277-5665, to have an application e-mailed/faxed/mailed. The deadline for applications is 5 p.m., Dec. 22. Applications received after that date will not be considered.

Sixth Judicial District Court

Change of Physical Location of Public Auctions

Effective immediately, the 6th Judicial District Court will hold all public auctions in the foyer/lobby of the Grant County Courthouse, Silver City, New Mexico.

Bernalillo County Metropolitan Court

Closing for Employee Appreciation Lunch

The Bernalillo County Metropolitan Court will be closed briefly from 11:30 a.m. to 1 p.m., Dec. 14, for the court’s traditional employee holiday lunch. The judges and administrators of the court will don aprons, antlers and Santa caps to serve the meal, which will be catered by Garcia's Mexican Kitchen. The meal, which is paid for by the judges and administrators, is a thank-you to employees for another year of hard work at the court. The New Mexico Supreme Court has approved the 90-minute closure. Metro Court will resume normal activities at 1 p.m. Media interested in covering the event should call to make arrangements.

Judicial Appointment

Governor Bill Richardson announced the appointment of Julie Altwies to serve as a judge on the Bernalillo County Metropolitan Court, Division IV, in Albuquerque. Altwies lives in Albuquerque and is a graduate of the University of New Mexico and the UNM School of Law. She has served as deputy district attorney in the 13th Judicial District (Sandoval County) for the past year. From 1988 to 2004, Altwies served as deputy district attorney in Bernalillo County. She has been honored as prosecutor of the year by both the New Mexico’s District Attorney’s Association and Mothers Against Drunk Driving. Altwies is a former member of the board of directors of the Sexual Assault Nurse Examiners Program and the Albuquerque Rape Crisis Center. Altwies was one of four candidates recommended to Governor Richardson by the Judicial Nominating Commission. She fills the vacancy left by the resignation of Judge Charles Barnhart. Altwies stands for election in 2006.

U.S. District Court For The District of New Mexico

Suspension of 2006 Annual Federal Bar Dues

With the concurrence of all active Article III judges in the District of New Mexico, it is ordered that as of Jan. 1 the annual attorney bar dues of $25 shall be suspended for the calendar year 2006. All delinquent dues are still required to be paid. The administrative order may be viewed on the court’s Web site: http://www.nmcourt.fed.us.

STATE BAR NEWS

Attorney Support Group Change in Meeting Location

Due to the holidays, the next Attorney Support Group meeting will be held at 5:30 p.m., Jan. 9, at the First United Methodist Church at Fourth and Lead SW, Albuquerque. The group meets regularly on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

Natural Resources, Energy and Environmental Law Section

Annual Meeting

The Natural Resources, Energy and Environmental Law Section will hold its annual membership meeting at noon, Dec. 16, in conjunction with Environmental Justice and the Public Welfare: Evolving Concepts of the Public at the State Bar Center. Contact Chair Dan Long, dwl@modrall.com or (505) 848-1800, to place an item on the agenda. Attendees of the CLE will receive 5.0 general and 2.0 professionalism CLE credits. The section member discount price is $159. Register online at www.nmbar.org and select CLE or call (505) 797-6020.
Young Lawyers Division 2005 Election Results

The State Bar Young Lawyers Division (YLD) is governed by a board of directors whose members are elected by the active, in-state members of the division to staggered two-year terms. All members of the State Bar who have practiced law in any state for five years or less, and those State Bar members who are under the age of 36 are members of the division and are eligible for office.

The 2005 election closed on Nov. 22. Erika Anderson, Roxanna Chacon, Dustin Hunter, Joseph Sawyer, and Briana Zamora all petitioned for board positions, and were unopposed. Martha Chicoski and Joseph Sapien both petitioned for Director-At-Large, Position 3. Ballots were mailed to the YLD membership, and the vote tally was finalized on Dec. 1, in favor of Joseph Sapien.

The full 2006 Young Lawyers Division Board of Directors is as follows:

<table>
<thead>
<tr>
<th>Term</th>
<th>S. Carolyn Ramos</th>
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<tbody>
<tr>
<td>Chair</td>
<td>2006</td>
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<tr>
<td>Region 5 Director</td>
<td>2006-2007*</td>
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<td>Joseph Foye Sawyer</td>
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<td>Region 1 Director</td>
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<td>J. Brent Moore</td>
<td>2005-2006</td>
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<td>Region 2 Director</td>
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<td>Dustin K. Hunter</td>
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<td>Region 3 Director</td>
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<td>Steven Lorenzo Almanza</td>
<td>2005-2006</td>
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<td>Region 4 Director</td>
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<td>Briana Zamora</td>
<td>2005-2006</td>
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<td>Director-At-Large, Position 1</td>
<td>2006-2007</td>
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<td>Roman R. Romero</td>
<td>2005-2006</td>
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<td>Director-At-Large, Vice Chair</td>
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<td>Position 2</td>
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<tr>
<td>Joseph A. Sapien</td>
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<td>Director-At-Large, Position 3</td>
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<td>Roxanna Marie Chacon</td>
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<td>Director-At-Large, Position 4</td>
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<td>Erika Anderson</td>
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<td>Director-At-Large, Chair Elect</td>
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<td>Position 5</td>
<td>2006-2007</td>
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<td>Michael Neill</td>
<td>2006-2007</td>
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<tr>
<td>Morris J. Chavez</td>
<td>2006-2007</td>
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*Appointed at Dec. 3 board meeting. Petition received after deadline.

Holiday Mixer

The Young Lawyers Division of the State Bar is holding a holiday mixer from 6 to 8 p.m., Dec. 15, at Sauce, 405 Central Avenue NW, Albuquerque. All members of YLD and students at the UNM School of Law are invited to attend. A cash bar and free hors d’oeuvres will be provided; reservations are required. R.S.V.P. by Dec. 13 to Chair Roxanna Chacon, lglrmc@zianet.com.

Other Bars

Albuquerque Bar Association Monthly Meeting Luncheon and CLE

The Albuquerque Bar Association’s monthly meeting luncheon will be at noon, Jan. 3, at the Albuquerque Petroleum Club. U.S. District Court Chief Judge Martha Vazquez will provide the luncheon address. The CLE program, Protecting Consumers from Predators, will be presented by Richard Feferman of Feferman & Warren. The CLE, for 2.0 general credits, will be held from 1:30 to 3:30 p.m. Lunch only: $20 members/$25 non-members; lunch and CLE: $60 members/$85 non-members; and CLE only: $40 members/$60 non-members. Register by noon, Dec. 29, at www.abqbar.com; by e-mail at abqbar@abqbar.com; by mail or phone to the Bar office at 400 Gold SW, Suite 620, Albuquerque 87102; or call (505) 842-1151 or (505) 243-2615.

American Bar Association 2006 Michael Franck Award

The American Bar Association (ABA), through the Center for Professional Responsibility, is pleased to announce the 2006 Michael Franck Award. The award is named in honor of the late director of the State Bar of Michigan and long-time champion of improvements in lawyer regulation in the public interest. The ABA presents this award each year to someone whose contributions in the professional responsibility field evidence the highest level of dedication to the legal profession. Additional information and an application form are located online at http://www.abanet.org/cpr/franck.html. Questions can be directed to cpr@abanet.org or to George Kuhlman, ABA Ethics Counsel, (312) 988-5300. The award will be presented June 1 at the 32nd National Conference on Professional Responsibility in Vancouver, British Columbia. The deadline for nominations is Jan. 6.

UNM School of Law

Exam Library Hours

Dec. 18 Library Closed
Dec. 19–22 8 a.m. to 6 p.m.
Dec. 23–Jan. 2 Library Closed
Jan. 3–10 8 a.m. to 6 p.m.
Jan. 8 Closed
Jan. 11 Library resumes regular hours, 8 a.m. to 11 p.m.
Jan. 16 Closed MLK Day

Other News

National Association of Legal Professionals Annual Charity Auction

The National Association of Legal Professionals (NALS of Albuquerque, formerly known as AALP) proudly announces the annual charity auction to be held from 6 to 10 p.m., Dec. 16, at the Hotel Albuquerque, Old Town, to benefit Red Cross Katrina Relief. Dinner begins at 6 p.m. followed by the auction, which will feature unique holiday items, gift baskets/cards/certificates. Call Debra Torres, NALS treasurer, (505) 883-3070, for details.
HATS OFF TO OUR VOLUNTEERS

The Board of Bar Commissioners and staff would like to express our appreciation to the 2005 section chairs whose terms expire on December 31, 2005. We welcome the volunteers who will serve as chairs in 2006.

<table>
<thead>
<tr>
<th>Section</th>
<th>2005 Chair</th>
<th>2006 Chair</th>
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<tbody>
<tr>
<td>Appellate Practice</td>
<td>Steven L. Tucker</td>
<td>Bryan P. Biedscheid</td>
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<td>Bankruptcy Law</td>
<td>Alice Nystel Page</td>
<td>Alfred M. Sanchez</td>
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<tr>
<td>Business Law</td>
<td>Bradley D. Tepper</td>
<td>Colin L. Adams</td>
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<tr>
<td>Children’s Law</td>
<td>Anthony J. Ferrara</td>
<td>Susan K. Alkema</td>
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<td>Commercial Litigation</td>
<td>Stephen J. Lauer</td>
<td>David A. Streubel</td>
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<tr>
<td>Criminal Law</td>
<td>Michael W. Kiernan</td>
<td>Ousama M. Rasheed</td>
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<td>Elder Law</td>
<td>Kevin D. Hammar</td>
<td>Mary H. Smith</td>
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<td>Cindy J. Lovato-Farmer</td>
<td>Carlos M. Quinones</td>
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<tr>
<td>Family Law</td>
<td>Linda Ellison</td>
<td>Felissa Garcia Kelley</td>
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<tr>
<td>Health Law</td>
<td>John A. Bannerman</td>
<td>J. Douglas Compton</td>
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<td>Indian Law</td>
<td>Rosemary Maestas-Swazo</td>
<td>Levon B. Henry</td>
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<td>International &amp; Immigration Law</td>
<td>Mary Ann Romero</td>
<td>Francisco E. Gonzales</td>
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<td>Natural Resources, Energy &amp; Environmental Law</td>
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<td>A. Kyle Harwood</td>
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<td>Prosecutors</td>
<td>Daniel W. Long</td>
<td>James R.W. Braun</td>
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<td>Public Law</td>
<td>Michael P. Sanchez</td>
<td>Albert James Lama</td>
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<tr>
<td>Real Property, Probate &amp; Trust</td>
<td>Frank Murray</td>
<td>Charles A. Seibert</td>
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<tr>
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MASTERING AND MANAGING DOCUMENTS IN THE STATE-OF-THE-ART LAW OFFICE

By T. Roe Frazer

Document management is the most daunting challenge for today’s law office. Regardless of the size of the law firm, mountains of file folders and forests of paper pile up every day. Traditionally, the answer to this challenge has been outsourcing or the hiring of more clerical staff, more paralegals and more attorneys.

This response has been less than optimal because the knowledge base of the documents and, in the area of litigation, knowledge of the evidence, is disparate and widely distributed across many individuals. More desirable is a “system” whereby each person tasked with knowledge of a particular matter knows all the vital information and critical documents.

Consequently, the only way to master the evidence in a meaningful way is through a document management software or web-based system. These systems give each member of a law practice group or litigation team easy access to the same knowledge base. One main goal with document management software is to eliminate endless search missions for the documents or files and especially the proverbial “needle in the haystack.” Imagine the immediate relief from carrying boxes of documents. Instead, the user’s laptop will give instant access to every document, even in cases involving millions of pages of documents.

Finding the Right Software

Simplicity of Use

Time is precious and fleeting in most law firm environments. The typical law practice is deadline-oriented yet must be flexible enough to meet varying dynamic situations arising daily. Thus, a law firm should not only seek a document management solution that will enhance productivity but also one that is dynamic and user friendly.

Countless law firms have invested in document management technology only to find later that learning to use it was much too time consuming. They found that training time was ridiculously long. Features, while certainly attractive, were hard to use and remember. Functionality might have been based on archaic architecture and complicated by legacy issues. These shortcomings all conspire to make some software document solutions utterly unusable except by the seasoned and tech-savvy few.

Consequently, the first software selection hurdle to clear is to find document management software that is so simple to use that lawyers will actually use it in their everyday practice. Simplicity of use translates into actual usage. Simplicity of use equals less training time and less lost billable hours and productivity. Simplicity of use makes any person in the practice group a master of all the documents and evidence. Lawyers and staff should be able to master millions of pages of evidence in a click of the mouse.

Simplicity of use involves functionality as well as the style of the interface. The system should enable the administrator or document store manager to have a greater degree of control and flexibility over the design and implementation of the document store. The administrator should have the flexibility to create new user fields, assign them to categories, generate lookup lists for fields, specify format rules as well as assign icons to categories. The look of the interface should be inviting and familiar and the real estate easily navigable.

Versatile Features

After clearing the simplicity-of-use hurdle, the user will want software that will quickly and efficiently collect, organize, annotate and research electronic media, documents, images, etc. The user wants to be able to word search or field search his or her entire database plus be able to customize the database(s). Scanning documents into the desired place on a desktop should be quick and easy.

From a features standpoint, the software’s document stores should support an unlimited number of named user fields. User fields should be capable of being defined to contain a certain type of data (e.g., numeric, date, text, etc.) as well as format enforcement and lookup list creation. User field usage should be streamlined and simplified by not re-using the same user field to store different kinds of data within multiple categories. Law firms have several fields that are very commonly needed. Those should be included as standard or built-in fields, such as title, document type, case name, case style, cause number, jurisdiction, state, party, name, attorney, firm, received date, from, to, subject and attached to. These fields should be capable of being removed or configured in the same way that the other user-defined fields are.

The document management software should feature speed in document retrieval, searching, indexing and editing. System capacity should easily accommodate millions of documents while simultaneously reducing the hardware requirements on the server and client machines.

It is useful to have a system that easily changes the look between documents that have not been read and documents that have been read. All documents returned by either a quick or saved search can appear as unread until the user has viewed the documents relative to those search results. In other words, if the same search were executed again, all of the resulting documents would appear as unread again. This helps the user keep up with what documents in the search results have been viewed and which have not. Users should also be able to “mark” documents as either read or unread.

Another feature to consider is the document viewer or previewer within the software system. What is the time it takes to open and display a PDF document? Will users be able to highlight regions to place notes without a full version of Adobe Acrobat? This can be accomplished if the highlights and notes are stored by the system in the document store, rather than within the PDF document itself, making it more secure and easier to produce the original documents without mark ups.

Another desirable feature is the ability to select a rectangular region with the underlying text so it can be copied to a clipboard for transferring information to document fields or other applications. A handy viewer also includes standard tools for searching, navigating, rotating, zooming, printing, saving and sending via e-mail.

Viewers should enable users to mark rectangular regions for redaction. The regions should remain visible until they are published, where they can be “burned in” to the resulting document images. The originals, should remain preserved and unchanged.

Versatile software should automatically convert documents to HTML for previewing when no suitable software is installed on...
the user's computer. The original document is not altered. Optionally, the user should have the flexibility to specify that certain document types be converted to HTML for previewing purposes, even when a suitable viewer is installed on the system.

Document text search hits should be capable of being highlighted in all types of documents including Word, WordPerfect, Access, PowerPoint and any other type of searchable document even if the user has no software installed capable of displaying that document type.

Document publication should include the ability to convert document formats, document page stamping, watermarking, redaction burn-in, third-party application load file generation and removable media (CD/DVD) sets. Any document stamping feature should be flexible enough so that it can be a static value or a calculated value based on values stored in the database or any combination. Examples of this are the ability to create:

(1) a document number—a sequential value incremented per document produced;
(2) a document label—a sequential value describing the document as “document # of #”;
(3) a page number—a sequential value incremented per page per document produced;
(4) a page label—a sequential value describing the document as “page # of #”;
(5) a folder name—the name of the folder that the document being produced resides in;
(6) a store name—the name of the document store that the document is being produced from;
(7) a store id—a unique identifier assigned to a document store when it is created;
(8) a username—the username of the user creating the publication;
(9) a group name—the name of the practice group to which the user creating the publication belongs;
(10) a short date—the date of publication in mm/dd/yyyy format;
(11) a long date—the date of publication in the month dd, yyyy format;
(12) data values—values derived from information stored about the documents and the activities performed on those documents, including filename, file, file path, full path, storage path, bates start prefix, bates start number, bates end prefix and bates end number; and
(13) field values—values that users have entered during data entry.

Time-Saving Features
A state-of-the-art document management system needs to include a diversified document format conversion so that documents can be converted as they are published from PDF to any of the scores of formats commonly encountered. Similarly, it is necessary to have versatile load file generation so that generic and third party applications and specific load file formats can be generated during the publication process. Destination media settings are also important so that the user can specify the destination media that the publication will eventually be produced to. The publication feature should automatically segment the output files so that they will fit on the destination media type.

One feature to look for is a process whereby users can mark an “issue” or other like category as available for all to see without regard to the user’s workgroup assignment. This is further demonstrated by “issues,” which are automatically generated lists for retrieving documents without having to perform a search, such as documents: added last month; added last week; added this month; added this week; added today; added yesterday; edited last month; edited last week; edited this month; etc.

Searching for documents should be simple, easy and powerful. Users should be allowed to let other users see and execute their searches. The document text searching should be capable of performing as an any words, all words or Boolean search. Adding or acquiring documents should be simple, such as using a drag-n-drop feature that automatically extracts the to, from, subject, and body to the user specified fields. The user should be able to select multiple files in a desktop or internet application, select copy, navigate to the desired folder in the document management system and paste.

An exciting timesaving feature to look for is the Docules Goby Capture Integration where documents can easily scan, OCR, convert to PDF and/or be added to a document store. Scanned documents that appear in that folder are automatically and instantly processed and routed to the appropriate document store.

The system should also make it easy for an administrator to create a new user based on the settings of one that already exists in the document store.

Security
Any excellent document management system should adequately address user management and security. The software should provide multiple security levels or roles such as edit filenames, print documents, publish documents, index manager, store manager, category manager, document redaction, view recycle bin, empty recycle bin and restore recycle bin.

Use with Other Applications
Third Party Application Integration and Support is also a vital function. Generally this means full integration or partial integration or support of popular legal professional software applications such as TrialDirector, Sanction II, CaseMap, and others.

While here are only a handful of products on the market for any law firm to consider, efficient document and evidence management is THE state-of-the-art law practice. The right software will empower attorneys in depositions, instill confidence in court hearings and be the decisive edge needed at trial. It also will make the in-office practitioner more productive and more “hands-on.”

The document challenges facing today’s law office can only be mastered with document management software.

About the Author: T. Roe Frazer is CEO and general counsel for CaseLogistic. Frazer is a graduate of Samford University’s Cumberland School of Law where he was the editor-in-chief of the Cumberland Law Review. A member of both the Mississippi and Alabama Bar Associations, Frazer was named the Outstanding Trial Lawyer of the Year by the Mississippi Trial Lawyers Association in 1993. He worked as a civil trial attorney in Jackson, Mississippi, for 20 years. Frazer is a frequent lecturer on legal and technology issues.

