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--January 26, 2005 Smith, Haughey, Rice & Roegge, Grand Rapids, MI

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**Real World Toxicology for the Courtroom: Legal Evaluation Strategies for Forensic, Tort & Environmental Cases**

State Bar Center, Albuquerque
Tuesday, March 14, 2006
5.5 General CLE Credits

*Presenter:* Sol Bobst, PhD, President and Principal of CERATOX Consulting, Houston

Toxicology spans relevant legal issues in cases involving criminal defense, worker's compensation, employment screening, toxic tort litigation, and environmental contamination. Communicating complex science concepts in the courtroom can be challenging and requires planned preparation. This seminar will address strategies that can be used for presenting “real world questions” as a context for decision making in these cases.

- $159

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**How to Do Your First Personal Injury Case**

State Bar Center, Albuquerque
Friday, March 17, 2006
5.0 General and 1.0 Ethics CLE Credits

The focus of this seminar will be upon the nuts and bolts of how to present and defend a personal injury case. This seminar is designed for the new attorney who does not have experience in personal injury cases, or who is simply looking for a refresher from the perspectives of experienced practitioners.

- $169

---

**The Ethical Use of Paralegals in New Mexico**

State Bar Center, Albuquerque
Wednesday, March 22, 2006
1.0 Ethics CLE Credits

What’s the difference between a “legal assistant” and a “paralegal”, anyway? The Supreme Court Rules Governing Paralegal Services answer that question and provide clear guidance to the ethical use of paralegal services in New Mexico. Learn why it is critical for attorneys and paralegals to understand what paralegals legally can -- and cannot -- do in supporting the work of their attorneys. Attorneys, paralegals, and law office administrators will benefit from this informative session.

- $45

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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

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Program Title: ______________________
Program Date: _____________________
Program Location: ________________
Program Cost: _____________________

- [ ] Purchase Order (Must be attached to be registered)
- [ ] Check enclosed $ _________
- [ ] VISA [ ] MC [ ] American Express [ ] Discover
- [ ] Credit Card #: ________________________
- [ ] Exp. Date ___________________________
- [ ] Authorized Signature __________________

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Contributes 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 is available upon request.

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Cite officially as Bar Bulletin (ISSN 1062-6611).
Subscription price $80 per year.
Subscriptions are nonrefundable once purchased.
Published weekly by the State Bar, 5121 Masthead NE, Albuquerque, NM 87109 (505) 797-6000
(800) 876-6227
Fax: (505) 828-3765
E-mail: bb@nmbar.org
www.nmbar.org
Periodicals Postage Paid At: Albuquerque, NM 87101 • ©2006, State Bar of New Mexico • Postmaster send address changes to: General Administrator • Bar Bulletin • PO Box 92860, Albuquerque, NM 87199-2860 or address@nmbar.org.

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Professionalism Tip
With respect to my clients:
I will be courteous and considerate of my client at all times.

Meetings

March
6
Attorneys Support Group
5:30 p.m., First Methodist Church, Albuquerque
8
Law Office Management Committee
noon, State Bar Center
9
Children’s Law Section Board of Directors, noon, Juvenile Justice Center
9
Public Law Section Board of Directors, noon, Risk Management Division, Santa Fe
9
Business Law Section Forms Committee, 2:30 p.m. State Bar Center
10
Business Law Section Board of Directors, 4 p.m., State Bar Center

State Bar Workshops

March
10
Lawyer Referral for the Elderly Workshop
1 p.m., Eastern Plains Housing, Clovis
14
Lawyer Referral for the Elderly Workshop
10:30 a.m., Jemez Valley Community Center, Jemez Pueblo
21
Lawyer Referral for the Elderly Workshop
1 p.m., Ford Canyon Senior Center, Gallup
22
Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center, Albuquerque
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

*Consumer Debt/Bankruptcy workshops include a one-on-one consultation with an attorney. For more information, call Marilyn Kelley at (505) 797-6048 or 1-888-876-6227; or visit the SBNM Web site, www.nmbar.org.

BAR BULLETIN - March 6, 2006 - Volume 45, No. 10  5
NOTICES

COURT NEWS

NM Supreme Court
Board of Legal Specialization
Comments Solicited

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

Employment and Labor Law
Jeffrey L. Lowry

Law Library

For the convenience of state employees, the judiciary and the general public, the Supreme Court Law Library is open extended hours:
Monday-Friday, 8 a.m.–5:30 p.m.
Saturday, 10 a.m.–3 p.m.
Closed holiday weekends

The library has statutes, rules, regulations, etc., plus, FREE computer access to Westlaw and Lexis. It also has many other computer-based research tools.

Phone: (505) 827-4850; fax: (505) 827-4852; e-mail: libref@nmcourts.com; Website: www.supremecourtlawlibrary.

Notice on Address Changes

All New Mexico attorneys must notify the Supreme Court and the State Bar of any changes in address or telephone number. Information may be e-mailed to the Supreme Court at Supvrnl@nmcourts.com; faxed to (505) 827-4837; or mailed to PO Box 848, Santa Fe, NM 87504-0848. Information may be e-mailed to the State Bar at address@nmsbar.org; faxed to (505) 828-3755; or mailed to PO Box 92860, Albuquerque, NM 87199-2860. The State Bar keeps both mailing and directory addresses. Contact the State Bar for more information.

Second Judicial District Court

 Destruction of Exhibits
Pursuant to the Supreme Court Ordered Judicial Records Retention and Disposition Schedules, the 2nd Judicial District Court will destroy exhibits filed with the Court in the civil cases for the year 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 Feb. 2 to April 6. Attorneys who have cases with exhibits should verify exhibit information with the Special Services Division, (505) 841-7596/5452, from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Fourth Judicial District

Judicial Appointment

Gov. Bill Richardson has appointed Abigail Aragon to a judgeship in the 4th Judicial District Court in Las Vegas. Aragon will become the first woman to sit on the District Court in Las Vegas. She is a native of Mora and a graduate of Mora High School. She earned her undergraduate degree from New Mexico Highlands University and her law degree from UNM. Aragon was a partner in the Aragon and Juarez law office from 1996 to 2000 and has been a partner in the Aragon law office since 2000. She is a member of the State Bar Board of Bar Commissioners, a former director of the Hispanic Bar Association and a member of the Criminal Defense Lawyers Association.

Aragon was one of three candidates recommended to Richardson by the Judicial Nominating Commission and fills the vacancy left by the retirement of District Judge Jay Harris. Aragon must stand for election this year.

Eighth Judicial District
Nominating Commission
Announcement of Meeting

The 8th Judicial District Nominating Commission will reconvene at the Colfax County Courthouse in Raton at 2:30 p.m., March 13, to consider Governor Richardson's request for additional names to fill the vacancy on the 8th Judicial District Court left by the retirement of the Honorable Peggy J. Nelson, effective Feb 1.

The name of John Miller Paternoster was forwarded to the governor after the 8th Judicial District Nominating Commission met on Feb. 17.

Thirteenth Judicial District
Civil ADR Program

The 13th Judicial District has expanded the Alternative Dispute Resolution (ADR) services to include a new Civil ADR program that joins the existing Magistrate Court, Domestic Relations, and Children's Court (Abuse and Neglect) mediation programs.

The new Civil ADR program may apply to all civil lawsuits, including domestic and probate cases and will include both traditional mediation and settlement facilitation. Mediation and settlement facilitation services will be provided by attorneys and other ADR professionals with specific subject area knowledge who are then compensated by a flexible party-pay system. Civil cases in which damages sought do not exceed $10,000 are now eligible to have the mediation or facilitation fees paid by the court. In order to support this effort, the
13th Judicial District Court is currently updating the list of mediators and settlement facilitators interested in providing ADR services for the Court. For more information or to request a packet, contact Teresa Berry, director of ADR programs, (505)235-3525, or tberry@earthlink.net.

STATE BAR NEWS
Address Changes for Bench & Bar Directory

The State Bar staff is updating information for the 2006–07 Bench & Bar Directory. Address changes will be accepted through April 1. Information submitted to the State Bar beyond that date is not guaranteed to be in the new membership directory. To verify attorney information, go to www.nmbar.org, “Attorney/Firm Finder” and search by name. If changes are necessary, submit in writing to Pam Zimmer, PO Box 92860, Albuquerque, NM 87199-2860; fax to (505) 797-6019; or e-mail to address@nmbar.org.

Attorney Support Group

The next Attorney Support Group meeting will be held at 5:30 p.m., March 6, 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.

Bankruptcy Law Section Annual Meeting and CLE

The Bankruptcy Law Section will hold its annual membership meeting at 1 p.m., March 10, in conjunction with the 21st Annual Bankruptcy Year in Review at the State Bar Center. Contact Chair Alfred Sanchez, businessbankruptcy@gmail.com, or (505) 242-1979, to place an item on the agenda. The board of directors would like input from members regarding areas of focus for 2006. Of particular interest is reaching members in outlying areas.

Attendees of the CLE will receive 6.0 general and 1.0 ethics CLE credits. The section member discount price is $179. Register online at www.nmbar.org and select CLE. If registering by mail, use the registration form in the Feb. 6 Bar Bulletin; or call (505) 797-6020 to register with a credit card.

Board of Bar Commissioners

Casemaker Free Online Legal Research

Coming Soon for New Mexico Lawyers

The State Bar of New Mexico is proud to offer its newest member benefit, Casemaker. Casemaker is online legal research made available to State Bar members at no charge. That’s free legal research.

Casemaker will be available from the State Bar’s Web site at www.nmbar.org with an anticipated launch date of July 2006 as part of the Annual Meeting in Taos. The library will include most everything needed for the New Mexico lawyer, including federal material.

Casemaker allows the user to search by:
• word, word combinations or phrases,
• official case citation,
• statute number,
• judge’s name, or
• attorney’s name.

Casemaker has two search options:

• The basic search engine allows the user to formulate a search using natural language or Boolean search logic. Natural language allows the user to type in a word or sentence, and the search engine will recognize important words or phrases. For Boolean searches, enter keywords and connectors.

• The advanced search feature allows the user to enter data into fields. Plug in key information about a case, such as the cite, syllabus, date, attorneys, court and more.

With the full-text search capabilities of Casemaker, there is no need to rely on annotation to find which cases are cited. When the user plugs a statute into the basic search screen, he or she will retrieve the full text of all cases that discuss the code in question.

New Mexico joins a growing consortium of Casemaker states. As a consortium, New Mexico lawyers will get access to all other member state libraries, which currently include: Alabama, Colorado, Connecticut, Georgia, Idaho, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and West Virginia. Casemaker promises to be a tremendous asset to New Mexico practitioners.

The New Mexico library will include:

New Mexico Supreme Court from 1949
New Mexico Court of Appeals from 1966

New Mexico Statutes
New Mexico Regulations
New Mexico Acts
New Mexico Civil Jury Inst.
New Mexico Criminal Jury Inst.
New Mexico Attorney General Opinions
New Mexico Law Review
Children’s Court Rules and Forms
Civil Forms
New Mexico Criminal Forms
New Mexico Domestic Relations Forms
New Mexico Code of Judicial Conduct
New Mexico Judicial Standards Commission Rules of NM
New Mexico Probate Court Rules
New Mexico Rules of Appellate Procedure
New Mexico Rules of Civil Procedure for District Courts
New Mexico Rules of Crim. Proc. for District Courts
New Mexico Rules of Evidence
New Mexico Rules Governing Admission to the Bar
New Mexico Rules Governing Discipline
New Mexico Rules Governing the New Mexico Bar
New Mexico Rules Gov. the Recording of Judicial Proc.
New Mexico Rules of Legal Specialization
New Mexico Rules for Minimum Continuing Legal Education
New Mexico Rules of Professional Conduct

Federal Materials

U.S. Supreme Court from 1937 to current, selected cases from 1790–1937
USCA all from 1995, some 1989
F Supp (CT) from 1989
U.S. Constitution
Code of Federal Regulation
U.S. Code
U.S. Circuit Appellate Rules for all Member Districts
U.S. 8th Circuit Appellate Rules
Federal Rules of Practice and more
Federal Bankruptcy decisions
Watch for more information about Casemaker and visit www.casemaker.us.

Contact Joe Conte jconte@nmbar.org or (505) 797-6099 with questions.
Commissioner Vacancies
Fourth Bar Commissioner District

A vacancy in the 4th Bar Commissioner District, representing Colfax, Guadalupe, Harding, Mora, San Miguel, Taos and Union counties, was created due to Abigail P. Aragon’s appointment to a judgeship in the 4th Judicial District. The board will make an interim appointment at its April 21 meeting to fill the vacancy until the next regular election of commissioners is held in November, at which time the remainder of the unexpired term will be filled. Active status members with a principal place of practice located in the 4th Bar Commissioner District are eligible to apply. Applicants should plan to attend the four remaining board meetings scheduled for July 20 in Taos, Sept. 15 in Tucumcari, Nov. 2 in Roswell and Dec. 15 in Albuquerque. Anyone interested in serving on the board should submit a letter of interest and resume to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199, by April 10.

Commissioner Vacancies
Sixth Bar Commissioner District

A vacancy in the 6th Bar Commissioner District, representing Chaves, Eddy, Lea, Lincoln and Otero counties was created due to Jane Shuler Gray’s appointment to a judgeship in the 5th Judicial District. The board will make an interim appointment at its April 21 meeting to fill the vacancy until the next regular election of commissioners is held in November, at which time the remainder of the unexpired term will be filled. Active status members with a principal place of practice located in the 6th Bar Commissioner District are eligible to apply. Applicants should plan to attend the four remaining board meetings scheduled for July 20 in Taos, Sept. 15 in Tucumcari, Nov. 2 in Roswell and Dec. 15 in Albuquerque. Anyone interested in serving on the board should submit a letter of interest and resume to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199, by April 10.

Board of Editors
Quarterly Inserts
Call for Writers

In response to the results of the 2005 Publication Survey wherein members of the State Bar indicated their needs and desires for a supplemental publication to the Bar Bulletin, the Board of Editors is preparing to publish four special-topic inserts in the Bar Bulletin. The first insert will feature the important U.S. or New Mexico Supreme Court decisions of the last three years, discussing the issues that have had and will continue to have the greatest impact on New Mexico. The board is calling for writers to submit articles on this topic to Dorma Seago, dseago@nmbar.org, by March 31.

The second quarterly insert will feature articles on Realism in Television’s Treatment of the Law. Articles will discuss the impact of popular television law shows on the public’s perceptions and expectations of the legal system and the attorney/client relationship as influenced by television’s fictional portrayals. The board invites interested writers to submit articles on this topic as well.

Topics for the remaining two quarterly inserts have yet to be decided, and the board welcomes suggestions of topics that would interest the membership at large, including suggestions for reviews of current books on legal issues. Submit ideas to Dorma Seago, dseago@nmbar.org.

Health Law Section
Legislative Update on Health Law and Medical Related Bills

The State Bar Health Law Section will hold a luncheon program from 11:45 a.m. to 1:15 p.m., March 16, at the State Bar Center. Barbara C. Quissell and Gabriel M. Parra will present Legislative Update on Health Law and Medical Related Bills. Lunch will be provided free of charge to section members ($8 for non-members). Reservations are required to ensure an adequate number of lunches. R.S.V.P. to membership@nmbar.org or (505) 797-6033 by March 14. CLE credit will not be provided.

National Consortium on Racial and Ethnic Fairness in the Courts

18th Annual Meeting

The 18th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts will be held April 25–28 at the Hotel Albuquerque, Old Town, Albuquerque. The event, co-chaired by Justice Patricio Serna of the New Mexico Supreme Court and Judge Theresa Gomez from Metropolitan Court, is expected to draw 250–300 attendees from across the country. The National Consortium is devoted to enhancing racial and ethnic fairness in the courts. Members include judicial officers, court staff, members of the Bar and lay persons who work in some way to ensure racial and ethnic fairness in the courts. The theme for the meeting is Healing Our Past; Braiding Justice Across Cultures. CLE credit will be available. Exceptional educational programs will highlight the diversity of the southwest and will feature social events at the Indian Pueblo Cultural Center and the Hispanic Cultural Center. For program or sponsorship information, contact Joe Conte, jconte@nmbar.org, or (505) 797-6099.

Paralegal Division
Monthly Brown Bag CLE for Attorneys and Paralegals

The Paralegal Division invites members of the legal profession to bring a lunch and join their monthly CLE from noon to 1 p.m., March 8, at the State Bar Center. Nancy Sandstrom, Children’s Court TCAA, will present Adoptions in New Mexico. Participants will earn 1.0 general CLE credit. The cost is $16 for attorneys and $15 for paralegals, legal assistants and secretaries. Registration begins at 11:30 a.m. For more information, contact Cheryl Passalaqua, (505) 872-7470, or Amy Paul, (505) 883-8181.

Prosecutors Section
Annual Meeting

The State Bar Prosecutors Section will hold its annual meeting from noon to 1 p.m., March 29, (lunch provided) at the Sandia Casino and Resort located just east off I-25 at the Tramway Exit. Agenda items should be sent by March 22 to James R.W. Braun, james.braun@usdoj.gov, or (505) 346-7296. Send an R.S.V.P. for lunch to membership@nmbar.org.

Annual Awards

The State Bar Prosecutors Section is soliciting nominations for awards that the section will present to five prosecutors at the Association of District Attorneys’ 2006 Spring Conference, March 30, at the Sandia Casino and Resort.

Nominations should be submitted by March 1 to James R.W. Braun, c/o U.S. Attorney’s Office, PO Box 607, Albuquerque, NM 87105, or e-mail james.braun@usdoj.gov. The nominees will be presented to a selection committee. See the Feb. 27, Vol. 45, No. 9, Bar Bulletin for award criteria.
Young Lawyers Division
2006 Summer Fellowships

The State Bar Young Lawyers Division (YLD) is currently accepting applications for its 2006 Summer Fellowships. Two fellowships will be awarded to two law students who are interested in working in unpaid legal positions in the public interest or government sector during the summer of 2006. The fellowship awards, depending on the circumstances of the position, could be up to $3,000. All documents must be submitted to J. Brent Moore, YLD Summer Fellowship Coordinator, Office of General Counsel, New Mexico Environment Department, 1190 St. Francis Dr., Suite N-4050, Santa Fe, NM 87501. Applications must be postmarked by March 31. Direct questions to J. Brent Moore, (505) 476-3783. See the Feb. 13, Vol. 45, No. 7, Bar Bulletin for more details and award criteria.

OTHER BARS
Albuquerque Bar Association
Monthly Luncheon and CLE

The Albuquerque Bar Association’s monthly luncheon will be held at noon, March 7, at the Albuquerque Petroleum Club. The legislative update will be presented by State Senator Cisco McSorley. For an additional fee, the program is eligible for an optional 1.0 general CLE credit. The CLE program, Family Law Update, from 1:30 to 3:45 p.m., will be presented by Gretchen Walther, David Walther and Tom Burrage for 2.0 general CLE credits. Lunch only: $20 members/$25 non-members; lunch with 1.0 general CLE credit: $40 members/$55 non-members; lunch and both CLEs: $80 members/$115 non-members; Family Law CLE only: $40 members/$60 non-members.

Register for lunch by noon, March 6. Lunch is an additional $5 without reservations. Register at www.abqbar.com; by e-mail at abqbar@abqbar.com; or by mail to ABA, 400 Gold SW, Suite 620, Albuquerque 87102; or call (505) 842-1151 or (505) 243-2615.

The Association will collect new or gently used children’s books for the Read to Me Book Drive, sponsored by The Albuquerque Business Education Compact. The goal is to place books in the hands of children in need to encourage reading and participation in the Summer Reading program at their local library. Bring books to the luncheon or deliver them to the Association office at 400 Gold SW, Suite 620, Albuquerque.

NM Criminal Defense Lawyers Association

The New Mexico Criminal Defense Lawyers Association is sponsoring a CLE at 8:30 a.m., March 17, Snatching Victory Out of the Jaws of Defeat: Crafting Arguments To Avoid Incarceration will be presented at the UNM School of Law, Room 2401, for 6.5 general CLE credits. For more information, visit www nmcdla.org, or call (505) 992-0050.

NM Defense Lawyers Association (DLA)
Defense Practice Academy

NMDLA and the Young Lawyers Division of SBNM are proud to announce the Defense Practice Academy—Basic Skills Program scheduled for June 9–10 in Albuquerque. The program is designed for attorneys with zero to five years of experience. A faculty of veteran attorneys from local firms will provide insight into opening a file, pleadings and motions, discovery, depositions, medical records/experts and evidence/trial preparation. DLA is also designing intermediate and advanced level programs that will be introduced later this year. Judges and attorneys who wish to be a part of the planning committee or who are interested in participating as a speaker should contact Rhonda Hawkins, (505) 797-6021, or nmdefense@nmdla.org. For more information about the Basic Skills Program, visit www.nmdla.org.

UNM School of Law
Health Law Students Organization
Mentoring Program

The Health Law Students Organization at UNM Law School is organizing a mentoring program for law students interested in health law. Health law students will be matched with practicing health lawyers, with the understanding that the commitment that the lawyers and the law students will make is likely to vary from person to person. The attorney mentor would meet with a student once or twice (or more) between now and the summer, serving also as a sounding board for that student, although the arrangement will be entirely up to the participants.

