Inside This Issue:

Board of Legal Specialization  6
Comments Solicited Legal Specialists Announced

Board of Bar Commissioners  7
Appointment to ABA House of Delegates

Ask Pat  9

NM Drug Court Recognition Month  10

Hearsay and In Memoriam  11

Legal Education Calendar

Writs of Certiorari

List of Court of Appeals’ Opinions

Clerk Certificates

2006-NMSC-016, No. 28,996: In the Matter Before the New Mexico Public Regulation Commission of the Application of Socorro Taxi, Inc. v. New Mexico Public Regulation Commission

2006-NMSC-017, No. 29,272: U.S. Xpress, Inc. v. State


2006-NMCA-047, No.  25,777: Director, Labor and Industrial Division, New Mexico Department of Labor v. Echostar Communications Corporation

Ethics Advisory Opinion 2006-1: Naming Firms “& Associates”

Special Insert:
State Bar of New Mexico’s 2006 Annual Meeting
Reaching for Excellence
THE UNIVERSITY OF NEW MEXICO
SCHOOL OF LAW

2006 DISTINGUISHED ACHIEVEMENT AWARD

NOMINATION FORM

The University of New Mexico Alumni/ae Association seeks nominations for its 2006 Distinguished Achievement Award to be presented on Friday, October 20, 2006.

The criteria are as follows:

1. UNM School of Law graduate or substantial connection or contribution (professor, adjunct professor, etc.) to the law school.
2. Distinguished career, legal or otherwise (i.e. private practice, government practice, judiciary, business, etc.).
3. Well known and respected in New Mexico and possibly elsewhere.
4. Many years dedicated to a legal or other career.
5. Other community involvement (i.e. government service, charitable involvement, etc.).

We encourage nominations from throughout New Mexico. Please list up to three nominees and include (on separate sheets) some background information on your nominees. Deadline for nominations is Monday, May 22, 2006.

NOMINEE ADDRESS

1. ______________________________________    ______________________________________
2. ______________________________________    ______________________________________
3. ______________________________________    ______________________________________

_________________________________________    ______________________________/___________
Please print your name            Please sign your name                       Telephone #

Please mail or FAX (505) 277-1597 this form, along with the nominee(s) background information to:

Carmen Rawls
UNM School of Law,
1117 Stanford NE
Albuquerque NM 87131-1431

Telephone (505) 277-8184
The outcome of your case may very well depend on a single financial fact.

From small actions to the most high-stakes cases, more and more New Mexico attorneys and law firms are turning to Moss Adams, a leading provider of vital litigation support services in the West. As the largest CPA firm in the state, and the largest headquartered in the region, Moss Adams boasts more than 150 years of combined state, national and international experience and a proven record of success in the courtroom. Find out how you can benefit from the full resources of Moss Adams’ Litigation Services Group. Contact Richard Wexler in our Albuquerque Practice Office at (505) 830-6200, or Kevin Prins in Los Angeles, at (310) 477-0450.

6100 UPTOWN BLVD NE · SUITE 400 · ALBUQUERQUE, NM 87110 · 505.830.6200 · WWW.MOSSADAMS.COM

Richard B. Wexler CPA, CVA
Litigation Services Group Head
Moss Adams - Albuquerque
richard.wexler@mossadams.com

Kevin L. Prins
Chair, Moss Adams Litigation Consulting Practice
kevin.prins@mossadams.com
Electronic Legal Resources: A World of Legal Information at UNM School of Law Library
State Bar Center, Albuquerque • Wednesday, May 24, 2006
1.0 General CLE Credit

Co-Sponsor: Law Office Management Committee
This CLE will be taught by two law librarians and legal research experts who both teach the Advanced Legal Research Course to 2nd and 3rd year law students at UNM School of Law. The focus will be on the latest electronic resources that the UNM law library has available for legal practitioners to use. It will also cover legal information that can be accessed for free on the web. Practitioners interested in learning about the latest electronic legal resources, including basic search strategies, should not miss this training opportunity.