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<td>2005 Professionalism: Lawyers Concerned for Lawyers</td>
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</table>
### WRITS OF CERTIORARI

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

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

**Effective December 9, 2005**

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

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#### CERTIORARI GRANTED BUT NOT YET SUBMITTED TO THE COURT:

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WRITS OF CERTIORARI

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

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

EFFECTIVE DECEMBER 9, 2005

PETITION FOR WRIT OF CERTIORARI DENIED:

NO. 29,512 Martinez v. Los Alamos (COA 25,681) 11/30/05
NO. 29,524 Lopez v. Tapia (12-501) 12/1/05
NO. 29,536 Romero v. Moya (12-501) 12/5/05
NO. 29,535 Tafoya v. Hatch (12-501) 12/5/05
NO. 29,519 Wells Fargo v. Gilmore (COA 25,674) 12/5/05
NO. 29,516 State v. Nance (COA 25,730) 12/5/05

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NO. 29,117 State v. Zamora (COA 23,436) 12/5/05
NO. 29,135 State v. Munoz (COA 24,072) 12/5/05

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

| NO. 27,945 | State v. Munoz (COA 23,094) | 11/18/03 |
| NO. 28,068 | State v. Gallegos (COA 22,888) | 2/3/04 |
| NO. 28,241 | State v. Duran (COA 22,611) | 3/29/04 |
| NO. 28,426 | Sam v. Estate of Sam (COA 23,288) | 9/13/04 |
| NO. 28,471 | State v. Brown (COA 23,610) | 9/15/04 |
| NO. 27,269 | Kmart v. Tax & Rev (COA 21,140) | 10/14/04 |
| NO. 28,628 | Herrington v. State Engineer (COA 23,871) | 11/16/04 |
| NO. 28,500 | Manning v. New Mexico Energy & Minerals (COA 23,396) | 12/13/04 |
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| NO. 28,812 | Battishill v. Farmers Insurance (COA 24,196) | 2/16/05 |
| NO. 28,660 | State v. Johnson (COA 23,463) | 3/11/05 |
| NO. 28,816 | Romero v. City of Santa Fe (COA 24,775) | 5/9/05 |
| NO. 28,898 | Deffon v. Sawyers (COA 23,013) | 5/10/05 |
| NO. 28,823 | Payne v. Hall (COA 22,383) | 6/13/05 |
| NO. 28,997 | Maestas v. Zager (COA 24,200) | 6/14/05 |
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| NO. 29,058 | Sanchez v. Pellicer (COA 25,082) | 9/29/05 |
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| NO. 29,017 | State v. Jade G. (COA 23,810) | 10/11/05 |
| NO. 29,042 | State v. Frank G. (COA 23,165/23,497) | 10/11/05 |
| NO. 29,018 | State v. Pamela G. (COA 23,497/23,787) | 10/11/05 |
| NO. 29,159 | State v. Romero (COA 24,390) | 11/14/05 |
| NO. 29,134 | State v. Kathleen D.C. (COA24,540) | 11/14/05 |
| NO. 29,190 | Aguilera v. Board of Education (COA 23,895) | 11/14/05 |
| NO. 29,202 | Montgomery v. Lomas Altos (COA 24,297) | 11/16/05 |
| NO. 29,196 | Grine v. Peabody (COA 24,354) | 11/16/05 |
| NO. 29,226 | Upton v. Clovis (COA 24,051) | 12/12/05 |
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| NO. 29,100 | State v. Casanova (COA 22,952) | 12/12/05 |
| NO. 29,178 | State v. Maestas (COA 24,507) | 12/13/05 |
| NO. 28,950 | State v. Nyce (COA 25,075) | 12/13/05 |

NO. 29,160 Benavidez v. City of Gallup (COA 25,373) 12/13/05
NO. 29,206 State v. Maldonado (COA 23,637) 12/13/05
### Published Opinions

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<td>8th Jud Dist Colfax CV-02-134, Jessie Krieger v. the Wilson Corporation (affirmed in part and reversed in part)</td>
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### Unpublished Opinions

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Slip Opinions for Published Opinions may be read on the Court’s website: [http://coa.nmcourts.com/documents/index.htm](http://coa.nmcourts.com/documents/index.htm)
OPINION

PER CURIAM

{1} This appeal arises from a Doña Ana County school board member recall election held on November 15, 2005. Appellants Gregg Martinez, Luz Vargas, Fred Garza, and James Dino Anastasia (“the Named Board Members”) are four of the five school board members for the Gadsden Independent School District (“GISD”). Appellees Robert Duane Frizell, individually and as representative of RECALL, David J. Garcia, Florentino Silva, and Santiago Burciaga, Appellees, versus GREGG MARTINEZ, LUZ VARGAS, FRED GARZA, and JAMES DINO ANASTASIA, Appellants.

No. 29,480 (filed: November 21, 2005)

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

CHARLES D. NOLAND
ELena Martinez Gallegos
WALSH, ANDERSON, BROWN, SCHULZE & ALDRIDGE, P.C.
Albuquerque, New Mexico
for Appellants

ROBERT DUANE FRIZELL
El Paso, Texas
Pro Se Appellant

THOMAS R. FIGART
Las Cruces, New Mexico
for Appellee Doña Ana County Clerk

ROBERT DUANE FRIZELL
SCOTT, HULSE, MARSHALL, FEUILLE, FINGER & THURMOND, P.C.
El Paso, Texas
for Appellees RECALL, Garcia, Silva, & Burciaga

J. Garcia, Florentino Silva, and Santiago Burciaga (the “RECALL Petitioners”) are a group of voters in the GISD boundaries and members of RECALL. The Doña Ana county clerk is also an appellee.

{2} The Named Board Members are appealing two district court orders, which allowed the recall election at issue to proceed. The RECALL Petitioners brought this matter before the district court, pursuant to the Local School Board Member Recall Act. See NMSA 1978, § 22-7-1 (1977). They alleged that the Named Board Members engaged in malfeasance by violating the Open Meetings Act, see NMSA 1978, § 10-15-1.1 (1989), and by violating legislation identified as House Bill 212. See, e.g., NMSA 1978, §§ 22-5-4 (2003, prior to subsequent amendments), 22-5-14 (2003). In the first order, pursuant to NMSA 1978, § 22-7-9.1 (1987), the district court found that sufficient facts existed to allow the recall process to continue, on the basis of Open Meetings Act violations and violations of House Bill 212, although the court required modifications in the statement of the charges. In the second order, pursuant to NMSA 1978, § 22-7-12 (1985), the district court concluded that the failure to circulate petitions in Spanish as well as English did not invalidate any signatures. The district court also found that the RECALL Petitioners had gathered a sufficient number of valid signatures. Finally, the district court ruled the statement of the charges was sufficient to support a recall election. The county clerk issued and published its proclamation for the recall election. Absentee voting began on October 21, 2005 and ran until November 11, 2005.

{3} The Named Board Members filed their Notice of Appeal on September 29, 2005. Additionally, they filed a motion to stay the recall election process pending appeal. The district court denied the motion to stay and this Court granted an expedited appeal, pursuant to the request of the RECALL Petitioners and the county clerk. Following oral arguments, this Court also denied the Named Board Members’ request for a stay pending the appeal. We now address the issues raised on appeal.

{4} The issues raised on appeal are as follows: 1) whether the charges as stated in the petitions and supporting affidavits were sufficient to allow the recall efforts to proceed; 2) whether the RECALL Petitioners’ motives for initiating the recall election were purely political and personal; 3) whether the district court erred by not considering the Named Board Members’ evidence; 4) whether the county clerk and/or the RECALL Petitioners’ failure to provide petitions in both Spanish and English violated Section 22-7-6(C)’s requirement that “[a]ll information written on the petition form shall be in compliance
with the federal Voting Rights Act of 1965, as amended;" and 5) whether evidence of canvasser irregularities and misrepresentations in obtaining signatures on the recall petitions were sufficient to invalidate all petitions submitted as a matter of law. We view the first and second issues as a single challenge to the sufficiency of the charges: whether the RECALL Petitioners were entitled to have the voters decide whether to recall the named Board Members under CAPS v. Board Members, 113 N.M. 729, 832 P.2d 790 (1992).

{5} The Named Board Members have argued that there was an insufficient factual basis for a determination they acted with an improper or corrupt motive as required by CAPS. While we recognize this Court referred to the requirement of an “improper or corrupt motive,” see id., 113 N.M. at 730, 832 P.2d at 791 (quoting Arellano v. Lopez, 81 N.M. 389, 392,467 P.2d 715, 718 (1970)), we were analyzing a discretionary act. See CAPS, 113 N.M. at 730, 832 P.2d at 791. In CAPS, it was undisputed “that the selection, by a local school board, of a site for a new school is a discretionary act within that board’s scope of authority.” Id. In this case, the charges are not that discretionary acts were wrongful, but rather that the Named Board Members acted outside their authority. The challenge raised in the first two issues by the Named Board Members is whether the charges were legally sufficient to show malfeasance. The reference in CAPS to motive is not applicable.

{6} The RECALL Petitioners’ charges of Open Meetings Act violations and of House Bill 212 violations, if true, provided a sufficient legal basis for the recall process. If multiple intentional violations of the Open Meetings Act occurred, and those violations permitted policy decisions concerning the respective roles of the Superintendent and the school board to have been made without public participation, then those violations were a form of misconduct for which recall was provided. See N.M. Const. art XII, § 14 (“A petition for a recall election must cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the member concerned.”)). The district court had a sufficient factual basis to support the charges that the Open Meetings Act had been violated on more than one occasion and that the violations involved decisions contrary to the Legislature’s intent represented by statutes such as Sections 22-5-4 and 22-5-14. Finally, there was a factual basis to conclude that the violations, if they occurred, were knowing. Therefore, even if animosity and conflict exist between the RECALL Petitioners and the Named Board Members, it does not appear that the RECALL Petitioners’ sole reason for employing the recall was as “a means of harassment or for purely political or personal purposes.” CAPS, 113 N.M. at 731, 832 P.2d at 792.

{7} For example, on April 25th, Board Member Maria Saenz wrote a letter to President Luz Vargas expressing Saenz’s concern that the GISD School Board violated the Open Meetings Act and House Bill 212 in their April 14th closed session. Ms. Saenz alleged that the board violated the Open Meetings Act by discussing subjects other than those announced or voted upon prior to closure. Ms. Saenz contends that the board did not vote for Ms. Vargas and Mr. Anastasia to proceed to tell Superintendent Ronald Haugen “how to do his job in relation to how he handles his personnel and what people he needs to fire[].” In addition, Ms. Saenz stated that at approximately 9:50 p.m. she asked Ms. Vargas whether anything else needed to be discussed because it was getting late. Ms. Vargas said there was nothing further to discuss, so Ms. Saenz left. A few days later, Ms. Saenz learned that the Named Board Members continued to discuss business matters after she left, including a personnel issue, with Mr. Haugen. Ms. Vargas gave Mr. Haugen a letter requiring him to respond to his actions about a previous employee. Ms. Vargas also handed Mr. Haugen a letter dated April 13th, signed by four board members, to restrict Mr. Haugen’s out-of-state travel. Ms. Saenz alleged that this written directive “should have been voted upon at an open meeting.” In addition, Ms. Saenz claimed that the letter given to Mr. Haugen was “invalid” pursuant to NMSA 1978, Section 10-15-15 (1997). Ms. Saenz’s letter was addressed to Ms. Vargas, and copies were sent to the other board members and Mr. Haugen. The letter put all the Named Board Members on notice that Board Member Saenz was concerned about possible Open Meetings Act violations and House Bill 212 violations. Similarly, Mr. Haugen wrote a letter to Ms. Vargas on April 22nd, which also expressed his concerns about the April 14th meeting. That letter was also sent to all the board members.

{8} Further, the alleged violations that occurred in the April 14th closed session and the alleged violations that occurred after Ms. Saenz left the April 14th closed session were not isolated events. Mr. Haugen wrote a second letter to the board members on May 8th, expressing his concern that Mr. Anastasia violated House Bill 212 by threatening a principal within the district that it would be in his best interest to reinstate the assistant principal. In the May 12th closed session, Ms. Vargas, Mr. Anastasia, and Ms. Martinez placed Mr. Haugen on paid administrative leave effective immediately. Mr. Haugen alleged that Mr. Anastasia informed him that the reason that he was being placed on administrative leave for insubordination was because he “did not fire an employee as directed and because [he] did not follow a directive [he] was given to not take any personnel actions whatsoever.” “[N]either the notice nor the agenda for the meeting on May 12, 2005 gave any indication that the School Board would take any such action.”

{9} Although Ms. Vargas, Mr. Anastasia, and Mr. Martinez attempted to rectify their actions after placing Mr. Haugen on administrative leave by getting a recorder and recording the motions made, the motions made and recorded were still conducted in a closed meeting. The limited personnel exception to the Open Meetings Act does not “exempt final actions on personnel from being taken at open public meetings.” NMSA 1978, § 10-15-1(H)(2) (1999). There is no indication that the three members informed the public that it would reconvene its open session after the closed session. Therefore, the district court was entitled to conclude there was evidence of final actions having been taken in a closed session, knowingly contrary to the Open Meetings Act and to Sections 22-5-4 and 22-5-14.

{10} The third issue is whether the district court erred in not considering the Named Board Members’ evidence at the second hearing. The district court denied the Named Board Members’ challenge pursuant to Section 22-7-12(A)(3), ruling that sufficient facts had been alleged to support the charges for violations of the Open Meetings Act and violations of House Bill 212. In doing so, the district court stated that “the Court’s review of this matter in this appeal is limited to ‘the sufficiency of the charge’; therefore, for this matter, the Court only reviews the evidence that was part of the record in Cause No. MS-2005-01.” Section 22-7-9.1(C) supports the district court’s conclusion.

{11} We conclude, under Sections 22-7-9.1 and 22-7-12, the district court was limited in the second hearing to reviewing the evidence presented by the RECALL Petitioners in the first hearing. Section
22-7-9.1(C) provides that “[u]pon review of the completed face sheet together with affidavits submitted by the petitioner setting forth specific facts in support of the charges specified on the face sheet,” the district court shall determine “whether sufficient facts exist” to permit the recall process to continue. The statute does not invite counter-affidavits. The district court was not required to weigh disputed issues of fact. Section 22-7-12(A) limits challenges in the second hearing. Under Section 22-7-12(A)(3), the district court was required to determine the Named Board Members’ challenges to “the sufficiency of the charge.” We are not persuaded the district court erred in construing Section 22-7-12(A)(3) as requiring only a reconsideration of the evidence offered at the first hearing.

12 The fourth issue raised by the Named Board Members is whether the recall petitions should have been printed and circulated in both Spanish and English, pursuant to Section 22-7-6(C), which requires “[a]ll information written on the petition form [to] be in compliance with the federal Voting Rights Act of 1965, as amended.” The district court determined that failure to have petitions in Spanish did not invalidate the petitions. We note the county clerk has contended that the “initiative petitions are not voting materials that fall within the ambit of the Voting Rights Act requiring minority language treatment.” (emphasis in original).

13 We do not address the clerk’s contention because the Named Board Members lack standing to challenge the petitions on the basis they did not circulate in Spanish as well as English. “[S]tanding is a doctrine requiring that the claimant must have a personal stake in the outcome of a case; the claimant must allege both injury in fact and a traceable causal connection between the claimed injury and the challenged conduct.” Key v. Chrysler Motors Corp., 1996-NMSC-038, 121 N.M. 764, 768, 918 P.2d 350, 354. The Named Board Members clearly have a stake in the outcome of this case, but they have failed to articulate any injury arising from the failure to circulate the petitions in Spanish.

14 The only evidence of harm appears to be that two women who only understood Spanish signed petitions without being shown any documents in Spanish. These women do not contend that had they been given petitions in Spanish, they would not have signed them. Rather, they simply indicate that they were never given a Spanish document to read. It is plausible that the two women would not have signed the petitions had they been in Spanish. However, it is equally plausible that the RECALL Petitioners could have collected an even greater number of signatures than they did if the petitions were circulated in both Spanish and English.

15 Even if the Named Board Members could demonstrate an “injury in fact and a traceable causal connection” to the challenged conduct, they must also show that “the interest sought to be protected . . . is arguably within the zone of interests to be protected or regulated by the statute.” Key, 1996-NMSC-038, 121 N.M. at 768, 918 P.2d at 354 (quoting 12 James W. Moore, Moore’s Federal Practice, ¶ 300.02 [2-3], at 1-16 (2d ed. 1995) (quoting Ass’n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 153 (1970))). We are not persuaded the New Mexico Legislature intended to permit local school board members facing a recall election the opportunity to challenge the form of the petition under Sections 22-7-9.1 or 22-7-12. Neither Section 22-7-9.1 nor 22-7-12 specifically authorize a challenge to the form of the petition. We believe the Legislature intended the county clerk, in cooperation with the Secretary of State, would ensure that the materials provided voters would comply with the law and the remedy for non-compliance would be available elsewhere. For example, the Local School Board Members Recall Act provides that a petitioner may apply to district court “for writ of mandamus to compel the performance of [a] required act.” See NMSA 1978, § 22-7-15 (1985).

16 The final issue raised on appeal also provides no basis for relief. The Named Board Members’ evidence of canvasser irregularities was insufficient to invalidate any of the petitions as a matter of law. The Named Board Members produced evidence showing that at most, there were some procedural irregularities with respect to three of the 1266 signatures obtained. The three signatures at issue do not change the result because the canvassers collected more signatures than required for each Named Board Member. Therefore, even if the challenged signatures were invalid, the error was harmless. There was still a sufficient number of valid signatures for the recall election against each Named Board Member.

17 For these reasons, we affirm the district court’s order filed September 23, 2005.

18 IT IS SO ORDERED.

RICHARD C. BOSSON, Chief Justice

WE CONCUR:
PAMELA B. MINZNER, Justice
PATRICIO M. SERNA, Justice
PETRA JIMENEZ MAES, Justice
EDWARD L. CHÁVEZ, Justice
Certiiorari Granted, No. 29,437, November 14, 2005

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-128

CITY OF SUNLAND PARK, Plaintiff-Appellee, versus HARRIS NEWS, INC., Defendant-Appellant.

No. 23,593 (filed: August 24, 2005)

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

ROBERT E. ROBLES, District Judge

MARK C. DOW
MOLLY B. MCINTOSH
DARCI A. CARROLL
BAUMAN, DOW, MCINTOSH & LEÓN, P.C.
Albuquerque, New Mexico

STEPHEN G. PETERS
MIKE MILLIGAN
El Paso, Texas

for Appellee

for Appellant

OPINION

RODERICK T. KENNEDY, JUDGE

{1} Defendant Harris News, Inc. (the Bookstore) appeals a district court order holding that it breached a settlement agreement (the Agreement) and engaged in statutory and common law nuisance, ordering the Bookstore to remove its truck sign and to cease operating an adult bookstore in its current location. The court further imposed a statutory penalty, and awarded damages. The Bookstore raises five arguments on appeal. First, it argues that the district court erred by considering parol evidence of the circumstances of the Agreement and that even if the court properly considered testimony in this regard, it erred by concluding that the Agreement was ambiguous. Second, the Bookstore contends that the district court misinterpreted the Agreement to prohibit the truck sign and nude dancing. Third, the Bookstore argues that the district court’s ruling on statutory or common law nuisance is not supported by substantial evidence. Fourth, the Bookstore claims that the district court improperly applied the doctrines of res judicata and collateral estoppel to bar consideration of the Bookstore’s constitutional defenses. Fifth and last, the Bookstore argues, even if it did breach the Agreement with Plaintiff City of Sunland Park (Sunland Park), create a nuisance, or both, it was an abuse of discretion to close the Bookstore’s business.

{2} We reverse in part and affirm in part. In the matter of the Agreement that Sunland Park and the Bookstore had entered into prior to this litigation, we hold that the district court improperly construed it to incorporate Sunland Park’s ordinances. As a result, we reverse the remedies that flowed from any alleged violation of the ordinances, including the statutory penalties imposed and the closure of the Bookstore. We further hold that the district court properly construed the Agreement to limit the Bookstore to displaying the one sign described in the Agreement and properly heard extrinsic evidence to clarify the Agreement’s ambiguity in this regard. Therefore, we affirm the district court’s conclusion that the Bookstore breached the Agreement by displaying an additional sign than provided for in the Agreement and affirm its injunction ordering its removal. We reverse the monetary damages awarded to Sunland Park for breach of the Agreement for lack of supporting evidence. As a result of our holdings on the construction of the Agreement, we do not reach the application of res judicata and collateral estoppel. Last, we reverse the district court’s nuisance rulings for lack of supporting evidence and the absence of statutes or common law declaring the Bookstore’s activities nuisances. As a result, we do not address whether the district court erred by closing down the Bookstore’s operations to abate the nuisance.

FACTUAL AND PROCEDURAL BACKGROUND

{3} On December 3, 1998, the Bookstore filed suit in federal district court against Sunland Park seeking to prevent Sunland Park from enforcing its zoning ordinances. In that suit, the Bookstore asserted first amendment rights in the operation of an adult bookstore and video store located in Sunland Park less than one thousand feet from a residually zoned district and less than five hundred feet from a liquor establishment. The federal district court issued a temporary restraining order against Sunland Park. It appears that the parties agreed on December 7, 1998, to postpone the hearing in federal court and further that, pending such a hearing, Sunland Park would allow the Bookstore to remain open and operating. The Bookstore agreed that it would not post any signage visible from the road or advertise the sale of adult materials on the building, in the parking lot, or the surrounding area, and that it would apply for a permit for the sign in an expedited application process.