Anyone interested in serving as a mentor should forward the following information to schwartz@law.unm.edu or jacques@law.unm.edu: name, address, phone, e-mail address and primary health law practice.

Law Library

Law Library

Monday–Thursday 8 a.m.–11 p.m.
Friday 8 a.m.–6 p.m.
Saturday 9 a.m.–6 p.m.
Sunday Noon–11 p.m.

Reference

Reference

Monday–Thursday 9 a.m.–9 p.m.
Friday 9 a.m.–6 p.m.
Saturday Closed
Sunday Noon–4 p.m.

Mexican American Law Student Association’s (MALSA)
Eleventh Annual Fighting for Justice Banquet

The 11th Annual Fighting for Justice Banquet will be held Saturday, April 1, at the Sandia Resort and Casino, 30 Rainbow Road NE, Albuquerque. The keynote speaker will be The Honorable Patricia Madrid, New Mexico Attorney General. Cocktails, music and a silent auction will begin at 6 p.m., and the program and dinner will begin at 7 p.m. Former New Mexico Supreme Court Chief Justice Dan Sosa, Jr., is the 2006 award recipient. For more information or to R.S.V.P., contact Dahlia Olsher, olsherda@law.unm.edu or (505) 243-6147.

NM Law Review Awards Dinner

The New Mexico Law Review’s 2006 Excellence in Jurisprudence awards dinner will be held at 7 p.m., March 23, at the Embassy Suites Hotel, 1000 Woodward Place NE, Albuquerque. Honorees are The Honorable Patricio M. Serna, New Mexico Supreme Court, and Professor James W. Ellis, UNM School of Law. Cocktails will be served at 6:30 p.m. The cost of $50 per person includes dinner and a registration fee. R.S.V.P. to Susan Tackman, lawrev@law.unm.edu or (505) 277-4910.
OTHER NEWS

2006 Paralegal of the Year Nominations

Gain national exposure, earn recognition for the paralegal profession and bring prestige to a respected colleague. Nominate a peer for the Legal Assistant Today’s (LAT) 2006 Paralegal of the Year Award.

Since 1998, LAT has honored a paralegal who demonstrates a profound commitment to his or her career and strives to shape the future of the paralegal field. The winner will be chosen by the LAT Editorial Advisory Board and be featured in the September/October 2006 issue. The winner will receive a $1,000 cash prize, an award plaque and a complimentary one-year subscription to LAT. His or her division will also receive $100. Two runners-up will each receive an award plaque and a one-year subscription to LAT, as well as be featured in the September/October issue.

Nominations are due May 5. For complete contest requirements and to fill out a nomination form, go to www.legalassistanttoday.com and click on the Paralegal of the Year Award logo.

Attorney General’s Office Notice of New Location

The Attorney General’s Office announces a new location in Santa Fe for Service of Process:

408 Galisteo Street
Santa Fe, New Mexico 87501

All Service of Process will need to be delivered per Rule 1-004 to the address above.

The new fax number for the Litigation Division is (505) 827-6036. All phone numbers to attorneys and staff have remained the same for this division.

Web Corner

By Veronica Cordova, Assistant Director of Administration

This month, users are directed to Public Services and Resources on the Web site. The services and resources in this area are designed to serve the public in various ways. There are a number of programs available to assist the public with complaints against attorneys that include the Client-Attorney Assistance Program (CAAP) which encompasses Fee Arbitration, Client Protection Fund and the Lawyers Assistance Program.

In addition, educational workshops are offered in Albuquerque and Las Cruces that deal with bankruptcy or consumer debt issues. The workshops usually begin with a presentation by volunteer attorneys, followed by a question and answer period and include free one-on-one consultations to discuss specific bankruptcy and consumer debt issues. Workshop presentations are also held at various senior centers throughout the state to discuss current law topics geared to seniors. Workshop calendars are available on the site.

Users can find these resources and many more by clicking on the link Public Services and Resources directly off the State Bar homepage. In addition, the Public Legal Services Department (PLSD) is always looking for volunteers to help with these worthwhile programs. To volunteer, contact PLSD at (505) 797-6054 or email cjoseph@nmbar.org.

Another helpful and relevant area on the site that helps provide information to the public is Law Topics. Some topics include adoption, auto accidents, clients’ rights and responsibilities, complaints against lawyers, divorce and separation, employee rights, landlord-tenant relations, and much more. Visit the site to see the topics available and feel free to use these resources to help clients. Brochures are also available for purchase for attorneys interested in this option. See page 13 for a complete list and order form.

Visit the Web site, and remember ideas and suggestions to continually improve the site are always welcome. Send comments to vcordova@nmbar.org, or call (505) 797-6039. Look for this column next month.

QUICK REMINDERS

Letters to the Editor

The Bar Bulletin is now accepting Letters to the Editor. Submit letters to notices@nmbar.org.

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STATE BAR OF NEW MEXICO
2006 ANNUAL AWARDS

Nominations are being accepted for the 2006 annual awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2005 or 2006. Awards will be presented at the 2006 Annual Meeting, July 21–22, at the Taos Convention Center in Taos.

A letter of nomination for each nominee should be sent to: Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; faxed to (505) 828-3765 or e-mailed to sbnm@nmbar.org.

Deadline for nomination submissions is April 28.

Consideration should be given to the following award descriptions and criteria when submitting nominations. (Previous recipients for the past five years are listed below, unless otherwise noted.)

1. Professionalism Award: This award is given to one or more attorneys or judges who, over long and distinguished legal careers, have, by their ethical and personal conduct, exemplified for their fellow attorneys, the epitome of professionalism. This award is limited to one per year, with the exception of an additional posthumous award. Nominations will be reviewed by the Commission on Professionalism to be recommended to the Board of Bar Commissioners for selection. Previous recipients: John G. Baugh; Lawrence M. Pickett; Lowell Stout; Toby Grossman; Joseph P. Paone; William S. Dixon; Richard L. Gerding; Paul A. Kastler; Neil P. Mertz; Betty Reed; and Felix Briones Jr.

2. Seth D. Montgomery Distinguished Judicial Service Award: This award is given to judges who have distinguished themselves through long and exemplary service on the bench. The award is generally given to judges who have or soon will be retiring and is not necessarily an annual award. This award is limited to one per year, with the exception of an additional posthumous award. Previous recipients: Frank H. Allen, Jr.; Gene E. Franchini; Joseph F. Baca; and Rudy S. Apodaca.

3. Outstanding Judicial Service Award: This award is given to judges whose recent activities have significantly advanced the administration of justice or improved the relations between the bench and the bar. This award is limited to one per year, and is not necessarily given annually. Previous recipients: John W. Pope; Grace B. Duran; Anne Kass; Lynn Pickard; Geraldine E. Rivera; Albert S. Murdoch; and Neil P. Mertz.

4. Courageous Advocacy Award: This award is given to one or more members of the bar who have distinguished themselves, during their legal careers, by courageous advocacy of unpopular causes, often without compensation and without concern for the impact of such advocacy upon their own practice. This award is not necessarily given annually. Previous recipients: David S. Campbell; Randolph H. Barnhouse; and Carmen E. Garza.

5. Robert H. LaFollette Pro Bono Award: This award is presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance to people who could not afford the assistance of an attorney. It is intended to reflect such contribution over an attorney's career, rather than during the past year. This award is not necessarily given annually. Previous recipients: Steve H. Mazer; Sage and Burks, PC; Albert W. Schimmel, III; Nicholas T. Leger; Cristen Conley; and Barbara V. Johnson.

6. Distinguished Bar Service Award - Lawyer: This award is given to attorneys who have given long and valuable service to the State Bar of New Mexico over a significant period of time. It is intended to recognize long-term commitment to bar services and significant contributions to the legal profession. This award is not necessarily given annually. Previous recipients: Briggs F. Cheney; Russell D. Mann; Michael T. Murphy; Joyce Stowers; James R. Crouch; Robert J. Desiderio; Jan B. Gilman-Tepper; Raymond Hamilton; Henry F. Narvaez; and Presiliano A. Torrez.

7. Distinguished Bar Service Award - Nonlawyer: This award is given to one or more nonlawyers who, over a period of time, have served or assisted the legal profession of the State Bar of New Mexico in a significant way. This award is not necessarily given annually. Previous recipients: Kay L. Homan; Michelle Giger; Edwina Logan Hambor; Carol Herrera; Louise Kodituwakku; Garry Spencer; and Harold Daum.
8. Outstanding Contribution Award: This award is given annually to those members of the bar who have made outstanding and extraordinary contributions of their time and talents to Bar activities during the past year. Previous recipients (for last three years): 2004 - Leigh Anne Chavez; Rosemary Maestas-Swazo; 2003 - Daniel J. Behles; Michael F. Hacker; Ronald E. Holmes; Thomas J. “Budd” Mucci; and Jason Neal. 2002 - Roger Eaton; Jeffrey L. Lowry; Gary O’Dowd; Peter H. Pierotti; Robert E. Sabin; Barbara L. Shapiro; Sarah M. Singleton; Alan M. Varela; Elizabeth S. Vencill; Mitchel L. Winick; and Geno Zamora.

9. Outstanding Local Bar Award: This award is given to one or more local bar associations that have had the most outstanding programs and activities for their members and for the public at large. This award is not necessarily given annually. Previous recipients: Sandoval County Bar; San Juan County Bar; Colfax-Union County Bar; Curry-Roosevelt County Bar; Chaves County Bar; and Lea County Bar.

10. Outstanding Program Award: This award is given to recognize programs of the bar that serve the mission of being a united, inclusive organization serving the legal profession and the public. This award is not necessarily given annually. Previous recipients: New Mexico Hispanic Bar Scholarship Program; Lawyers’ Assistance Program; Consumer Debt Workshops; Consumer Attorney Assistance Program (CAAP); Cross-Cultural Exchange Project; Lawyers Care Referral Program; Southwest Bench and Bar Conference; and Summer Law Clerk Program.

11. Outstanding Section/Committee Award (New Award created in 2005): This award is intended to recognize a State Bar section or committee that has made outstanding or extraordinary contributions to State Bar activities, programs or the legal profession during the past year. Previous recipients: Bankruptcy Law Section.

12. Pioneer Award: This award is presented to an attorney who has, on his/her own initiative and through considerable creativity, made an exemplary contribution to the State Bar in an area considered to be new, relatively unexplored and of considerable interest and benefit to members of the bar. This award is not necessarily given annually. Previous recipients: Arturo L. Jaramillo; Stephen E. Doerr; Justice Gene E. Franchini; John M. Greacen; and Rex D. Throckmorton.

13. Outstanding Young Lawyer of the Year Award: This award is given to one or more attorneys who have during the formative stages of their legal careers by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism. In addition to a commitment to clients’ causes, this attorney has demonstrated a commitment to public service and in so doing has enhanced the image of the legal profession in the eyes of the public. To qualify for this award, an attorney must have practiced no more than five years or must be no more than 36 years of age. Previous recipients: Morris J. “Mo” Chavez; Brian S. Colón; Roxanna M. Chacon; H. Nicole Schamban; and Trent A. Howell.

14. Outstanding Contribution to People with Disabilities Award: This award is intended to recognize and honor exceptional achievements and contributions to further promote and protect the rights of people with disabilities. It is intended to acknowledge contributions to furthering the rights, dignity, and access to justice for people with disabilities. This award is not necessarily given annually. Nominations will be reviewed by the Committee for the Delivery of Legal Services to People with Disabilities to be recommended to the Board of Bar Commissioners for selection. Previous recipients: Tara C. Ford; Rita Nuñez Neumann; Albert T. Gonzales, Sr.; Ann T. Sims; Peter M. Cubra; V. Colleen Miller; and Therese E. Yanan.

15. Quality of Life - Legal Employer Award: This award is intended to honor and recognize legal employers who have demonstrated exemplary commitment in supporting programs designed to enhance the quality of life for employees. The employer must show a commitment to the quality of life of the individuals employed there through programs, activities, office policies or other means. Nominations will be reviewed by the Standing Committee on Quality of Life to be recommended to the Board of Bar Commissioners for selection. This award is not necessarily given annually. Previous recipients: Aguilar Law Offices, PC; New Mexico Environmental Law Center; Swaim, Schrandt & Davidson, PC; New Mexico Court of Appeals; and Daniel J. O’Brien.

16. Quality of Life - Lawyer Award: This award is intended to recognize an attorney who demonstrates exemplary commitment to and value of an overall balance/quality of life. It is intended to honor and publicly recognize an attorney who demonstrates to colleagues, family and friends that he/she consistently works to improve quality of life, and has an ongoing commitment to personal and professional fulfillment. Nominations will be reviewed by the Standing Committee on Quality of Life to be recommended to the Board of Bar Commissioners for selection. This award is not necessarily given annually. Previous recipients: Susan E. Page; Wayne E. Bingham; Charles W. Daniels; Philip B. Davis; and JoAnn S. Jaramillo.
Now Available

Public Information Pamphlets

Members can now order Public Information Pamphlets from the State Bar.

- Label or stamp with name or law firm to increase visibility.
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Complete and return this form to: State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax to (505) 797-6019, Attn: Veronica Cordova; or call (505) 797-6039.

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Sandra E. Rotruck, who practices divorce and family law with Atkinson & Kelsey P.A., has been appointed to the New Mexico Supreme Court’s Disciplinary Board for a three-year term ending December 31, 2008. Rotruck is a member of the Supreme Court’s Statewide Alimony Guidelines Committee and an appointed settlement facilitator in family law cases. She practices primarily in the areas of collaborative divorce, custody and timesharing, child support and domestic violence.

Francis J. Mathew was appointed by the Santa Fe County Commission as the new Santa Fe County probate judge. Mathew fills the vacancy created by Ann Yalman, who resigned after being appointed to succeed Frances Gallegos as municipal judge. Mathew also serves on the Homewise board of directors.

Brandon Miller, Heather Anaya and Grace Choi have joined the Albuquerque office of Grant Thornton L.L.P. as associates in the assurance division. Miller earned his master’s and bachelor’s degrees at NMSU. Anaya received her bachelor’s of science degree from the Anderson Schools of Management at UNM. Choi was awarded her bachelor’s of science in business from Indiana University’s Kelley School of Business.

Richard Boyd has joined Lewis and Roca, practicing in New Mexico as Lewis and Roca Jontz Dawe L.L.P., as an associate. Boyd, a member of the firm’s corporate group, will focus his practice on tax and general business matters. Prior to joining Lewis and Roca, Boyd served as an associate with the New York firm of Curtis, Mallet-Prevost, Colt & Mosle L.L.P. as well as with a prominent Albuquerque firm. Boyd received an LL.M in taxation from New York University School of Law, a J.D. from the University of Michigan Law School, and a B.A., magna cum laude, from Texas Tech University.

Lewis and Roca L.L.P., practicing in New Mexico as Lewis and Roca Jontz Dawe L.L.P., is proud to welcome two new members to the firm, Leif Reid and Alfredo Alonso.

Reid joins as a partner and will help further develop the firm’s Reno office while continuing his practice in governmental regulatory matters and commercial litigation. He has practiced law in the Reno area for over 10 years, working most recently as a partner in the Reno office of Lionel Sawyer & Collins. Through his tenure, he has represented clients in complex civil litigation in federal and state courts as well as before various state and federal administrative boards. Reid received his J.D. from Stanford Law School and his B.A. from Brigham Young University.

Alonso will join the firm as a principal and will continue his focus with the firm’s government relations group. His consulting experience spans over 11 years in Nevada. Most recently, he served as part of the Lionel Sawyer & Collins government relations team and as deputy press secretary and legislative assistant for Banking, Housing, and Urban Affairs for former senator Jacob “Chic” Hecht. Alonso was retained by Congresswoman Vucanovich as her senior legislative assistant and as policy analyst for the Committee on House Administration.

President George W. Bush appointed Albuquerque attorney William B. Keleher to fill the remaining vacant seat on the nine-member board that manages Valles Caldera National Preserve. Keleher will serve until January 2009 as the cultural and historical expert on the board, replacing author and historian William DeBuys, whose term ended in 2005. Keleher, who is with Keleher and McLeod, practices real-estate, public-utility and estate-planning law. He is on the board of Albuquerque Economic Development and has served as chairman of the Federal Magistrate Selection Panel for New Mexico since 1994. Keleher grew up in Albuquerque and said he developed a love for New Mexico history from his father, Will Keleher, an attorney and writer.

Ann M. Conway has been promoted by Miller Stratvert to director. Conway joined the firm as counsel in May 2005. She is the president of the Albuquerque Bar Association and director of the New Mexico Defense Lawyers Association.

Matt Sandoval was appointed the new Las Vegas city attorney. Sandoval retired from the Las Vegas Policy Department and entered the UNM School of Law. He opened his private practice and then served as an assistant district attorney for the 4th Judicial District. He was also county attorney for Mora and Guadalupe counties and served as president of the New Mexico District Attorney Association. His accomplishments as district attorney made him a top crime fighter in the state.

The UNM Alumni Association presented the Erna S. Ferguson Award for exceptional accomplishment and distinguished service to John P. Salazar, a partner with the law firm of Rodey, Dickason, Sloan, Akin & Robb. Salazar is a former president of the UNM Alumni Association and has served on the board of the UNM Foundation. He also is the immediate past chair of the board of the Albuquerque Hispano Chamber of Commerce and has served in leadership positions on many boards, including the Albuquerque Economic Forum and the Greater Albuquerque Chamber of Commerce.

Attorney General Patricia Madrid has been included in the list of “Top Movers and Shakers in America” in the January 2006 issue of Latino Leaders Magazine. Madrid appears in the list of 101 individuals who have been successful and made significant contributions to the Latino and Hispanic community in 2005.

Randall M. McDonald has joined the Miller Stratvert Law Firm as counsel in the Albuquerque office. McDonald has a bachelor’s degree from Montana State University and a law degree from the University of Montana. He practices primarily in business banking, commercial transactions, computer and technology law and tax-exempt organizations law.
Liam Griffin has been made an associate attorney with the David M. Stevens law firm. Griffin received his bachelor’s degree from the University of California at Berkeley in 1985 and graduated with honors from the UNM School of Law. He spent more than 20 years in the telecommunications industry as a business manager. He is also an accomplished musician and entertainer who has performed throughout Europe and the United States. Griffin, who speaks fluent Spanish and French, will conduct a civil practice, concentrating on commercial and property law.

Judge Benjamin Chavez of Bernalillo County Metropolitan Court Criminal Division XIII will be taking on new responsibilities presiding over some sessions of Homeless Court in addition to his regular full-time criminal docket. He will be working in conjunction with Presiding Criminal Court Judge Victoria Grant. Judge Chavez will begin his new responsibilities in mid-April. He has been on the Metropolitan Court bench since November 2004. He is a graduate of the UNM Law School, a former DWI prosecutor and a former assistant Albuquerque city attorney. Homeless Court was established at Bernalillo County Metropolitan Court in 2002 and is designed to help defendants find housing and employment. Their criminal activity is often directly related to their homelessness, and those who participate in the program are those who are willing to make a real effort and take advantage of resources offered by the court to break the cycle of homelessness. Metropolitan Court Homeless Court is patterned on a similar court in San Diego. Homeless Court staff includes a dedicated probation officer and clerk who work with court clients and community organizations.

The new Bernalillo County Metropolitan Court Rules Committee has begun meeting to review rules and procedures for the state’s busiest court. The committee, headed by Criminal Division XII Judge Daniel Ramczyk, was appointed last month by Bernalillo County Metropolitan Court Chief Judge Judith K. Nakamura. The initiative for a separate rules committee was part of a directive handed down by New Mexico Supreme Court Chief Justice Richard Bosson. The committee will study criminal and civil rules, including mandates on DWI and DV cases, jury procedures and timelines. Any recommendations made will be submitted to the New Mexico Supreme Court for approval. The committee will work to streamline procedures for efficiency that will enable judges to manage caseloads of seven to eight thousand cases a year in a way that minimizes delays and guarantees that cases will be heard on the merits as soon as possible. Other committee members include Metropolitan Court Criminal Presiding Judge Victoria Grant, Criminal Division I Judge Victor Valdez, Civil Division XVII Judge Clyde DeMersseman, Magistrate Court Division Director of the Administrative Office of the Courts Karen Janes, attorneys Jennifer Romero of the public defender’s office, Deputy Bernalillo County District Attorney Debbie DePalo and Gene Vance, in private civil practice. Bernalillo County Metropolitan Court Counsel Raymond Mensack will serve in an advisory capacity.

James M. Parker of the Modrall Sperling law firm has been selected as a delegate to the 2006 National Summit on Retirement Savings. Along with 200 other delegates from around the country, Parker will join Secretary of Labor Elaine L. Chao, leaders of Congress, and leaders in business and academia in Washington, D.C., with a common goal: to encourage all Americans to evaluate and plan for their retirement security. Building on the efforts of two previous summits, the goal of the 2006 National Summit is to overcome the obstacles to retirement savings. The delegates will focus on the savings challenges of four targeted groups that face a variety of obstacles to successful savings: new entrants in the workforce, workers nearing retirement, low-income workers and small business employees. The summit will identify the central issues and analyze possible strategies to assist workers and families in overcoming savings obstacles. Parker is a shareholder of the Modrall Sperling law firm and chair of its employee benefits, probate and federal tax group. He has over 35 years of experience in helping small businesses and individuals with employee benefits, federal taxation, estate planning and health care law.