Standard Fee $45

NATIONAL TELESEMINARS

Liability Issues for Trustees What a Trustee Must Tell Beneficiaries
11 a.m. via telephone • 1.0 General CLE Credits

There is an inherent tension between trustees and beneficiaries, between those with a fiduciary duty to preserve and grow property and those who often want greater distributions out of a trust. This program will examine the points of tension between fiduciaries and beneficiaries, potential fiduciary liability, and the obligations of disclosure of fiduciaries.

Standard Fee $67

Malpractice Insurance: What Attorneys Should Know
11 a.m. via telephone • 1.0 General CLE Credits

This program will provide an overview of errors and omissions policies available to attorneys and a detailed discussion of major clauses, with a focus on providing practitioners key decision-points and guidance for when they purchase or renew their policies. The program will also related the policy discussion to external legal/professional obligations.

Standard Fee $67

FOUR WAYS TO REGISTER

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

Name __________________________________________
NM Bar # ______________________________________
Street _________________________________________
City/State/Zip ____________________________

Phone __________________ Fax ______
E-mail ______________________________________

Program Title ____________________________
Program Date ____________________________
Program Location _________________________
Program Cost ____________________________

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

Board of Commissioners–Officers
Virginia R. Dugan, President
Dennis E. Jontz, President-Elect
Craig A. Orraj, Vice President
Henry A. Alaniz, Secretary-Treasurer
Charles J. Vigil, Immediate-Past President

Board of Editors
Frances C. Bassett, Esq.
David M. Berlin, Esq.
Janet Blair
Paul A. Bleicher, Esq.
Germaine R. Chapelle, Esq.
Martin R. Esquivel, Esq.
Barbara Glenn Momaday, Esq.
Mary Catherine McCulloch, Esq.
Stacey E. Scherer, Esq.
Elizabeth Staley, Esq.

Executive Director – Joe Conte
Editor – Dorma Seago
(505) 797-6030: E-mail: notices@nmbar.org
Account Executive – Marcia C. Ulibarri,
(505) 797-6058; E-mail: ads@nmbar.org
Pressman – Brian Sanchez
Print Shop Assistant – Richard Montoya
Mail Handler – Chris Knowles

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.

**TABLE OF CONTENTS**

Notices ......................................................................................................................6–12
Legal Education Calendar ....................................................................................13–14
Writs of Certiorari ...............................................................................................15–16
List of Court of Appeals’ Opinions .......................................................................17
Clerk Certificates ....................................................................................................18–19
Opinions ..................................................................................................................20–35

*From the New Mexico Supreme Court*

2006-NMSC-016, No. 28,996: In the Matter Before the New Mexico Public Regulation Commission of the Application of Socorro Taxi, Inc. v. New Mexico Public Regulation Commission ..................................................20

*From the New Mexico Court of Appeals*

2006-NMCA-047, No. 25,777: Director, Labor and Industrial Division, New Mexico Department of Labor, v. EchoStar Communications Corporation ..........32

*From the State Bar of New Mexico Ethics Advisory Committee*

Ethics Advisory Opinion 2006-1: Naming Firms “& Associates” .............................35

Advertising ..............................................................................................................36

*Professionalism Tip*

With respect to opposing parties and their counsel:

I will clearly identify, for other counsel or parties, all changes that I have made in all documents.

**Meetings**

May

17 Bankruptcy Law Section Board of Directors, noon, U.S. Bankruptcy Court, 10th floor conference room

17 Committee on Women and the Legal Profession, noon, Lewis and Roca Jontz Dawe, L.L.P.

18 Health Law Section Board of Directors, noon, State Bar Center

19 Indian Law Section Board of Directors, 9 a.m., State Bar Center

20 Prosecutors Section Board of Directors, 3 p.m., State Bar Center

23 Technology Committee, 4 p.m., State Bar Center

24 Membership Committee, noon, State Bar Center

25 Natural Resources, Energy and Environmental Law Section, noon, State Bar Center

**State Bar Workshops**

May

17 Lawyer Referral for the Elderly Workshop
10 a.m., Sacramento Mt. Senior Services, Cloudcroft

18 Lawyer Referral for the Elderly Workshop
10 a.m., Alamogordo Senior Center, Alamogordo

24 Consumer Debt/Bankruptcy Workshop
6 p.m., State Bar Center, Albuquerque

25 Lawyer Referral for the Elderly Workshop
Topic: Nursing Home Medicaid
1:15 p.m., Meadowlark Senior Center, Rio Rancho

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

31 Consumer Debt/Bankruptcy Workshop
6 p.m., Las Vegas VFW, Las Vegas

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

COURT NEWS

NM Supreme Court
Judicial Performance Evaluation Commission

Upcoming Meeting
The Judicial Performance Evaluation Commission was created by the New Mexico Supreme Court for the purpose of providing voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers. The commission’s next meeting will be from 8 a.m. to 5 p.m., May 18–19, at the State Bar Center, for the purpose of interviewing Metro judges.