{4} After further negotiations, on May 4, 1999, the parties entered into the Agreement whereby the Bookstore agreed to dismiss its federal lawsuit and any potential claims against Sunland Park officials related to the lawsuit. In turn, Sunland Park agreed not to enforce its ordinances that would prohibit the Bookstore’s operations and its advertisement of adult material. Subsequently, the Bookstore displayed a truck in its parking lot with the words “Adult Video” illuminated on its side (the truck sign). The Bookstore also advertised and provided nude dancing on its premises.

{5} Sunland Park initiated the action that is the subject of this appeal on May 26, 2000, by filing suit in the New Mexico district court alleging breach of contract and violation of its ordinances. It sought a temporary restraining order and a hearing to obtain a preliminary and permanent injunction against the Bookstore to cease its operations. The Bookstore failed to appear at the hearing, and the district court issued a preliminary injunction enforcing the Agreement by enjoining the Bookstore from allowing nude dancing and from displaying the truck sign on its premises. The Bookstore filed a motion to vacate the injunction on the grounds of improper notice, which the district court granted on April 2, 2001.

{6} On July 5, 2000, while Sunland Park’s suit was pending in the New Mexico district
court, the Bookstore filed a complaint in the United States District Court for the Western District of Texas, El Paso Division, seeking declaratory and injunctive relief, arguing that Sunland Park was inappropriately attempting to enforce its ordinances to preclude the truck sign that was allegedly located in Texas. On July 6, 2000, the federal court granted a temporary restraining order enjoining Sunland Park from enforcing its ordinance against the Bookstore or any vehicle parked in any portion of the lot that is located in Texas. After an evidentiary hearing, the federal court concluded that an injunction was not warranted, dissolved the temporary restraining order, and dismissed the case.

In this case, still pending in the New Mexico district court, Sunland Park amended its complaint to add nuisance claims to its breach of contract claims. Sunland Park also moved for partial summary judgment on the grounds that the Bookstore’s constitutional defenses should be barred by the doctrines of res judicata and collateral estoppel based on the Texas federal district court’s decision that the Bookstore had waived its constitutional claims by entering into the Agreement. The district court granted Sunland Park’s motion for partial summary judgment, ruling that the federal decision precluded the relitigation of the Bookstore’s constitutional claims. In addition to its request that the Bookstore’s operations as an adult bookstore and video store be permanently enjoined, Sunland Park requested unspecified amounts of punitive damages for the Bookstore’s breach of the Agreement and of the covenant of good faith and fair dealing and for nuisance per se. Sunland Park also requested damages for violation of its sign ordinance or nuisance per se, asserting that it set a maximum penalty of $500 and that each day in which the Bookstore was in violation of its sign ordinance constituted a separate offense. Sunland Park requested damages totaling $398,500 for the 797 days of the Bookstore’s violation of the sign ordinance.

The district court concluded that the Bookstore’s truck sign and the nude dancing permitted on its premises breached the parties’ Agreement. The district court further concluded that, as a result of the breach, Sunland Park could enforce its ordinances against the Bookstore to cease its operations in the sale of adult material. The district court ordered the Bookstore to pay $1250 as a statutory penalty for violation of the sign ordinance and another $1250 as consequential and punitive damages for breach of the Agreement.

As to Sunland Park’s nuisance claims, the district court found that the Bookstore itself, its truck sign, and the nude dancing were a public nuisance, a nuisance per se, and that the truck sign and store impaired the property values and the quiet enjoyment of the property of the adjacent residents. Concluding that the Bookstore was liable for “statutory and common law nuisances” by causing “consequential damage to the public and private residents in the area,” the district court also ordered damages in the amount of $1250. This appeal followed.

DISCUSSION

The Contract Arguments

The district court’s interpretation of the Agreement as prohibiting nude dancing and its truck sign. The Bookstore argues that since the Agreement was not ambiguous as to whether it prohibited the truck sign, the court erred in using parol evidence of the parties’ intended meaning. In this context, it argues that the district court’s findings were inconsistent. As a preliminary matter, we must determine whether the Agreement was ambiguous as to whether it permitted other signage. We then address each of the Bookstore’s arguments in turn.

The Agreement

Sunland Park entered into the Agreement after the federal court judge in the first federal case warned Sunland Park that it was not likely to prevail on the merits. Sunland Park subsequently negotiated the Agreement with the Bookstore. Sunland Park agreed, at a minimum, not to enforce its zoning ordinances for twenty years in exchange for the Bookstore’s promise to dismiss the federal lawsuit and to not refile it in any form.

The Agreement stated the following:

1. Sunland Park agrees not to enforce its zoning ordinance so as to prohibit operation of the [Bookstore] at its present location for a period of twenty (20) years following the execution of this Agreement, regardless of the uses of other lands within one thousand (1,000) feet of the property boundary of the [Bookstore].

2. Sunland Park agrees not to enforce its zoning ordinance so as to prohibit [the Bookstore] from advertising the [Bookstore’s] goods and services by the erection of a lighted sign above the front wall of the building, facing Emory Way, bearing the words “Arcade Video” and in all other respects as shown on [sic] the sketch map accompanying the application. The said sign shall have a horizontal dimension no greater than twelve (12) feet, a vertical dimension no greater than four (4) feet, and a total height of no more than fourteen (14) feet above the land surface. The lettering of said sign will not exceed twenty (20) inches per letter.

4. In consideration of Sunland Park’s agreement not to enforce its zoning ordinance so as to prohibit the operation of the [Bookstore] and the erection of an advertising sign as described above, the Bookstore agrees that its Lawsuit against Sunland Park will be dismissed and will not be refiled in any form.

6. Nothing contained in this General Release constitutes or should be construed as an admission by Sunland Park that its zoning ordinances . . . cannot be fully enforced . . . against any use of the Subject Property other than that described herein . . .

This General Release is the entire agreement between the parties as of the date hereof, except for zoning and other permits already granted by Sunland Park. Any and all prior agreements or understandings that are not embodied in this General Release or in formal approval of a prior application to Sunland Park are of no force and effect and the terms of this General Release may not be modified, except by written agreement of the parties.

The Agreement stated again in another paragraph that Sunland Park agreed to forgo enforcement of its zoning ordinance to prohibit the Bookstore’s operations and to prohibit the sign described above. The Agreement did not specifically state
that the Bookstore was prohibited by the Agreement, rather than the Sunland Park ordinances, from any other use of the property or advertising on the property.

Standards of Review and Framework for Analysis

13 There are two levels to analyzing when parol evidence may be used. Initially, we assess whether an ambiguity exists in the contract language. The district court may hear extrinsic evidence to answer this preliminary question. Mem’l Med. Ctr., Inc. v. Tatsch Constr. Inc., 2000-NMCA-030, ¶ 16, 129 N.M. 677, 12 P.3d 431. If the district court determines that the contract is not ambiguous, it need not admit the extrinsic evidence to aid it in its interpretation.

Id. On the other hand, if the district court decides that a term is ambiguous, it may admit extrinsic evidence to explain what the parties meant the term to mean. C.R. Anthony Co. v. Loreto Mall Partners, 112 N.M. 504, 508, 817 P.2d 238, 242 (1991). Since its conclusion of ambiguity or lack of ambiguity is also a ruling on whether extrinsic evidence may or may not be heard, the admission or exclusion of extrinsic evidence to explain an ambiguous term is reviewed de novo. See Mem’l Med. Ctr., Inc., 2000-NMSC-030, ¶ 18 (“Whether ambiguity exists is a question of law; therefore, this Court reviews the district court’s decision to exclude extrinsic evidence de novo.”).

14 “The parol evidence rule ‘bars admission of evidence extrinsic to the contract to contradict and perhaps even supplement the writing.’” Id. ¶ 16 (quoting C.R. Anthony Co., 112 N.M. at 509, 817 P.2d at 243). However, even where a term or provision of a contract is unambiguous, parol evidence may still be used “to supply terms not in the written contract . . . or to show fraud, misrepresentations, or mistake.” Univ. of N.M. Police Officer’s Ass’n v. Univ. of N.M., 2004-NMCA-050, ¶ 11, 135 N.M. 655, 92 P.3d 667 (internal quotation marks and citation omitted). Thus, the inquiry into whether parol evidence was properly admitted and utilized hinges upon the purpose for which the evidence was offered and exactly how the evidence was used. Cf. Cent. Sec. & Alarm Co. v. Mehler, 1996-NMCA-060, ¶ 47, 121 N.M. 840, 918 P.2d 1340.

The Agreement was Ambiguous as to Permissible Signage; the District Court did not Err in Using Parol Evidence

15 Both Sunland Park and the Bookstore assert that the unambiguous language of the Agreement supports their respective interpretations. The district court concluded that the Agreement was unambiguous in permitting the Bookstore the one sign specified in the Agreement. At this point our inquiry is whether the Agreement’s signage language was reasonably susceptible to different meanings. See Sitterly v. Matthews, 2000-NMCA-037, ¶ 16, 129 N.M. 134, 2 P.3d 871; Schueller v. Schueller, 117 N.M. 197, 199, 870 P.2d 159, 161 (Ct. App. 1994). “Reasonableness is the touchstone for determining whether there is a true lack of clarity.” Berry v. Fed. Kemper Life Assurance Co., 2004-NMCA-116, ¶ 60, 136 N.M. 454, 99 P.3d 1166. To find that a provision is ambiguous, we require more than the parties’ dispute over what that provision means. Id.

16 In the Agreement itself, Sunland Park agreed not to enforce its ordinances in a manner that would prohibit “a lighted sign above the front wall of the building, facing Emory Way, bearing the words ‘Arcade Video’” and “in all other respects as shown on in [sic] the sketch map accompanying the application.” In the sketch attached to the Agreement, before the word “Video,” the word “Adult” was removed to conform to the Agreement’s “Arcade Video” language. The Agreement specified that this sign would have certain dimensions and lettering. The Agreement further expressly stated that in exchange for Sunland Park’s “agreement not to enforce its zoning ordinance so as to prohibit . . . the erection of an advertising sign as described above,” the Bookstore dismiss its claims against the City.

17 Frank Coppler, the city attorney who had negotiated the Agreement, testified at trial. The district court admitted his testimony to determine whether the Agreement was ambiguous. Coppler testified that the parties negotiated the Agreement with the idea that Sunland Park did not want the Bookstore to display signs that attracted people from the streets and that the use of “Arcade Video” over “Adult Video” was vigorously negotiated. From this, Coppler formed a belief that the parties intended that the sign described in the Agreement would be the only sign allowed under the Agreement. John Fahle, who represented the Bookstore, testified that one of his associates (who did not testify at trial) had handled all of the negotiations leading to the Agreement.

18 The question then is whether this evidence renders the Agreement reasonably susceptible to two different meanings? See Sitterly, 2000-NMCA-037, ¶ 16. On one hand, the Agreement itself does not explicitly state the Bookstore’s promise to limit itself only to the sign described in the Agreement. Thus, the Agreement could reasonably be interpreted as not containing such a promise. On the other hand, the Agreement details with much specificity concerning the sign that it permits, and does so in the singular, e.g., “an advertising sign.” Additionally, Coppler’s testimony that the parties discussed this Agreement as limiting the Bookstore to that one specifically described sign, and extensively negotiated what it would say, could lead to interpreting the Agreement as the Bookstore’s promise to limit itself to that one sign. We therefore disagree with the district court’s conclusion that the Agreement was unambiguous in permitting only the sign described in the Agreement. However, since we agree with the district court’s interpretation of the Agreement to contain the Bookstore’s promise not to post other signage (as will be discussed more extensively later in this opinion), we do not reverse on the basis of this issue. See Meiboom v. Watson, 2000-NMSC-004, ¶ 20, 128 N.M. 536, 994 P.2d 1154 (stating that we will affirm the district court where it ruled correctly, but for the wrong reason, if not unfair to the appellant). We now address the district court’s findings and the parol evidence it used.

19 The Bookstore generally challenges the testimony of Coppler as parol evidence. New Mexico permits parol evidence to be used more expansively than the Bookstore would have us allow. Here, the district court permissibly used Coppler’s testimony to determine whether the Agreement was ambiguous. See Mem’l Med. Ctr., Inc., 2000-NMSC-030, ¶ 16. We have held that the Agreement was ambiguous. Therefore, the district court could properly admit extrinsic evidence for the purpose of determining the parties’ intended meanings. See C.R. Anthony Co., 112 N.M. at 508, 817 P.2d at 242. As the district court allowed here, this evidence may include “preliminary negotiations and other factors.” Id. at 509 n.3, 817 P.2d at 243 n.3. We thus do not agree that Coppler’s testimony could be no broader than references to “a particular term or expression.” We have previously stated that “ambiguity comprises both ambiguous terms and general lack of clarity.” Cent. Sec. & Alarm Co., 1996-NMCA-060, ¶ 46. Even though cases like Hedcke v. Gunville, 2003-NMCA-032, ¶ 13, 133 N.M. 335, 62 P.3d 1217, involved the interpretation of single, short phrases,
we have also repeatedly stated that “a court may hear evidence of the circumstances surrounding the making of the contract and of any relevant usage of trade, course of dealing, and course of performance.” Bogle v. Summit Inv. Co., 2005-NMCA-024, ¶ 10, 137 N.M. 80, 107 P.3d 520 (internal quotation marks and citation omitted). On one hand, Coppler’s testimony as to his discussions with the Bookstore was “evidence of the circumstances surrounding the making of the contract,” and indicative of an issue-driven course of dealing between the parties. Id. (internal quotation marks and citation omitted). On the other hand, Coppler’s testimony as to his subjective belief of the parties’ intent is not. See id. The district court must make this distinction. Here, though, any error in admitting Coppler’s testimony as to the parties’ intent and understandings was harmless. See Santa Fe Custom Shutters & Doors, Inc. v. Home Depot U.S.A., Inc., 2005-NMCA-051, ¶¶ 31-32, 137 N.M. 524, 113 P.3d 347. The other evidence presented was sufficient without this testimony. See id.

Finally, in the context of its parol evidence arguments, the Bookstore makes a number of other assertions that we briefly address. It attacks the district court’s findings of fact as inconsistent. Allegations of inconsistency are not enough. See Herrera v. Roman Catholic Church, 112 N.M. 717, 721, 819 P.2d 264, 268 (Ct. App. 1991) (“Unless clearly erroneous or deficient, findings of the trial court will be construed so as to uphold a judgment rather than to reverse it.”). The Bookstore states that the district court should not have rejected Fahle’s testimony that the word “Arcade” was never negotiated. However, “when there is a conflict in the testimony, we defer to the trier of fact.” Buckingham v. Ryan, 1998-NMCA-012, ¶ 10, 124 N.M. 498, 953 P.2d 33. The Bookstore briefly suggests that there was no mutual assent. This, too, is a question of fact. See id. The Bookstore’s other assertions, if intended as arguments, are insufficient to raise an issue for review. See, e.g., State v. Barrera, 2001-NMSC-014, ¶¶ 33, 130 N.M. 227, 22 P.3d 1177 (refusing to address inadequate arguments). We now turn to what the Agreement means.

**Whether the District Court Erred in the Meanings it Assigned to the Terms of the Agreement**

**i. The Truck Sign**

Having held that the Agreement was ambiguous as to whether it prohibited the truck sign, we must decide whether the district court’s interpretation of the Agreement in this regard was supported by substantial evidence. See Bogle, 2005-NMCA-024, ¶ 10; see also Mark V, Inc. v. Mellekas, 114 N.M. 778, 781, 845 P.2d 1232, 1235 (1993) (holding that where the district court concludes that an agreement is reasonably susceptible to different interpretations, the meaning must be resolved by the appropriate fact finder”). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” State v. Salgado, 1999-NMSC-008, ¶ 25, 126 N.M. 691, 974 P.2d 661 (internal quotation marks and citations omitted). We both resolve disputed facts and indulge in all reasonable inferences in favor of the district court’s judgment. See id. We do not reweigh the evidence. Id.

Here, the district court determined that by its repeated and highly specific references to one sign, the Agreement restricted the Bookstore’s ability to post any other signs. It concluded that Coppler’s testimony supported this interpretation. We agree, and hold that substantial evidence supported this conclusion.

As described above, the Agreement repeatedly refers to a single sign. The Agreement states that this sign may be lighted, is to be placed in a specific place on the building, and must face a certain road. The sign was to say “Arcade Video.” The sign was to be further have specific dimensions and lettering not above a certain size. Coppler testified that he and the Bookstore specifically negotiated and agreed on the one sign specifically described in the Agreement. Also, an aspect of the Agreement that was heavily negotiated was the wording of the sign. When the Bookstore’s sign company produced a sketch of a proposed sign that said “Adult Video,” Sunland Park rejected it. The Agreement allowed the “Arcade Video” wording specifically to prohibit such objectionable wording.

In another attempt to avoid enforcement of the Agreement against the truck sign, the Bookstore argues that the Agreement does not govern the truck sign, which was located in Texas, because only land situated in New Mexico is subject to the Agreement. The recitals prefacing the Agreement stated that the “Subject Property” is located in Sunland Park, New Mexico, and was described more particularly in metes and bounds in an exhibit, attached to the Agreement. In the district court, the parties disputed whether the metes and bounds description included any property located in Texas or only property in New Mexico, whether the truck sign was placed in Texas and/or New Mexico, and from where the sign was visible.

In support of this argument, the Bookstore points to an interim agreement, in which the parties agreed that the Bookstore would not “post any signage, which would be visible from the road, advertising adult materials on the building, in the parking lot, or any immediate surrounding area.” The Bookstore argues that because no language appears in the final Agreement regulating any of the Bookstore’s future conduct in Texas, the Agreement does not govern any signs in Texas.

As discussed extensively above, the evidence indicates that a reasonable interpretation of the Agreement and understanding would permit only one sign, regardless of the location of any other sign on the site. Therefore, substantial evidence supports the conclusion that the Agreement prohibited the truck sign whether it was in New Mexico or in Texas. For these reasons, we hold that the Bookstore cannot avoid enforcement of the Agreement to prohibit the truck sign by arguing that the truck sign was located in Texas. Further, we hold that substantial evidence supported the district court’s conclusion that the display of the truck sign breached the Agreement.

We hold that this evidence is sufficiently substantial to justify the district court’s conclusion that the Bookstore had promised to only post the one sign described in the Agreement. Additionally, because we hold that there was substantial evidence to support the district court’s conclusion that the Agreement itself embodied the Bookstore’s promise to post only the sign describe therein, we do not address the Bookstore’s argument that Coppler’s testimony improperly supplied this promise as a term to the Agreement.