Rodye attorney Justin Horwitz was recently elected to the board of directors of the New Mexico Community Development Loan Fund. Horwitz practices in the business department with an emphasis in public finance, mergers and acquisitions and corporate law. A frequent speaker on topics related to business law, he represents companies and individuals in matters related to franchising.

Governor Bill Richardson named Tommy Jewell as the new Cabinet Secretary for the Children, Youth and Families Department (CYFD). The governor touted Jewell as one of New Mexico’s best known and most respected advocates for children and families. Judge Jewell retired last year as the Presiding Judge of the 2nd Judicial District Children’s Court after more than two decades of service on the bench. He was recognized for Outstanding Judicial Service by the State Bar of New Mexico in 1997 and was selected Outstanding Judge by the Albuquerque Bar Association in 2001. Jewell graduated from the UNM School of Law in 1979. Former Governor Toney Anaya appointed him to the Children, Youth and Families Department (CYFD). The governor touted Jewell as one of New Mexico’s best known and most respected advocates for children and families. Judge Jewell retired last year as the Presiding Judge of the 2nd Judicial District Children’s Court after more than two decades of service on the bench. He was recognized for Outstanding Judicial Service by the State Bar of New Mexico in 1997 and was selected Outstanding Judge by the Albuquerque Bar Association in 2001. Jewell graduated from the UNM School of Law in 1979. Former Governor Toney Anaya appointed him to the Children’s Court by former Gov. Bruce King in 1991. He currently serves on the State Justice Institute Board of Directors, to which he was appointed by President Bill Clinton in 1995.

Margaret A. Foster has joined Keleher & McLeod P.A. as of counsel. Foster has a master’s degree in taxation from New York University and a law degree from UNM. She is a member of the Albuquerque Bar Association and the Albuquerque Estate Planning Council.
Herbert E. Cooper, a longtime El Paso judge and co-founder of La Viña Winery, has died at age 66. Cooper, known by loved ones and friends as “Tio,” was the first judge of the County Court-at-Law No. 5 in El Paso. He is survived by his wife, Susan Munder Uribeta, and his children, Deborah Cooper, Janet Sullivan, Eric Cooper, Christina Uribeta and Justin Cooper. Cooper retired as judge of County Court-at-Law No. 5 after serving 21 years on the bench. Friends said he served five consecutive electoral terms, and he never attracted an opponent. Most recently he was a visiting judge for the Drug Impact Court, a position he accepted within months of retiring.

Don Alton Troublefield, 61, passed away Sept. 16 at his residence. Troublefield was born in Hagerman, New Mexico, and served for 19 years as Hagerman municipal judge. He was a member of the Hagerman School Board, Hagerman Fire and Rescue and the Chapparral Skeet Club of Roswell. Troublefield was owner and operator of TNT Transportation. He is survived by his wife, Billie Ruth; his son, Paul; his daughters, Mary Kathryn Tennison and Margaret Ann Troublefield; a sister, Carolyn Ann Walls Malone; and two grandchildren.

Albert T. Gonzales, who defended land-grant activist Rejes Tijerina, worked on legislation with Helen Keller and arraigned accused spies Julius and Ethel Rosenberg, died at age 93 in Santa Fe. Gonzalez was born in Roswell and raised in Hondo and Las Cruces. He moved to Santa Fe following his election as a state representative from southern New Mexico in 1940.

Gonzales was apparently New Mexico’s first blind attorney, and, according to his family, was the first blind student at New Mexico State University and the first to graduate from Georgetown Law School in Washington, D.C. He lost his sight in a swimming accident as a teenager.

Starting in the 1970s, Gonzalez invested in Santa Fe real estate. His holdings included a hardware store, a motor company, a restaurant and apartments. He was also president of the old Santa Fe Bus Company. He was always the first to admit that he had been very lucky, but not depending on luck, he pushed himself to achieve in areas where he broke new ground as a blind person.

Gonzales served on the Santa Fe County Commission, was appointed to the regents boards for NMSU and the New Mexico School for the Visually Handicapped, and served on numerous other public boards and commissions. Santa Fe’s Gonzales Elementary School and Gonzales Street are named after him.

During a stint as a police judge in the 1940s, he arraigned the Rosenbergs and bound them over to federal court in New York. The Gonzales family treasures a photograph of Gonzalez with Keller, who came to Santa Fe to help Gonzales push through legislation on aid and rights for the blind. Gonzales also represented Tijerina after his band of armed land-grant activists took over the Tierra Amarilla courthouse in 1967. He once said that his success in real estate made it possible for him to help others. He took on the cases of thousands of low-income clients in domestic relations disputes and bankruptcies. His son Albert V. Gonzales, also a lawyer in Santa Fe, once said his father “was Legal Aid before there was really Legal Aid.” According to his memoir by Alexander Andrews, Gonzales was “irascible, demanding and unconventional,” such as when he wore a 1950s tuxedo to a local cafe for lunch. For decades, he was a well-known sight around Santa Fe’s South Capitol neighborhood, walking with his assistance dogs. Upon his death, Gonzales was remembered by former governors, state legislators, and fellow attorneys across the state.

Joseph A. Sommer, age 83, passed away on Feb. 22. A resident of Santa Fe since 1953, Sommer was born and raised in Portsmouth, OH, the son of Aloysius and Freda Sommer. His father died when Sommer was nine, leaving his mother to raise and educate Sommer and his four siblings (Madeline, Dorothy, Teresa and James) during the Great Depression. He graduated as valedictorian in 1940 from St. Mary’s Parochial School and earned a full scholarship to Xavier University. He graduated from Xavier in 1943, summa cum laude, and again was awarded a full scholarship to Catholic University where he earned his law degree in 1946. While working for the U.S. attorney’s office in Washington D.C., he attended Georgetown University and received his LL.M in 1951. In 1953, he was invited by a friend to visit Santa Fe, and he never left. He developed his private law practice and co-founded McKenna & Sommer, now known as Sommer, Udall, Hardwick, Ahern & Hyatt. He enjoyed a long and distinguished career as one of New Mexico’s first tax attorneys and one of the state’s premier trial attorneys. He was an eloquent speaker with a mastery of the English language, history and literature.

Sommer tried innumerable cases throughout northern New Mexico in state and federal courts, while simultaneously developing a tax, business real estate and estate planning practice. He especially enjoyed mentoring young attorneys in his firm throughout his legal career. His achievements were recognized by his colleagues in 1991 when he received the President’s Award for Exceptional Service by the Bar Association of the 1st Judicial District. One of the highlights of his professional career was his oral arguments before the U.S. Supreme court in Rea v. The United State of America. At the age of 33, he and his client prevailed against the government.

Sommer volunteered in many civic, educational, legal and charitable organizations as a member, director and officer. He was a member and past president of the Santa Fe Jaycees and a member and past president of the local bar association. During the last years of his career, he was especially proud of his service to his community through the Service Corps of Retired Executives (SCORE), a non-profit association dedicated to the formation, growth and success of small businesses nationwide. He gave countless hours providing legal advice to many small business owners in Santa Fe.

He loved Santa Fe and his many friends with whom he regularly socialized. An ardent reader and conservative, he loved to debate and discuss the political, religious and social issues of the times. He loved to travel and valued time spent with his children and grandchildren. His strong and gentle guidance towards honesty, integrity and fairness are part of the legacy he left his family.

Sommer is survived by his wife of 24 years, Henriette Hardy, a sister, Carolyn Ann Walls Malone; his son, Paul; his daughters, Mary Kathryn Tennison and Margaret Ann Troublefield; a sister, Carolyn Ann Walls Malone; and two grandchildren.
### Legal Education

#### March

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<td>(703) 797-2008, <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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<td>Pro Se Can You See: Navigating the Fog of the Pro Se Litigant</td>
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<td>(505) 797-6020, <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td>State Bar Center, Albuquerque Center for Legal Education of NMSBF</td>
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<td>(505) 797-6020, <a href="http://www.nmbar.org">www.nmbar.org</a></td>
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<td>10</td>
<td>Guiding Clients Through the NM Adoption Process</td>
<td>Albuquerque National Business Institute</td>
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<td>(800) 835-8525, <a href="http://www.nbi-sems.com">www.nbi-sems.com</a></td>
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<td>2006 UCC 3 (Negotiable Instruments/Commercial Paper) Update</td>
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<td>Protecting NM Special Education Students’ Needs</td>
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<td>14</td>
<td>Real World Toxicology for the Courtroom: Legal Evaluation Strategies</td>
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<td>Corporate Counsel: Caught in the Crossfire</td>
<td>TRT, INC.</td>
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<td>(703) 779-2008, <a href="http://www.trtcle.com">www.trtcle.com</a></td>
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G = General  
E = Ethics  
P = Professionalism  
VR = Video Replay

Programs have various sponsors; contact appropriate sponsor for more information.

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| Satellite Broadcast | Teleseminar | Development in NM Planning
| Center for Legal Education of NMSBF | Center for Legal Education of NMSBF | Land Use and Water Issues |
| 3.6 G | 1.0 G | Albuquerque
| (505) 797-6020 | (505) 797-6020 | Lorman Education Services
| www.nmbar.org | www.nmbar.org | 5.0 G, 1.0 E |
| Albuquerque | Teleconference | Get Organized and Get Things Done: Practical Time Management for Lawyers |
| Sterling Education Services | TRT, INC. | State Bar Center, Albuquerque Center for Legal Education of NMSBF |
| 4.6 G, 2.0 E | 2.0 G | 3.2 G |
| (715) 850-0495 | (703) 779-2008 | (505) 797-6020 |
| 17 | How to Do Your First Personal Injury Case | 21 | Pro Se Can You See: Navigating the Fog of the Pro Se Litigant | 24 | International Treaties |
| State Bar Center, Albuquerque Center for Legal Education of NMSBF | Teleconference | International Treaties |
| 5.0 G, 1.0 E | TRT, INC. | TRT, INC. |
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| www.nmbar.org | (505) 797-6020 | (703) 779-2008 |
| 17 | Moral Character Test: Its Affect on Admissions and Retention | 21 | Do You Really Want This Case? | 27 | Professionalism and Ethics Issues Regarding Addictive Behaviors |
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| 2.0 P | 2.0 G | 2.0 P |
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| 20 | Turning the Tables: Bias Directed at Attorneys | 22 | Ethical Use of Paralegals in New Mexico | 28 | 2006 Estate Planning Valuation Update |
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| TRT, INC. | TRT, INC. | Teleseminar |
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| www.trtcle.com | www.trtcle.com | (505) 797-6020 |
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| Albuquerque | Teleconference | Ethical Use of Paralegals in New Mexico |
| New Mexico Crime Victims Reparation Commission | TRT, INC. | Ethical Use of Paralegals in New Mexico |
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| (505) 266-3451 | (703) 779-2008 | 1.0 G |
| www.nmbar.org | www.trtcle.com | (505) 797-6020 |
| VR | Teleconference | Major Issues in Arbitration |
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| 6.0 G, 1.0 E | 2.0 G | 2.0 G |
| (505) 797-6020 | (703) 779-2008 | (703) 779-2008 |
| 23 | Major Issues in Arbitration | | | | Experienced Practitioner’s Guide to Achieving Favorable Personal Injury Settlements |
| Teleconference | | Albuquerque |
| TRT, INC. | | National Business Institute |
| 2.0 G | 5.5 G, 0.5 E | 5.5 G, 0.5 E |
| (703) 779-2008 | (800) 835-8525 | (800) 835-8525 |
## 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 MARCH 6, 2006**

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

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<tr>
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### Certiorari Granted but not yet Submitted to the Court:

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**Response due 3/13/06**

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**Response filed 2/14/06**

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<td>State v. Evans</td>
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**BAR BULLETIN - March 6, 2006 - Volume 45, No. 10 - 19**
**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 MARCH 6, 2006**

**CERTIORARI GRANTED AND SUBMITTED TO THE COURT**

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

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<tr>
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<th>Case</th>
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<tr>
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<td>Manning v. New Mexico Energy &amp; Minerals (COA 23,396)</td>
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<td>NO. 28,410</td>
<td>State v. Romero (COA 22,836)</td>
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<td>State v. Gutierrez (COA 24,731)</td>
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<td>NO. 28,660</td>
<td>State v. Johnson (COA 23,463)</td>
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<td>Romero v. City of Santa Fe (COA 24,775)</td>
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<td>Deflon v. Sawyers (COA 23,013)</td>
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<td>Payne v. Hall (COA 22,383)</td>
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<td>Maestas v. Zager (COA 24,200)</td>
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<td>Sanchez v. Pellicer (COA 25,082)</td>
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<td>State v. Kathleen D.C. (COA24,540)</td>
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<td>Montgomery v. Lomos Altos (COA 24,297)</td>
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<td>Grine v. Peabody (COA 24,354)</td>
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**PETITION FOR WRIT OF CERTIORARI DENIED:**

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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)
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IN THE MATTER OF THE APPROVAL OF LOCAL FORM 3.03 FOR THE SIXTH JUDICIAL DISTRICT

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the Rules of Civil Procedure for the District Courts Committee to approve amendments to LR6-Form 3.03, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is adopted and the amendments to LR6-Form 3.03 for the Sixth Judicial District hereby are APPROVED.

DONE at Santa Fe, New Mexico, this 16th day of February, 2006.

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

LR6-Form 3.03

STATE OF NEW MEXICO
COUNTY OF ____________________________________________
SIXTH JUDICIAL DISTRICT COURT

________________________________________, Petitioner

No. ________________

v.

Judge ________________

________________________________________, Respondent

ORDERED PARENTING PLAN FOR
FOR THE CHILDREN OF __________________________ and

1. **Children involved:** The children’s names and dates of birth are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of birth</th>
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<tbody>
<tr>
<td>______________</td>
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2. **Primary physical custody:** The children shall be in the primary physical custody of the [mother] [father] (hereinafter sometimes referred to as the “custodial parent”) having periods of responsibility as set forth in this order.

**PROPER CONDUCT OF SEPARATED PARENTS**

To father and mother:

You are involved in a divorce suit and are the parents of minor children. As you know, your children are usually the losers when their parents separate. They are deprived of the full-time, proper guidance that two parents can give -- guidance and direction essential to their moral and spiritual growth.

Although there is probably some bitterness between you, it should not be inflicted upon your children. In every child’s mind there must and should be an image of two good parents. Your future conduct with your children will be helpful if you will follow these suggestions:

A. Do not poison your children’s minds against either their mother or father in discussing their shortcomings. Do not attempt to buy your children’s favor by presents or special treatment.

B. Do not expose your children to any member of the opposite sex with whom you may be emotionally involved.

C. Do not use your visitation as an excuse to continue arguments with the other parent.

D. Do not visit your children if you have been drinking. Do not visit your children at unreasonable hours.

E. Be prompt in paying child support as ordered. You will not be credited with presents, clothes, etc., as part of the child support ordered.

F. Do not fail to notify the other parent as soon as possible if you are unable to keep your visitation. It’s unfair to your children to keep them waiting -- and worse to disappoint them by not coming at all.

G. Make your visitation as pleasant as possible for your children by not questioning them regarding the activities of the other parent and by not making extravagant promises which you know you cannot or will not keep.

H. The parent with whom the children live must prepare them both physically and mentally for the visitation. The children should be available at the time mutually agreed upon.

I. If one parent has plans for the children that conflict with the visitation and these plans are in the best interests of the children, be adults and work out the problem together.

J. Always work for the spiritual well-being, health, happiness and safety of your children.

3. **Legal custody:**

The parties shall have joint legal custody of the children, with significant periods of responsibility allocated to each parent in accordance with the terms of this parenting plan and with authority and responsibility for making major decisions in the children’s best interests as set out herein. Joint legal custody means that neither of you will unilaterally make a major change affecting your children in the areas of religion, residence, non-emergency medical or dental care, education or major recreational activities. Before such a decision is made, you will discuss the matter, and both of you must agree. If you cannot agree, your disagreement will be resolved by the methods chosen in Paragraph 14 of this
plan. Until agreement or resolution, no change will be made. This agreement shall set forth the authority and responsibility for making major decisions in the children’s best interest as set out in this order. Except as otherwise specified in this order, you shall have joint responsibility and authority for the major decisions affecting the children’s health, medical and dental treatment, education, religious activities, recreational activities and residence. Neither of you shall implement a decision which constitutes a major change in either of the children’s lives with respect to these designated areas without consultation with the other parent.

4. Contact with non-custodial parent: The custodial parent shall encourage and support frequent contact between the non-custodial parent and the children. When a parent does not have the children in their care, such parent is entitled to keep in touch with the children. Both parents have the right to contact the children by mail as frequently as they desire without interference or supervision of correspondence by the other parent. During any time that the children are out of the custody of one parent or the other for more than a weekend, the children shall not only be allowed, but required by the parent who has them in their custody, to call the other parent twice each week and once per weekend; that is, if the children are with one parent for an entire week, they will call the other parent twice during that week period; and if they are in the custody of one parent for a weekend they will call the other parent one time during the weekend. Such telephone conversations shall not be monitored or supervised by the parent in whose custody the children are in at the time.

5. The children’s wishes: The children’s wishes should and must be considered when decisions are made about them. How much weight you give a child’s wishes will depend on the age of the child and the nature of the decision. You will not ask a child to choose between you, and you will not burden a child with any decision that is inappropriate for the child’s age and development.

6. General care:
   A. The children shall generally be in the custodial parent’s care. The custodial parent will ensure the children have adequate food, clothing, shelter, medical care and attend school regularly. The non-custodial parent shall ensure that the children have adequate food, clothing, shelter, medical care, and attend school during the non-custodial parent’s periods of responsibility, if appropriate.
   B. Each parent shall be responsible for the day-to-day care and control of the children during those periods in which the children are physically with such parent’s household.
   C. Each parent shall arrange for day care for the children with a private caretaker or licensed day care center during the parent’s work hours during the parent’s period of responsibility. If the children’s caretaker that the custodial parent normally uses is not available, the custodial parent shall contact the non-custodial parent to determine if the non-custodial parent is available to care for the children.

7. Visitation:
   A. All visitation, other than the non-custodial parent’s weekend visitations, shall be confirmed by the non-custodial parent and custodial parent arranging the upcoming visitation at least twenty-four (24) hours prior to the time the visitation commences. That is, the custodial parent shall give the non-custodial parent at least twenty-four (24) hours notice prior to dropping the children off at the non-custodial parent’s home and the non-custodial parent shall give the custodial parent at least twenty-four (24) hours notice prior to picking up the children at the custodial parent’s home. If a party fails to provide the other with confirmation of the upcoming visitation at least twenty-four (24) hours prior to the scheduled visitation, the visitation is forfeited.
   B. Non-custodial parent shall have visitation with the children every other weekend. The weekend of _____________ (date), shall be the first alternating weekend visitation of the children with the non-custodial parent. The exchange of the children shall occur at 6:00 p.m. on Friday evenings and at 6:00 p.m. on Sunday evenings at _____________.
   C. Holidays. The children will spend holidays as follows:
      (1) Mother’s Day and mother’s birthday with mother;
      (2) Father’s Day and father’s birthday with father;
      (3) Thanksgiving holiday with father in even-numbered years from Wednesday when school recesses for the holiday to 6:00 p.m. Sunday following the holiday, and with mother in odd-numbered years;
      (4) For purposes of the Christmas holiday exchange, the parties will each have the children for a one (1) week period. During the first Christmas holiday after this parenting plan is entered by the court, the first week is with mother. During the second Christmas holiday after this parenting plan is entered by the court, the first week is with father. The parties will thereafter alternate that arrangement. In addition to alternating the weeks, the parties shall also alternate the children spending Christmas Day and Christmas Eve with each parent. During the first Christmas holiday after this parenting plan is entered by the court, the children shall spend Christmas Eve and Christmas Day with mother. During the second Christmas holiday after this parenting plan is entered by the court, the children shall spend Christmas Eve and Christmas Day with father. During the third Christmas holiday after this parenting plan is entered by the court, the children will spend Christmas Eve with mother and Christmas Day with father. During the fourth Christmas holiday after this parenting plan is entered by the court, the children will spend Christmas Eve with father and Christmas Day with mother, and they will alternate that arrangement from that time forward;
      (5) Spring break will be alternated with mother having the children during the first Spring break that occurs after this parenting plan is entered by the court. Fall Break will be alternated with father having the children during the first Fall break that occurs after this parenting plan is entered by the court;
      (6) Easter Day will be with whichever parent has custody of the children during that weekend.
   D. Telephone and mail: Both parents will keep the other informed of current phone numbers and addresses on an ongoing basis, and will not disrupt phone or mail service i.e., unplug phone, have mail held other than during absence from home).
   E. Changes: You may each ask the other for exceptions to this schedule from time to time, but the other parent has the right to say “no”, and you will not argue about it nor criticize the other parent’s decisions in front of the children.
   F. Scheduled activities: If either of the children have school or recreational activities planned on weekends during the non-custodial parent’s period of responsibility, the non-custodial parent shall take the child involved or make arrangements for the child to attend or participate in such activities during the visit. The non-custodial parent should be notified in advance of such weekend activities whenever possible.

As your children grow, it may be necessary to change the schedule from time to time. This would be a major change that you will have to discuss and agree on. If you cannot agree, you must follow the dispute resolutions in Paragraph 14.