Proposed Revisions to the Rules of Appellate Procedure
The Supreme Court is considering proposed revisions to the Rules of Appellate Procedure. Written comments on the proposed amendments may be sent to Kathleen J. Gibson, Chief Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, New Mexico 87504-0848, by May 29. For reference, see the May 8, (Vol. 45, No. 19) Bar Bulletin.

Board of Legal Specialization
Comments Solicited
The attorneys listed below are applying for certification as specialists 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.

Bankruptcy Law—Consumer
Chris W. Pierce
Federal Indian Law
David T. Gomez

Legal Specialists Announced
The New Mexico Supreme Court Board of Legal Specialization is pleased to announce the following attorneys as board certified specialists:

Appellate Practice
Robin A. Goble
Employment and Labor Law
Daniel M. Faber
Duane C. Gilkey
Agnes Fuentevilla Padilla
Federal Indian Law
Carolyn J. Abeita
James E. Fitting

Natural Resources—Oil and Gas Law
William F. Carr
Don M. Fedric
Real Estate Law
Bradley D. Tepper

Trial Specialist—Criminal Law
Michael E. Calligan

To receive information on any of the certified specialty areas, call the Legal Specialization administrative office at (505) 797-6057.

First Judicial District Court
Criminal Bench and Bar Brownbag
The 1st Judicial District Court Criminal Bench and Bar will have a brownbag meeting at noon, May 16, in the courtroom of Judge Michael E. Vigil. Issues and topics for discussion may be submitted to Sally or Kim, (505) 827-5047.

Destruction of Exhibits
Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1971 to 1995
Attorneys who have cases with tapes, and wish to have duplicates made, should verify tape information with the Special Services Division (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Aforementioned tapes will be destroyed after May 24 by Order of the Court.

Eleventh Judicial District Court
Announcement of Vacancy
A vacancy on the 11th Judicial District Court will exist in Gallup as of June 30 due to the retirement of Judge Joseph L. Rich.

The chair of the 11th Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14, of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site at http://lawschool.unm.edu/judsel/application.php, or e-mailed/faxed/mailed by calling Sandra Bauman, (505) 277-4700. The deadline for applications is 5 p.m., May 22. Applications received after that date are not considered.
District Courts and Bernalillo County Metropolitan Court

Announcement of Vacancies

The following seven vacancies will exist as of July 1 due to the creation of new judgeships by the New Mexico State Legislature.

- One vacancy in the 3rd Judicial District in Las Cruces.
- Two vacancies in the 5th Judicial District: one vacancy will exist in Carlsbad, and one will exist in Roswell.
- One vacancy in the 9th Judicial District in Clovis.
- One vacancy in the 11th Judicial District in Farmington.
- One vacancy in the 13th Judicial District in Bernalillo.
- One vacancy in the Bernalillo County Metropolitan Court in Albuquerque.
- The chair of the Judicial Nominating Commission solicits applications for these positions from lawyers who meet the statutory qualifications in Article VI, Section 14, of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site at http://lawschool.unm.edu/judsel/application.php, or e-mailed/faxed/mailed by calling Sandra Bauman, (505) 277-4700. Applicants are advised to clearly indicate which position they are applying for. The deadline for applications is 5 p.m., May 22. Applications received after that date are not considered.

Federal Courts

U. S. District Court for the District of New Mexico

Opinion Retrieval System

The Federal Bar Association is sponsoring a program to produce a collection of the Court’s opinions on compact disc. The CD collection contains a master disc which includes all documents that are contained in the Court’s Opinion Retrieval System and weekly discs which contain documents filed in each of the weeks during the program. The CD collection will be maintained by the 10th Circuit Library, Albuquerque Branch, and can be viewed at the library, or copies of the discs can be provided at no cost. This program will be available until the replacement of the Court’s Opinion Retrieval System is implemented in Fall 2006.