**ii. Nude Dancing**

We are unable to tell whether the court interpreted the Agreement to prohibit nude dancing based on a determination that the
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Justice Lewis Powell, Jr.
language was unambiguous, or based on a decision that the language was ambiguous and further based on parol or extrinsic evidence to determine the meaning of the language. The importance of this distinction generally would lie in the resultant standard of review. Compare Bogle, 2005-NMCA-024, ¶ 10 (stating that ambiguous terms are subject to a substantial evidence review), with Aspen Landscaping, Inc. v. Longford Homes of N.M., Inc., 2004-NMCA-063, ¶¶ 14, 21, 135 N.M. 607, 92 P.3d 53 (stating that the meaning of an unambiguous term is a question of law that we review de novo). However, even under the more deferential substantial evidence standard of review, the district court’s conclusion that the Agreement prohibited nude dancing was unjustified. {30}

The only evidence that the Agreement might somehow prohibit nude dancing was paragraph six. This paragraph stated that, “[n]othing contained in this General Release and Agreement constitutes or should be construed as an admission by the City that its zoning ordinances . . . cannot be fully enforced against . . . any use of the Subject Property other than that described herein.” In the recitals, the Bookstore was described as “a retail store . . . dealing in adult-oriented books and videos.” The district court appears to have reasoned that because the Bookstore was described as it was, and this use was a special use, any other special use would be a breach of the Agreement. {31}

We hold that this evidence was not sufficient to support the district court’s conclusion that the Bookstore had agreed to refrain from any other uses of its property. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” Salgado, 1999-NMSC-008, ¶ 25 (internal quotation marks and citation omitted). The evidence upon which the district court relied is simply insufficient to support the necessary elements of a contract. See, e.g., DeArmond v. Halliburton Energy Servs., Inc., 2003-NMCA-148, ¶ 20, 134 N.M. 630, 81 P.3d 573 (“In the absence of evidence in the record of a meeting of the minds, the trial court could not find that there was mutual assent.”).

iii. Ordinance Violations

{32} Again using the more deferential standard of substantial evidence, we review the district court’s treatment of the Sunland Park zoning ordinances. The district court concluded that not only did the truck sign and nude dancing breach the Agreement (as discussed above), the sign and dancing were violations of the Sunland Park City zoning ordinances. It reasoned that because the Agreement permitted Sunland Park to enforce its ordinances in the event of the Bookstore’s breach, Sunland Park was not only entitled to contract damages, but a statutory penalty as provided in the ordinances. {33} We disagree. First, even if the Agreement could be construed as the Bookstore’s promise not to disobey any of Sunland Park’s ordinances, obeying the law is a pre-existing duty. See, e.g., Jaynes v. Strong-Thorne Mortuary, Inc., 1998-NMSC-004, ¶ 11, 124 N.M. 613, 954 P.2d 45 (describing the pre-existing duty rule). Second, Sunland Park’s statement that it was not waiving its right to enforce its ordinances is not tantamount to the Bookstore’s promise to obey them. Third, there was not any evidence of such a promise. See State v. Boergadine, 2005-NMCA-028, ¶ 37, 137 N.M. 92, 107 P.3d 532 (stating that counsel’s arguments are not evidence and are insufficient to support proposed facts). Therefore, we hold that there was insufficient evidence that the Agreement contained the Bookstore’s promise to obey Sunland Park’s ordinances. We therefore reverse the district court’s conclusion that the Sunland Park ordinances were enforceable via Sunland Park’s breach of contract action. {34}

Contract Relief Awarded

{35} For the Bookstore’s breach of contract, the district court ordered (1) that the truck sign be removed, (2) that the Bookstore cease operations, (3) that the Bookstore pay $1,250 as a statutory penalty violation of the Sunland Park ordinances, and (4) that the Bookstore pay $1250 in punitive and consequential damages.

Damages Based on Violations of Sunland Park Ordinances

{36} Consistent with our holding that the Agreement did not incorporate the Sunland Park ordinances, we reverse the district court’s order to the extent that it imposed penalties for breach of contract based on those ordinances. We therefore vacate the district court’s award to Sunland Park of the $1,250 penalty.

Consequential and Punitive Damages

{37} The district court’s award of consequential and punitive damages was based on the Bookstore’s breach of contract. However, the district court’s order does not delineate what it awarded for the Bookstore’s breach of contract for the truck sign (which we affirm) and what it awarded for the Bookstore’s breach of contract for violation of the ordinances (which we reverse). We therefore remand for recalculation of the consequential and punitive damages based solely on the truck sign breach.

Removal of the Truck Sign

{38} Consistent with our holding that the Bookstore’s truck sign constitutes a breach of the Agreement, we affirm the district court’s injunctive order to remove the truck sign insofar as this relief was awarded based on breach of contract. While we note that where specific performance affords the full benefit of the contract, damages will not ordinarily be awarded, see McCoy v. Alsup, 94 N.M. 255, 262, 609 P.2d 337, 344 (Ct. App. 1980), this argument was not raised by the parties. See Deaton v. Gutierrez, 2004-NMCA-043, ¶ 26, 135 N.M. 423, 89 P.3d 672 (stating that it is improper for this Court to consider arguments not raised by the parties).

Ceasing the Bookstore’s Operations in Its Current Location

{39} The Bookstore was ordered, as a remedy for its breach of the Agreement, “[t]o immediately cease operation as an illegal [Adult Bookstore/Video Store operating within 1000 feet from a residential area and operating within 500 feet of a busi-

2While under this more deferential standard of review we do not reweigh the evidence, Sunland Park’s own key witness testified that uses of the property, and specifically nude dancing, were never contemplated by either party when they entered into the Agreement. He stated that the Agreement was only about the sign.

3The ordinances describe violations as “offense[s]” with potential jail time, which upon “conviction” require the imposition of certain mandatory fees that the district court did not impose. Under the ordinances, a conviction requires a plea or a finding of guilt on the “criminal charge.”

4The brief in chief does not raise, and we hence do not discuss, whether what appears to be a criminal ordinance may be enforced in such a civil action, and if so, whether Sunland Park ever asserted a sufficient cause of action in this regard. See Aragon, 109 N.M. at 634, 788 P.2d at 934.
ness serving alcoholic beverages.” This remedy clearly and explicitly incorporates and was predicated upon the district court’s erroneous incorporation of the Sunland Park ordinances into the Agreement. We therefore vacate this order as a remedy for breach of contract in this case.

Whether Substantial Evidence Supports the District Court’s Ruling that Nude Dancing and the Truck Sign Constitutes Statutory and Common Law Nuisance

{38} The Bookstore claims that there was insufficient evidence presented below to support the district court’s conclusions of statutory and common law nuisance. We review the district court’s findings of fact for substantial evidence, and review de novo the legal conclusions it draws from the facts. State v. Rector, 2005-NMCA-014, ¶ 4, 136 N.M. 788, 105 P.3d 341.

{39} The district court found that the truck sign was a “visual light nuisance,” that the truck sign, the nude dancing, and the Bookstore itself “interfered[d] with the exercise and enjoyment of public rights, including the right to use public property,” were nuisances per se, and “unreasonably interfered[d] with rights common to the general public.” The district court said that “[u]nder the circumstances, the truck sign, the nude dancing and the adult bookstore are not only a nuisance by their nature, but are also a nuisance in fact locality [sic], and the manner in which they are conducted or managed.” The court found that the Bookstore, the sign, and the nude dancing had “create[d] light and aesthetic injury to” a neighboring residence. It concluded that:

12. The truck sign, nude dancing, dimensions of the lighted truck sign constitute a statutory nuisance injurious to the public health, safety and welfare of the public and/or interferes with the exercise of the public rights, including right to use public property and causes a statutory and public nuisance.

13. The truck sign, nude dancing, dimensions of the lighted truck sign is an unreasonable interference with the general public’s right causing a common law nuisance.

{40} Common law and statutory public nuisance are similar concepts in New Mexico, both described as an “unreasonable interference with a right common to the general public.” State ex rel. Village of Los Ranchos v. City of Albuquerque, 119 N.M. 150, 163, 889 P.2d 185, 198 (1994) (internal quotation marks and citation omitted). New Mexico’s public nuisance statute states that:

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

A. injurious to public health, safety, morals or welfare; or

B. interferes with the exercise and enjoyment of public rights, including the right to use public property.

Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a petty misdemeanor.

NMSA 1978, § 30-8-1 (1963). New Mexico common law more specifically defines public nuisance as either nuisances per se or nuisances in fact. A nuisance per se is an “activity, or an act, structure, instrument, or occupation which is a nuisance at all times and under any circumstances, regardless of location or surroundings.” Village of Los Ranchos, 119 N.M. at 164, 889 P.2d at 199 (internal quotation marks and citation omitted). A nuisance in fact is described as “an activity or structure which is not a nuisance by nature, but which becomes so because of such factors as surroundings, locality, and the manner in which it is conducted or managed.” Id. {41} In contrast, a private nuisance is distinguished by the interest invaded; it is an unreasonable interference with the private use and enjoyment of land. See Scott v. Jordan, 99 N.M. 567, 570, 661 P.2d 59, 62 (Ct. App. 1983) (adoption of the definition of a private nuisance contained in Restatement (Second) of Torts § 821D (1979)); 58 Am. Jur. 2d Nuisances § 31 (2002). Accordingly, only those whose private use and enjoyment in land has been injured may assert a claim of private nuisance. See 58 Am. Jur. 2d Nuisances § 45; see also Restatement (Second) of Torts § 821E (1979). Although a private nuisance “affects the enjoyment of some private right not common to the public,” see 58 Am. Jur. 2d Nuisances § 44, a nuisance may be both public and private, or “mixed,” where “a considerable number of people suffer in the interference with their use and enjoyment of land.” 58 Am. Jur. 2d Nuisances § 33.

{42} In its final order, the district court decreed that the Bookstore “engaged in statutory and common law nuisances.” See Village of Los Ranchos, 119 N.M. at 163, 889 P.2d at 198 (“The common law public nuisance is similar to the New Mexico public nuisance statute, Section 30-8-1.”); cf. State v. Davis, 65 N.M. 128, 332, 333 P.2d 613, 616 (1958) (distinguishing between statutory and common law nuisances per se and a nuisance in fact). The district court’s findings and conclusions indicate that the district court found that the Bookstore’s truck sign constituted a private nuisance, that the Bookstore’s operation in its current location constituted a nuisance per se, and that the Bookstore’s operation in its current location, the truck sign, and the nude dancing constituted nuisances in fact.

{43} Sunland Park presented very little evidence, if any, that the Bookstore’s business in its current location, the truck sign, and the nude dancing constitute nuisances of any kind. Sunland Park’s allegations of nuisance consist largely of conclusory assertions of counsel and point specifically to the impact on only the Cox family residence, and, once, in a pleading, Sunland Park mentioned the impact on a Catholic Church residence about which the district court made no findings. See V.P. Clarence Co. v. Colgate, 115 N.M. 471, 472, 853 P.2d 722, 723 (1993) (“[T]he briefs and arguments of counsel are not evidence upon which a trial court can rely[,]”). The attorney for Sunland Park asserted, without presenting evidence, that the adult video store and the truck sign impaired or diminished the property value of the neighboring Cox family residence, that the truck sign created a visual light nuisance in New Mexico, and that it impaired the Cox family’s use and enjoyment of their property. See id. No member of the Cox family ever testified. In its trial brief, Sunland Park represented, without citing the transcript, that testimony supported its nuisance claims. However, the only testimony presented to support its nuisance allegations relate to the Cox family residence and was given by a building inspector and a police officer. The building inspector, testifying mostly about the size and location of the truck sign, testified that the “Adult Video” sign is visible from, and lights the ground by, the Cox family’s mailbox located by the street. The police officer testified that the truck sign occasionally used to face the Cox’s farm and that Mrs. Cox reported that trash was thrown onto her property.

{44} To the extent the district court may have ruled that the Bookstore created a mixed nuisance, and even assuming Sunland Park has standing to seek redress for
such a nuisance, such a ruling is also not supported by the record. The district court’s final order indicates that it may have concluded the nuisance was both public and private, when it stated that the Bookstore’s nuisances “caused consequential damage to the public and private residents in the area of the [Bookstore’s] property.” The record, however, does not indicate that “a considerable number of people [have] suffer[ed] in the interference with their use and enjoyment of land.” 58 Am. Jur. 2d Nuisances § 33 (describing a mixed nuisance). As stated above, the record indicates that Sunland Park presented only scant evidence suggesting that the Cox family residence was specifically affected.

{45} As to the district court’s finding of a public nuisance in fact, there is also insufficient evidence in the record to support it. Although we have no case law indicating what evidence would be necessary to prove that an adult bookstore, nude dancing, or an illuminated sign advertising adult materials constitutes a public nuisance in fact, it is clear that some evidence of injury to the public, rather than a mere assertion of injury, is required. See 58 Am. Jur. 2d Nuisances § 21 (stating that “[t]he existence of a nuisance in fact is a question for the trier of fact, which may or may not find the existence of a nuisance from proof of the act and its consequences”). Sunland Park did not, for instance, present evidence that the Bookstore, nude dancing, or the truck sign creates a traffic problem, leads to increased criminal activity on the premises or surrounding area, impairs “the character and quality of residential neighborhoods,” or otherwise violates some substantial public right or interest shared by a considerable number of people. Cf. SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1272 (5th Cir. 1988) (describing the evidence considered by the city of the impact of sexually oriented businesses on the area when adopting an ordinance regulating such businesses); 58 Am. Jur. 2d Nuisances §§ 39-41 (stating that proof is required to show that the alleged nuisance substantially deprived a considerable number of people of a public right). Rather, Sunland Park blankly asserted that the Bookstore, the truck sign, and the nude dancing were injurious to public health, safety, morals, and/or welfare. Therefore, we hold that the district court’s finding of public nuisance in fact is not supported by substantial evidence.

{46} Without presenting evidence of a nuisance in fact, Sunland Park seems to rely on a legal argument. See V.P. Clar-

ence Co., 115 N.M. at 472, 853 P.2d at 723 (noting that the arguments of counsel are not evidence). Sunland Park argues that because the Bookstore may not conduct its business, provide nude dancing, or display the truck sign in its current location under the ordinances, these activities constituted nuisances. The violation of a municipal ordinance is not, however, sufficient to prove either nuisance in fact or nuisance per se. See 58 Am. Jur. 2d Nuisances § 134. {47} In contrast, where the state legislature has validly declared that a certain act constitutes a public nuisance, “against which an injunction may issue without allegation or proof of irreparable injury,” the act will be considered a nuisance per se. 58 Am. Jur. 2d Nuisances § 61 (noting that the legislative determination of a nuisance per se is still subject to constitutional challenge and judicial review); see also Davis, 65 N.M. at 132, 333 P.2d at 616 (“An act may be enjoined as constituting a public nuisance where [it is] declared by statute to be a nuisance per se[.]”). There are no statutes in New Mexico, however, declaring that an adult bookstore, nude dancing, or an illuminated truck sign advertising adult material constitutes a nuisance per se. See Scott, 99 N.M. at 570, 661 P.2d at 62 (defining a nuisance per se); 58 Am. Jur. 2d Nuisances § 61 (same). {48} In the absence of a specific nuisance statute prohibiting such activities, the district court ruling might be supported by common law. We have not, however, found a decision in any jurisdiction holding that a bookstore, an illuminated truck sign advertising adult material, or nude dancing is a nuisance per se under common law. Cf. Davis, 65 N.M. at 131-33, 333 P.2d at 615-16 (reversing the injunction that closed a social club for the sale of alcohol, which was illegal in the county, in the absence of evidence proving a nuisance in fact, a pertinent nuisance statute, and common law decisions holding that the illegal sale of alcoholic beverages is a nuisance per se). Nor has Sunland Park indicated why such a nuisance, such a ruling is also not supported by the record. The district court’s finding of a public nuisance in fact is not supported by the evidence. The court ruled that Sunland Park could not enforce its ordinance, even though it had not been adopted in response to the activities at the Bookstore. In re U.S. West Communications, Inc., 1998-NMSC-032, ¶ 8, 125 N.M. 798, 965 P.2d 917 (describing “ripeness as a ‘tool’ of the court, which is used to . . . [avoid] rendering an advisory opinion on some future set of circumstances” (internal quotation marks and citation omitted) (alterations in original)); Weddington v. Weddington, 2004-NMCA-034, ¶ 18, 135 N.M. 198, 86 P.3d 623 (“Advisory opinions are those that resolve a hypothetical situation that may or may not arise.”). Furthermore, having reversed the district court’s rulings on Sunland Park’s nuisance claims, we do not reach the question of whether the Bookstore was properly barred from asserting its constitutional defenses to those claims.

CONCLUSION

{51} For the reasons set forth above, we affirm the injunction ordering removal of the Bookstore’s truck sign for breach of the Agreement with Sunland Park. We remand this case for recalculation of Sunland Park’s punitive and consequential damages for this breach alone. We reverse the injunction ordering the Bookstore’s closure on both contract and nuisance grounds and all related statutory penalty and nuisance damages awarded.

{52} IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Chief Judge

JONATHAN B. SUTIN, Judge
OPINION

MICHAEL E. VIGIL, JUDGE

{1} Defendant consented to a search of his apartment by armed police officers after they entered his apartment without a search warrant in the early morning hours while he was sleeping. During their search, the police discovered evidence of a methamphetamine lab. We hold that there was insufficient attenuation between the officers’ illegal entry into Defendant’s apartment and his consent. As a result, Defendant’s consent was the fruit of a poisonous tree, and his consent. As a result, Defendant’s consent was the fruit of a poisonous tree, and the evidence the police discovered subsequently granted the officers permission to search the house.

{2} The evidence conflicts about what knowledge the officers had about Defendant living in the house, and when they obtained that knowledge. Wife testified that when Husband answered the door and the officers asked for permission to search the house, she heard Husband tell the officers that somebody else’s apartment was in the house. Wife said the officers then asked if “he” was home, and Husband answered they did not know. Husband testified that while the officers were searching the house, he was sitting in the living room, as instructed, when the male officer asked: “What’s in there?” Husband testified he told the officer that the area of the house that the officer was asking about was rented. Husband said this was the first time he said anything about renting any part of the house, and he did not know if this conversation was before or after the door to Defendant’s apartment was opened. Husband said his memory was vague about some details because, “[i]t was early in the morning and [he] had just woken up. It was kind of crazy.” On the other hand, Officer White testified he never had any conversation with Landlords regarding anyone else living in the house, that he and Officer Gonterman were both surprised when Defendant was discovered in the home. Officer Gonterman testified that before Defendant’s room was discovered, she asked Wife if she knew who Shawn or Popcorn was, and Wife answered they had rented a part of their house to her husband’s friend, Shawn, and that he lived in the back of the house.

{4} The officers gathered Husband, Wife, their children, and their guest in one room and began their search. In this process they were separated, with Officer White in one part of the house, and Officer Gonterman in another. Officer White testified he opened a door which turned out to be a closet. He then opened another door further down the hallway identical to the first and observed a male and female sleeping on a couch. He called to Officer Gonterman and they then entered the room. As they entered the room, Officer Gonterman noticed that there was “a rifle leaning against the corner by a dresser.” Because the officers could not tell whether the couple on the couch was armed, they announced, “Albuquerque Police Department. Show us your hands.” Defendant complied. Officer White was certain he did not draw his weapon upon entering Defendant’s room. However, Of-
officer Gonterman was not certain whether her handgun was drawn when she entered Defendant’s room. Her habit would be to draw her weapon and keep it in a “low-riding” position pointed to the ground until Defendant showed her his hands as instructed, then replace it in the holster. She said she was certain that neither officer had his or her gun drawn when Defendant was asked for permission to search.

[6] Officer Gonterman testified that after she and Officer White entered the room, announced, “Albuquerque Police Department” and ordered Defendant to “[s]how us your hands[,]” that the officers “told [Defendant] why [they] were there, that [they] suspected there was a meth lab in [Defendant’s apartment] somewhere and asked . . . if [they] could search [Defendant’s room].” [Defendant] said, ‘Go ahead and look. I’m sleeping. Do whatever you want.’ Something to that effect.” Officer White said that after he and Officer Gonterman entered the room and announced themselves as Albuquerque Police Officers, Defendant was told that the officers “had reason to believe that there’s a meth lab at the house.” [Defendant] kind of leaned up while [the officers] were talking with him. He advised [the officers], ‘[s]earch what you want. I’m going back to sleep.’ And he laid [sic] back down.” Gonterman stayed with Defendant and his girlfriend who remained on the couch while Officer White looked around the room. The subsequent search of Defendant’s rooms uncovered drug paraphernalia, mariatic acid, tubing glassware, and other materials consistent with manufacturing methamphetamine.

[7] Defendant moved to suppress all evidence seized as a result of the officers’ entry into his apartment. The district court denied the motion to suppress. Defendant then pled guilty to trafficking methamphetamine by manufacturing and to a separate charge of possession of methamphetamine, reserving his right to appeal the denial of his motion to suppress. We reverse.

STANDARD OF REVIEW

[8] The determination of whether a search is constitutionally reasonable involves mixed questions of law and fact. State v. Flores, 1996-NMCA-059, ¶ 6, 122 N.M. 84, 920 P.2d 1038. Therefore, when we review a district court’s ruling on a motion to suppress, we defer to the district court’s findings of fact to the extent that they are supported by substantial evidence. State v. Rector, 2005-NMCA-014, ¶ 4, 136 N.M. 788, 105 P.3d 341; State v. Pierce, 2003-NMCA-117, ¶ 8, 134 N.M. 388, 77 P.3d 292. We then review whether the district court correctly applied the law to the facts de novo. Rector, 2005-NMCA-014, ¶ 4.