8. Grandparents and other relatives: The children’s relationships with grandparents and other extended family members are
important, and it is beneficial for the children to spend time with your extended families, as long as, the members of those families do not try to alienate the children from either of you. You will communicate about visitation with the grandparents.

9. **Step-parents, step-children, step-siblings:** Deep and important relationships between step-relatives can develop. It is not in the children’s best interest to cut off those relationships.

10. **Medical decisions:**
   A. [Father] [Mother] agrees to keep the minor children covered by health and dental insurance under the policy of insurance available to that parent from either that parent's employer or other group health care insurance plan.
   B. In case of a medical emergency, the parent with that period of responsibility will contact the other parent concerning treatment of the child, if possible. If the absent parent cannot be reached, any decision for emergency medical treatment will be made in the best interest of the child by the available parent.
   C. Elective medical and dental treatment, other than routine medical and dental treatment, such as regularly required vaccinations and checkups, shall require the consent of both parents.
   D. Medical treatment shall be by a licensed physician, osteopath, chiropractor or other recognized health care provider. Any dental work, including orthodontic or periodontal work, shall be done by a licensed dentist.
   E. Both parents shall have full access to all medical and dental records and to health care providers.

11. **Change of residence:**
   A. Both parents presently intend to continue to live in the city of their residence.
   B. Neither parent will remove, cause to be removed, or permit removal of the children from the State of New Mexico, except as agreed to in this plan or for temporary visits which do not interfere with the time-sharing schedule, without the written consent of the other parent or resolution of the dispute by the method set forth in Paragraph 14 of this plan.
   C. If either parent plans to change their current home city or state of residence, that parent shall provide to the other parent thirty (30) days notice, in writing, stating the date and destination of the move. As soon as possible thereafter, the moving parent shall provide an address and phone number where the children may send correspondence or call. Absent agreement of the other parent or order of the court, no change of home city or state of residence will be made.

12. **Educational decisions:**
   A. Changes in educational environments or programs shall require the consent of both parents.
   B. The children shall continue to attend the school or schools in which they are currently enrolled. The children shall be placed in programs appropriate for their needs based upon recommendations by the school counselors, teachers and advisors and agreement by both parents.
   C. School districts shall not be changed unless necessitated by a move or agreement of both parents.
   D. Both parents shall have complete access to the children’s school records and shall be entitled to participate in conferences with the children’s teachers and supervisors. The custodial parent shall ensure that the non-custodial parent receives, and will forward to the non-custodial parent, copies of the children’s report cards, progress reports and special testing results. In addition, the custodial parent will ensure that the non-custodial parent receives copies of order forms for the children’s school pictures, notices of their parent-teacher meetings and any recreational activities that the children may be involved in.

13. **Recreational activities, school activities and public activities:**
   A. Major changes in the children’s recreational activities, such as enrolling a child in a series of recreational lessons, shall require the consent of both parents, and the parents shall not withhold consent arbitrarily or capriciously.
   B. The children shall continue in the recreational activities in which they are currently participating. They shall be entitled to participate in any recreational activities sponsored by the school which they are attending. Recreational activities shall expand as the children’s interests develop. The parents shall take into account the children’s expressed preferences for recreational activities. Unless the activity is dangerous or unusual (any sports or recreational activities sponsored by the children’s school shall not be considered to fall within this category), the custodial parent may enroll the children without the other parent’s consent, but shall inform the other parent of the activity. It is understood that the children may participate in programs such as soccer, baseball, gymnastics, softball, volleyball, tennis, swimming, diving, etc.
   C. Each parent shall have the right to attend and participate in the children’s school and other recreational activities, and each parent shall advise the other of such events that come to the parent’s attention.

14. **Dispute resolution:**
   A. Disputes concerning interpretation or application of this parenting plan [or] and failure of the parents to reach agreement when required under the provisions of this plan shall be resolved in accordance with this section. While a dispute is being resolved, neither parent shall alter the status quo.
   B. In the event that a problem arises in which an immediate agreement cannot be reached, the parents shall set aside a portion of time in which to discuss the matter, either in person or by telephone, without distractions, and without the children being present. Issues other than the specific problem at hand shall not be discussed at that time. The parents shall attempt, in good faith, to resolve their differences and reach an agreement. Each parent agrees to keep in mind what is in the best interests of the children and to take the children’s wishes and desires into account.
   C. Written proposals:
      If either parent wishes to permanently change the time-sharing plan or one or more aspects of the status quo, the one who wishes the change will give to the other a written change proposal which will include what the other party wants to change and why, and which will provide enough information so the other will be able to investigate. For example, the change proposal will include necessary names, addresses and phone numbers, and a reasonable time limit for responding.
      The parent who receives the change proposal will investigate the proposed change and will respond in a reasonable time, in writing. If the parent disagrees with the proposed change, the parent must explain why the parent disagrees, and when appropriate, the parent who disagrees shall make a written counter proposal.
      D. Oral Discussion:
         You will discuss all major changes in the children’s lives in order to try to reach an agreement.
         E. If you cannot agree to the proposed change, no change will be made until you submit the issue to, and participate in, mediation to try and reach an agreement.
         F. Only after you have attempted all these avenues to resolve the issue and they fail, will the matter then be submitted to the district court. The district court may refer the matter to a special
G. The cost involved in the dispute resolution will be paid fifty percent (50%) by each parent. You will use the above methods of dispute resolution and neither parent will withhold financial support or access to the children before, during or after dispute resolution.

15. **General:**
   A. You will both be actively involved in the major decisions and legal responsibilities for your children.
   B. You will communicate and be flexible about the needs of the children, especially as those needs change due to a child’s growth and development.
   C. You will be supportive of the children’s relationship with the other parent and positive about that relationship. You will give permission to the children to enjoy the relationship with the other parent and will not interfere with the parent-child relationship of the other.
   D. Neither of you will align the children against the other parent, or the other parent’s family.
   E. You shall foster a positive relationship between the other parent and the children. You will refrain from making negative or derogatory comments about the absent parent. Neither of you shall discuss disputes regarding property matters, support payments or other issues with the children or in their presence. You will not use the children as intermediaries in transmitting money, documents or messages.
   F. This parenting plan shall continue in force and effect until modified by order of a court of competent jurisdiction or until modified by written agreement.

Dated this ______ day of ________________, ______.

________________________________
District Judge
Sixth Judicial District

I certify that I have [ ] mailed [ ] delivered a copy of the foregoing to the petitioner at: ________________ and to the respondent at: ________________ on this ______ day of ________, ______.

____________________________________
Administrative assistant to the judge

**SUBMITTED BY AND AGREED TO IN SUBSTANCE AND FORM:**

Petitioner

Respondent

[Approved, effective November 21, 2002; as amended, by Supreme Court Order 06-8300-06, effective February 16, 2006.]
OPINION

PETRA JIMENEZ MAES, JUSTICE

(1) Defendant Israel Delgado Munoz (“Defendant”) was convicted of custodial interference, contrary to NMSA 1978, § 30-4-4 (B) (1989), and injuring or tampering with a vehicle, contrary to NMSA 1978, § 66-3-506 (1978). The Court of Appeals affirmed Defendant’s convictions in an unpublished memorandum opinion. State v. Munoz, No. 23,094 (Ct. App. Feb. 7, 2003). This Court granted Defendant’s petition for a writ of certiorari pursuant to Rule 12-502 NMRA 2006. On certiorari review, we consider two issues related to Defendant’s conviction for custodial interference: (1) whether the instruction given to the jury defining good cause constituted error because it failed to include the concept of good faith; and (2) whether the trial court erred in refusing to give the jury Defendant’s tendered instruction defining protracted period of time. We hold that the trial court’s good cause instruction did not adequately reflect New Mexico’s custodial interference law; however, we find the erroneous definitional instruction did not amount to reversible error. We also hold that the trial court’s refusal to give Defendant’s requested instruction defining protracted period of time was not erroneous because the meaning of the phrase is readily understandable. Accordingly, we affirm Defendant’s conviction for custodial interference.

FACTS AND PROCEEDINGS BELOW

(2) The following facts were adduced at Defendant’s criminal trial. In 1996, Defendant and his wife, Yolanda Munoz (“Yolanda”), divorced in order to protect several of their business enterprises, which were jeopardized by Defendant’s prior felony conviction. Yolanda testified further that she also went along with the divorce because she was unhappy with the marriage. In the divorce decree, Defendant and Yolanda were given joint legal custody of their four children, with Yolanda receiving physical custody of the children and Defendant receiving liberal visitation rights. However, the two continued to live together until 1999, when Yolanda and the children moved to Carlsbad, New Mexico. After Yolanda moved to Carlsbad, Defendant and Yolanda no longer acted as a married couple. Defendant lived in another city and would occasionally visit the children. Sometimes Defendant would ask Yolanda if they could get back together. Defendant wanted the family to move to Arizona. Yolanda, however, did not want to reunite with Defendant.

(3) In July 2000, Defendant went to Yolanda’s house to visit. At that time, Defendant was living with his brother in Safford, Arizona. Defendant stayed at the house, ignoring Yolanda’s repeated requests to leave. On July 3, Yolanda called Defendant from work and told him to leave her home. Despite this request, Defendant was there when Yolanda came home from work. In order to avoid arguing with Defendant, Yolanda left the house for the evening, leaving the children in Defendant’s care.

(4) In the early morning hours of July 4, 2000, Yolanda had not returned home and Defendant left the house to look for her. Defendant observed Yolanda with a male acquaintance. Upon seeing Yolanda with another man, Defendant returned home, woke up his three youngest children and took them to see what their mother was doing. Around dawn, Yolanda attempted to approach her car, however, as she approached she saw Defendant waiting for her in the car. Defendant ran out of the car and chased Yolanda, who fled with her three youngest children. Defendant and the three children then drove Yolanda’s vehicle back to her home.

(5) When Defendant and the three youngest children returned from observing Yolanda, Defendant proceeded to pack up his things. He also packed clothing and toys belonging to the three youngest children. Defendant removed the distributor wire from Yolanda’s vehicle, disabling it so that she could not follow him. He then took the three youngest children to Arizona.

(6) When Yolanda finally returned to her home, she saw her oldest child standing
outside on the road. Upon hearing that Defendant had left with the three other children, Yolanda went to the police station to report the incident. Yolanda returned home to find the contents of her purse strewn about the grass and her car parked in an unusual place behind the home. She could not start her car because of the missing distributor wire. When Defendant took the three youngest children, he also took some of Yolanda’s personal items, including her money.

[7] Defendant and the children called Yolanda after arriving in Arizona and stayed in almost daily contact while they were away. Each time Yolanda spoke to Defendant, she demanded that he return the children, but Defendant said he would not return the children until she moved to Arizona. At one point Defendant offered to meet Yolanda in El Paso, Texas with the children, on the condition that she go alone. Yolanda declined Defendant’s offer because she was unwilling to go by herself. The children were eventually returned to Yolanda sixteen days after they were taken, following Defendant’s arrest at a social services agency in Arizona on July 19, 2000.

[8] As a result of these events, Defendant was charged with custodial interference, contrary to Section 30-4-4(B), injuring or tampering with a vehicle, contrary to Section 66-3-506, unlawful taking of a motor vehicle, contrary to NMSA 1978, § 66-3-506 (1998), and larceny, contrary to NMSA 1978, § 30-16-1 (1987). During Defendant’s trial, two definitional jury instructions related to custodial interference became an issue. The jury was given the following instruction outlining the elements of custodial interference:

For you to find the defendant guilty of Custodial Interference... the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant had a right to custody of [the children];
2. The defendant maliciously took [the children], and failed to return them without good cause;
3. At the time defendant took [the children], each of them was under the age of eighteen (18);
4. The defendant intended to deprive permanently or for a protracted period of time another person also having a right to custody of these children... (Emphasis added.) Neither party objected to this instruction outlining the elements of custodial interference. However, Defendant and the State disagreed about related instructions defining the terms good cause and protracted period of time.

[9] Both Defendant and the State tendered definitional jury instructions for the term good cause. Defendant’s proposed definition for good cause was taken from State v. Luckie, which defined good cause as “...a good faith and reasonable belief that the taking, detaining, concealing, or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm.” 120 N.M. 274, 278, 901 P.2d 205, 209 (Ct. App. 1995) (quoting CAL. PENAL CODE § 277 (Cun. Supp. 1995)). The State’s submitted definition was also taken from Luckie, but based on employment law, and stated that “[g]ood cause is established when an individual faces compelling and necessitous circumstances of such magnitude that there is no [other] alternative.” Id. at 277-78, 901 P.2d at 208-09 (quoting Molenda v. Thomsen, 108 N.M. 380, 381, 772 P.2d 1303, 1304 (1989)). After argument by counsel, the trial court chose the State’s instruction based on the Court of Appeal’s statement in Luckie that the employment law definition “can readily be applied to varying fact patterns in the context of our custodial interference statute.” Id. at 278, 901 P.2d at 209. The trial court interpreted the appellate court’s comment as instructing lower courts to use the employment law definition in custodial interference cases. Consequently, the jury was given the employment context instruction over Defendant’s alternative request that no instruction be given.

[10] The trial court declined Defendant’s request to provide the jury with a definitional instruction for the phrase protracted period of time. The court determined that the phrase was readily understandable and an instruction would not aid the jury.

[11] The jury convicted Defendant of custodial interference and injuring or tampering with a motor vehicle and acquitted him of unlawful taking of a motor vehicle and larceny. The Court of Appeals held that the jury instruction given adequately defined good cause and that it was not necessary to define protracted period of time for the jury. We granted certiorari to review the good cause definitional instruction and the trial court’s decision not to instruct the jury on the definition of protracted period of time.

DISCUSSION

Good Cause Instruction

[12] “The standard of review we apply to [the good cause instruction] depends on whether the issue has been preserved.” State v. Benally, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134. If Defendant preserved the error, we review the given instructions under a reversible error standard. Id. If Defendant failed to preserve the issue for review, we review for fundamental error. Id. Thus, we must first address the State’s claim that the good cause instruction should be reviewed only for fundamental error.

[13] The State maintains that the jury instruction error now identified by Defendant was not preserved because after the State submitted the instruction drawn from Molenda, the defense maintained a general objection to the instruction but did not point to any fault in the instruction’s failure to expressly address good faith. Defendant, however, took two significant steps which constituted adequate preservation. First, Defendant submitted the good cause definition found in the California custodial interference statute cited in Luckie that specifically states good faith is an element of good cause. Second, when Defendant’s tendered instruction was refused, Defendant objected and argued alternatively that no instruction defining good cause should be given. By taking these two steps, Defendant fairly invoked a ruling by the trial court. Benally, 2001-NMSC-033, ¶ 26 (Baca J., dissenting) (“With respect to jury instructions, a ruling or decision by the district court may be fairly invoked by either a formal objection to the instruction that is to be given to the jury by the court, or by tendering a correct instruction.”). Therefore, we review the given instruction for reversible error.

[14] In order to determine whether the good cause instruction given to the jury constitutes reversible error, it is first necessary to clarify both types of action prohibited by the custodial interference statute and the mental state a defendant must have to be subject to conviction for custodial interference. The custodial interference statute states:

Custodial interference consists of any person, having a right to custody of a child, maliciously taking, detaining, concealing or enticing away or failing to return that child without good cause and with the intent to deprive permanently or for a protracted time another person also having a right...
to custody of that child of his right to custody. Whoever commits custodial interference is guilty of a fourth degree felony. Section 30-4-4(B) (emphasis added). The statute clearly sets forth two distinct ways that a person, having a right to custody of a child, can commit custodial interference: (1) maliciously taking, detaining, conceal- ing or enticing away a child with the intent to deprive permanently or for a protracted period of time another person also having a right to custody; or (2) failing to return that child without good cause and with the intent to deprive permanently or for a pro- tracted time another person also having a right to custody of that child of his right to custody. The first act constitutes “taking” interference, and the second, “failing to return” interference. To be guilty of custodial interference, a defendant need only engage in one of the acts prohibited by the statute, either “taking” interference or “failing to return” interference.

[15] Both types of custodial interference require malice and the intent to deprive permanently or for a protracted time another person of his or her custodial rights. Luckie, 120 N.M. at 278, 901 P.2d at 209 (“We think it is clear that the term ‘maliciously’ modifies all of the proscribed conduct in Section 30-4-4(B), and is an essential element of the alleged offense.”). Only the second type, “failing to return” interference, requires a showing that a defendant acted without good cause. Thus, the good cause instruction in this case only pertains to the jury’s finding with regard to “failing to return” interference. Having clarified the type of harm that is prohibited by the custodial interference statute and a defendant’s requisite mental state, we now turn to the meaning of good cause in custodial interference cases in New Mexico. Defendant argues that a good cause instruction in custodial interference cases should include the concept of good faith. We agree.

[16] Currently there is no uniform jury instruction defining good cause and no New Mexico case has defined good cause within the context of custodial interference. Cf. Luckie, 120 N.M. 274, 901 P.2d 205 (discussion of good cause limited to determining whether the term rendered our custodial interference statute unconstitutional vague). Therefore, to determine what constitutes good cause in custodial interference cases, we must consider the objective of the custodial interference statute. The custodial interference statute is intended to prevent persons with custodial rights from disrupting another person’s right to custody. Section 30-4-4(B). However, recognizing that there may be situations in which custodial interference is warranted, the legislature modified the custodial interference statute to include the requirement that the custodial interference must be perpetrated “without good cause.” Compare NMSA 1978, § 30-4-4 (prior to 1989 amendments), with NMSA 1978, § 30-4-4(B) (1989). Thus the statute punishes conduct effected without good cause and excuses conduct justified by good cause.

[17] The Model Penal Code offers guidance as to what constitutes good cause in custodial interference cases. In the section on interference with custody, the Model Penal Code provides an affirmative defense when “the actor believed that his action was necessary to preserve the child from danger to its welfare.” MODEL PENAL CODE § 212.4(1)(a) (Official Draft and Revised Comments 1962). To prevent the willful defiance of a custody order, however, the Model Penal Code requires a defendant’s belief to be a good faith belief. Id. at § 212.4 cmt. 3 (the Model Penal Code requires “an honest belief that the actor’s conduct was ‘necessary to preserve the child from danger to its welfare.’”). Several other jurisdic- tions also excuse a defendant’s conduct when his or her action is taken to protect a child from harm, so long as the action is based on a good faith belief, a reasonable belief, or both.1

[18] We believe that the term good cause in our custodial interference statute similarly encompasses the concepts of subjective good faith and objective reasonableness. To avoid criminal sanctions for custodial interference, a defendant must have an honest belief that his actions are necessary to protect a child from harm and that honest belief must be reasonable. A defendant’s unreasonable belief that custodial interference is necessary to protect children from harm will not satisfy the good cause requirement.

[19] In custodial interference cases, an instruction defining good cause should communicate that a defendant’s belief must be both reasonable and in good faith. Therefore, when a defendant requests an instruction defining good cause, good cause should be defined. A suggested definition is as follows: “a good faith and reasonable belief that the defendant’s actions were necessary to protect a child from physical or significant emotional harm.” We believe this suggested definition adequately describes our state’s custodial interference law which excuses a defendant’s actions when they are motivated by an honest and reasonable belief that custodial interference is necessary to prevent physical harm or significant emotional harm. Our uniform jury instructions committee should review this instruction and make a further recommendation.

[20] We acknowledge that the good cause instruction given to the jury in this case

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2 This suggested definition takes into account California’s custodial interference statute, CAL. PENAL CODE § 277 (Cum. Supp. 1995), on which the Court of Appeals apparently relied in State v. Luckie, 120 N.M. 274, 901 P.2d 205 (Ct. App. 1995), and the version of the California statute in effect at the time of Defendant’s conduct, CAL. PENAL CODE § 278.7(a) (1999). Our suggested instruction identifies the types of harm that are relevant in New Mexico. We believe that a defendant should be permitted to protect a child from both physical harm and significant emotional harm without being subjected to criminal penalty.
did not accurately reflect New Mexico’s custodial interference law because it failed to address the concept of good faith. When reviewing an erroneous jury instruction for reversible error, “[w]e consider jury instructions as a whole, not singly,” State v. Montoya, 2003-NMSC-004, ¶ 23, 133 N.M. 84, 61 P.3d 793, and we look to see “whether a reasonable juror would have been confused or misled by the jury instructions.” Id.

[21] When the given jury instructions are examined as a whole, it becomes clear that the jury in this case could not have been confused or misled by the erroneous good cause instruction. The jury was instructed that to find the defendant guilty of custodial interference, “[t]he State must prove to your satisfaction beyond a reasonable doubt that . . . the defendant maliciously took [the children], and failed to return them without good cause.” (Emphasis added.) As previously discussed, either “taking” interference or “failing to return” interference alone constitutes illegal custodial interference, however, the instruction in this case required the jury to find beyond a reasonable doubt that Defendant both maliciously took the children and failed to return them without good cause. In light of this instruction, Defendant’s conviction for custodial interference meant that the jury found Defendant guilty of both “taking” interference and “failure to return” interference.