Workers’ Compensation Administration

Destruction of Exhibits and Depositions

The New Mexico Workers’ Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2004 (excluding causes on appeal). The exhibits and depositions are stored at 2410 Centre Ave SE, Albuquerque. They can be picked up until May 26. For further information, contact the Workers’ Compensation Administration, Clerk of the Court Alex Maestas, (505) 841-6843 or (800) 255-7965. Exhibits and depositions not claimed by the specified date will be destroyed.

STATE BAR NEWS

Annual Meeting

Resolutions and Motions

The 2006 Annual Meeting of the State Bar of New Mexico will be held at noon, July 21, at the Taos Convention Center in Taos. Resolutions and motions to be considered must be submitted in writing and received in the office of Executive Director Joe Conte, PO Box 92860, Albuquerque, NM 87199; fax, (505) 828-3765; or e-mail, jconte@nmbar.org, by 5 p.m., June 21.

Attorney Support Group

The attorney support group monthly meeting in June will be held in Santa Fe rather than Albuquerque. It will be at 5:30 p.m., June 5, at the office of Scott Vorhees, (505) 820-3302, located at 411 St. Michaels Drive, Suite A, Santa Fe (at the intersection of Old Pecos Trail and St. Michaels Drive). The meeting is generally held at 5:30 p.m. on the first Monday of each month at the First United Methodist Church in Albuquerque, and it will be at that location on July 3. For further information, contact Bill Stratvert, (505) 242-6845.

Bankruptcy Law Section

Brownbag Meeting

The Bankruptcy Law Section board and the clerk of the Bankruptcy Court will hold a brownbag meeting at noon, May 19, in the conference room on the 10th floor of U.S. Bankruptcy Court. Attorney David Campbell, guest speaker from Dallas, Texas, will provide training on PACER and CM/ECF. Attendees will learn creative ways in which to save on the costs of accessing the new system. Teleconferencing is available on request. Video conferencing from Roswell or Las Cruces may also be available. Contact Ron Holmes at ronholmes@prodigy.net, or (505) 268-3999, for more information and to R.S.V.P.

Board of Bar Commissioners

Appointment to ABA House of Delegates

The Board of Bar Commissioners will make one appointment to the American Bar Association (ABA) House of Delegates for a two-year term, which will expire at the conclusion of the 2008 ABA Annual Meeting. The delegate must be willing to attend meetings or otherwise complete his/her term and responsibilities without reimbursement or compensation from the State Bar; however, the ABA provides reimbursement for expenses to attend the ABA mid-year meetings. Members wishing to serve on the board must be a current ABA member in good standing and should send a letter of interest and brief resume by May 19 to Executive Director Joe Conte, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; or fax to (505) 828-3765.

Casemaker

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 summer 2006.

Watch for more information about Casemaker and visit www.casemaker.us. Contact Joe Conte, jconte@nmbar.org, or (505) 797-6099 with questions.

Children’s Law Section

Brownbag Lunch Program

The Children’s Law Section of the State Bar and the Corinne Wolfe Children's Law Center are sponsoring *The New Mexico Adoption Act: Covering the Basics* from noon to 1:30 p.m., May 19, at the John Brown Juvenile Justice Center, 5100 2nd Street, NW, Albuquerque. Children’s Court Judges John J. Romero and M. Monica Zamora will be presenting on the fundamentals of...
adoption attorneys and, as both were adoption attorneys before they joined the bench, they will speak from the perspective of practitioners as well as the Court. Members and nonmembers are welcome, and there is no charge for the program. Bring a lunch and take advantage of this great opportunity to better understand how the Adoption Act works.

Public and Legal Services Department and the Bankruptcy Law Section Assistance Needed

The State Bar’s Public and Legal Services Department is seeking assistance from bankruptcy attorneys to help with the New Mexico State Bar Foundation’s consumer debt/bankruptcy workshops, which have taken place in Albuquerque and Las Cruces for over five years. The workshops are held on a monthly basis as a public service to educate people about consumer debt, bankruptcy issues and the resources available to meet their legal needs. These workshops have become well known and well attended. The Bankruptcy Court adds the workshop information to their pro bono packets. Volunteer attorneys include Dan Behles and Ron Holmes.