DISCUSSION

[9] The United States Constitution and the New Mexico Constitution both prohibit unreasonable searches and seizures. U.S. Const. amend. IV; N.M. Const. art. II, § 10. “A search is an intrusion on a person’s reasonable expectation of privacy.” State v. Cleave, 2001-NMSC-031, ¶ 11, 131 N.M. 82, 33 P.3d 633 (internal quotation marks and citations omitted); accord Maryland v. Macon, 472 U.S. 463, 469 (1985). Among the areas afforded the greatest protection by these constitutional provisions is a person’s home. See State v. Wagoner, 1998-NMCA-124, ¶ 10, 126 N.M. 9, 966 P.2d 176 (noting that the “‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed’” (quoting United States v. United States Dist. Ct., 407 U.S. 297, 313 (1972))). Therefore, a warrantless search of a home is “presumptively unreasonable, subject only to a few specific, narrowly defined exceptions.” State v. Ryon, 2005-NMSC-005, ¶ 23, 137 N.M. 174, 108 P.3d 1032.

[10] The district court made a finding that “Officer White inadvertently entered the rented portion of the home and was surprised to find two individuals there.” Nevertheless, by inadvertently entering Defendant’s apartment without a warrant, Officer White invited upon Defendant’s reasonable expectation of privacy. See McDonald v. United States, 335 U.S. 451, 453-54 (1948) (holding police violated the Fourth Amendment in searching the room defendant rented in a residence without a search warrant); People v. Ponto, 480 N.Y.S.2d 921, 924 (N.Y. App. Div. 1984) (holding defendant had a reasonable expectation of privacy in room he rented inside home); State v. Fitzgerald, 530 P.2d 553, 555 (Or. Ct. App. 1973) (same). See also State v. Attaway, 117 N.M. 141, 148, 870 P.2d 103, 110 (1994) (noting that, as a general matter, the “Fourth Amendment is violated by an unannounced police intrusion into a private home” (quoting Ker v. California, 374 U.S. 23, 47 (1963) (Brennan, J., concurring in part and dissenting in part)), modified on other grounds by State v. Lopez, 2005-NMSC-018, 138 N.M. 009, 116 P.3d 80. Therefore, absent an exception to the warrant requirement, the officers’ entry into Defendant’s apartment was a violation of his constitutional rights under both the United States and New Mexico Constitutions. State v. Diaz, 1996-NMCA-104, ¶ 8, 122 N.M. 384, 925 P.2d 4 (holding that “[a] search and seizure conducted without a warrant is unreasonable unless it is shown to fall within one of the exceptions to the warrant requirement”); accord Minnesota v. Dickerson, 508 U.S. 366, 372 (1993). We also note that “[t]he state has a heavy burden when it seeks to justify warrantless arrests and searches.” State v. Wright, 119 N.M. 559, 562, 893 P.2d 455, 458 (Ct. App. 1995).

[11] The State argues that a warrant was not required because Landlords consented to a search of the house, which properly included Defendant’s apartment. We disagree.

[12] “A search based upon a valid consent is an exception to the requirement for obtaining a search warrant.” State v. Mann, 103 N.M. 660, 664, 712 P.2d 6, 10 (Ct. App. 1985). However, “mere status as the owner cannot resolve the question of the validity of the consent.” Diaz, 1996-NMCA-104, ¶ 12. Instead, the validity of consent to search Defendant’s rooms turns on whether Landlords had common authority over Defendant’s apartment. Id. ¶ 9; accord United States v. Matlock, 415 U.S. 164, 171 (1974) (noting that a warrant is not required where “permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected”). The evidence fails to meet this standard.

[13] In Diaz, we held that a father could not validly consent to a search of his adult son’s bedroom inside the father’s home. Although the father testified that he could enter his son’s room without permission, we held that the district court had properly concluded that the father did not have common authority over the room. Id. ¶ 15. We based our conclusion on the fact that the father was not a co-occupant of the room and that his son “had far greater access and control” over the room. Id. ¶ 16. Moreover, his son had “a superior privacy interest” in the room. Id. The same is true here. Landlords’ testimony demonstrates that they did not have common authority over Defendant’s apartment. Although they occasionally entered the apartment to do laundry or to access Husband’s stored tools, they treated Defendant’s apartment as his private residence. Therefore, we hold that the State failed to show that Landlords had common authority over Defendant’s apartment. As a result, Landlords could not validly consent to a search of the apartment. See id. ¶ 9; Matlock, 415 U.S. at 171.
Finally, the State cannot rely upon any claimed apparent authority of Landlords to consent to a search of Defendant’s apartment. Under the New Mexico Constitution, the State was required to show that Landlords had “actual, not apparent, authority to grant that consent.” Diaz, 1996-NMCA-104, ¶ 17. See Wright, 119 N.M. at 563-64, 893 P.2d at 459-60 (holding that the defendant had a reasonable expectation of privacy in a back bedroom she shared with a companion, where the door to the bedroom was closed and the homeowner gave the defendant and her companion consent to occupy the room, and that the New Mexico Constitution does not allow police to rely on the consent of an individual with apparent authority to justify the warrantless search of a home).

The State also argues that Defendant validly consented to a search of his apartment. We also disagree with this contention.

Officers White and Gonterman violated Defendant’s constitutional right to privacy when they entered his apartment without a warrant. Upon entering the apartment, they obtained Defendant’s consent to the search that uncovered the physical evidence he now seeks to suppress. The “fruit of the poisonous tree” doctrine “bar[s] the admission of legally obtained evidence derived from past police illegality.” State v. Bedolla, 111 N.M. 448, 454, 806 P.2d 588, 594 (Ct. App. 1991); see 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 8.2(d), at 77 (4th ed. 2004) (noting that “the fruit of the poisonous tree doctrine also extends to invalidate consents which are voluntary”). Therefore, “the evidence obtained by the purported consent should be held admissible only if it is determined that the consent was both voluntary and not an exploitation of the prior illegality.” 4 LaFave, supra, § 8.2(d), at 76; accord State v. Prince, 2004-NMCA-127, ¶ 20, 136 N.M. 521, 101 P.3d 332 (holding that “[f]or evidence to be admissible, consent must be both voluntary and purged of all taint from a prior illegality”), cert. granted, 2004-NMCLERT-011, 136 N.M. 656, 103 P.3d 580. This is because two separate inquiries are involved: first, whether the consent itself is voluntary under the Fifth amendment; and second, whether the consent is the fruit of the poisonous tree under the Fourth Amendment. See State v. Jutte, 1998-NMCA-150, ¶ 21, 126 N.M. 244, 968 P.2d 334 (noting that we observed in Bedolla, 111 N.M. at 455, 806 P.2d at 595, that under Brown v. Illinois, 422 U.S. 590 (1975), the Fifth Amendment voluntariness test is separate from the Fourth Amendment fruit of the poisonous tree analysis). The district court made a finding that Defendant’s consent was “voluntary and unequivocal.” This finding is supported by the evidence. We therefore turn to the second inquiry.

To determine whether the evidence discovered by the officers’ search should have been suppressed under the “fruit of the poisonous tree” doctrine, we determine whether the officers obtained Defendant’s consent “by means sufficiently distinguishable to be purged of the primary taint.” Wong Sun v. United States, 371 U.S. 471, 488 (1963) (internal quotation marks and citation omitted). That is, there must be a break in the causal chain between the illegality and the consent. See Jutte, 1998-NMCA-150, ¶ 22 (“If there is a break in the causal chain from the unlawful arrest to the search, then the evidence may be admitted.”). If there is sufficient attenuation between the illegality and the consent to search, the evidence is admissible. “To determine whether there was ‘sufficient attenuation,’ we consider the temporal proximity of the arrest and the consent, the presence of intervening circumstances, and the flagrancy of the official misconduct.” Id.; see Brown, 422 U.S. at 603-04. The district court concluded, without analyzing these factors, that “[e]ven if the initial entry into [D]efendant’s room was not lawful, the subsequent consent by [D]efendant was still valid as the entry did not taint the subsequent consent.” We review this conclusion de novo. Rector, 2005-NMCA-014, ¶ 4.

First, the temporal proximity of the officers’ illegal entry into Defendant’s apartment and his consent weighs against a finding that the taint of the illegality was purged. Officers White and Gonterman sought Defendant’s consent almost immediately after illegally entering his apartment. See United States v. Robeles-Ortega, 348 F.3d 679, 683 (7th Cir. 2003) (holding that temporal proximity of the consent to the illegal entry weighed against a finding that the taint had been purged “because a consent obtained immediately after an illegal entry is less likely to be unconnected to that entry”). Second, there were no intervening circumstances between the officers’ illegal conduct and Defendant’s consent. Cf. United States v. Oguns, 921 F.2d 442, 447-48 (2d Cir. 1990) (holding that “intervening circumstances” diminished the taint of the federal agents’ unlawful entry because “the agents read to [the defendant] a consent to search form, indicating [his] right to refuse to consent to a search[,]” and the defendant read the form himself and signed it); State v. Phillips, 577 N.W.2d 794, 807 (Wis. 1998) (holding that “intervening circumstances” attenuated the taint of the law enforcement officers’ illegal entry into the defendant’s home because the officers explained to the defendant that (1) they were investigating a crime; (2) they did not have a warrant; and (3) they could not search without his permission).

Third and finally, we consider the nature of the officers’ misconduct. The district court found that Officer White’s initial entry into Defendant’s apartment was “inaudent.” The evidence conflicts about whether either officer was told that Defendant was renting rooms in the house and whether it was before or after they entered his room. We understand the district court’s finding of inadvertence to mean that the officers did not know that they would find Defendant when they opened what appeared to be another closet door; as we understand the finding, it is supported by the evidence. However, Defendant was in a very vulnerable position when he consented to the search. Two armed police officers entered his apartment in the early morning hours and awakened him, demanding that he show them his hands. They then immediately told Defendant they suspected the presence of a methamphetamine lab and asked if they could search. Under the circumstances, the “request” to search could have very easily been construed as a “demand” to search. To this extent, at least, the officers “exploited” their illegal entry into Defendant’s apartment. Therefore, despite the inadvertence of the intrusion, we conclude, based on the weight of the applicable factors of our analysis, that Defendant’s consent “was not obtained by means sufficiently distinguishable as to be purged of the primary taint.” Robeles-Ortega, 348 F.3d at 684 (internal quotation marks omitted). We are particularly concerned with the officers’ use of tactics that appear designed to “cause surprise, fright, and confusion,” see id. (internal quotation marks and citation omitted), such as knocking on windows and doors in the darkness of a December morning and announcing to the sleeping Defendant “Police . . . . Show us your hands.”

Policy also drives our conclusion in this case. The objective of the exclusionary rule in New Mexico is not to deter police
misconduct but “to effectuate in the pending case the constitutional right of the accused to be free from unreasonable search and seizure.” State v. Gutierrez, 116 N.M. 431, 446, 863 P.2d 1052, 1067 (1993). This is why the good-faith exception to the federal exclusionary rule is deemed to be incompatible with the constitutional protections found under Article II, Section 10 of the New Mexico Constitution. Id. at 446-47, 863 P.2d at 1067-68. Moreover, “[t]here is established New Mexico law interpreting Article II, Section 10 [of the New Mexico Constitution] more expansively than the Fourth Amendment.” State v. Gomez, 1997-NMSC-006, ¶ 24, 122 N.M. 777, 932 P.2d 1. In this case, suppressing the evidence illegally obtained by Officers White and Gonterman “best effectuates the constitutional proscription of unreasonable searches and seizures by preserving the rights of the accused to the same extent as if the government’s officers had stayed within the law.” Gutierrez, 116 at 446, 863 P.2d at 1067.

{21} The State failed to establish that Defendant’s consent to search his apartment was purged of the taint of the officers’ illegal entry. The evidence discovered by Officers White and Gonterman during their search of Defendant’s apartment should have been suppressed.

CONCLUSION

{22} We hold that Officers Gonterman and White acquired the methamphetamine lab evidence that Defendant seeks to suppress by violating his rights under the Fourth Amendment and Article II, Section 10 of the New Mexico Constitution. We therefore reverse the district court’s denial of Defendant’s motion to suppress and remand.

{23} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:
LYNN PICKARD, Judge
CELIA FOY CASTILLO, Judge

Certiorari Denied, No. 29,484, November 14, 2005

From the New Mexico Court of Appeals

Opinion Number: 2005-NMCA-130

STATE OF NEW MEXICO
Plaintiff-Appellee,
versus
ROBERT WILSON,
Defendant-Appellant.
No.25,017 (filed: September 21, 2005)

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

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Albuquerque, New Mexico
for Appellant

Opinion

CELIA FOY CASTILLO, Judge

{1} In the metropolitan court, Defendant Robert Wilson was convicted of criminal trespass and harassment; neither crime is listed in the Crimes Against Household Members Act, NMSA 1978, §§ 30-3-10 to -16 (1995, as amended through 2001). Accordingly, convictions for criminal trespass and harassment do not require proof that the victim was a household member. But the status of the victim as a household member becomes relevant when Defendant appeals. If the victim of these two crimes is a household member, the incident is considered domestic abuse under the Family Violence Protection Act, NMSA 1978, §§ 40-13-1 to -8 (1987, as amended through 2002), and Defendant’s appeal is limited to review of the record. NMSA 1978, § 34-8A-6(C) (1993); Rule 7-706 NMRA. If the victim is not a household member, the incident is not considered domestic abuse, and Defendant has the right to a trial de novo in the district court. Section 34-8A-6(D). Because Defendant considered his convictions as not involving domestic abuse, he moved for a trial de novo in district court. The motion was denied, based on the district court’s conclusion that the victim was a household member and that the conviction therefore did involve domestic violence. Defendant’s convictions were affirmed after an on-record appeal. It is the metropolitan court (metro court), not the district court, that must make a finding that the victim is a household member. Based on our determination that there is no finding in the judgment that indicates the crimes were perpetrated by one household member on another, we reverse the district court and remand for a de novo trial on the two convictions.

I. BACKGROUND

{2} Based on events that occurred with the victim on June 20, 2003, Defendant was charged with criminal trespass, telephone harassment, and harassment, contrary to NMSA 1978, § 30-14-1 (1995); NMSA 1978, § 30-20-12 (1967); and NMSA 1978, § 30-3A-2 (1997). Under the Family Violence Protection Act, these three crimes are considered domestic abuse if they are the result of an incident by one household member against another. Section 40-13-2(C). Metro court is a court of record for criminal actions within its jurisdiction that involve domestic violence; acts of domestic abuse under the Family Violence Protection Act are considered domestic violence. State ex rel. Schwartz v. Sanchez, 1997-NMSC-021, ¶¶ 6-7, 123 N.M. 165, 936 P.2d 334. Hence, the docketing and number assigned to this case is preceded by “DV,” indicating that this is a domestic violence case and that the trial must be on record.

{3} Defendant waived his right to a jury trial. During trial, metro court dismissed the telephone harassment charge by directed verdict and, after hearing all of the evidence, convicted Defendant of harassment and criminal trespass. Although the routing slips describe the charges and
Determination regarding the status of the defendant is crucial in determining whether crimes were committed against a household member. It is clear that defendant was found guilty of harassment and criminal trespass with no indication that the crimes were committed against a household member.

Defendant appealed his two convictions to district court and requested a trial de novo. The district court denied Defendant's motion for a trial de novo and, after an on-record review, upheld the convictions. This appeal followed.

II. DISCUSSION

[5] We first consider Defendant’s argument that he is entitled to a de novo trial. Then we address the State’s contention that we need not hear this case because it is moot.

A. Right to a Trial de Novo

[6] Whether or not a defendant is entitled to an appeal de novo in district court is a question of law, which we review de novo. State v. Krause, 1998-NMCA-013, ¶ 3, 124 N.M. 415, 951 P.2d 1076. The conviction, rather than the charge, controls the type of appeal to which a defendant is entitled. Id. ¶ 8. The New Mexico Constitution entitles a defendant to a trial de novo in district court, unless provided otherwise by statute. N.M. Const. art. VI, § 27. There are two statutory exceptions: DWI and domestic violence trials are recorded in metro court, and the district court reviews the records of these convictions, instead of conducting a new trial. Section 34-8A-6(C); Rule 7-706. Offenses listed in the Family Violence Protection Act, Section 40-13-2(C), when perpetrated by one household member against another, are considered domestic violence offenses. See Schwartz, 1997-NMSC-021, ¶¶ 6-7. A “‘household member’” is a “person with whom the other party has had a continuing personal relationship.” Section 40-13-2(D). If Defendant and the victim had a “continuing personal relationship,” they would be considered household members, and Defendant’s convictions would be considered domestic violence actions. Defendant contends that the district court erred in its review of the evidence because metro court determined that his victim was not a household member and Defendant’s convictions were therefore not domestic violence actions. Thus, Defendant also contends that he is entitled to a trial de novo, as provided in Section 34-8A-6(D).

[7] The State disagrees with Defendant’s analysis and argues that metro court’s determination regarding the status of the victim was done in the context of the denial of the State’s motion to amend the complaint and not in the context of a finding for purposes of a judgment. The State relies on the district court’s determination as a matter of law that the “boyfriend and girlfriend” relationship between Defendant and the victim constituted a personal relationship, as defined by the Family Violence Protection Act; that such determination should be given deference on appeal; and that metro court’s erroneous legal conclusion is not binding on the district court, as a superior court. The State further contends that the district court’s interpretation of the statute is correct and that public policy strongly supports a broad reading of “continuing personal relationship.” Section 40-13-2(D).

[8] The State’s position is similar to the position we rejected in State v. Trujillo, 1999-NMCA-003, ¶ 15, 126 N.M. 603, 973 P.2d 855. In Trujillo, the defendant was charged with and convicted of simple battery. Id. ¶ 13. This Court was asked to construe the conviction as battery against a household member because the record indicated that the victim was the defendant’s sister-in-law. Id. ¶¶ 3, 6. In denying that request, we explained that an appellate court has “no power to find a missing element of a criminal offense, no matter how compelling the evidence [is].” Id. ¶ 15. Here, we recognize that the status of Defendant and the victim is not an element of the crimes for which Defendant was convicted. However, the parties’ status as household members is a necessary element in proving that the crimes are domestic violence under the Family Violence Protection Act. As such, we do not look to the district court’s legal analysis of the evidence at trial, but rather to the judgment entered by metro court.

[9] As we have indicated, metro court made no indication on the judgment of Defendant’s convictions involving domestic abuse. The judgment is silent regarding the status of Defendant and the victim as household members. There is no finding regarding the relationship between Defendant and the victim. This supports the conclusion that metro court did not consider Defendant’s actions domestic abuse. Absent a finding on this critical issue, Defendant’s convictions cannot be considered domestic violence, and he is entitled to a trial de novo on his two convictions.

[10] While we need go no further in this analysis, we will review metro court’s comments during entry of the convictions because these comments mirror the judgment. After closing arguments, metro court addressed Defendant and explained the evidence on which the court found Defendant guilty of criminal trespass and harassment. Metro court found that all of the elements of criminal trespass and harassment were proven beyond a reasonable doubt. Metro court made no mention of the relationship between Defendant and the victim; nor did the Court ask for a finding on that issue. The burden is on the State to prove its case. The State’s contention was that Defendant’s crimes were domestic violence; yet, the State failed to have any finding made on the status of Defendant and the victim. Metro court’s failure to address the relationship between the parties bolsters the conclusion that the court did not consider Defendant’s actions domestic violence.

[11] As we have noted above, we need not look further than the judgment in this case. Both parties, however, direct us to the comments made by metro court during trial. We look to the record in order to address the parties’ arguments, and in doing so, we find additional support for the absence of a finding of domestic violence.

[12] During trial, the State objected on relevance grounds when Defendant questioned the victim about the type of relationship she had with Defendant. In overruling the objection, metro court stated, “I see the relevance; it comes into whether or not it’s a domestic violence issue and whether or not [ ] -- the relationship between the two -- is probative. I’ll allow that.” This clearly indicates metro court was aware that the issue of domestic violence was before the court.

[13] Before the close of its case, the State requested that the criminal complaint be amended to add a charge of battery against a household member, “based upon the facts alleged in the complaint and testimony that was elicited from [the victim].” In denying the motion to amend, metro court said,

I would not be able to allow that—battery on a household member. In fact, opposing counsel was trying very strenuously to establish some form of domestic relationship, which she [the victim] denied occurred. For the State to stand up and bootstrap that in there—I have not seen the ability to amend it, based on that.
Defendant urges us to consider this as a finding that the victim was not a household member. The State argues that this language cannot be used as a finding because the statement was made in the context of denying a motion to amend the complaint. We agree that this language cannot be used as a finding. It can be used, however, to explain the absence of a finding that the crimes were committed against a household member. Again, it was the State’s burden to prove that the victim was a household member. The State failed to do so. Because Defendant was not convicted of a domestic violence offense, he is entitled to de novo appeal. See Krause, 1998-NMCA-013, ¶ 10.