[22] The erroneous good cause instruction only affected “failure to return” interference because good cause only modifies “failure to return” interference. Section 30-4-4(B) (“failing to return that child without good cause”). Thus, the incorrect definitional instruction had no bearing on the jury’s finding that Defendant engaged in “taking” interference. Because the jury found Defendant guilty of “taking” interference, an error with regard to “failure to return” interference should not invalidate the jury’s verdict that Defendant was guilty of custodial interference based on “taking” interference. Therefore, when the jury instructions are considered as a whole, the jury was not confused or misled as to “taking” interference and the good cause instruction error did not amount to reversible error.

Protracted Period of Time Instruction

[23] Defendant contends that the trial court erred when it refused to give the jury his tendered instruction defining the phrase protracted period of time. Defendant’s proposed instruction read: “protracted period of time means a lengthy or unusually long time under the circumstances.” Relying on State v. Mascareñas, 2000-NMSC-017, 129 N.M. 230, 4 P.3d 1221, Defendant asserts that the trial court was required to give his tendered instruction. Defendant appears to argue that once a court has determined the meaning of a term, the jury should be instructed on that meaning. However, Defendant told the trial court when he submitted his definitional instruction that the definition might be helpful to the jury but that it was not required. Defendant asserts that because it is uncertain whether the jury considered the circumstances in determining whether he had kept the children for a protracted period of time, this error rose to the level of fundamental error.

[24] We conclude that the trial court did not err in refusing to give Defendant’s requested instruction. “Where the issue is the failure to instruct on a term or word having a common meaning, there is no error in refusing an instruction defining the word or term.” State v. Carnes, 97 N.M. 76, 79, 636 P.2d 895, 898 (Ct. App. 1981). Since the phrase protracted period of time is self-explanatory and has an understandable and common meaning, there was no need for further definition. See Trujeque v. Serv. Merch. Co., 117 N.M. 388, 390, 872 P.2d 361, 363 (1994) (concluding that the phrase “exclusive control and management” was self-explanatory and thus required no further definition for the jury); Luckie, 120 N.M. at 279, 901 P.2d at 210 (concluding that the phrase protracted time does not require “enactment of a further statutory definition” because “any reasonable person would interpret the meaning of the phrase ‘protracted period’ to mean a ‘lengthy or unusually long time under the circumstances’” (quoting People v. Obertance, 432 N.Y.S.2d 475, 476 (N.Y. Crim. Ct. 1980))). Indeed, Defendant admits that this phrase has a common meaning.

[25] Additionally, Defendant’s reliance on Mascareñas is misplaced. In Mascareñas, 2000-NMSC-017, ¶ 21, we held that the trial court committed fundamental error when it failed to properly instruct the jury on the mens rea element of the crime at issue. We determined that “the trial court’s failure to provide the instruction was a critical determination akin to a missing elements instruction.” Id. ¶ 20. That is not the situation here because the jury was properly instructed on all the elements of the crime. Thus, Mascareñas is not applicable to the facts of this case.

[26] Further, Defendant was able to argue his interpretation of the meaning of protracted period of time to the jury. Defendant argued that he did not intend to keep the children for a protracted period of time, unlike situations where a child is taken and never heard from again until several years later when the child is found. Defendant said that he never intended to deprive Yolanda of the children; she knew where they were and he told her that she could come and get them. He argued that the two-week time period in this case did not qualify as a protracted period of time. We believe that a reasonable juror could glean from Defendant’s closing argument that a protracted period of time meant an unusually lengthy amount of time and that, according to Defendant, the two-week period was not unusually long under the circumstances of this case. Thus, we conclude that no error resulted from the trial court’s refusal to give the jury Defendant’s tendered definitional instruction on the phrase protracted period of time. Cf. Bennally, 2001-NMSC-033, ¶ 21 (holding that closing argument was not sufficient to correct fundamental error arising from an erroneous jury instruction).

CONCLUSION

[27] For the reasons stated, we affirm Defendant’s conviction for custodial interference.

[28] IT IS SO ORDERED.

PETRA JIMENEZ MAES, Justice

WE CONCUR:

RICHARD C. BOSSON, Chief Justice

PAMELA B. MINZNER, Justice

PATRICIO M. SERNA, Justice

EDWARD L. CHÁVEZ, Justice
Certiorari Not Applied For

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-022

STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
GERALD B.,
Child-Appellant.
No. 24,538 (filed: January 5, 2006)

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
BARBARA J. VIGIL, District Judge

PATRICIA A. MADRID
Attorney General
JOEL JACOBSEN
Assistant Attorney General
Albuquerque, New Mexico

SHERI A. RAPHAELSON
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for Appellee

OPINION

IRA ROBINSON, JUDGE

{1} Child appeals his adjudication as a delinquent for possession of one ounce or less of marijuana contrary to NMSA 1978, § 30-31-23(B)(1) (2005). On appeal, Child makes three arguments: (1) the trial court erred in refusing to suppress statements and evidence because he was not advised of his rights, pursuant to NMSA 1978, § 32A-2-14 (2005), prior to questioning before a pat-down search; (2) insufficient evidence exists to convict him of possession of marijuana; and (3) the prosecutor exercised a peremptory challenge during jury selection in a racially discriminatory manner.

{2} We hold that (1) Section 32A-2-14 does not require police officers to issue warnings to juveniles, pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), before asking about needles or weapons prior to conducting a valid pat-down search; (2) sufficient evidence exists to support the conviction for possession of marijuana; and (3) the claim of racial discrimination fails under the analysis in Batson v. Kentucky, 476 U.S. 79 (1986). We, therefore, affirm Child’s adjudication of delinquency.

I. BACKGROUND AND FACTS

{3} At approximately 11:00 a.m., on December 1, 2002, police officers arrived at the Santa Fe Plaza to investigate a citizen’s complaint about individuals selling drugs in the area. According to his testimony, Officer Worth approached seventeen-year-old Child and nineteen-year-old Adam Stewart because they matched the descriptions in the complaint. Child and Stewart appeared very nervous and were wearing heavy clothing that could have concealed weapons. The officer told Stewart that he was going to conduct a pat-down search for weapons, but first asked if Stewart had any syringes with needles. Officer Worth testified that he always asked about needles to avoid getting pricked. Stewart produced a syringe, which he admitted he had used to inject cocaine. Officer Worth patted down Stewart, then arrested him for possession of drug paraphernalia.

{4} Officer Worth testified that, during the search of Stewart, Child kept turning his body sideways as if preparing to attack. Concerned for his safety, the officer decided to perform a pat-down search of Child. He first asked if Child had any syringes with needles. Child said he did not have any needles, but that he did have some marijuana, and handed the officer a small plastic sandwich bag from his pocket. Another officer performed the pat-down search, but did not find any additional contraband. Officer Worth then asked if Child had any more marijuana. Child reached into his jacket and produced eight more sandwich bags. Child was arrested, handcuffed, and placed in the police car. Only then was Child advised of his Miranda rights.

A. Motion to Suppress Statements and Marijuana

{5} The State filed an amended petition in district court, charging Child with possession of one ounce or more of marijuana, contrary to NMSA 1978, § 30-31-23(B)(2) (2005); distribution of marijuana, contrary to NMSA 1978, § 30-31-22 (2005); and conspiracy to distribute marijuana, contrary to Section 30-31-22 and NMSA 1978, § 30-28-2 (1979). Child filed a motion to suppress all evidence of marijuana and accompanying statements. Child argued that he should have been given Miranda warnings, as required by Section 32A-2-14 and State v. Javier M., 2001-NMSC-030, 131 N.M. 1, 33 P.3d 1, before the officer asked about needles because Child was being held in an investigatory detention. Child also filed a motion to suppress all statements made to the arresting officer following his arrest. After a hearing, the district court denied both motions to suppress. The court concluded that the officer initially had reasonable suspicion to approach Child and Stewart and that it was proper for the officer to conduct a pat-down search for officer safety, pursuant to Terry v. Ohio, 392 U.S. 1 (1968). The court concluded that the question regarding syringes prior to the pat-down search was an administrative question, which does not require a previous advisement of rights under Javier M.

B. Sufficiency of the Evidence

{6} The nine plastic bags police took from Child were introduced into evidence and viewed by the jury. Lab tests on the marijuana were excluded because the State disclosed the results on the morning of the trial. Officer Worth, who had worked as a narcotics agent and had handled marijuana numerous times in his eighteen years in law enforcement, testified that, in his opinion, the bags contained marijuana. No expert witnesses testified.

{7} At the close of the State’s case, Child moved for a directed verdict on all counts, which the court granted on the conspiracy charge, but denied on the marijuana charges.

C. Jury Selection

{8} Following voir dire, the State exercised its first of two peremptory challenges to remove a prospective juror named David Grayson. Previously, the State had requested Grayson’s removal for cause because he was an attorney, which the court ruled was not a sufficient reason. Defense counsel did not object to the first peremptory strike. The State used its second peremptory challenge to remove a prospective juror named...
Michael Begay. Defense counsel objected, alleging racial bias, because Begay was the only Native American on the panel, and requested a non-racial reason for the peremptory strike.

[9] Although the district court did not rule that defense counsel had made a prima facie showing of discriminatory intent, the prosecutor denied that the peremptory strike was racially motivated. The prosecutor said she wanted Begay excused because he did not appear to be listening. The court allowed the peremptory challenge. Defense counsel subsequently stated that she thought the prospective juror was paying attention. The prosecutor responded that there was no showing that Begay was the only Native American on the panel and again denied that she wanted to strike Begay due to racial reasons. She added that Begay appeared to be closing his eyes and falling asleep. Defense counsel suggested that the prosecutor point out anyone else she thought was Native American. The State objected to defense counsel basing its claim on Begay’s appearance and also argued that a person’s name does not necessarily indicate his ethnicity.

[10] The district court allowed the peremptory challenge for the reasons given by the prosecutor stating that “[Child] to my knowledge is not Native American and I do not believe that that’s the reason that the State is exercising its peremptory . . . excusal for . . . this particular juror.” Defense counsel stated that Child was Hispanic. The final panel apparently included three jurors with Hispanic surnames and three jurors with Anglo surnames. There is nothing in the record regarding the ethnicity of the potential jury members other than surnames. However, from the record, it appears defense counsel based her Batson claim, not on surnames, but on the appearance of the prospective jurors.

[11] The jury returned a verdict, finding that Child committed the lesser-included offense of possession of one ounce or less of marijuana. The jury was unable to reach a verdict on the distribution charge.

II. DISCUSSION

A. Motion to Suppress Statements and Marijuana

[12] On appeal, Child contends that, under Javier M., he was statutorily entitled to be warned of his right to remain silent and that anything he said could be used against him. He also claimed that he was not advised of his Miranda rights, or that he did not understand his rights.

[13] An appeal of a suppression motion involves a mixed question of fact and law. We view the facts in the light most favorable to the State as the prevailing party, and defer to the district court’s findings of fact supported by substantial evidence. State v. Urioste, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. We review de novo the trial court’s application of the law to those facts. State v. Ochoa, 2004-NMSC-023, ¶ 5, 135 N.M. 781, 93 P.3d 1286.

[14] In Javier M., our Supreme Court held that Section 32A-2-14 provides children with broader rights in the area of police questioning than those guaranteed by Miranda jurisprudence. 2001-NMSC-030, ¶ 1. Our Supreme Court concluded that “a child need not be under custodial interrogation in order to trigger the protections of the statute.” Id. Rather, these protections are triggered when a child is subject to an investigatory detention. Id. Therefore, “prior to questioning, a child who is detained or seized and suspected of wrongdoing must be advised that he or she has the right to remain silent and that anything said can be used in court.” Id.

[15] However, in our case, Child’s initial incriminating statements and evidence was not intended to confirm or dispel the officer’s suspicions of whether Child committed a delinquent act. “[W]hen an officer reasonably believes the individual may be armed and dangerous [during an investigatory stop, he] may check for weapons to ensure personal safety.” State v. Chapman, 1999-NMCA-106, ¶ 15, 127 N.M. 721, 986 P.2d 1122 (internal quotation marks and citation omitted). Furthermore, police officers about to conduct a lawful frisk or search of a suspect need not give Miranda warnings before asking the suspect about the presence of dangerous objects on his person. See United States v. Lackey, 334 F.3d 1224, 1225 (10th Cir. 2003). In Lackey, the Tenth Circuit explains that “[t]he purpose of the question ‘Do you have any guns or sharp objects on you?’ is not to acquire incriminating evidence; it is solely to protect the officers, as well as the arrestee, from physical injury.” Id. at 1228.

[16] To justify a frisk for weapons, an officer must have a sufficient degree of articulable suspicion that the person being frisked is both armed and presently dangerous. Terry v. Ohio, 392 U.S. 1, 27 (1968). Moreover, in Chapman, our Court emphasized that the officer “provided more than [just] conclusive characterizations of [the defendant]. Instead of just describing [the d]efendant as nervous, the deputy identified specific behaviors and changes in [the d]efendant’s demeanor and attitude that explain[ed] why he believed that [the d]efendant might be armed and dangerous.” 1999-NMCA-106, ¶ 16 (internal citation omitted).

[17] Here, Officer Worth approached Child and Stewart because they matched the descriptions in the complaint. Child and Stewart appeared very nervous and were wearing heavy clothing that could have concealed weapons. The officer told Stewart that he was going to conduct a pat-down search for weapons, but first asked if he had any syringes with needles. After Stewart produced a syringe, Officer Worth patted him down and then arrested him for possession of drug paraphernalia. During the search of Stewart, Officer Worth testified that he noticed that Child kept turning his body sideways as if he was preparing to attack. Concerned for his safety, he decided to conduct a pat-down search of Child. Like Stewart, he asked Child as well if he had any syringes with needles. At that time, Child said he did not have any needles, but that he had some marijuana and handed it to the officer. Officer Worth then asked if Child had any more marijuana, then Child admitted that he had eight additional bags.

[18] During his testimony, Officer Worth explained his reason for asking Stewart if he had any needles was “so I don’t get punctured while I’m searching.” He went on to explain that dirty needles, shared by intravenous drug users, can transmit AIDS and other infectious diseases, and that he was trained to ask the question. He added, “I don’t know a policeman who doesn’t ask that question.”

[19] Here, Child does not dispute that Officer Worth had a right to conduct a pat-down search for the officer’s personal safety under Chapman. We conclude that asking Child whether he had any needles, within the context of a pat-down search, was proper for the purpose of ensuring the officer’s personal safety. Cf. Chapman, 1999-NMCA-106, ¶ 15 (“[T]he officer may check for weapons to ensure personal safety.”). Questions intended to ensure the officer’s personal safety during a pat-down search are an integral part of the search itself. Moreover, we note that Officer Worth’s question is not prohibited by Javier M. and Section 32A-2-14 because (1) it was not “intended to confirm or dispel the officer’s suspicions that [Child was committing] a delinquent act,” and (2) Child’s response was a voluntary statement. See Javier M., 2001-NMSC-030, ¶ 40 (“The statute’s protections also do not apply . . . when the child
makes a voluntary statement.”). Therefore, when Child volunteered that he possessed marijuana, in response to Officer Worth’s inquiry about needles during a pat-down search, Child was not entitled under Section 32A-2-14 to suppression of the statements or marijuana.

[20] We do find it necessary to address Officer Worth’s second question regarding whether Child had any more marijuana. In light of our discussion above, we conclude that Officer Worth did not ask the second question because of concerns for officer safety. The question about additional marijuana clearly was intended to confirm, or dispel, the officer’s suspicions that Child committed a delinquent act. See Javier M., 2001-NMSC-030, ¶ 40. As a result, Officer Worth was required to advise Child of his “constitutional rights” prior to that questioning. Because Officer Worth failed to do so, Child’s admission that he had eight additional bags of marijuana should have been suppressed. Given the jury’s verdict, however, we conclude that the trial court’s error in failing to suppress any statements, regarding the additional marijuana, was harmless. The jury only found that Child committed the act of possession of one ounce or less of marijuana. As we next discuss, even if we were to conclude that the physical evidence accompanying Child’s improperly admitted statement should have been excluded, the evidence viewed in the light most favorable to the State would support the jury’s verdict concerning the first small bag of marijuana, which Child voluntarily admitted having and producing in response to the question about needles.

B. Sufficiency of the Evidence

[21] Child argues that the evidence was insufficient to prove, beyond a reasonable doubt, that he had marijuana in his possession. See UJI 14-3101 NMRA. In evaluating a sufficiency of the evidence challenge, we determine “whether there is substantial evidence of either a direct or a circumstantial nature to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to conviction.” State v. Sanchez, 2001-NMCA-109, ¶ 14, 131 N.M. 355, 36 P.3d 446. We view the evidence in the light most favorable to the State, resolving all conflicts and indulging all reasonable inferences to uphold the verdict. State v. Sanders, 117 N.M. 452, 456, 872 P.2d 870, 874 (1994).

[22] Child argues that the evidence was insufficient to support his conviction because Officer Worth’s lay testimony was the only evidence presented at trial to prove that the substance in the bags was marijuana. We reject this argument.

[23] First, as Child concedes, expert testimony is not required to identify illegal drugs. “Lay opinion concerning the identification of marijuana is admissible, and the qualifications of the witness go to weight and not admissibility.” State v. Rubio, 110 N.M. 605, 607, 798 P.2d 206, 208 (Ct. App. 1990). Officer Worth’s many years of experience in narcotics and drug investigations qualified him to give his opinion that the substance was marijuana. The jury was entitled to consider the officer’s testimony and give it whatever weight the jury deemed appropriate. See id.

[24] Next, the record indicates that Officer Worth’s identification was not the only evidence admitted at trial. According to Officer Worth’s testimony, Child referred to the substance in both the first bag and the eight other bags as marijuana. We are mindful that an extra-judicial admission is “not sufficient as evidence that a child committed delinquent acts absent other corroborating evidence.” In re Bruno R., 2003-NMCA-057, ¶ 17, 133 N.M. 566, 66 P.3d 339. However, Child also testified that the first bag was his own marijuana. In addition, the jury could infer, from Child’s admissions and the physical evidence, that the substance in Child’s possession was marijuana.

[25] We find substantial evidence exists to support Child’s conviction. Viewed in the light most favorable to the State, and resolving all inferences to uphold the verdict, we conclude the jury could reasonably infer, from Child’s admissions and the physical evidence of the first bag, that the substance in Child’s possession was marijuana. Thus, even if the additional eight bags were excluded because Child was not given Miranda warnings as required by the statute and Javier M., sufficient evidence exists to support the verdict that Child possessed an ounce or less of marijuana.

C. The State’s Use of Peremptory Challenges

[26] Child argues that the State’s peremptory challenge against a Native American prospective juror was racially motivated and violated Child’s constitutional rights. It is well settled that the State may not exercise its peremptory challenges to exclude potential jurors solely on account of their race without violating the equal protection rights of both the defendant and the prospective jurors. Batson, 476 U.S. at 85-89; State v. Martinez, 2002-NMCA-036, ¶ 9, 131 N.M. 746, 42 P.3d 851.

[27] A determination of whether a prosecutor discriminated in exercising peremptory challenges involves a three-step analysis from Batson, Martinez, 2002-NMCA-036, ¶ 10. First, a defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. Id. If the defendant makes the requisite showing, then the burden shifts to the prosecutor to provide a racially neutral reason for the challenges. Id. If the trial court finds that the State’s explanation is racially neutral, then the burden shifts back to the defendant “to show that the reason given is in fact pretext for a racially discriminatory motive.” Id.

[28] In reviewing a claim of racial discrimination in the use of peremptory challenges, we give deference to the trial court’s factual findings, but review its legal conclusions de novo. See id. ¶ 21. “Deferece to the trial court is especially important in evaluating the reasons a prosecutor gives for making a challenge, as well as the reasons a defendant puts forth for claiming those reasons are pretextual.” Id. ¶ 20.

1. Prima Facie Showing

[29] Ordinarily, a party desiring to raise a Batson claim of discrimination must first make a prima facie showing that (1) the State exercised its peremptory challenges to remove members of a racial group from the jury panel and (2) these facts and any other relevant circumstances raise an inference that the State used its challenges to exclude members based solely on race. Martinez, 2002-NMCA-036, ¶ 11. Child argues that the prosecution’s removal of the only Native American from the jury panel raises an inference of discrimination. The State contends that even if Begay was the only Native American member of the venire, which defense counsel did not establish below, Child failed to meet his burden of proving discriminatory intent.

[30] Child is correct that our cases have indicated that a prima facie case can be made when “the prosecution uses a peremptory challenge to remove the sole member of a particular racial group from the jury.” Id. ¶ 29. A defendant need not share the same race as the prospective juror to object to peremptory challenges that exclude jurors based on race. Powers v. Ohio, 499 U.S. 400, 402 (1991) (recognizing that one purpose of Batson is to address the right of a juror not to be excluded from serving on a jury for racial reasons). “A single prospective juror may be stricken for a racially motivated reason and the jury still retain its ‘representative’ character. This,
noted, however, that a finding of intentional discrimination, as opposed to intentional discrimination, is based on race, but on the juror’s ability to fairly and impartially hear the case. See Gonzalez, 111 N.M. at 596, 808 P.2d at 46 (relating racially neutral reasons “to the juror’s ability to fairly and impartially hear the case”).