After a general presentation by a bankruptcy attorney, everyone attending the workshop is able to meet one-on-one with an attorney to consult about their specific issues. If the attorney determines that the person is in need of Chapter 7 bankruptcy, the attorney will recommend whether the person should be referred on a full fee, reduced fee, or pro bono basis (based on the federal poverty guidelines and "need," i.e., not judgment proof).

Contact Marilyn Kelley, (505) 797-6048, or e-mail mkelley@nmbar.org.

Solo and Small Firm Practitioners Section Meeting Rescheduled

The Solo and Small Firm Practitioners Section has cancelled its May 16 meeting. The next meeting will be held June 20 at the State Bar Center in conjunction with the CLE, Lurking Dangers in Real Estate Contracts for all NM Lawyers, presented by Ron Taylor. The program will begin at 11:45 a.m. with registration and lunch and will conclude at 1:15 p.m. The cost of the program is $45, lunch included. To register, call (505) 797-6020; fax (505) 797-6071; visit www.nmbar.org and click on CLE, or mail CLE, PO Box 92860, Albuquerque, NM 87199.

Other Bars

Albuquerque Bar Association Monthly Luncheon and CLE

The Albuquerque Bar Association’s monthly luncheon will be held at noon, June 6, at the Albuquerque Petroleum Club. The State of the Courts will be presented by The Honorable Richard C. Bosson, Chief Justice, New Mexico Supreme Court.

The CLE, Inside the Court of Appeals: Pointers on Appellate Practice will be presented by The Honorable Cynthia Fry, New Mexico Court of Appeals; The Honorable Michael D. Bustamante, Chief Judge, New Mexico Court of Appeals; and Edward Ricco, Rodey Dickason Sloan Akin & Robb PA. The CLE, from 1:30 to 3 p.m., will qualify for 1.5 general CLE credits.

Lunch only: $20 members/$25 non-members; lunch and CLE: $50 members/$70 non-members; CLE only: $30 members/$45 non-members.

Register for lunch by noon, June 5. Lunch is an additional $5 without reservations. Register at www.abqbar.com; by e-mail at abqbar@abqbar.com; by mail to ABA, 400 Gold SW, Suite 620, Albuquerque, NM 87102; by fax to (505) 842-0287; or call (505) 842-1151 or (505) 243-2615.

Other News

Legal FACS Torrance County Pro Se Forms Clinic

Legal FACS, a self-help nonprofit legal program, will conduct a free pro se forms clinic from 9 a.m. to noon, June 21, at the Neil Mertz Judicial Complex in Estancia (Highway 14, west side of the road). The clinic is for self-represented litigants and domestic violence victims who cannot afford to hire an attorney for their divorce, legal separation, annulment, name change, child custody orders, spousal/child support enforcement orders and/or other related family matters. Litigants will have the opportunity to discuss their case with an attorney and visit with a paralegal and/or domestic violence victim advocate.

Individuals interested in the clinic must call Legal FACS, (505) 256-0417. Legal FACS will conduct intake to verify qualification for the program. (Income guidelines are used to determine eligibility.) All pro se litigants must make an appointment and will be seen by appointment only on June 21.

NM Center on Law and Poverty 2006 Statewide Legal Services Training

The New Mexico Center on Law and Poverty is pleased to announce its annual Statewide Legal Services Conference, a training which addresses poverty law issues. This conference will be of interest to those working in the system of civil legal service providers as a professional or volunteer or to those doing pro bono work in this area.

The conference will be held June 13–14 at the Professional Development Center of the State Bar. The keynote address will be delivered on the morning of June 13th by Lieutenant Governor Diane Denish. The conference will also feature professionalism training by Chief Justice Richard Bosson, ethics training by Michael Browde of the UNM School of Law, and A Look at the Significant New ABA Standards on Providing Civil Legal Aid with Sarah Singleton. Other topics to be covered include: consumer law, family law, Medicaid, bankruptcy law, predatory lending, depositions, discovery techniques, housing law, unemployment law, and more.