B. Mootness

{14} Normally, we address a mootness issue first. In this case, however, we address this issue last because the analysis above provides a background for our conclusion. Pointing to State v. Sergio B., 2002-NMCA-070, ¶¶ 9-10, 132 N.M. 375, 48 P.3d 764, the State contends that Defendant’s appeal is moot. Generally, we do not hear moot consequences. We agree that this appeal cannot prove the existence of collateral completed serving his full sentence and 375, 48 P.3d 764, the State contends that B.

conclusion. Pointing to above provides a background for our address this issue last because the analysis cannot be used as a finding. It can be used, however, to explain the absence of a finding that the crimes were committed against a household member. Again, it was the State’s burden to prove that the victim was a household member. The State failed to do so. Because Defendant was not convicted of a domestic violence offense, he is entitled to de novo appeal. See Krause, 1998-NMCA-013, ¶ 10. We agree with Defendant.

{15} In this case, we discuss the two types of appeal from metro court convictions: de novo and on record. As we have explained above, unless a defendant is convicted of DWI or domestic violence in metro court, he is entitled to de novo appeal. See Krause, 1998-NMCA-013, ¶ 10. However, upon being charged with DWI or domestic violence, a defendant is presumptively on track for on-record, rather than de novo, appeal. Id. ¶ 4-5. Thus, when a defendant is acquitted of all DWI and domestic violence charges brought against him but has remaining charges he wishes to appeal, he must file a motion to transfer the case to the de novo calendar. If the motion is erroneously denied, as it was here, the defendant must wait through the district court review process and the appeal certification process before his claim reaches this Court. In the case that the conviction is for a misdemeanor offense, punishable by a maximum term of 364 days, as it was here, the defendant will likely have served his entire sentence by the time he is heard in this Court. Thus, by the time the defendant’s right to a trial de novo is heard on appeal, his case could be moot. If we allowed this, those defendants charged with DWI or domestic violence but who contend they are entitled to appeal by a de novo trial will be exposed to the danger of losing the right to a trial de novo, without appellate relief. Based on the foregoing, we conclude that Defendant’s case is capable of repetition yet evades review. Accordingly, we agree with Defendant and have decided his appeal.

III. CONCLUSION

{16} The denial of Defendant’s motion to transfer to the de novo calendar is reversed. We remand to the district court to conduct a trial de novo.

{17} IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

A. JOSEPH ALARID, Judge
IRA ROBINSON, Judge

OPINION

RODERICK T. KENNEDY, JUDGE

{1} We certified this case to our Supreme Court under NMSA 1978, § 34-5-14(C) (1972), as we believed that our differing views of jurisdiction required resolution. Following oral argument above, our Supreme Court quashed certification as improvidently granted and returned the case to this Court. But see id. (“Any certification by the court of appeals under this subsection is a final determination of appellate jurisdiction.”). We now enter our respective opinions as they were set forth in the order of certification.

{2} Defendant Amrep Corporation (Amrep) brings this interlocutory appeal from the district court’s denial of Amrep’s motion to dismiss for lack of personal jurisdiction. We must decide whether the district court has personal jurisdiction over Amrep. This inquiry presents the primary issue of whether alter ego is a viable theory for obtaining personal jurisdiction over a foreign corporation in New Mexico, and if not, whether the district court could properly assert jurisdiction over Amrep. We hold that under these facts, an alter ego
theory that uses substantive corporate law is not the test that New Mexico uses for personal jurisdiction. Instead, the test is one of constitutional perimeters. As Plaintiffs made a sufficient showing to satisfy the due process requirement of minimum contacts for jurisdiction over Amrep, we affirm.

PROCEDURAL HISTORY

4. EUI is a New Mexico incorporated public utility that has the “right and obligation” to provide water to its franchise area. Plaintiffs were landowners and developers in the EUI franchise area in Santa Fe County. Plaintiffs claimed that EUI committed itself to serve as a water utility for their real estate developments in its franchise area. According to Plaintiffs, Santa Fe County later determined that EUI was unable to do so, and prohibited any further developers from relying on EUI for their water. Santa Fe County subsequently imposed a moratorium on subdivision within EUI’s service area. Plaintiffs urged EUI to fight this decision; EUI would not. When Plaintiffs brought this matter before the Public Utility Commission (PUC), which is now the Public Regulation Commission, EUI refused to join in the proceedings, and was involuntarily joined by the PUC Hearing Officer. PUC staff recommended finding that EUI could not service Plaintiffs’ proposed developments. Plaintiffs further alleged that Santa Fe County imposed another ordinance in 1997 due to EUI’s inability to provide adequate water, which was extended in 1998 and 1999. In 1999, EUI informed its customers that it was at “Water Alert Stage 2,” and unable to “produce water under existing conditions at a sufficient rate to meet [the] consumption” of its customers. Essentially, Plaintiffs’ complaint alleged that EUI promised them something it could not provide: water. Now, Plaintiffs complain, they own land that they cannot develop as they had planned. Plaintiffs also asserted that EUI did not fight the ordinances because Amrep’s land development subsidiaries, including Eldorado at Santa Fe and Amrep Southwest, compete with Plaintiffs. EUI’s failure would help Amrep by hurting those competing with its land-development subsidiaries. As one of its own officers stated, Amrep is in the land business, not the utility business.

5. EUI is a wholly owned subsidiary of Amrep. On March 29, 2000, Plaintiffs filed an amended complaint naming Amrep as a defendant. The amended complaint also named Amrep Southwest, another wholly owned Amrep subsidiary, and Eldorado at Santa Fe, a subsidiary of Amrep Southwest. Both are incorporated in New Mexico. A diagram of Amrep’s corporate structure would look like:

6. Amrep, an Oklahoma corporation, was served with the amended complaint in Oklahoma, and does not contest this service. However, on May 11, 2000, Amrep’s counsel, who also serves as EUI’s counsel, entered a special appearance to challenge the district court’s jurisdiction. Amrep then filed a motion to dismiss for lack of personal jurisdiction. The district court ordered discovery on the jurisdictional issue, and on June 13, 2002, Plaintiffs filed their response to Amrep’s motion. On August 30, 2002, Amrep filed its reply with an affadavit from Gary Sullivan, EUI’s treasurer. Amrep’s motion to dismiss was denied by the district court on September 23, 2002, and Amrep appealed. For the reasons set forth below, we affirm.

FACTS
7. Most of the facts in this case are undisputed. Amrep is a holding company publicly traded on the New York Stock Exchange. Amrep essentially has two ventures: cable television and real estate. The real estate branch of Amrep owns the New Mexico Amrep subsidiaries listed above. In 1973, EUI, not its parent Amrep, applied to run a water utility in New Mexico. Minutes from a special meeting of EUI’s board in 1973 stated that EUI “was for the purpose of providing water utility service at El Dorado at Santa Fe.” EUI was created to facilitate the real estate interests or ventures of Amrep. According to EUI’s president, who also serves as vice president for Amrep, when Amrep’s land subsidiaries no longer need EUI, Amrep will sell it. Specifically, Amrep is in the land business, not the utility business.

8. PUC required that Amrep subsidize any of EUI’s operating shortfalls. The 1973 PUC order noted that “[a]s the revenues from the utility operation will be insufficient to maintain the utility in a ‘no-loss’ position for several years, the payments made by AMREP are the additional revenues needed to maintain the utility in a ‘no-loss’ financial position.” PUC ordered that “AMREP . . . shall annually pay . . . the amount required to maintain [EUI] in a ‘no-loss’ financial position until such a time as [EUI] becomes a self sustaining utility.” The final order approving this subsidization agreement found jurisdiction over the parties, but does not state who those parties were. In 1993, EUI asked PUC to end this requirement, since the subsidization requirement interfered with Amrep’s desire to sell EUI. The subsidization requirement ended in 1994. In its 1994 order, PUC stated that it had jurisdiction over EUI and “all the parties to [the] case,” and that EUI had become self-sustaining. However, from 1994 until 1999, Amrep gave EUI millions of dollars in what it called “capital contributions.” EUI’s employee supervisor, James William McLean, stated that EUI never had any money. If EUI needed money, such as to drill a well, it looked to Amrep to pay for it.

9. By 2001, EUI had an income of $1,300,000. In 2002, its assets alone were worth $8,500,000. EUI had 2700 customers, some employees, and contracts in its own name. Amrep referred to EUI as a subsidiary, and not as a department or division. EUI filed its own separate financial statement with PUC as part of that Commission’s requirements.

10. Amrep officers were also officers for its New Mexico subsidiaries. James Wall served as the senior vice president for Amrep and the president of Amrep’s New Mexican subsidiaries, including EUI. He considered himself an employee of Amrep and of Amrep Southwest; he was the primary link between the two. He was also the common link between Amrep Southwest and EUI. Below, counsel argued over whether EUI’s board ever elected Wall as their chief executive officer. Defense counsel, however, only pointed to EUI board minutes appointing Wall as president of EUI. When asked about his relationship with EUI, Wall stated that he served as the “CEO for all the real estate for AMREP,” and that the only position he held with Amrep itself was as its senior vice president. However, he did not have a contract with EUI nor a job description with this subsidiary. Wall’s salary and raises were set by Amrep, but Amrep Southwest actually paid him. Wall reported directly to an executive committee that served as the CEO of Amrep, and considered it his...
“boss.” Amrep and its various subsidiaries, including EUI, had a common payroll system, and consolidated their annual reports and financial statements.

{11} When Wall reported the Santa Fe County moratorium to Amrep, he was directed to “[f]ix it.” When asked why EUI did not fight this moratorium, Wall said that “[w]e have a lot of other things that came before the county [and] [w]e didn’t feel it was in our best interest at that time to challenge [the county] legally.” These issues included a road system for its subdivision and zoning. Being in the land business, and not the utility business, Amrep apparently chose to make the interests of its land development subsidiaries superior to the issues facing EUI.

{12} EUI’s officers also included Gary Sullivan, Mohan Vachani as vice president, and Wendy Mitchell as secretary. Vachani was the Corporate Finance Officer for Amrep, plus an officer and director of its subsidiaries, serving as vice president for Eldorado at Santa Fe. Sullivan was the comptroller of Amrep Southwest and a director at Eldorado at Santa Fe. Mitchell served as vice president of human resources for Amrep Southwest, and secretary for Eldorado at Santa Fe.

{13} Amrep asserts that EUI, and not Amrep, ran the day-to-day operations of EUI. Wall stated that McLean ran EUI’s day-to-day operations. McLean supervised at least some of EUI’s employees. McLean, however, stated that he did not work for EUI or have a contract with that subsidiary. Rather, McLean’s contract was with Amrep Southwest.

{14} EUI’s board of directors existed because Wall needed a “legal board” to conduct business. EUI shared officers with Amrep from its incorporation in 1973. EUI board meetings were held in Amrep’s corporate offices in New York for approximately ten years. The Santa Fe County moratorium and the litigation that resulted in the appeal before us never went before the board of EUI. The board minutes reflect elections, such as electing Wall president (but not CEO) of EUI, adoption of a retirement plan, and a special meeting regarding a loan agreement. The sale of EUI’s assets appeared not in the minutes of EUI, but in the minutes of Amrep, where it was ultimately approved in 1990. The record is unclear as to what happened to this deal, and there are not any minutes from EUI pertaining to it.

**DISCUSSION**

**Standard of Review for Personal Jurisdiction**

{15} “The issue of whether the district court has personal jurisdiction over [a] non-resident [defendant] . . . is a question of law, which we review de novo.” Santa Fe Techs., Inc. v. Argus Networks, Inc., 2002-NMCA-030, ¶ 12, 131 N.M. 772, 42 P.3d 1221. Here, the district court ruled on the jurisdictional issue after a hearing. The district court heard the arguments of counsel for both Plaintiffs and Amrep, but the hearing was not evidentiary in nature. “Therefore, the party asserting jurisdiction need only make a prima facie showing that personal jurisdiction exists.” Id. (internal quotation marks and citation omitted).

Furthermore, since the district court based its ruling on “pleadings and affidavits, the standard of review resembles that of summary judgment; the appellate court reviews the pleadings and affidavits or sworn testimony in the light most favorable to the party asserting jurisdiction.” Id. Since Plaintiffs have asserted jurisdiction, and the district court did not hold an evidentiary hearing on the jurisdictional issue, this Court’s de novo review favors Plaintiffs.

**Whether New Mexico Requires Use of an Alter Ego (or Agency) Theory**

{16} Plaintiffs contend that EUI is the alter ego of Amrep, and that this relationship gives New Mexico courts personal jurisdiction over Amrep. Both agency and alter ego have been referred to in dicta as jurisdictional theories in New Mexico. Smith v. Halliburton Co., 118 N.M. 179, 186, 879 P.2d 1198, 1205 (Cl. App. 1994). Amrep’s brief in chief merely inserts a block quote on the issue of agency, and Plaintiffs’ answer brief does not appear to address the agency issue at all. Just as we will not review arguments that do not cite any legal authority, we may not construe quotes without reference to facts or argument as sufficient to permit our review of an issue. ITT Educ. Servs. Inc. v. Taxation & Revenue Dep’t, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969 (requiring legal citations for proper review of legal arguments). Thus, we will not directly address the issue of agency.

{17} Indirectly, however, agency principles may be useful to the question of jurisdiction over Amrep. Agency and alter ego might require a separate analysis when used to assert liability over a foreign corporation, but “it is difficult to see a significant distinction between the two theories for jurisdictional purposes.” SGI Air Holdings II LLC v. Novartis Int’l AG, 239 F. Supp. 2d 1161, 1166 (D. Colo. 2003). Both theories “often depend on the same type of evidence.” Id. As we will explain, the true inquiry must be focused on minimum contacts and not substantive principles of corporate law; we address the theory of alter ego with the understanding that agency cases may be useful in our analysis. To do this, we must first decide whether alter ego is even a viable theory to establish personal jurisdiction in New Mexico, and if so, to what extent. This fundamental question went unaddressed by the parties, who focused only on the application of an alter ego theory to the facts.

{18} Alter ego, however, is primarily used to establish liability. See, e.g., Antoinein Sedillo López, Comment, The Alter Ego Doctrine: Alternative Challenges to the Corporate Form, 30 UCLA L. Rev. 129 (1982). When we are called upon to review an “alternative challenge[]” to the corporate form, “[t]he traditional alter ego analysis is often inadequate when applied . . . and, as a result, rulings are often inconsistent.” Id. at 131. Assertions of jurisdiction based on an alter ego theory are one such category of “unusual challenges.” Id. at n.12.

{19} The usual challenge using the alter ego theory seeks to pierce the corporate veil, to disregard the separate nature of a corporation and its subsidiary for purposes of liability. Id. at 129-30; see, e.g., Scott v. AZL Res., Inc., 107 N.M. 118, 121, 753 P.2d 897, 900 (1988) (stating that piercing the corporate veil requires findings not only of instrumentality, but of improper purpose and proximate cause). We have applied the alter ego exception to a question of the liability of a parent corporation for the acts of its subsidiaries in cases like Cruttenden v. Mantura, 97 N.M. 432, 434-35, 640 P.2d 932, 934-35 (1982). Liability based on an alter ego theory lies “where the shareholders have so manipulated the corporation to further their own individual interests that the identity of the corporation has merged into its shareholders.” Scott Graphics, Inc. v. Mahaney, 89 N.M. 208, 211, 549 P.2d 623, 626 (Cl. App. 1976). Liability through an alter ego theory thus focuses on the identity of each entity and the use of substantive principles of corporate law.

For example, Cruttenden says that referring to the subsidiary “as such or as a department or division” is one factor in assessing whether one corporation is the alter ego of another. Cruttenden, 97 N.M. at 435, 640 P.2d at 935 (internal quotation marks and citation omitted). Yet the long-arm statute
focuses on minimum contacts. NMSA 1978, § 38-1-16(A) (1971). We hold that liability and jurisdiction are different inquiries that focus on different principles and frequently on different bodies of law.

{20} These differing inquiries have led courts to apply alter ego theories to questions of jurisdiction in two distinctly separate ways. López, supra, at 131 n.12. One approach imports the state’s own unique alter ego test into the state long-arm statute. See, e.g., Jemez Agency, Inc. v. CIGNA Corp., 866 F. Supp. 1340, 1343-44 (D.N.M. 1994) (requiring the plaintiffs to satisfy all three prongs of the alter ego test for liability as set forth in Scott, 107 N.M. at 121, 753 P.2d at 900). The result of satisfying the alter ego test when applied to jurisdiction would be to “attribute[e] [the] contacts of one person or entity to another.” Purple Onion Foods, Inc. v. Blue Moose of Boulder, Inc., 45 F. Supp. 2d 1255, 1258 (D.N.M. 1999). If we took this approach here, for example, and held that EUI was the alter ego of Amrep, then EUI’s contacts with New Mexico would be attributed to Amrep. See id.; see also N. Laminate Sales, Inc. v. Matthews, 249 F. Supp. 2d 130, 137 (D.N.H. 2003) (applying a traditional alter-ego test to the question, and discussing the use of an alter-ego theory to pierce the corporate veil to establish jurisdiction so that corporate contacts may be attributed to another); Swell v. Bob Fisher Enters., Inc., 106 F. Supp. 2d 87, 90 (D.N.H. 2000) (same). Put another way, our general jurisdiction over EUI would give our courts general jurisdiction over Amrep.

{21} This approach has found favor with many state and federal courts. Lonny Sheinkopf Hoffman, The Case Against Vicarious Jurisdiction, 152 U. Pa. L. Rev. 1023, 1029 (2004). Even some law reviews favored this approach. Id. at 1031; see, e.g., Lea Brilmayer & Kathleen Paisley, Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency, 74 Cal. L. Rev. 1 (1986). As Purple Onion Foods commented on this trend, “the theory has a certain commonsense appeal.” Purple Onion Foods, 45 F. Supp. 2d at 1258. Indeed, if one could prove that one entity was the alter ego of another, showing that they were essentially the same entity, then it would appear to make sense to treat them as one for all purposes, including liability and jurisdiction. This approach would allow a court to satisfy the constitutional requirements by sole use of a straightforward alter ego test instead of focusing on a broader, amorphous, constitutional test.

{22} The second approach to questions of jurisdiction that seek to employ alter ego theories rejects such a use of substantive corporate law. Id. at 1259. Cases like Purple Onion Foods would require that the corporation “have sufficient contacts of its own with New Mexico in order to be subject to suit.” Id. Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483, 490 (D. Kan. 1978), also rejected a strict application of substantive corporate law when faced with a question of jurisdiction over a foreign corporation. Energy Reserves examined in great detail how the Supreme Court decision in Cannon Manufacturing Co. v. Cudahy Packing Co., 267 U.S. 333 (1925), precipitated the use of substantive corporate law when evaluating jurisdiction over an entity not incorporated within a forum’s borders. Energy Reserves, 460 F. Supp. at 495-99; see Hoffman, supra, at 1029. Amrep relies in part on Cannon Manufacturing for the proposition that New Mexico incorporation of a subsidiary does not subject its non-resident parent to New Mexico jurisdiction. Cannon Manufacturing, however, was decided in a context where extraterritorial service of process on a non-resident corporation was statutorily unauthorized and constitutionally restricted by the old notions of territorial power limitations on a state’s ability to issue service beyond its borders. Cannon therefore imposed merely a statutory obstacle to service on a non-resident corporation on the basis of its subsidiary’s business in the forum. That statutory obstacle, however, was reflective of the constitutional obstacle to extraterritorial service then extant under the territorial due process constraint that a state might exercise jurisdiction only over those persons present in the forum.

Although often cited for the proposition that the mere presence of a subsidiary corporation within a state does not provide a basis for personal jurisdiction over a non-resident parent corporation, Cannon specifically held that the business of a subsidiary in the state did not constitute sufficient “doing business” in that state by the parent to warrant an inference of the parent’s “presence” there. Thus, local service of process on the domestic subsidiary was held insufficient as a means to invoke jurisdiction over the non-resident parent.