3. Determination of Intentional Discrimination

[34] In the final step of the Batson analysis, after the prosecutor produces an explanation for exercising peremptory challenges that the trial court finds facially valid, the defendant may “refute the stated reason or otherwise prove purposeful discrimination.” Jones, 1997-NMSC-016, ¶ 3. The trial court’s duty is “to consider the reason advanced and to determine whether, considering all the facts and circumstances, the defendant has carried his burden of persuading the trial court that the state used one or more of its peremptory challenges to eliminate jurors on the basis of race.” Gonzalez, 111 N.M. at 597, 808 P.2d at 47. “The trial court’s determination that the prosecution has or has not intentionally discriminated on the basis of race is a finding of fact and will not be disturbed on appeal if it is supported by substantial evidence.” Id.

[35] The trial court found that the State met its burden of coming forward and establishing a racially neutral explanation for its use of the peremptory challenge against Begay. Child argues that the racially neutral reason given by the prosecutor must be true and Child successfully disputed it by arguing that the prospective juror appeared to be paying attention. In Child’s view, the court erred because it never made any factual finding regarding the disputed accounts of Begay’s behavior during voir dire. Child also argues that the trial court erred in applying the wrong standard — whether Child is of the same race as the excluded juror.

[36] We agree with Child that the trial court erred, as a matter of law, if it based its ruling that the State did not exercise its peremptory challenges in a racially discriminatory manner on the finding that the prospective juror was of a different race than Child. However, the court explicitly stated that it did not believe the state exercised its peremptory challenge for racially discriminatory reasons. The court accepted the reasons provided by the State. A prosecutor’s subjective belief might not be susceptible to verification or objective rebuttal, but that does not mean a reason for a peremptory strike is inherently discriminatory. See Jones, 1997-NMSC-016, ¶¶ 4-5. As courts have recognized, the ultimate Batson findings “largely will turn on evaluation of credibility” of counsel. Jones, 1997-NMSC-016, ¶ 4 (internal quotation marks and citation omitted). Because we review the action of the trial court under a deferential standard, we conclude that the trial court was in the best position to evaluate the prosecutor’s sincerity and to determine she did not purposefully discriminate in striking jurors.

[37] In sum, the burden was on Child not only to make an adequate record to establish his contention that the prosecutor struck the only Native American member of the venire, but that she did so for discriminatory reasons. In response to Child’s claim that the prosecutor improperly exercised a peremptory challenge to remove a prospective juror from the jury pool, the prosecutor gave a race-neutral explanation. The trial court explicitly found the prosecutor’s explanation credible. We, therefore, conclude that Child failed to carry his burden of showing sufficient evidence to support a finding of discriminatory intent. As a result, Child’s claim, that the State exercised a peremptory challenge against jury selection in a racially discriminatory manner, fails.

III. CONCLUSION

[38] We therefore hold that the trial court committed only harmless error in admitting evidence of eight bags of marijuana on Defendant’s person, and did not otherwise err in (1) admitting evidence of the results of a pat-down search without Miranda warnings, and (2) in allowing the State’s peremptory challenge of a Native American juror. Finding sufficient evidence to support Defendant’s conviction for possession of marijuana, we affirm Child’s conviction for delinquency.

[39] IT IS SO ORDERED.

IRA ROBINSON, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

MICHAEL E. VIGIL, Judge

36 BAR BULLETIN * MARCH 6, 2006 * VOLUME 45, NO. 10
**Certiorari Not Applied For**

From the New Mexico Court of Appeals

**Opinion Number: 2006-NMCA-023**

STATE OF NEW MEXICO, ex rel. CHILDREN, YOUTH AND FAMILIES DEPARTMENT, Plaintiff-Appellant, versus DONNA J., MICHAEL H., and TOMMY J. II, Respondents, MARTHA K. and ANTHONY K., Intervenors, ELSIE N., Intervenor/Appellee,

IN THE MATTER OF JESSICA H. and ELIZABETH N., Children

Defendant-Appellant.

No. 25,872 (filed: January 12, 2006)

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY WILLIAM C. BIRDSALL, District Judge

REBECCA J. LIGGETT

CHILDREN, YOUTH & FAMILIES DEPARTMENT

Santa Fe, New Mexico

for Appellant

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Albuquerque, New Mexico

for Appellee

KAREN L. TOWNSEND

Aztec, New Mexico

Guardian Ad Litem

F. CHESTER MILLER III

F. CHESTER MILLER III, P.C.

Farmington, New Mexico

for Respondent Donna J.

**OPINION**

JAMES J. WECHSLER, JUDGE

[1] In this abuse and neglect case, with child custody proceedings in both Texas and New Mexico, we address whether exclusive, continuing jurisdiction remains in the Texas court after the father dies and the mother moves to New Mexico with the child, but is later incarcerated in Texas at the time the child’s grandmother files a petition to modify the Texas court’s custody order. We hold that the mother resided in Texas under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), NMSA 1978, §§ 40-10A-101 to -403 (2001), and affirm the ruling of the district court granting full faith and credit to the orders of the Texas court.

[2] The jurisdictional background of this case is not disputed. Respondent Donna J. is the mother of Elizabeth N. Raymond N., deceased, is the father. In a consolidated proceeding, initiated by Father’s paternity and Mother’s divorce petitions, a Texas district court declared Father’s paternity and ruled that Father and Mother were never married. In a final order signed on July 19, 2001, it appointed both parents as joint managing conservators of Elizabeth and ordered that Mother had the right to establish Elizabeth’s primary residence in one of two Texas counties.

[3] Thereafter, Mother moved between Texas and New Mexico several times. On August 6, 2003, appointing Grandmother as sole managing conservator of Elizabeth. The orders were to “continue in force until the signing of the final order or until further order of the court.”

[4] Father was murdered on September 2, 2002. Mother was arrested on November 19, returned to Texas on November 20, 2002. Mother entered a plea to first degree murder and received a sentence of fifteen years confinement by the Texas Institutional Division, less 486 days credit for time spent in the county jail.

[5] During the time that Mother was incarcerated in Texas, legal custody proceedings ensued in both Texas and New Mexico. The existing Texas proceeding, which had been initiated by Father’s paternity petition and Mother’s divorce petition, was dismissed for lack of prosecution on January 21, 2003. Then, on March 17, 2003, in the same proceeding, Elsie N., Elizabeth’s paternal grandmother (Grandmother), filed a petition to modify the parent-child relationship with the Texas court, asking for modification of the final order and asserting that her appointment as sole managing conservator would serve Elizabeth’s best interest. After Grandmother amended her petition and after notice to Mother and Elizabeth’s maternal grandmother, the Texas court held a hearing and issued temporary orders on August 6, 2003, appointing Grandmother temporary sole managing conservator and appointing Mother temporary possessory conservator of Elizabeth. The orders were to “continue in force until the signing of the final order or until further order of the court.”

[6] During the same general time period in New Mexico, the Children, Youth and Families Department (CYFD) took protective custody of Elizabeth and Jessica and, on June 25, 2003, filed an abuse and neglect petition in the district court. Grandmother and her niece and niece’s husband, Martha K. and Anthony K., intervened so that they could be considered for placement or custody of Elizabeth. As Mother requested, CYFD placed Elizabeth and Jessica with other, unrelated foster parents. The case proceeded with judicial reviews and permanency hearings. Grandmother participated in the proceedings by telephone and was represented by counsel.

[7] At the end of 2004 and in early 2005, the separate proceedings came to a head and merged. The Texas case was set for final trial on February 4, 2005. After notice of this setting had been received by CYFD, on December 7, 2004, the district court de-
nied CYFD’s motion to terminate parental rights because of the unresolved placement issues and ordered the parties to mediate to attempt to agree on the terms of an open adoption. The Texas court held its hearing. Despite notice, Mother did not appear. The Texas court granted Grandmother’s request to modify its original custody order as in the best interest of Elizabeth and appointed Grandmother as Elizabeth’s sole managing conservator with no possessory conservator. It stated that it retained exclusive jurisdiction over the case because Mother unlawfully removed Elizabeth from the jurisdiction of the court in violation of the court’s valid order.

{8} Elizabeth’s foster parents intervened in the Texas case and requested a new trial. The Texas court dismissed their petition, stating that although the New Mexico court had temporary jurisdiction to make orders for Elizabeth’s immediate protection, at the time the New Mexico court placed Elizabeth with CYFD, Grandmother’s petition was pending in the Texas court, and the Texas court “had continuing, exclusive jurisdiction over the child as a result of prior proceedings” under the UCCJEA, Tex. Family Code Ann. § 152.202 (Vernon 2002); see NM SA 1978, §§ 40-10A-101 to -403. The Texas court concluded that the New Mexico orders entered after the New Mexico court had actual notice of the Texas proceedings on August 13, 2003, were void for lack of jurisdiction. The Texas court determined that it was not necessary for it to communicate with the New Mexico court based on its determination that it had continuing, exclusive jurisdiction.

{9} The next actions in the New Mexico court led to this appeal. Grandmother, Martha K., and Anthony K. filed a motion to dismiss as to Elizabeth for lack of jurisdiction under the UCCJEA. Grandmother filed a notice of registration of the Texas custody order and a verified motion to communicate with the New Mexico court to fulfill their full faith and credit requirements. See UCCJEA prefatory note, 9 U.L.A. 650 (1999). Its purposes follow that of the Uniform Child Custody Jurisdiction Act (UCCJA), 9 U.L.A. 261 (1999), to provide jurisdictional clarity and to promote interstate cooperation. UCCJA prefatory note, 9 U.L.A. at 264. Both New Mexico and Texas have adopted the UCCJEA and have largely identical provisions. Compare NMSA 1978, §§ 40-10A-101 to -403, with Tex. Family Code Ann. §§ 152.001-152.317 (Vernon 2002 & Supp. 2005).

{10} Section 40-10A-206(a) of the New Mexico UCCJEA structures our analysis. It prohibits a New Mexico court from exercising jurisdiction under the UCCJEA, except in emergency circumstances, if an action has been commenced in another state “having jurisdiction substantially in conformity with” the UCCJEA unless the other state’s proceeding is terminated or stayed. Id. The New Mexico district court determined that Section 40-10A-206(a) precluded its jurisdiction. If the Texas court had exclusive, continuing jurisdiction as contemplated by Section 202 of the UCCJEA, it was acting “in conformity with” the UCCJEA. We review the district court’s determination by interpreting the UCCJEA, a task we perform de novo. State v. Rivera, 2004-NMSC-001, ¶ 9, 134 N.M. 768, 82 P.3d 939.

{11} Section 202 of the UCCJEA addresses the exclusive, continuing jurisdiction of the courts of the state entering a child custody order. Under Section 202(a), a court that enters a child custody order has “exclusive, continuing jurisdiction” over its order until (1) a court of the same state “determines that neither the child, the child’s parents, and any person acting as a parent do not have a significant connection with [the] state and that substantial evidence is no longer available in [the] state concerning the child’s care, protection, training, and personal relationships;” or (2) a court of the same or another state “determines that the child, the child’s parents, and any person acting as a parent do not presently reside in [the] state.”

{12} Under Section 202, the Texas court had exclusive, continuing jurisdiction as of March 17, 2003, when Grandmother filed her petition to modify the court’s original custody order. The Texas court had entered the initial custody order concerning Elizabeth in July 2001 and had the jurisdiction to do so under Section 201 of the UCCJEA. This order, the subject of Grandmother’s petition, triggered the Texas court’s exclusive, continuing jurisdiction under Section 202. After September 2, 2002, even though Father had died and Mother and Elizabeth had left Texas, the Texas court did not make any determination, as part of its exclusive ability under Section 202(a)(1), that there was a lack of significant connection for Texas to continue its jurisdiction. Under Section 40-10A-202(a)(2) and the Texas equivalent, Section 155.202(a)(2), after Father died and Mother and Elizabeth moved to New Mexico, either the Texas or the New Mexico court had the authority to make a determination that Elizabeth and Mother no longer resided in Texas. Neither court made such a determination.

{13} We do not agree with CYFD that the Texas court lost its exclusive, continuous jurisdiction when Father died because Mother and Elizabeth had already moved from Texas. CYFD relies on the Comment to Section 202 by the National Conference of Commissioners on Uniform State Laws, which states the intention that “unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.” UCCJEA § 202 cmt., 9 U.L.A. at 674. Although the Comment stresses the importance of physical presence to exclusive, continuing jurisdiction, the UCCJEA language specifically requires action by either the home or another state before exclusive, continuing jurisdiction in the home state
She maintains that involuntary relocation, "micile," it nevertheless requires a volitional act. UCCJEA § 202 cmt., 9 U.L.A. at 674. She argues that although the Comment section no longer resided in Montana. We understand the basis for this requirement. Parents can easily move back and forth between states as Mother did after the Texas court’s July 2001 order. An automatic loss of jurisdiction, without any factual determination, would add uncertainty, diminish the Court’s jurisdiction after the father moved to Washington, the mother and the child moved to Pennsylvania, and the Pennsylvania court, after a hearing, determined that the parties no longer resided in Montana. In re Brilliant, 86 S.W.3d at 682, 688 (Tex. App. 2001) (stating that the UCCJEA has the same objectives as the UCCJEA including discouraging continued controversies over child custody).

{18} The cases relied on by CYFD that were decided under the UCCJEA do not require a different result. CYFD quotes In re Brilliant, 86 S.W.3d 297, 302 (Tex. App. 2001) (stating that the UCCJEA has the same objectives as the UCCJEA including discouraging continued controversies over child custody).

{19} We lastly address CYFD’s contention that the Texas court’s jurisdiction results in a custody determination contrary to the purpose of the UCCJEA of promoting cooperation between states “to ensure that a custody decision is rendered in the state that can better determine the best interest of the child.” The UCCJEA pursues that purpose by encouraging communication between courts of different states concerning proceedings and enabling courts to allow testimony to be taken, hearings held, and information exchanged between states. Sections 40-10A-110 to -112. However, as the UCCJEA Prefatory Note states, “[t]he UCCJEA eliminates the term ‘best interests’ in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.” UCCJEA prefatory note, 9 U.L.A. at 652. At this stage of this case, the jurisdictional standards are at issue, and we apply the UCCJEA jurisdictional provisions to reach a decision.

CONCLUSION

{20} Because we determine that the Texas court retained exclusive, continuing jurisdiction and the New Mexico court therefore did not have subject matter jurisdiction, we affirm. We deny CYFD’s application for a stay.

{21} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:
CYNTHIA A. FRY, Judge
IRA ROBINSON, Judge

Bar Bulletin - March 6, 2006 - Volume 45, No. 10
OPINION

CYNTHIA A. FRY, JUDGE

(1) Stephen M. Selmeczki (Worker) appeals the termination of his employment with the Department of Corrections (the Department), which both the Personnel Board and the district court affirmed. The termination resulted from accusations that Worker slapped coins at the Secretary and Deputy Secretary of Corrections and cursed at them in relation to a lack of pay raises for correctional officers. We conclude that the record in this case is sufficient to support the termination of Worker for intentional misconduct and such termination is consistent with New Mexico case law. Therefore, we reject Worker’s contention that progressive discipline was required prior to termination of his employment where he engaged in intentional, hostile, and unprovoked conduct approaching a physical fight. We also conclude that Worker’s argument that he had no notice of what behavior could result in termination was neither preserved for our review nor supported by authority.

I. FACTUAL BACKGROUND

(2) We begin with uncontested background facts and then present the conflicting testimony given before the Personnel Board Administrative Law Judge (ALJ) regarding the confrontation itself. Our review of an administrative agency’s findings of fact involves whole record review, Regents of University of New Mexico v. New Mexico Federation of Teachers, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236, so we recount testimony that is both favorable and unfavorable to Worker.

(3) At the time of his termination, Worker, who held the rank of sergeant, had been employed by the Department for approximately thirteen years and had received favorable job reviews and commendations. Worker had not been disciplined previously, except for one incident in relation to overtime, and that discipline had been rescinded by the Department. Worker presented evidence that he had previously been a labor activist or advocate for better pay and conditions for correctional officers.

(4) On May 9, 2000, Secretary of Corrections Robert J. Perry and Deputy Secretary John Shanks were at the Central New Mexico Correctional Facility (Central) for meetings and conducted an inspection tour of the facility. An associate warden at Central, Warden Langston, testified he behaved so unprofessionally, to which Worker replied with something similar to, “I like my job,” and “I don’t care who you are.” At this point, Perry attempted to describe his efforts to obtain pay raises for officers, to which Worker replied, “You’re a disgrace, too.” At this point, the interaction ended when either Shanks or Perry opened the office door, allowing re-entry of those waiting just outside. Perry told Langston to place Worker on administrative leave. Perry testified that inmates were nearby during the confrontation.

(5) Toward the end of the tour, Perry and Shanks entered a security office where Worker and correctional officer Howard Houston were located. Shanks testified that it was his intention, in keeping with his practice, to greet the two officers. From this point forward, testimony describing the interaction between Worker, Perry, and Shanks is conflicting.

(6) We begin with the viewpoint of Perry and Shanks as the version least favorable to Worker. Perry recounted that he greeted Houston, who was polite but seemed nervous, while Shanks approached Worker. Worker refused Shanks’s offered handshake. When Perry moved to greet Worker, Worker rose up part way from a seated position behind a desk and forcefully slapped a stack of five to ten coins toward both visitors, which resulted in the coins striking them both on the legs. Perry testified that after the coins struck him, he asked Worker, “What’s that all about?” and that Worker replied, “That’s for our fucking raises.” Shanks also testified that Worker said, “That’s for our fucking raises.” Perry then asked the others to leave the room so that only he, Shanks, and Worker remained. Again, Perry asked what this was all about and Worker replied, “That’s how much you’re fucking worth to us.” Perry testified that he was defensive and concerned that a physical fight would take place and described Worker as angry. Shanks testified that, but for his position and self control, he could have responded physically to this provocation. Perry told Worker that he should consider looking for another job if he behaved so unprofessionally, to which Worker replied with something similar to, “I like my job,” and “I don’t care who you are.” At this point, Perry attempted to describe his efforts to obtain pay raises for officers, to which Worker replied, “You don’t believe you.” Shanks told Worker that his behavior was a disgrace to the Department, to which Worker replied, “You’re a disgrace, too.” At this point, the interaction ended when either Shanks or Perry opened the office door, allowing re-entry of those waiting just outside. Perry told Langston to place Worker on administrative leave. Perry testified that inmates were nearby during the confrontation.

(7) Worker’s version of these events is strikingly different. Worker denied slapping or striking the coins at Perry and Shanks but claimed that he only “nudged or dropped” them off the desk, a gesture he admitted was probably “not prudent.” He denied any advance planning, claiming it was a “spur of the moment” act. He said he had only been planning to ask Perry about officers being...
allowed to observe National Correctional Officers Day. He also denied cursing at Perry, saying that he had said, “thanks for our pay raise;” in a normal, conversational tone, remaining calm and using no profanity. Worker testified that it was only Perry and Shanks who were angry and hostile, that Perry raised his voice and Shanks was “trying to crowd me.” He could not understand why they were so upset. Worker had previously claimed in a statement provided to a department investigator that he had dropped the coins for “some reason, still unknown to me,” but on cross examination he stated that, upon reflection, “it became clear” to him that he was “indignant” at the time over the lack of a pay raise. Worker testified that at the time of the incident, he was a supervisor in the minimum restrict unit portion of Central.

{8} Others who were in the security office at the time also testified. Houston, who had been seated nearby, testified that Worker had dropped the coins, not slapped them, and had not cursed, but only sarcastically said, “Thanks for my raise.” Houston said that Perry and Shanks went “into an uproar about the whole deal” and that it was Perry who raised his voice and was angry. On cross examination, Houston admitted that Worker was a “good guy,” a work friend, and his supervisor, and that Houston admired what Worker had done. Houston also admitted to being unhappy working at the Department and was contemplating resigning. Captain Bill Marz testified that he was standing behind Perry and Shanks when he heard the coins strike the floor. He heard Perry say something like, “What was that for?” and heard Worker, who he described as angry with a red face, say in a raised voice, “That’s what I think of your fucking raise,” but did not recall any profanity. Finally, Langston testified that he saw Worker swipe the coins at Perry and Shanks and saw the coins strike them in the legs. Langston thought that he heard Worker say, “That’s what I think of your fucking raise,” although he had excluded the profanity from his prior descriptions and was “not one hundred percent” sure that Worker had used profanity.

{9} The warden at Central, Ron Lytle, testified that he asked Worker what had happened immediately after the incident. Both Lytle and Langston testified that Worker replied, “I did what I had to do and now you have to do what you have to do.” Worker denied saying this, but claimed instead that he “didn’t understand why they were so upset” and “didn’t know what was going on” so he “had nothing to say.” After the incident, Langston took Worker’s official identification, and senior staff, including Perry and Shanks, escorted Worker from the facility. Lytle placed Worker on administrative leave. After receiving statements from witnesses and providing Worker with an oral response hearing, Lytle issued a notice of final action dismissing Worker from the Department.

II. PROCEDURAL POSTURE

{10} Worker appealed his termination to the Personnel Board. The Personnel Board’s ALJ conducted a two-day hearing, at which Worker testified and was represented by counsel. The parties stipulated that the Personnel Board had jurisdiction over Worker’s appeal and thus agree that Worker was a classified state employee subject to the Personnel Act. See NMSA 1978, §§ 10-9-1 to -25 (1961, as amended through 1999). The ALJ made findings of fact that Worker had forcefully struck the coins at Perry and Shanks and had cursed at them. The ALJ also made conclusions of law that Worker’s actions violated the Department’s code of ethics, that dismissal of Worker was justified without the need for progressive discipline, and that Worker’s speech was not protected by the First Amendment. Worker filed exceptions to the ALJ’s recommended decision with the Personnel Board. The Personnel Board, however, adopted the ALJ’s findings and conclusions and affirmed Worker’s dismissal. Worker appealed to the district court under Section 10-9-18(G) (allowing appeals of Board decisions), NMSA 1978, 39-3-1.1(C) (1999) (permitting judicial review of final administrative agency decisions), and Rule 1-074 NMRA (governing administrative appeals to the district court). The district court affirmed Worker’s termination.

{11} Worker timely sought a writ of certiorari from this Court, which we granted. See § 39-3-1.1(E) (permitting a party to petition the Court of Appeals for a writ of certiorari to review the district court’s decision in an administrative appeal); Rule 12-505(B) NMRA (same).

III. DISCUSSION

{12} We first set out the standard of review applicable to appeals of administrative decisions. We then address Worker’s contention that progressive discipline was mandatory in this case as a matter of law. Finally, we address Worker’s claim as to lack of notice, and his connected arguments on disparate discipline, the paramilitary structure of the Department, and civil battery.

A. Standard of Review

{13} In reviewing a decision of the Personnel Board, we apply a whole-record standard of review. Martinez v. N.M. State Eng’r Office, 2000-NMCA-074, ¶ 31, 129 N.M. 413, 9 P.3d 657. “Like the district court, we independently review the entire record of the administrative hearing to determine whether the Board’s decision was arbitrary and capricious, not supported by substantial evidence, or otherwise not in accordance with law.” Id. An administrative ruling is arbitrary and capricious if it is “unreasonable or without a rational basis, when viewed in light of the whole record,” and we must avoid substituting our own judgment for that of the agency. Archuleta v. Santa Fe Police Dep’t, ex rel., City of Santa Fe, 2005-NMSC-006, ¶ 17, 137 N.M. 161, 108 P.3d 1019. Whether the Board’s actions were contrary to law is a question that we review de novo. Id. ¶ 18. The burden is on the party challenging the agency decision to demonstrate grounds for reversal. Regents of Univ. of N.M., 1998-NMSC-020, ¶ 17.

B. Just Cause and Progressive Discipline

{14} Worker contends that progressive discipline was required in his case. We begin by reviewing the concept of just cause for discipline and then discuss progressive discipline.

{15} Employees subject to the Personnel Act who have completed a probationary period may only be disciplined for just cause. 1 NMAC 7.11.10(A) (2002). Our review necessarily includes an evaluation of whether just cause existed for discipline, including termination, because the Board “must decide whether agency action was based on just cause” and we are reviewing the Board’s action. Gallegos v. N.M. State Corrs. Dep’t, 115 N.M. 797, 802, 858 P.2d 1276, 1281 (Ct. App. 1992) (internal quotation marks and citation omitted). Just cause to terminate an employee covered by the Personnel Act requires that the Board determine both that the employee engaged in misconduct and that the discipline was appropriate and reasonable in light of the misconduct. Martinez, 2000-NMCA-074, ¶ 30. Just cause to terminate exists “when an employee engages in behavior inconsistent with the employee’s position and can include, among other things, incompetency, misconduct, negligence, insubordination, or continuous unsatisfactory performance.” Id. ¶ 32; see also 1 NMAC 7.11.10(B) (defining just cause similarly). The question of whether behavior “constituted misconduct...
so as to provide ‘just cause’ for the discipline of a state employee is a question of fact to be determined from all the attendant circumstances in each case.” Romero v. Employment Sec. Dep’t, 102 N.M. 71, 74, 691 P.2d 72, 75 (Ct. App. 1984). We review an agency’s findings by examining the entire record, but we must affirm a decision if it is supported by substantial evidence. Regents of Univ. of N.M., 1998-NMSC-020, ¶ 17.

{16} The ALJ found that progressive discipline was not required for Worker’s “egregious action” that provided just cause for termination. We agree. The findings were supported by substantial evidence, and they support the determination that just cause existed to terminate Worker without first employing lesser forms of discipline.

{17} The evidence as to Worker’s behavior in the security office was conflicting. Worker’s testimony was self-serving overall, and the record fairly supports an inference that Worker was untruthful. See Gallegos, 115 N.M. at 801, 858 P.2d at 1280 (concluding that no substantial evidence supported a finding of misconduct where no evidence existed to support an inference that the employee was untruthful). Houston’s testimony supporting Worker was effectively impeached. Perry and Shanks both told identical stories and were in the best position to see and hear Worker. Langston and Marez, who were nearby, generally supported the version recounted by Perry and Shanks, but were either unsure of or could not recall the use of profanity. Langston’s testimony supported the notion that Worker was aware of the tour and was planning some type of confrontation. On the other hand, Worker contended that he had been a labor activist and advocate for better pay and hours for correctional officers, contending that this could motivate retaliation by the Department against him. In this case, however, such evidence cuts both ways -- not only is it a potential motivation for the Department to fire him, but his pro-labor activities also provide a plausible motive for the very misconduct of which Worker was accused. Based upon the entire record, there was substantial evidence for the fact finder in this case to have found that Worker cursed at Perry and Shanks and deliberately slapped or struck the coins, causing them to strike Perry and Shanks.

{18} Having determined that the findings are properly supported, we further conclude that the ALJ correctly applied the law to the facts in deciding that just cause existed for termination without the need for progressive discipline. Both the Personnel Board Rules and the Department’s own rules promote the concept of progressive discipline, which means that increasing levels of discipline should be used in an effort to retain the employee and to correct deficient performance or behavior. See 1 NMAC 7.11.8(B) (2001) (stating that progressive discipline “shall be used whenever appropriate”). Progressive discipline, however, need not be used in all cases. Id. (stating that “[t]here are instances when a disciplinary action, including dismissal, is appropriate without having imposed a less severe form of discipline”). The Department’s own rules state that “some misconduct is so severe as to not warrant progressive discipline and immediate dismissal is the only appropriate action.”

{19} Several New Mexico cases have evaluated progressive discipline and its relation to the concept of just cause for discipline. In accord with the Board rules, our cases have “recognized that progressive discipline is not required before termination when the conduct for which an employee is terminated constitutes just cause to terminate.” Martinez, 2000-NMCA-074, ¶ 42. The question then becomes precisely what conduct provides just cause to terminate, which again requires a case-by-case evaluation. Romero, 102 N.M. at 74, 691 P.2d at 75.

{20} Other cases provide guidance in this evaluation. In the context of a denial of unemployment insurance benefits, our Supreme Court has focused on the importance of willful misconduct contrasted with simply poor performance, concluding that an employer had to show compliance with progressive discipline policies where only unsatisfactory job performance was at issue and there was no substantial evidence to support a finding of willful misconduct. Chicharellilo v. Employment Sec. Div., 1996-NMSC-077, ¶ 4, 122 N.M. 635, 930 P.2d 170. The case of New Mexico Regulation & Licensing Department v. Lujan, 1999-NMCA-059, 127 N.M. 233, 979 P.2d 744, teaches that socially inappropriate conduct may not rise to the level of just cause for termination, particularly where there is a culture of misbehavior. There, a worker had engaged in a pattern of “foul language, sexually charged misconduct, and outbursts of anger.” Id. ¶ 2. The hearing officer in that case found the conduct was demeaning and disrespectful, but found no just cause for dismissal in light of “other conduct occurring at the office, all of it attributable to lack of effective management.” Id. ¶¶ 4, 18, 19 (internal quotation marks and citation omitted). We agreed, based upon the whole record, that there was no just cause for dismissal and that progressive discipline was required. Id. ¶ 21. Martinez, on the other hand, instructs that hostile or threatening behavior clearly provides just cause for termination. In Martinez, a worker failed to control his mental illness and became erratic and threatening at work, including threatening the life of a supervisor over the telephone. 2000-NMCA-074, ¶¶ 9-15. There, we noted that the employee was dismissed for “insubordination, misconduct, and threats of physical violence against his supervisor, all of which clearly fall within the category of conduct constituting just cause for dismissal.” Id. ¶ 42. We found there that the conduct in question was “the type of serious ‘misconduct’ which does not have to be tolerated by an employer and which justifies immediate dismissal.” Id. We have held that “the term ‘misconduct’ as contemplated by the rule is not limited to circumstances of intentional wrongdoing, but also embraces an employee’s disregard of proper behavior which an employer has a right to expect of an employee.” Romero, 102 N.M. at 74, 691 P.2d at 75. Our cases have also expressly noted that supervisory staff clearly affect the efficiency of the agency and serve as examples for subordinates. Id. Finally, our Supreme Court has recently stated that we must be properly deferential to the internal disciplinary practices of an agency. Archuleta, 2005-NMSC-006, ¶ 28 (stating that “[t]he propriety of a disciplinary measure meted out by [an agency] is a matter of internal administration with which a court should not interfere absent a clear abuse of authority” (internal quotation marks and citation omitted)).

{21} Based upon the foregoing, it is clear that whether progressive discipline was required turns on whether there was just cause for termination. We think just cause for termination was properly found for three reasons. First, unlike the circumstances in Lujan, here the hearing officer found just cause for dismissal and also did not find any culture of misbehavior or mismanagement mitigating Worker’s actions. 1999-NMCA-059, ¶ 18. The Personnel Board and the district court each affirmed this conclusion; while we independently determine whether just cause existed, we find it noteworthy that the ALJ, the Personnel Board, and district court all concluded that just cause for termination existed. We agree and, based upon the standard articulated in Archuleta, see no clear abuse of authority. Second, we see this case as more akin to
Martinez, in which aggressive, threatening, and hostile behavior “clearly fall[s] within the category of conduct constituting just cause for dismissal.” 2000-NMCA-074, ¶ 42. Several factors inform this conclusion: (1) the confrontation was planned and intentional, (2) while Worker was on duty, (3) as a supervisor, (4) committing a civil battery on his superiors, (5) using hostile and foul language, and (6) all of which come close to causing a physical fight. We think these combine to overcome Worker’s long positive record with the Department. Third, unlike Chicharrello, here there is substantial evidence to support a finding of misconduct, and the Department was not attempting to correct merely unsatisfactory job performance. 1996-NMSC-077, ¶ 4. Worker engaged in misconduct, and the Department’s response to that conduct was neither unreasonable, Martinez, 2000-NMCA-074, ¶ 30, nor a clear abuse of authority, Archuleta, 2005-NMSC-006, ¶ 28. Because just cause existed to terminate Worker, progressive discipline was not necessary. Martinez, 2000-NMCA-074, ¶ 36 (stating that “[o]nce it is determined that just cause exists to terminate, termination is appropriate under the Board Rules”). In sum, we find no clear abuse of authority, no contravention of our law, and no capriciousness in the Personnel Board’s determination that just cause existed to discipline Worker and to terminate him without imposing progressive discipline.

C. Lack of Notice and Associated Arguments

[22] Initially in his appeal to the Personnel Board, Worker claimed he was not on notice that his actions could result in termination. This reference to notice was also contained in the list of Worker’s contested issues in the joint stipulated pre-hearing order. The Department contends that such an argument was not preserved for our review and also lacks merit. After thoroughly reviewing the record, we agree with the Department on these points. Worker recites lack of notice in the heading of his first issue on appeal to this Court, but cites no authority in reference to any notice requirement. Worker is not claiming a procedural right to notice, such as notice of the hearing or the allegations against him. Instead, we discern that the substance of his argument is aimed at making the following points: (1) that he was subjected to disparate discipline, (2) that the ALJ improperly relied on the purportedly paramilitary nature of the Department to find just cause for termination, and (3) that striking Perry and Shanks with the coins was not “meaningfully” a civil battery. We reject each contention in turn after discussing Worker’s attempt to argue lack of notice.

[23] We generally will not review a matter not passed upon by the trial court, which in this case was either the ALJ sitting as the trier of fact, or the Personnel Board as the ultimate decision maker. Rule 12-216(A) NMRA. While the formal rules of procedure need not all be followed in administrative proceedings, we do require preservation of issues raised on appeal from an administrative decision. Garza v. State Taxation & Revenue Dep’t, 2004-NMCA-061, ¶¶ 7, 8, 135 N.M. 673, 92 P.3d 685 (evaluating whether an issue had been preserved in an administrative hearing). Worker made no notice argument before the ALJ or in his statement of exceptions to the Personnel Board. Indeed, in his opening statement, Worker stated that the case involved only “three of the seven” issues raised in the joint stipulated pre-hearing order. Notice was not one of the three arguments. The only argument in the hearing regarding notice was from the Department, not Worker. Worker may not preserve an argument raised by his opponent. Woolwine v. Furr’s, Inc., 106 N.M. 492, 496, 745 P.2d 717, 721 (Ct. App. 1987) (stating that “[t]o preserve an issue for review on appeal, it must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court” (emphasis added)). In fact, Worker expressly conceded that if the allegations were true, perhaps even severe discipline would be justified and at the hearing stated that notice, at least of the contents of the code of ethics, was “not an issue.”

[24] We decline to review an issue when Worker did not invoke a ruling of the ALJ thereon. Moreover, even if this argument were preserved for our review, Worker provides no authority for his argument that he lacked notice of the border between acceptable and unacceptable behavior. This Court will not consider an argument that lacks citation to any legal authority in support of that argument. Santa Fe Exploration Co. v. Oil Conservation Comm’n, 114 N.M. 103, 108, 835 P.2d 819, 824 (1992).

[25] Unlike his notice argument, however, Worker did seek to show that he was subjected to disparate discipline. In attempting to demonstrate this, he elicited the following testimony. First, Worker offered evidence that a correctional officer at Central had been coached (but not disciplined) for refusing to shake Perry’s hand. Second, he obtained testimony that another officer had asked Perry, off-duty and in a noisy bar, an arguably provocative question and had inadvertently dropped a pitcher of beer near Perry. This did not result in any discipline and Perry denied that any beer was thrown on him. Finally, in response to testimony alluding to a purportedly similar incident, the Department introduced a letter showing that a correctional officer had been reprimanded for calling a higher ranking officer an “idiot” in the presence of others and leaving his post before the end of the shift. The ALJ found no disparate discipline, and there is substantial evidence supporting this finding.

[26] We see none of these actions as substantially similar to Worker’s because none involved the combination of hostile words and acts tending to provoke a physical altercation by an on-duty supervisor. As we have discussed, the findings provided just cause to dismiss Worker. Thus, Worker’s reliance on disparate discipline cases is misplaced. See In re Termination of Kibble, 2000-NMSC-006, ¶ 19, 128 N.M. 629, 996 P.2d 419 (holding that termination of a worker was arbitrary where there was a “drastic difference” in treatment of a worker compared to another for “substantially similar” conduct in the context of public school employees). And even where other officers are similarly situated, they may be disciplined differently based upon the severity of the conduct, the circumstances, and the consequences of the conduct. Archuleta, 2005-NMSC-006, ¶ 24, 32 (explaining that “[e]ven similarly situated employees may be disciplined differently depending on the severity of the conduct” and summarizing New Mexico disparate discipline cases).

[27] Next, we consider Worker’s concern about the ALJ’s reliance on the paramilitary nature of the Department. Warden Lytle, who had served in the Navy, described the paramilitary nature of the Department, including its adherence to a chain of command structure. He spoke at length about the need for obedience and respect in a prison’s inherently dangerous environment and described the Department as “very similar” to the military. Lytle testified that it was his decision to dismiss Worker and his decision was based upon his fear that if he did not use the highest discipline then more similar incidents would occur, leading to a breakdown in staff cohesion, respect by inmates, and the ultimate safety and order within the facility. The ALJ found that the Department is a paramilitary organization.
and relied on this finding in its conclusion that just cause existed to terminate Worker. This finding was adopted by the Personnel Board.

{28} We consider this finding superfluous and affirm without passing on this paramilitary argument for two reasons. First, we may affirm the ruling from below on a different ground, as long as doing so is not unfair to the appellant and there is substantial evidence supporting the ground we rely on. Meiboom v. Watson, 2000-NMSC-004, ¶ 20, 128 N.M. 536, 994 P.2d 1154. We have already concluded that substantial evidence supports a finding that just cause for termination existed. We think the finding that the Department is paramilitary in style is of no consequence to an ultimate determination of just cause for discipline. Worker’s arguments at the hearing disputed both the factual basis for discipline and the existence of just cause, so we see no unfairness to Worker in holding that just cause existed in a more generalized sense. Second, a finding that is irrelevant or not necessary to support the judgment may be disregarded. Martinez, 2000-NMCA-074, ¶ 43. Again, we conclude that the paramilitary basis was not essential to the conclusion that just cause existed. We recognize that the ALJ may have concluded that the prison environment demanded a higher degree of courtesy, respect, and obedience from Worker than would more traditional types of state work. However, we need not pass upon this question of paramilitary structure because we conclude that Worker’s behavior would meet the standard of just cause for termination in any state organization. We express no opinion about whether the Department is or is not paramilitary in nature and the impact this may have on its disciplinary practice.

{29} Finally, we are not persuaded by Worker’s argument that he did not commit battery. Worker elicited testimony that no injury or harm was likely from the coins being launched at Perry and Shanks. Worker now argues that he did not “meaningfully” commit a civil battery. He is mistaken. It is black-letter law that causing an offensive touching, even indirectly to another’s clothing and not resulting in injury, is the tort of battery. State v. Ortega, 113 N.M. 437, 440-41, 827 P.2d 152, 155-56 (Ct. App. 1992) (describing tortious battery as including causing indirect contact with a person’s clothing and applying these concepts to criminal battery). Worker’s citation to criminal battery cases notwithstanding, his actions constituted a tort, and it was proper for the ALJ to have so found and used in its consideration of Worker’s conduct.

IV. CONCLUSION

{30} The district court’s decision affirming Worker’s termination from the Department is affirmed.

{31} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

A. JOSEPH ALARID, Judge
IRA ROBINSON, Judge

Certiorari Not Applied For

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-025

BROOKS TRUCKING CO., INC.,
Plaintiff-Appellant,
versus
BULL ROGERS, INC.,
Defendant-Appellee.
No. 24,684 (filed: January 13, 2006)

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
WILLIAM A. MCBEE, District Judge

W.T. MARTIN, JR.
MARTIN LAW FIRM
Carlsbad, New Mexico
for Appellant

LEE A. KIRKSEY
MADDOX & HOLLOMAN, P.C.
Hobbs, New Mexico
for Appellee

OPINION

JONATHAN B. SUTIN, Judge

{1} This appeal centers on whether this lawsuit by Brooks Trucking Co., Inc. against Bull Rogers, Inc. is barred by the doctrine of res judicata. We conclude that it is not. This lawsuit involves claims and transactions distinct and separate from the prior lawsuits in question. Important to our analysis of transactions is an issue of first impression in New Mexico. That issue involves the extent, if any, res judicata should apply where the claims asserted in the later lawsuit are based on operative facts that were not in existence at the time the earlier lawsuit was filed. We hold that res judicata does not apply to such claims.

BACKGROUND

BEN BROOKS’ LAWSUIT

{2} In 1994, Bull Rogers, an oilfield service company, used Brooks Trucking to remove old fuel tanks in an environmental cleanup project. Bull Rogers’ clean-up cost was to be reimbursed by the New Mexico Environment Department. In December 1997, the President of Brooks Trucking, Ben Brooks, in his own behalf, filed an action in breach of contract against Bull Rogers, alleging that he was an employee of Bull Rogers and was entitled to unpaid wages from 1994. At trial in November 1998, Mr. Brooks offered an assignment, created at the time of trial, by which Brooks Trucking attempted to assign all of its claims against Bull Rogers to Mr. Brooks personally. The district court did not allow the assignment and ruled in favor of Bull Rogers. The court held that Bull Rogers did not enter into any contract, either written or oral, to employ Mr. Brooks individually, and that Mr. Brooks had never been on Bull Rogers’ payroll. The court further held that Mr. Brooks could not assert claims on behalf of Brooks Trucking. The court dismissed Mr. Brooks’ lawsuit with prejudice in February 1999. Mr. Brooks did not appeal. We refer to this lawsuit as Mr. Brooks’ lawsuit to distinguish it from the following two lawsuits filed by Brooks Trucking.

BROOKS TRUCKING’S TWO LAWSUITS

{3} In November 1998, after knowing Mr. Brooks’ lawsuit would be dismissed, and
before entry of the order of dismissal of Mr. Brooks’ lawsuit, Brooks Trucking filed a complaint against Bull Rogers for debt on a contract pursuant to which Brooks Trucking leased equipment and performed labor during 1993 and 1994. We refer to this lawsuit as Brooks Trucking’s “first lawsuit.” In its complaint, Brooks Trucking contended that Bull Rogers owed money to Brooks Trucking and sought judgment in the amount owed. Brooks Trucking failed to serve the complaint on Bull Rogers for some sixteen months, during which period of time the statute of limitations on Brooks Trucking’s claim expired, and in May 2002 the district court granted Bull Rogers’ motion to dismiss the action. In its dismissal order, the court characterized the action as one on open account, and the dismissal was based on the running of the applicable four-year statute of limitations and was also based on Brooks Trucking’s failure to diligently serve the complaint. Brooks Trucking did not appeal the dismissal of its first lawsuit.