Energy Reserves, 460 F. Supp. at 495-96. Thus, under Cannon, the foreign corporation needed to be “present” in the state, which required showing that the corporation was “doing business” in the forum. Energy Reserves, 460 F. Supp. at 497 (internal quotation marks and citation omitted); see Cannon, 267 U.S. at 334-35; see also Hoffman, supra, at 1042, 1044. Since the corporation had to be “present,” and a state long-arm statute was not available, that court had to establish jurisdiction over a foreign corporation by use of an alter ego theory. Energy Reserves, 460 F. Supp. at 497.

{23} This Court is not bound by such restraints. First, unlike Cannon, New Mexico has a long-arm statute authorizing service on foreign corporations. Section 38-1-16(A)(1); see Cannon, 267 U.S. at 336 (“The claim that jurisdiction exists [did] not rest[ ] upon the provisions of any state statute.”). Second, New Mexico’s long-arm statute has language reflecting Cannon’s “doing business” requirement. Section 38-1-16(A) (stating that the court has jurisdiction when a cause of action arises from “the transaction of any business within this state”); Cannon, 267 U.S. at 334-35 (“The main question for decision is whether, at the time of the service of process, defendant was doing business within the [s]tate in such a manner and to such an extent as to warrant the inference that it was present there.”). Third, fulfillment of the technical requirements for service under the long-arm statute has been equated with minimum contacts. Santa Fe Techs., 2002-NMCA-030, ¶ 13. The equation of technically “doing business” with a minimum contacts analysis reflects an ideological shift from Cannon’s “presence” requirement to the “minimum contacts” requirement of International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

{24} International Shoe Co. requires a defendant to have “minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Id. at 316-17 (internal quotation marks and citation omitted). Minimum contacts are as important as “[t]he requirement of overall fairness.” Energy Reserves, 460

{25} However, the parties essentially argue that Plaintiffs must either show the minimum contacts of the parent corporation or that EUI is the alter ego of Amrep. Even if we held that EUI was the alter ego of Amrep, we would not be relieved of a due process inquiry. Due process requirements must be satisfied no matter what theory a plaintiff uses. An alter ego theory under substantive corporate law principles is not a substitute for minimum contacts. Furthermore, “[t]o read Cannon or the alter ego doctrine as a limitation upon International Shoe Co. is to elevate to a constitutional level a statutory obstacle to extraterritorial service of process that was generated in the context of a now obsolete jurisdictional analysis.” Energy Reserves, 460 F. Supp. at 504.

Energy Reserves further rejected any “constitutional immunity” from suit that would be the natural result of requiring the satisfaction of an alter ego test above and beyond minimum contacts to obtain jurisdiction over a foreign parent. Id. at 506-07. Since New Mexico law allows jurisdiction to the full limits of constitutionality under Federal Deposit Insurance Corp. v. Hiatt, 117 N.M. 461, 463, 872 P.2d 879, 881 (1994), we decline to impose such an unnecessary limitation. Therefore, we do not require that all of the elements of alter ego be proven in order to hale a foreign corporate parent into court, but we can and will consider whatever elements a plaintiff shows in assessing minimum contacts. “Put simply, separation of formal corporate identities does not impose a constitutional barrier to the exercise of jurisdiction over a non-resident corporation.” Energy Reserves, 460 F. Supp. at 508. Rather, we require only what is necessary to establish jurisdiction in any and all cases: the satisfaction of due process.

{26} This conclusion does not render the parties’ arguments entirely inapplicable. The substantive requirements of alter ego might be aptly applied to situations not presently before this Court. While we might decline to directly superimpose ill-fitting and questionably relevant principles of substantive corporate liability law onto our constitutional jurisdictional inquiry, the relationship between a parent and its subsidiary may be crucial in evaluating jurisdiction itself. “The mere existence of the relationship is one relevant factor.” Id. at 507.

The corporate relationship might also be probative of whether it is fundamentally fair to require the defendant to defend a suit in the forum. Id. at 508. Additionally, the showing of formation for an improper purpose under Scott, 107 N.M. at 121, 753 P.2d at 900, while not constitutionally mandated, might also be probative. Generally, our inquiry will turn on the facts of each case, as we review jurisdiction under the long-arm statute on a case-by-case basis. Cronin v. Sierra Med. Ctr., 2000-NMCA-082, ¶ 13, 129 N.M. 521,10 P.3d 845.

{27} Our holding that a plaintiff need not establish all elements of alter ego to make a prima facie case for jurisdiction is distinguishable from several other cases cited by the parties. First, Smith only referenced alter ego and agency in dicta. Smith, 118 N.M. at 186, 879 P.2d at 1205. Smith specifically found both inapplicable since the plaintiffs “failed to produce evidence sufficient to rebut [the defendant’s] prima facie showing of separateness.” Id. Plaintiffs here, however, did produce sufficient evidence. Amrep also places particular emphasis on Jemez Agency, 866 F. Supp. 1340, which itself relied on Quarles v. Fiuqua Industries, Inc., 504 F.2d 1358 (10th Cir. 1974). Quarles, however, arose four years before Energy Reserves, did not explain why it applied corporate law to a question of jurisdiction under a long-arm statute, and applied a “transact business” requirement reminiscent of Cannon. Quarles, 504 F.2d at 1361. As we explained above, our long-arm statute’s “doing business” requirement, which mirrored Cannon, has been equated with minimum contacts. Santa Fe Techs., 2002-NMCA-030, ¶ 13; see § 38-1-16(A).

Jemez Agency even noted that “[w]hether jurisdiction exists over a nonresident parent corporation by reason of the acts of a subsidiary is a matter governed by state law.” 866 F. Supp. at 1343 (internal quotation marks and citation omitted). Federal cases may therefore be instructive, but are not controlling in this matter. See Doe v. Roman Catholic Diocese of Boise, Inc., 121 N.M. 738, 741, 918 P.2d 17, 20 (Ct. App. 1996) (finding federal authority interpreting Fed. R. Civ. P. 12 instructive). Defendant’s other citations to federal cases are equally unpersuasive. Even less compelling, Jemez Agency misconstrued Cruttenden by citing it as a broad jurisdictional holding. Jemez Agency, 866 F. Supp. at 1343. Cruttenden specifically held that service on a parent corporation is not enough, without sufficient evidence that the parent is the alter ego of the subsidiary, to subject the subsidiary to the court’s jurisdiction. Cruttenden, 97 N.M. at 434-36, 640 P.2d at 934-36. Unlike Jemez Agency and the case at bar, Cruttenden did not seek to apply the state’s long-arm statute. Cruttenden, 97 N.M. at 434-36, 640 P.2d at 934-36. The plaintiff in Cruttenden had merely served the parent in New Mexico and said that because the subsidiary was that parent’s alter ego, service on the parent gave the court jurisdiction over the foreign subsidiary. Id. Amrep was properly and personally served under the New Mexico long-arm statute, and so we face an issue entirely different than that before the Cruttenden Court.

{28} The underlying issue before this Court is a matter of due process. In determining whether our courts have jurisdiction over an out-of-state defendant, we search for “the outer limits of what due process permits,” because New Mexico’s long-arm statute will extend as far as our Constitution allows. Hiatt, 117 N.M. at 463, 872 P.2d at 881 (internal quotation marks and citation omitted). We follow this principle in holding that due process guided by elements of an alter ego analysis frame our inquiry into the district court’s personal jurisdiction over Amrep. The question then is not whether corporate law restricts our jurisdiction in contradiction of the above principle, but whether due process allows for it.

Whether Amrep Has Minimum Contacts with New Mexico

{29} The parties disagree over whether Amrep has certain “direct contacts” with New Mexico. We have interpreted this reference to “direct contacts” as the way that the parties distinguished this portion of their argument from the portions that argued “alter ego contacts.” The question, however, is not one of “direct contacts,” but of minimum contacts which, by their nature, may give rise to either general or specific jurisdiction. The parties’ arguments fail to explicitly distinguish between general and specific jurisdiction. Since both parties frame their arguments using the language and case law for specific jurisdiction, we will address the issue of personal jurisdiction over Amrep within that framework.

{30} Generally, personal jurisdiction over non-residents requires satisfaction of a three-part test: “(1) the defendant’s act must be one of the five enumerated in the long-arm statute; (2) the plaintiffs cause of action must arise from the act; and (3) minimum contacts sufficient to satisfy due process must be established by the defendant’s act.” Santa Fe Techs.,
Due process requires that an out-of-state defendant have “minimum contacts” with the forum state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” International Shoe Co., 326 U.S. at 316 (internal quotation marks and citation omitted). Generally, the non-resident’s activities do not technically fall within the purview of the first prong of the long-arm statute, and instead focus this inquiry on Amrep’s minimum contacts with New Mexico.

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\{(31)\} Due process requires that an out-of-state defendant have “minimum contacts” with the forum state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” International Shoe Co., 326 U.S. at 316 (internal quotation marks and citation omitted). Generally, the non-resident’s activities do not technically fall within the purview of the first prong of the long-arm statute, and instead focus this inquiry on Amrep’s minimum contacts with New Mexico.

\{(32)\} EUI, Amrep Southwest, and Eldorado at Santa Fe are New Mexico corporations. Yet Amrep’s establishment of subsidiaries in New Mexico clearly does not, in and of itself, subject Amrep to our jurisdiction. “As a general rule, the mere relationship of parent corporation and subsidiary corporation is not in itself a sufficient basis for subjecting both to the jurisdiction of the forum state, where one is a nonresident and is not otherwise present or doing business in the forum state.” Smith, 118 N.M. at 182, 879 P.2d at 1201 (internal quotation marks and citation omitted). When speaking of jurisdiction, this rule is only common sense, since personal jurisdiction is precisely that: personal.

\{(33)\} Amrep’s New Mexico subsidiaries are also wholly owned. Even this fact, alone, is insufficient for personal jurisdiction over Amrep, as we will not subject passive investors to our jurisdiction solely on the basis of their investment. See, e.g., Hiatt, 117 N.M. at 465, 872 P.2d at 883. However, Plaintiffs made a prima facie case that Amrep did not simply own EUI; it completely controlled it to the point where EUI existed as little more than an instrument to serve Amrep’s real estate interests.

\{(34)\} For jurisdictional purposes, Plaintiffs made a prima facie showing that Amrep controlled EUI through Wall, directing EUI’s response to issues like the Santa Fe County moratorium. EUI’s concerns, however, were ignored in favor of focusing on the land development concerns of Amrep Southwest and Eldorado at Santa Fe. Cruttenden, 97 N.M. at 435, 640 P.2d at 935 (stating that a factor in determining alter ego is whether “[t]he executives or officers of the subsidiary do not act independently in the interest of the subsidiary but take direction from the parent corporation”). Even EUI’s day-to-day operations were run by an employee of Amrep Southwest, who looked to Wall for direction, who in turn looked to Amrep. EUI’s board members also worked for Amrep, Amrep Southwest, and Eldorado at Santa Fe, all of which subsidiaries had Wall as their CEO. See id. at 434-35, 640 P.2d at 934-35 (stating that having directors or officers in common is one factor in determining if a corporation is the alter ego of another). Apparently, EUI’s board of directors did not direct any action pertaining to the litigation before us, but Amrep did. Moreover, when it wished to divest itself of EUI, Amrep had EUI seek an end to PUC’s requirement that it subsidize EUI’s shortfalls. Yet Amrep still had to give this dependant subsidiary millions of dollars in subsequent years. See id. (stating that other factors in determining alter ego are whether “[t]he parent corporation pays the salaries of or expenses or losses of the subsidiary” and whether “[t]he parent corporation finances the subsidiary” (internal quotation marks and citation omitted)). Again, EUI’s board of directors did not take up this matter, but someone did. Considering that Amrep’s interests spurred EUI to seek an end to the subsidization requirement, and EUI’s “legal board” did not address it, it may be inferred that it was Amrep who made this decision on behalf of EUI. Lastly, the facts surrounding the beginning and end of the PUC order that required Amrep to subsidize EUI’s operating shortfalls represents a particularly telling instance of Amrep acting in New Mexico.

\{(35)\} The above facts are sufficient minimum contacts to invoke the district court’s jurisdiction. Furthermore, considering the extent of Amrep’s involvement with EUI’s affairs, we cannot say that it would be fundamentally unfair to require Amrep’s involvement in litigation arising from those affairs. Even though the 1973 PUC order does not name the parties, it orders that “Amrep . . . shall annually pay.” Nothing in the record indicates that Amrep ever challenged PUC’s ability to make such an order, or its jurisdiction to do so. We cannot fathom how Amrep could apparently subject itself to the jurisdiction of PUC, and not “[r]easonably anticipate being haled into court” here. World Wide Volkswagen, 444 U.S. at 297. By submitting to the PUC order to obtain permission to run EUI as a public utility, Amrep “purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hiatt, 117 N.M. at 464, 872 P.2d at 882 (internal quotation marks and citation omitted). Furthermore, in having EUI act, and sometimes not act, solely in the interests of Amrep, Amrep Southwest, and Eldorado at Santa Fe, Amrep’s actions were “purposefully directed toward [New Mexico] residents.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (internal quotation marks and citation omitted). Therefore, Amrep’s minimum contacts with New Mexico are sufficient to satisfy due process concerns.

\{(36)\} Having held that Amrep had minimum contacts with New Mexico, we must address the final prong of the long-arm statute. Section 38-1-16(A) requires that Plaintiffs’ cause of action arise from Amrep’s minimum contacts. Plaintiffs’ claim must lie “in the wake” of such activities. State Farm Mut. Ins. Co. v. Conyers, 109 N.M. 243, 245, 784 P.2d 986, 988 (1989) (internal quotation marks and citation omitted). Here, Plaintiffs essentially claimed that Amrep operated and controlled EUI, and that EUI acted to their detriment. Plaintiffs have made a sufficient prima facie showing that their cause of action arose from Amrep’s control, and its effects in New Mexico solely for the purposes of jurisdiction.

\{(37)\} Plaintiffs have satisfied New Mexico’s long-arm statute, including causation and
minimum contacts. Section 38-1-16(A). They have made a prima facie showing that: (1) Amrep had minimum contacts with New Mexico sufficient to satisfy due process concerns, and (2) their cause of action arose from these contacts. We have held that New Mexico’s test for alter ego is a matter of substantive corporate law, and that, under the facts presented by this case, it is not a test that Plaintiffs must satisfy in order to establish personal jurisdiction. Instead, we have reiterated that the true test for any assertion of personal jurisdiction is minimum contacts, and that our case law does not set a higher standard when the out-of-state defendant is a corporation. For these reasons, the district court having found that New Mexico had personal jurisdiction over Amrep, we affirm.

{38} IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

JONATHAN B. SUTIN, Judge (specially concurring)
LYNN PICKARD, Judge (dissenting)

SUTIN, Judge (specially concurring).

{39} I agree with the district court’s denial of Amrep Corporation’s (Amrep’s) motion to dismiss for lack of personal jurisdiction. However, the legal analysis can be less complex.

{40} Amrep did not itself transact the business of which Plaintiffs complain. Whatever contacts Amrep itself had with New Mexico were not in and of themselves sufficient for jurisdiction over Amrep. For jurisdiction over Amrep, Plaintiffs can turn only to legal theories through which Eldorado Utilities, Inc.’s (EUI’s) transactions and contacts are attributable or imputable to Amrep. Those theories, usually, are alter ego, agency, and conspiracy. See, e.g., NMSA 1978, § 38-1-16(A) (1971) (“Any person . . . who in person or through an agent does any of the acts enumerated . . . submits himself. . . to the jurisdiction of the courts of this state.”); Jemez Agency, Inc. v. Cigna Corp., 866 F. Supp. 1340, 1343 (D.N.M. 1994) (stating that a court can invoke jurisdiction over a foreign parent predicated on the acts of its subsidiary under alter ego and agency theories); Santa Fe Techs., Inc. v. Argus Networks, Inc., 2002-NMCA-030, ¶¶ 26-47, 131 N.M. 772, 42 P.3d 1221 (stating that a court can invoke jurisdiction over a foreign parent predicated on the acts of its subsidiary under agency and conspiracy theories).

{41} Plaintiffs were required to make a prima facie showing in the present case of alter ego or agency. See Sanchez v. Church of Scientology, 115 N.M. 660, 663, 857 P.2d 771, 774 (1993) (determining that the plaintiff failed to make a prima facie showing of conspiracy for jurisdiction); Santa Fe Techs., 2002-NMCA-030, ¶¶ 12, 26 (stating that the plaintiff bore the burden of proof to make a prima facie showing of personal jurisdiction, including its establishment based on an agency theory). On appeal, Plaintiffs do not argue agency; they argue only alter ego. Thus, only alter ego is at issue in this appeal.

{42} When the issue of jurisdiction is submitted to the district court on affidavits and the plaintiff makes a prima facie showing of all of the elements of the substantive alter ego theory of liability of a parent for the transactions of its subsidiary, little question exists that the district court would appropriately deny a pretial motion to dismiss. In the present case, Plaintiffs did not make a prima facie showing of the second and third elements of the substantive theory of liability, namely, the elements of improper or fraudulent purpose for incorporation and proximate causation. See Jemez Agency, 866 F. Supp. at 1343-44 (setting out the three requirements in order to pierce the corporate veil in New Mexico as “(1) a showing of instrumentality or domination; (2) a demonstration of improper or fraudulent purpose for incorporation; and (3) proximate causation”). The question is whether a prima facie showing of the first element of the substantive theory, that of instrumentality or domination, is sufficient for jurisdiction.

{43} In a plaintiff’s quest to establish alter ego liability, in proving instrumentality or domination, the plaintiff must show that “the subsidiaries are mere business conduit[s] for the parent or [that] there is such unity of interest and ownership that the individuality or separateness of the two corporations has ceased.” Id. at 1344 (internal quotation marks and citation omitted) (alterations in original). This is the “alter ego” aspect of the alter ego theory. See id. (“In other words, [in establishing the first requirement of instrumentality or domination,] the subsidiaries must be shown to be mere ‘alter egos’ of [the parent].”).

{44} Jemez Agency speaks of the application of “principles” of alter ego “as a component of [the] due process analysis” for jurisdiction. Id. at 1346. The Court in Jemez Agency states: “The Court does not suggest . . . that any one state’s principles of traditional alter ego analysis are mandated by due process.” Id. at 1348. The Court further states: “Nor should this opinion be construed as holding that alter ego principles constitute the totality of the due process analysis. Other facts, aside from ownership of a subsidiary corporation, may indicate that the parent corporation has minimum contacts with the forum state.” Id. These analyses in Jemez Agency are applicable in the present case.

{45} A prima facie showing of instrumentality or domination should be sufficient to establish the minimum contacts necessary for jurisdiction without also having to prove the improper or fraudulent purpose and proximate causation elements required to establish liability. A plaintiff can also show other activity of a parent in the forum state to bolster an attempt to establish minimum contacts.

{46} Placing the facts in the record in this case against the guidelines in Cruttenden v. Mantura, 97 N.M. 432, 434-35, 640 P.2d 932, 934-35 (1982), and a minimum contacts analysis, I support the denial of Amrep’s motion to dismiss at this early stage of the case based on the instrumentality/domination element of the substantive alter ego theory, together with Amrep’s overall involvement in relation to New Mexico.

{47} Plaintiffs’ showing is thin, to be sure, and affirming the district court’s denial of Amrep’s motion to dismiss is by little more than a hair’s breadth, but it is in line with our standard that we review what is before us in a light most favorable to the party asserting jurisdiction. See Santa Fe Techs., 2002-NMCA-030, ¶ 12 (“When the district court bases its ruling on the pleadings and affidavits . . . the appellate court reviews [the record] in the light most favorable to the party asserting jurisdiction.”).

{48} Because there was no evidentiary hearing on the issue of jurisdiction, if the district court during trial determines that the evidence of Amrep’s control or domination of EUI, or Amrep’s disregard of EUI’s separate, independent, corporate existence, and evidence of Amrep’s own other contacts with New Mexico are insufficient to constitute the minimum contacts required under due process, the court can dismiss for lack of jurisdiction at that point. See Mimco Inc. v. Va. Iron & Metal Recycling, Inc., 840 F. Supp. 1171, 1174-75 (S.D. Ohio 1993) (“For the foregoing reasons the Court finds that the Plaintiff has met its burden of demonstrating facts which support a prima facie finding of jurisdiction. In doing so the Court makes no judgement concerning the
merits of the parties’ claims. Furthermore, the issue of personal jurisdiction may be raised again at the trial on the merits, after complete discovery, where further factual issues may be argued and where the Plaintiff bears the burden of proving personal jurisdiction by a preponderance of the evidence.” (citation omitted).  