{4} In December 2002, Brooks Trucking filed another lawsuit against Bull Rogers, asserting claims of fraud, conversion, and damages. Bull Rogers filed a motion to dismiss in February 2003, on res judicata grounds, to which Brooks Trucking filed a response and amended complaint in April 2003. Brooks Trucking’s amended complaint added claims for unjust enrichment and breach of contract. The thrust of Brooks Trucking’s response to the motion to dismiss and the thrust of its amended complaint was that in 1999 or 2000 Bull Rogers received and wrongfully retained money paid to it by the State of New Mexico which it should have paid to Brooks Trucking. Brooks Trucking claimed that it was contractually entitled to payment directly from the State of funds that Bull Rogers retained and did not transfer to Brooks Trucking as assignee. The contractual documents on which Brooks Trucking relied for its claims were (1) an assignment by Bull Rogers to Brooks Trucking, as payee, in May 1994 of payments to be made by the State covering Brooks Trucking’s leasing and work and (2) a settlement agreement between the State and Bull Rogers in February 1996 relating to the payment of funds and also relating to Bull Rogers’ assigns. After a hearing on Bull Rogers’ motion to dismiss, the district court dismissed this lawsuit with prejudice. The dismissal of this second lawsuit is currently before us on appeal. We refer to this current lawsuit as Brooks Trucking’s “second lawsuit.”

{5} More particularly, Brooks Trucking’s amended complaint in its second lawsuit alleged what is set out in the remainder of this paragraph. In 1993 and 1994 Bull Rogers contracted with and incurred an obligation to the State of New Mexico for environmental cleanup. Bull Rogers also contracted with Brooks Trucking to provide services for the cleanup. In May 1994, together with a request for reimbursement from the State for work done by Brooks Trucking, Bull Rogers submitted a printed claim form seeking reimbursement from the New Mexico Corrective Action Fund. On this form, Bull Rogers assigned to Brooks Trucking the reimbursement rights held by Bull Rogers. Bull Rogers and the State were in dispute as to the amount of reimbursement to which Bull Rogers was entitled, and the New Mexico Environment Department sued Bull Rogers for fraud, unfair trade practice, and debt and money due, following which Bull Rogers counterclaimed. In February 1996, those parties settled their dispute by entering into a written settlement agreement. This settlement agreement dealt with the method and terms of reimbursement to Bull Rogers, and did not revoke Bull Rogers’ prior assignment to Brooks Trucking. The agreement expressly stated that it was binding upon Bull Rogers and its assigns. In 1999, in conformity with the settlement agreement, Bull Rogers received reimbursement for work done by Brooks Trucking. At the hearing on the motion to dismiss, Brooks Trucking clarified that the payment from the State to Bull Rogers was in “late 1999, or 2000.” The settlement agreement was a new contract and constituted a novation or an entirely new agreement as to which Brooks Trucking was a beneficiary in the form of an assignee. Bull Rogers retained the funds it received from the State and did not pay any funds to Brooks Trucking.

{6} In granting Bull Rogers’ motion to dismiss Brooks Trucking’s second lawsuit, the district court stated that it had reviewed and considered the pleadings filed in Mr. Brooks’ lawsuit and in Brooks Trucking’s first lawsuit. Stating only that Bull Rogers’ motion to dismiss was “well taken,” the court dismissed Brooks Trucking’s original and amended complaints in its second lawsuit with prejudice. In light of its ruling that the suit was barred, the district court also denied a motion Brooks Trucking had filed to amend the complaint to add a party. Brooks Trucking appealed. On appeal, Brooks Trucking asserts that the district court erred in granting Bull Rogers’ motion to dismiss because res judicata was not applicable to its second lawsuit. Brooks Trucking also asserts that it should be given the opportunity to amend the complaint.

{7} We first discuss the doctrine of res judicata and then provide our analysis of why the current lawsuit, Brooks Trucking’s second lawsuit, is not barred under res judicata. While this over-ten-year saga sorely needs to end, we do not see res judicata as the stopping point. Brooks Trucking’s second lawsuit claims are different than its prior claim on open account and the claims are based on facts distinct enough from those underlying the open account claim in the first lawsuit to conclude that the transactions underlying the two lawsuits are different.

STANDARD OF REVIEW

{8} Because the parties and the district court relied on pleadings and documents filed in Mr. Brooks’ action and in Brooks Trucking’s first lawsuit in granting Bull Rogers’ motion to dismiss in Brooks Trucking’s second lawsuit, we will view the court’s dismissal as a summary judgment in Bull Rogers’ favor. Rules 1-012(B), 1-056 NMRA. The facts upon which the court entered summary judgment are undisputed. Our review is de novo because the issues are issues of law. Moffat v. Branch, 2005-NMCA-103, ¶ 10, 138 N.M. 224, 118 P.3d 732, cert. granted, 2005-NMCERT-008, 138 N.M. 329, 119 P.3d 1266.

RES JUDICATA

{9} We agree with the parties that the governing law is the doctrine of res judicata. We look to the elements constituting the doctrine and the policy underlying it.

{10} The elements of res judicata or claim preclusion required as to the two actions at issue are (1) the same parties or parties in privity, (2) the identity of capacity or character of persons for or against whom the claim is made, (3) the same subject matter, and (4) the same cause of action. Moffat, 2005-NMCA-103, ¶ 11; Anaya v. City of Albuquerque, 1996-NMCA-092, ¶ 6, 122 N.M. 326, 924 P.2d 735. In regard to the subject matter and cause of action, res judicata “does not depend upon whether the claims arising out of the same transaction were actually asserted in the original action, as long as they could have been asserted.” Id. ¶ 18 (internal quotation marks and citation omitted). However, that a claim could have been asserted in the first lawsuit does not require invocation of res judicata where the two lawsuits do not arise out of the same transaction. Id. We are guided by Restatement (Second) of Judgments § 24(2) (1982),
in res judicata transaction analysis. Anaya, 1996-NMCA-092, ¶ 7, 12. Under Section 24(2), we consider “[1] the relatedness of the facts in time, space, origin, or motivation; (2) whether, taken together, the facts form a convenient unit for trial purposes; and (3) whether the treatment of the facts as a single unit conforms to the parties’ expectations or business understanding or usage.” Id. ¶ 12.

[11] As for policy, a party’s full and fair opportunity to litigate is the essence of res judicata. Moffat v. Branch, 2002-NMCA-067, ¶ 26, 132 N.M. 412, 49 P.3d 673; Bank of Santa Fe v. Marcy Plaza Assocs., 2002-NMCA-014, ¶ 14, 131 N.M. 537, 40 P.3d 442 (stating that claim preclusion applies only when plaintiff has had a “full and fair” opportunity to litigate issues in a prior action and that limitations on subject matter jurisdiction in the first action may prevent such an opportunity). Res judicata “reflects the expectation that parties who are given the capacity to present their entire controversies shall in fact do so.” Apodaca v. AAA Gas Co., 2003-NMCA-085, ¶ 81, 134 N.M. 77, 73 P.3d 215 (internal quotation marks and citation omitted). In considering the application of res judicata, we weigh whether “the courts’ and Defendants’ interests in bringing litigation to a close outweigh Plaintiff’s interest in the vindication of his claims.” Anaya, 1996-NMCA-092, ¶ 17. The party seeking to bar claims has the burden of establishing res judicata. Bank of Santa Fe, 2002-NMCA-014, ¶ 14; cf. Padilla v. Intel Corp., 1998-NMCA-125, ¶ 9, 125 N.M. 698, 964 P.2d 862 (discussing burden of party asserting collateral estoppel to establish it).

ANALYSIS OF THE LAWSUITS

[12] Bull Rogers argues that Mr. Brooks’ lawsuit and Brooks Trucking’s two lawsuits all arose out of the same set of facts and circumstances, seeking the same amounts of money for the same work. Bull Rogers therefore contends that Mr. Brooks’ lawsuit and Brooks Trucking’s first lawsuit provide a basis to apply res judicata to bar Brooks Trucking’s second lawsuit. With respect to the applicability of Mr. Brooks’ lawsuit, Bull Rogers states in its answer brief that Brooks Trucking conceded identity of capacity or character in regard to Mr. Brooks and Brooks Trucking. Although in its reply brief Brooks Trucking did not respond to this bare assertion, in its brief in chief Brooks Trucking footnoted a statement, carrying with it no argument or authority, that “there is no identity of parties between the first suit and the present suit.” Neither party develops this identity issue with any facts or authority. We therefore see no need to include Mr. Brooks’ lawsuit in our analysis and determinations. In addition, even were we to consider Mr. Brooks’ lawsuit, our holding in this case would apply to that lawsuit for the same reason it applies to Brooks Trucking’s first lawsuit.

[13] Turning to Brooks Trucking’s two lawsuits, Brooks Trucking asserts that its claims in its second lawsuit are based on (1) a right assigned by Bull Rogers to funds to be paid at some future date by the State, (2) an agreement between Bull Rogers and the State constituting a novation and binding on Bull Rogers’ assigns in regard to reimbursement sums to be paid at some future date by the State, and (3) Bull Rogers’ intentional and tortious refusal to pay funds to Brooks Trucking that were assigned to Brooks Trucking when Bull Rogers received the reimbursement sums from the State. Brooks Trucking argues that the facts giving rise to the claims in its second lawsuit did not arise until late 1999 or early 2000, when the State paid Bull Rogers and Bull Rogers wrongfully retained the funds. Brooks Trucking further argues that these claims could not have been asserted in its first lawsuit given that the district court had ruled that the statute of limitations on the open account claim asserted in that action had expired as of January 5, 1999, during the pendency of the action, service of process had not been completed by January 5, 1999, and the court ultimately dismissed the first lawsuit for failure to serve process within a reasonable time after filing the action.

[14] In Brooks Rogers’ view, because the assignment and settlement agreement were known to Brooks Trucking as early as Mr. Brooks’ lawsuit, having been exhibits or otherwise the subject of testimony in the trial in that action, and because no new investigation or discovery was done by Brooks Trucking after dismissal of its first lawsuit, the claims raised by Brooks Trucking in its second lawsuit could have been raised in the first one. Thus, Bull Rogers argues, when Brooks Trucking learned in late 1999 or early 2000 of the reimbursement payment from the State to Bull Rogers, there was sufficient time for Brooks Trucking to assert its claim in its first lawsuit which was pending at the time and not dismissed until May 2002.

[15] We are unpersuaded by Bull Rogers’ arguments. First, the claims Brooks Trucking stated in its second lawsuit were not the same as the claim of open account in its first lawsuit. Second, underlying Brooks Trucking’s different claims were different transactional relationships.

[16] With respect to the claims, Brooks Trucking’s first lawsuit’s open account claim was based on the underlying agreement to lease equipment and perform labor, and the actual leasing, labor, and incurrence of open account liability. That underlying agreement, and the leasing, labor, and debt owed for it resulted in the documents later executed that created Brooks Trucking’s right to receive payment from the State. Brooks Trucking’s second lawsuit claims of fraud, conversion, unjust enrichment, and breach of contract encompass a right Brooks Trucking alleges as having been created by the later-executed documents, a separate contractual right independent of the right to be paid on open account. See St. Joseph Healthcare Sys. v. Travelers Cos., 119 N.M. 603, 606, 893 P.2d 1007, 1010 (Ct. App. 1995) (“[W]hen a plaintiff has made written assignment of particular funds from a third party to a creditor, the creditor has an enforceable legal right to the funds.”).

[17] With respect to the transactional relationships, facts necessary for the resolution of the two lawsuits differ, and the factual and legal issues dispositive in the first lawsuit are different in significant degree from those in the second lawsuit. The proof in the first lawsuit required evidence of equipment leasing, labor performed, and the charges for those activities; the proof in the second lawsuit required evidence of the assignment and settlement agreement and the ultimate payment and retention of funds covered by those documents. Applied to the circumstances here, the guidelines in Section 24(2) of the Restatement do not support a single-transaction determination. The underlying debt for leasing and labor is substantially unrelated in time, origin, and motivation to the assignment and settlement agreement. Further, while the different claims in Brooks Trucking’s first and second lawsuits could be tried in one lawsuit with all of the facts underlying those claims, the different facts are not so intertwined as to cause us to conclude that they would best be adjudicated in one lawsuit. Nor do we see that the treatment of the different facts as a single unit conforms to any expectation of the parties or business understanding or usage. See Anaya, 1996-NMCA-092, ¶ 18 (rejecting an argument that res judicata applied because the second action could have been brought in the first, where the two lawsuits did not arise out of
the same transaction).

[18] In addition, although the documentary bases for Brooks Trucking’s claims in the second lawsuit are grounded in the early known assignment and settlement agreement, Brooks Trucking did not assert a claim and, indeed, may not have successfully asserted or recovered on a claim based on those documents until the reimbursement payments were ultimately made to and wrongfully retained by Bull Rogers. Thus, the transactions become even more distinct because critical operative facts underlying the claims in Brooks Trucking’s second lawsuit did not come into existence until after the first lawsuit was filed. For res judicata purposes, claims that arise from circumstances that come into existence after the first lawsuit is filed may be asserted by a supplemental pleading, but they are not required to be asserted in the first lawsuit. See Rule 1-015(D) NMRA; Baker Group, L.C. v. Burlington N. & Santa Fe Ry., 228 F.3d 883, 886 (8th Cir. 2000) (holding (1) claim preclusion does not apply to claims that did not arise until after the first suit was filed; and (2) because Fed. R. Civ. P. 15(d) is permissive for parties and discretionary with the court, the failure to supplement an already-commenced lawsuit did not raise a res judicata bar that precludes a second suit based upon a party’s later conduct); Fla. Power & Light Co. v. United States, 198 F.3d 1358, 1360-61 (Fed. Cir. 1999) (holding that under Fed. R. Civ. P. 15(d) as well as the different claims and underlying facts, the plaintiff’s later asserted claims were “not barred by res judicata on the ground that the plaintiffs should have arranged to have them joined in the same action with their [earlier action]” (emphasis omitted)); Doe v. Allied-Signal, Inc., 985 F.2d 908, 914-15 (7th Cir. 1993) (holding if the plaintiff could not have learned of fraud and breach of contract before filing the first lawsuit, res judicata will not bar subsequent litigation, and that the plaintiff is not required to amend the complaint in the first lawsuit to include the issues that arose later).

[19] Even were the distinctions between the transactions somewhat less clear, we would not under the facts and claims in this case conclude that res judicata should bar the second lawsuit. Wright and Miller’s on-topic discussion indicates that the distinctions between transactions are often difficult to make, and that the better rule to follow is that the cause of action in the earlier proceeding “need include only the portions of the claim due at the time of commencing that action,” and a supplemental or amended complaint as to claims that later ripen is not required to escape res judicata even if evidence of the underlying activity is used to prove the new claim. 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4409, at 210-52, esp. 213-20, 239-46 (2d ed. 2002).

[20] Nothing in New Mexico law requires a different result. No New Mexico case holds that later-raised claims must be asserted in an earlier lawsuit where the operative facts underlying the newly asserted claims arose after the claims in the first action were brought. In our cases that apply res judicata, when later-raised claims could have been asserted in an earlier lawsuit, the operative facts underlying the newly asserted claims existed at the time the claims in the first action were brought. See Moffat, 2005-NMCA-103, ¶¶ 12-13 (concluding that the second action could have been brought in the first action where all facts necessary had occurred before the first suit was brought); Apodaca, 2003-NMCA-085, ¶ 76-85 (holding that res judicata barred a second claim where it could have been brought in the first case where both claims were brought based on the same transaction and all of the events underlying both suits happened before either suit was filed); see also Bank of Santa Fe, 2002-NMCA-014, ¶¶ 22, 24 (holding that claim for overpayment of rent was not the same claim as claim about refinancing cost as a part of rent and deciding that because it was unclear whether overpayment was known at the time of earlier arbitration that it could not have been brought at that time); First State Bank v. Muzio, 100 N.M. 98, 99, 101-02, 666 P.2d 777, 778, 780-81 (1983) (adopting and applying the rule that res judicata bars a subsequent action on issues that could have been brought in an earlier action); overruled on other grounds by Huntington Nat’l Bank v. Sproul, 116 N.M. 254, 861 P.2d 935 (1993).

CONCLUSION

[21] We reverse the district court’s dismissal with prejudice and remand for further proceedings consistent with this opinion. In light of our reversal reinstating the lawsuit, the district court should revisit its ruling on Brooks Trucking’s motion to amend.

[22] IT IS SO ORDERED.

JOHNATHAN B. SUTIN, Judge

WE CONCUR:
LYNN PICKARD, Judge
IRA ROBINSON, Judge
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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. Single attorney space available. One-third of 1300SF (approx. 450SF), shared conference room, reception area, coffee bar, etc. w/building owners. $600/month. One (1) year lease. Call Ron Nelson or John Whisenant 883-9662.

Downtown Office for Sale/Lease
1019 2nd St NW, walking distance to courthouse, under renovation. 4 office & 4 secretarial spaces, kitchenette, conference room. Available for sale or lease, will lease entire building or individual office spaces, owner open to all possibilities. Input on renovation with early commitment. Lisa Torraco 480. 8218.

BUSINESS OPPORTUNITIES

Merge Your CR/DR Practice with Our Practice
You provide initial client base, we provide support staff, billing support and advertising/marketing support. Like having your own practice without the admin headaches. Call David Crum @ 385-9417 or e-mail to David@nmlawyers.com. All inquiries confidential.

MISCELLANEOUS

Searching For Will
Searching for Will of David R. Poquette, deceased in December 2, 2005, believed to have been drawn by Karl Werner. Call Law Offices of Brad L. Hays (505) 892-1050.

 Searching For Will - Urgent!
If any attorney has information regarding the will of Jack (deceased Jan. 2006) or Joni Pitts (deceased Aug. 2005), both from Socorro, NM - Please contact Lori Jensen at 209-481-7771.
Position Yourself to Win: A Visual Model for Persuasive Legal Writing

State Bar Center, Albuquerque
Thursday, March 30, 2006
6.8 General CLE Credits

Position Yourself To Win transforms the abstract idea of “writing” into the concrete task of organizing ideas, defines the components of that effort and provides practical tools to manage them. This seminar was developed by Walter Lowney utilizing his fifteen years of experience with the Federal Bar Association, Booze Allen Hamilton, the US State Department, NASA, AT&T, and various bar associations. The emphasis is upon learning by doing to assure command of the five steps most essential to persuasive communication. Lowney is a former law partner, associate general counsel for the U.S. EEOC, instructor at Boston University, and leader of clinical practice classes at the University of Pennsylvania.

8:00 a.m. Registration
8:30 a.m. Workshop Overview
9:00 a.m. How To Group, Sequence and Connect Ideas
10:00 a.m. Break
10:15 a.m. The CCI Method Applied to Legal Correspondence
11:15 a.m. How To Write A Fast, Coherent Draft
Noon Lunch (provided at the State Bar Center)
1:00 p.m. The Building Blocks of a Legal Argument
2:00 p.m. How To Use A Case Theory To Guide Research
2:30 p.m. Break
2:45 p.m. How To Organize and Draft Trial Court Memoranda and Appellate Briefs
3:30 p.m. Break
3:40 p.m. How To Write A Fast, Coherent Draft
4:45 p.m. Workshop Closing/Final Questions
5:00 p.m. Adjourn

REGISTRATION – Position Yourself to Win:
A Visual Model for Persuasive Legal Writing
Thursday, March 30, 2006 • State Bar Center, Albuquerque
6.8 General Credits
☐ Standard Fee - $189

Name: ________________________________________________________ NM Bar#: ______________________
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Payment Options: ☐ Enclosed is my check in the amount of $ _____________ (Make Checks Payable to: CLE)
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Mail this form to: CLE, PO Box 92860 Albuquerque, NM 87199 or Fax to (505) 797-6071.
Please Note: No auditors permitted
Register Online at www.nmbar.org
NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS
Healing Our Past; Braiding Justice Across Cultures

18th Annual Meeting
APRIL 25-28, 2006
HOTEL ALBUQUERQUE AT OLD TOWN
(formerly THE SHERATON OLD TOWN)
ALBUQUERQUE, NEW MEXICO

Information is available online at www.nmbar.org, or contact Joe Conte, (505) 797-6099 or jconte@nmbar.org.

FOUR WAYS TO REGISTER:
Phone: (505) 797-6099 (Please have credit card information ready)
Fax: (505) 828-3765, Open 24 Hours Internet: www.nmbar.org, click National Consortium
Mail: National Consortium, PO Box 92860, Albuquerque, NM 87199

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Registration Fee: ☐ $225 (if received by April 10, 2006) $___________
☐ $300 (if received after April 10, 2006) $___________

Guest Fee: ☐ $100 Includes name badge, meals/receptions, Santa Fe (tickets may be purchased separately on-site for events) $___________

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Cancellation & Refunds: If you find that you must cancel your registration, send a written notice of cancellation via fax by 5 p.m., one week prior to the event. A refund, less a $50 processing charge, will be issued.

HOTEL INFORMATION: Contact the Hotel Albuquerque directly and mention that you are attending the National Consortium on Racial and Ethnic Fairness in the Courts. Call 1-505-843-6300 or 1-800-237-2133. The conference rate is $68 per night for single or double occupancy. Overflow space is available at the Best Western Rio Grande Inn for $66 per night, single or double occupancy. Call 1-800-959-4726 or 1-505-843-9500.