JONATHAN B. SUTIN, Judge

PICKARD, Judge (dissenting).

{49} I dissent from the majority’s affirmance of the district court’s denial of the motion to dismiss. In my opinion, neither Judge Kennedy’s opinion nor Judge Sutin’s opinion is supported by the authorities cited, their opinions are contrary to what I view to be the better reasoned of out-of-state cases, and their opinions would open the door to jurisdiction whenever there is a parent corporation of a subsidiary doing business in New Mexico unless the parent had nothing whatsoever to do with the subsidiary, which is virtually impossible as well as impractical.

{50} The beginning of Judge Kennedy’s opinion suggests that Cruttenden v. Mantura, 97 N.M. 432, 434-35, 640 P.2d 932, 934-35 (1982), was a case involving the question of the substantive liability of a parent for the acts of its subsidiary. Kennedy op. ¶ 19. Yet, the opinion subsequently concludes that the case was about whether service on a parent would subject the subsidiary to the court’s jurisdiction. Kennedy op. ¶ 27. Further, the opinion concludes that such a question “entirely different” from that before us today. Id. While the issues are somewhat different, I am unable to conclude that they are so entirely different that Cruttenden does not lend any guidance to this case.

{51} In my view, the Cruttenden factors are the beginning of the analysis when one seeks to pierce the corporate veil, whether for jurisdictional or liability purposes. When evaluating for jurisdiction, piercing the corporate veil is sometimes known as the alter ego doctrine. See Jemez Agency, Inc. v. Cigna Corp., 866 F. Supp. 1340, 1343-45 (D.N.M. 1994). Piercing the corporate veil has three requisites: instrumentality, improper purpose, and proximate causation. Harlow v. Fibron Corp., 100 N.M. 379, 382, 671 P.2d 40, 43 (Cl. App. 1983). As Judge Sutin notes, the instrumentality requisite is sometimes called the alter ego doctrine. Sutin op. ¶ 43. See Harlow, 100 N.M. at 382, 671 P.2d at 43.

{52} In Judge Sutin’s view, instrumentality is the only requisite that is relevant for jurisdictional purposes. Sutin op. ¶ 45. However, no New Mexico case has ever said that. It is true that Cruttenden addressed only instrumentality. 97 N.M. at 434-35, 640 P.2d at 934-35. But that case found no instrumentality and therefore “did not reach the question of improper purpose.” Harlow, 100 N.M. at 382, 671 P.2d at 43. Cases are not authority for propositions not considered. Fernandez v. Farmers Ins. Co., 115 N.M. 622, 627, 857 P.2d 22, 27 (1993).

{53} Other jurisdictions that have addressed the issue have unequivocally held that for purposes of personal jurisdiction, it is not sufficient to establish only instrumentality, and instead a plaintiff must also establish that the corporation that is using another corporation as its instrumentality has formed it or is using it to perpetrate a fraud or other injustice or for some other improper purpose. See, e.g., Harris Rutsky & Co. Ins. Svcs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1134-35 (9th Cir. 2003) (“To satisfy the alter ego exception to the general rule that a subsidiary and the parent are separate entities [for purposes of personal jurisdiction], the plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.” (internal quotation marks and citations omitted)); Doe v. Unocal Corp., 248 F.3d 915, 926-28 (9th Cir. 2001) (holding that a parent’s ownership of subsidiary and facts that the same people served as directors of both companies and that a parent was involved in macro-management and finances of subsidiary did not satisfy first prong of alter ego test and thus the court did not need to reach second prong dealing with equities); United Elec. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1091-93 (1st Cir. 1992) (deciding the question of personal jurisdiction using federal veil piercing standard for ERISA cases and holding that fraudulent intent and injustice are elements of the standard), superseded by rule on other grounds as stated in Cent. States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 940 (7th Cir. 2000); Ace & Co. v. Balfour Beatty PLC, 148 F. Supp. 2d 418, 425 (D. Del. 2001) (holding that Delaware law requires fraud, injustice, or inequity to be shown before the alter ego doctrine can be used to find personal jurisdiction over a parent corporation); Medina v. Four Winds Int’l Corp., 111 F. Supp. 2d 1164, 1168-69 (D. Wyo. 2000) (same under Wyoming law); Sonora Diamond Corp. v. Super. Ct., 99 Cal. Rptr. 2d 824, 835-37 (Cal. Ct. App. 2000) (indicating that California requires two factors to be met before corporate veil may be pierced for jurisdictional purposes -- (1) unity of interest and ownership and (2) inequitable result caused by wrongdoing or fraud); Flight Int’l Aviation Training Ctr., Inc. v. Rivera, 651 So. 2d 1265, 1266 (Fla. Dist. Ct. App. 1995) (holding that wrongful or improper purpose must be shown for jurisdictional purposes). The reason for this rule is that corporations are formed precisely for the purpose of insulating the owners thereof and such purpose ought to be respected, whether for liability or jurisdiction, unless there are countervailing reasons not to do so. See United Elec. Workers, 960 F.2d at 1091; Jemez Agency, Inc., 866 F. Supp. at 1347; Sonora Diamond Corp., 99 Cal. Rptr. 2d at 836.

{54} Judge Kennedy suggests that no New Mexico case has ever held that personal jurisdiction over an out-of-state parent of a subsidiary doing business in New Mexico must be supported by either the doctrines of alter ego, agency, or conspiracy. He characterizes the analysis in Smith v. Halliburton Co., 118 N.M. 179, 186, 879 P.2d 1198, 2005 (Ct. App. 1994), seeming to require some recognized theory in order to assert personal jurisdiction over a parent, as dicta. Kennedy op. ¶ 27. Although the Court did not find any recognized theory to be applicable to the facts of that case, I cannot say its analysis was entirely dicta.

{55} To be sure, we did not in that case specifically consider and reject the analysis of Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483 (D. Kan. 1978) (Energy Reserves), on which Judge Kennedy’s opinion so heavily relies. But the fact that our Court considered it necessary to accept the traditional analysis indicates to me that it would not follow the Energy Reserves analysis, just as the New Mexico Federal District Court in Jemez Agency, Inc., 866 F. Supp. at 1346-47, did not follow it.

{56} One important reason not to follow Energy Reserves in New Mexico is that that case was analyzing personal jurisdiction pursuant to the Kansas long-arm statute, which is considerably broader than New Mexico’s. Compare Energy Reserves, 460 F. Supp. at 490 (indicating that the Kansas statute uses the phrase “agent or instrumentality”), with NMSA 1978, § 38-1-16(A) (1971) (permitting long-arm jurisdiction when certain things are done “in person or
through an agent”); see Lonny Sheinkopf Hoffman, The Case Against Vicarious Jurisdiction, 152 U. Pa. L. Rev. 1023, 1036 (2004) (indicating that statutes that use the words “agent or instrumentality” are more expansive than statutes like New Mexico’s that use only the word “agent”).

{57} Although many of our cases contain language indicating that personal jurisdiction analysis considers only the outer boundaries of due process, see e.g., Santa Fe Techs., Inc. v. Argus Networks, Inc., 2002-NMCA-030, ¶ 13, 131 N.M. 772, 42 P.3d 1221, and cases cited therein, I am unaware of any case in which it was not clear that there was the doing of an act under the long-arm statute, whether the act was the transaction of business or the commission of a tort. I believe that it is important that our legislature used certain language in the statute and note that the legislature did not write that “New Mexico has jurisdiction whenever due process would allow it.” See generally Hoffman, supra at 1036-37 (suggesting that using various substantive doctrines to invoke amenability to jurisdiction does not honor legislative intent); Applied Biosystems, Inc. v. Cruachem, Ltd., 772 F. Supp. 1458, 1465 (D. Del. 1991) (“In considering a recent Delaware Supreme Court decision, which stated that the Delaware long-arm statute confers jurisdiction to the maximum extent allowable under the Due Process Clause, the . . . court stated that: ‘the [Delaware] Supreme Court did not intend . . . to direct the trial court to ignore the specific words of [the long-arm statute] and to henceforth analyze all questions arising under [that statute] only in the broad terms of fundamental fairness that guide determination of the constitutional question. The Supreme Court commands that this statute be given a liberal construction so that its purpose is achieved, but it has not directed that the application of statutory words to the facts in hand be slighted.’” (citations omitted)).

{58} Thus, under the facts and allegations of this case, I conclude that the New Mexico long-arm statute requires the transaction of business by Amrep or its agent (or co-conspirator). Since the issues of agency or conspiracy are not before us, we are left with determining whether Amrep transacted any business.

{59} Prior to discussing Amrep’s transaction of business, a brief digression into the agency and conspiracy theories may be helpful. As both Judge Kennedy’s and Judge Sutin’s opinions make clear, Plaintiffs do not rely on the agency theory. Kennedy op. ¶ 16; Sutin op. ¶ 41. Nonetheless, it is important to understand that the agency theory, for purposes of personal jurisdiction, goes far beyond the simple fact that a subsidiary is doing the parent’s business. Thus, under the facts and allegations of this case, I conclude that the New Mexico long-arm statute requires the transaction of business by Amrep or its agent (or co-conspirator). Since the issues of agency or conspiracy are not before us, we are left with determining whether Amrep transacted any business.

{60} I do not believe that Amrep’s formation of subsidiary corporations to do business in New Mexico can amount to Amrep’s transaction of business; otherwise, every parent corporation would be amenable to suit, and there would be no call for doctrines such as alter ego or agency. Nor do I believe that the shareholder parent’s injection of capital into the subsidiary corporation or the corporations’ sharing of key staff or officers is enough to amount to the transaction of business by the parent. I would hold that it is only if Plaintiffs can pierce the corporate veil of EUI that Amrep should be considered to have transacted EUI’s business.

{61} I do not disagree with the other judges that, given the standard of review for jurisdictional issues when there is no evidentiary hearing, a court could find that Plaintiffs have just barely established a prima facie case of instrumentality under the Cruttenden factors. See id. at 434-35, 640 P.2d at 934-35. But Plaintiffs have not shown any sort of fraud, improper purpose, or inequity in the operation of EUI or Amrep’s use of EUI as an independent water-utility corporation in this case, and our statute does not allow jurisdiction over an entity that transacts business through the use of an instrumentality. I would therefore reverse and order that the complaint against Amrep be dismissed and that Plaintiffs be required to have their remedy, if any, against the corporations doing business in New Mexico.

LYNN PICKARD, Judge
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Catron, Carron & Pottow, a small Santa Fe AV-rated law firm, seeks a full-time legal assistant with experience in New Mexico wills, trusts, and probate. Good writing and computer skills are necessary along with knowledge of forms and procedures. Salary DOE; good benefits. Send letter of interest with resume, references and writing samples to pgrace@catronlaw.com or fax to 505-986-1013. All applications will be kept in confidence.

Attorney
Vogel Campbell & Blucher, P.C. - a Martindale-Hubbell A-V rated law firm - seeks an experienced NM-licensed attorney as a potential shareholder in the law firm. The law firm practices primarily in the areas of real estate, business law, estate planning and civil litigation. Please send a resume to the attention of Stephen Joseph Vogel at 6100 Uptown NE, Ste 500, Abq., NM 87110, e-mail to svogel@vogelcampbell.com or fax to 875-9021.

Attorneys
The Lawyer Referral for the Elderly Program (LREP) of the State Bar of New Mexico seeks attorneys interested in providing enhanced LREP services in regional areas of the state. The contracts will include five primary focus areas as follows: 1) Promote LREP in the community and with local attorneys, 2) Assist LREP in making referrals to private attorneys, 3) Conduct mini workshops, 4) Assist LREP with Legal Clinics and Workshops in the area, 5) Provide LREP information on community legal needs. All training and materials will be provided by LREP. Interested attorneys should submit a resume and letter of interest to the Contract Manager, P.O. Box 92860, Albuquerque, NM 87199. Open until filled. LREP is an Equal Opportunity Employer.

Associate Needed Immediately
For corporate, real estate & trial practice in rapidly growing area. One to three years of legal experience required (experience in real estate preferred). Challenging opportunity and attractive salary. Send Resume to P.O. Box 15698, Rio Rancho, NM 87174 or fax your Resume to 505-892-1864. All replies kept confidential.

Paralegal / Legal Assistant
Busy and growing Rio Rancho law firm seeks paralegal / legal assistant for corporate, real estate & trial practice. Experience in real estate preferred. Send Resume to P.O. Box 15698, Rio Rancho, NM 87174 or fax your Resume to 505-892-1864. All replies kept confidential.

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Staff Assistant III
Legal Secretary
PNM Resources (NYSE:PNM) is seeking a legal secretary/staff assistant with 3-5 years experience, preferably with some litigation experience. The ideal candidate must possess strong organizational skills, the ability to work well in a team environment, good communication skills and a solid working knowledge of Outlook, Microsoft Word and Excel, legal research tools and the Internet. The ability to transcribe documents and familiarity with Timeslips or similar timekeeping software is preferred. To learn more about our Staff Assistant III position and to apply on-line visit www.pnresources.com. Resumes MUST be received NO LATER than December 26, 2005. This position will be based in Albuquerque, New Mexico. PNM Resources is an equal opportunity / Affirmative Action employer. Women and minorities are encouraged to apply.

Paralegal/Assistant
Downtown firm, practicing in very extensive complex estate planning and business transactions/law, seeking full-time paralegal/assistant. Must be detail oriented and a team player, have excellent organizational skills, and be committed to consistent quality work and superior client service. Business transactions legal experience preferred. Excellent typing skills and use of MS Word and Outlook required. Send resume and references to Office Manager, Barlow & Wilcox, P.A., 201 Third Street NW, Suite 1130, Albuquerque, New Mexico 87102.

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: L.Brown@highdesertstaffing.com; fax (505) 881-9089; or call (505) 881-3449 for immediate interview.

Legal Assistant
Experienced legal assistant needed for a year-to-year contract position (continuation of position is contingent on availability of funding) with the United States Attorney’s Office in Albuquerque, New Mexico. Must be professional, self-motivated and capable of working as a team member. Minimum of three years legal experience desired. Must have excellent WordPerfect skills. Background investigation will be conducted to include drug test, criminal history and credit check. Salary - $30,731 - $34,149 per annum. Send resume with references to U.S. Attorney’s Office, Attn: Human Resources, P.O. Box 607, Albuquerque, NM 87103. NO TELEPHONE CALLS PLEASE.

Legal Secretary/Assistant
Legal secretary/assistant needed for small, busy law firm specializing in family law. Candidates must possess strong organizational and communication skills, the ability to work independently and solid working knowledge of Word, Wordperfect and Timeslips. Submit cover letter and resume (including references) to Sanford Siegel, 202 Girard SE, Albuquerque, NM 87106 or fax to (505) 232-0060.

Santa Fe Experienced Paralegal
Small (2 attys) established (1984) Santa Fe firm needs a bright, energetic, mature, meticulous and trustworthy paralegal. Prior NM experience preferred. Very substantial client contact. Excellent communication and organizational skills required. Computer intensive, informal non-smoking office. Competitive Salary DOE + monthly profit sharing; 100% paid Medical/Hosp; Parking; paid holidays; sick and personal leave; gasoline and cell phone reimbursement. CV with cover letter please to P.O. Box 4817, Santa Fe, NM 87502-4817.

Part-Time Legal Assistant
Small, downtown Albuquerque litigation firm seeks part-time (20-30 hours per week) experienced legal assistant. Flexible schedule and friendly environment. Organizational skills, flexibility, computer literacy and knowledge of state and federal litigation practice are important. Please send cover letter, resume and if possible, an example of your work to P.O. Box 26416, Albuquerque, NM 87125-6416.

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Yale trained and board certified in both Adult and Forensic Psychiatry. Available for consultation, psychiatric evaluations, record review and expert witness testimony. Experienced in both criminal and civil matters. Call Dr. Kelly at (505) 463-1228.

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For Rent
North Valley Office Building
Newly renovated office suites, shared conference room, reception area, kitchen, waiting area, security system. 5 minutes from Courthouses. Rent all or part (2600”). 1901 Candelaria NW (near Rio Grande Blvd. NW). Kathleen or Adam: (505) 459-4528.

Downtown
Beautiful adobe building near MLK on north I-25 on-ramp. Convenient to courthouses with free adequate parking for staff and clients. Conference room, reception room, employee lounge, utilities and janitor service included. 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.

Downtown Office Space
Prestigious office space on 7th floor of 40 First Plaza available for full or partial sublease. Space includes 8 offices, 3 conference rooms, kitchen, supply room, reception area, and secretarial areas. Convenient to courthouses and parking. Will consider sublease of entire premises (total 5,264 sq. ft.) or other configurations. One and one half years remaining on term with 5-year renewal at favorable rate. Contact Randall McDonald (505) 243-3000 or rjm@fojolaw.com.

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. Two different suite sizes, 850SF and 3747SF. Buildouts for larger suite include reception counter/desk, separate kitchen area, storage and 6-7 windowed offices. Competitive Rates. Available Now. Call Ron Nelson or John Whisenant 883-9662.

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Books and Tapes may be borrowed for two weeks; shipping is available for members who reside outside the Albuquerque area.

Browse Materials alphabetically or by topic on www.nmbar.org. Click on “Attorney Services/Practice Resources” in the top navigation bar and select “Lending Library.”

Place an Order by using the e-mail link membership@nmbar.org, visiting the State Bar Center or calling (505) 797-6033.
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The Annual Review of Civil Procedure
7.5 General and 1.2 Ethics CLE Credits • $229
☐ Dec. 27, 9 a.m. - 4:30 p.m.
☐ Dec. 29, 9 a.m. - 4:30 p.m.

Bridge the Gap 2005: Developing Winning Courtroom Strategy
6.3 General, 2.0 Professionalism and 1.2 Ethics CLE Credits • $239
☐ Dec. 27, 9 a.m. - 5 p.m.
☐ Dec. 29, 9 a.m. - 5 p.m.

The Basics of Real Estate Transactions from Negotiation to Closing
5.6 General and 1.0 Ethics CLE Credits • $179
☐ Dec. 27, 9 a.m. - 3 p.m.

Dementia, Capacity and Undue Influence of the Elderly
4.2 General CLE Credits • $119
☐ Dec. 27, 9 a.m. - 12:30 p.m.
☐ Dec. 29, 9 a.m. - 12:30 p.m.

Current Legalities and Realities of the End of Life Debate
3.5 General and 1.0 Ethics CLE Credits • $129
☐ Dec. 27, 1 - 5 p.m.
☐ Dec. 29, 1 - 5 p.m.

How to Win Your Next Jury Trial Using the Power Trial Method
7.2 General CLE Credits • $219
☐ Dec. 28, 9 a.m. - 3:30 p.m.

Legislative Process: A 2005 Update
2.4 General CLE Credits • $79
☐ Dec. 28, 10 a.m. - Noon

Cashing Out: Six Ways Business Owner Clients Can Sell Their Businesses
1.8 General CLE Credits • $69
☐ Dec. 28, 1 - 2:30 p.m.

Recent Changes to the UCC in New Mexico
1.2 General CLE Credits • $49
☐ Dec. 28, 2:45 - 3:45 p.m.

Lawyering with Emotional Intelligence
2.0 Professionalism and 1.2 Ethics CLE Credits • $99
☐ Dec. 28, 9 - 11:45 a.m.

DUI in New Mexico
5.3 General CLE Credits • $149
☐ Dec. 28, 12:15 - 4:45 p.m.

Public Health Emergencies
4.5 General, 2.0 Professionalism and 1.2 Ethics CLE Credits • $199
☐ Dec. 28, 9 a.m. - 4 p.m.

2005 Professionalism: Lawyers Concerned for Lawyers Substance Abuse and Addiction Issues in the New Mexico Legal Community
2.0 Professionalism CLE Credits • $59
☐ Dec. 29, 8:30 - 10:30 a.m.
☐ Dec. 29, 12:30 - 2:30 p.m.
☐ Dec. 30, 8:30 - 10:30 a.m.

Ethics: Now What Are You Gonna Do?
1.2 Ethics CLE Credits • $39
☐ Dec. 29, 10:30 - 11:30 a.m.
☐ Dec. 29, 2:45 - 3:45 p.m.
☐ Dec. 30, 10:30 - 11:30 a.m.

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