The registration fee for the two-day conference is $100 for public interest lawyers and $150 for private attorneys. To learn more, including how to register for the event, check the Trainings section at www.nmpovertylaw.org; call Stacey Leaman at the Center on Law and Poverty, (505) 255-2840; or e-mail stacey@nmpovertylaw.org. CLE credit is pending.

Youth for Understanding Host Families Needed

Youth For Understanding (YFU) is a worldwide movement of committed individuals and organizations working together to prepare young people for their responsibilities and challenges in a changing, interdependent global community. Each year YFU places a large number of international exchange students with local families. More than 2,000 YFU students come to the U.S. from about 50 countries in Europe, Africa, Asia, North and South America and the Pacific. To become a host family this upcoming school year or find out more about YFU, call (866) 493-8872, visit www.yfu-usa.org or e-mail vongsaly@yfu.org.

Youth for Understanding (YFU) is a worldwide movement of committed individuals and organizations working together to prepare young people for their responsibilities and challenges in a changing, interdependent global community. Each year YFU places a large number of international exchange students with local families. More than 2,000 YFU students come to the U.S. from about 50 countries in Europe, Africa, Asia, North and South America and the Pacific. To become a host family this upcoming school year or find out more about YFU, call (866) 493-8872, visit www.yfu-usa.org or e-mail vongsaly@yfu.org.
Dear Pat,

I am a female associate in a large firm who is not married and does not have children. The associates who do not have children are expected to pick up the slack when another lawyer has to leave or miss work due to a child care issue, not to mention maternity leave. I work additional hours and think it is only fair that I be compensated either by salary or partnership track. It’s all a matter of the choices we make, and the system that rewards hard work and billable hours seems more equitable to me than a system that rewards someone equally for working less.

Sincerely,
Future Partner

Dear Future Partner,

Unfortunately, the current focus on “family-friendly” workplaces often leaves workers who do not have child or family obligations feeling ignored or treated as if they can, and should, work more than their family-affected counterparts. However, a fair and equitable policy to protect women from discrimination or disparate treatment if they have a child should not have a corresponding negative impact on other workers. The underlying issue is not whether workers can balance work and family but whether the American work culture permits all employees to balance work and life. The discussion that began over a decade ago about balancing work and children for women is no longer just a women’s issue. Statistics indicate that Americans work far more than their European counterparts—on average 350 hours more per work year (or, nearly nine working weeks).

The real issue may not be that you are expected to take up the slack if a co-worker goes on maternity leave but that you are expected to add hours to your already work-dominated week. A solution for an employer faced with losing an employee for twelve or more weeks may be to hire a temporary replacement and incorporate transition plans into company policy for such temporary workload challenges. Although this alternative may be burdensome for some smaller firms, and may not always be possible (e.g., where it is impractical to replace an absent attorney with contract help due to the nature of the matters she handles, or due to insurmountable client confidentiality or conflicts issues), it certainly merits consideration. The length of notice a pregnant attorney is able to give her employer should alleviate some of the hardship associated with maternity leave.

Similarly, the benefits available to employees with families (e.g., health care, child-care, flexible schedules) should be equally available to all employees. A solution offered by many firms is to give each employee a “benefit budget” and allow the employee to allocate the budget to health care, child care, memberships in sports facilities, or other traditional and nontraditional benefits.

Finally, the issue of billable hours and partnership track requirements is not likely to be easily resolved. Increasing criticism of billable hours requirements and firms’ tendency to focus on the number of hours an associate works rather than quality of work, may make such systems fall out of favor. Until then, it is more likely than not that you, and other attorneys who work significant hours, will be rewarded both financially and with partnership. In spite of the characterization of such systems as gender-neutral and as a means to objectively reward associates for perceived dedication to the firm, there are inescapable gender-based effects. A billable hours based “all work, no life” path to partnership perpetuates a system founded on an outdated model. No longer is the typical associate a married man with a wife at home bearing the responsibility for raising the children. There are more than 300,000 women lawyers in the United States, yet there are still very few women partners in law firms. Nonetheless, support for the billable hours-based reward system continues.

Yes, you should be rewarded for hard work and extra effort. The argument is not against rewarding hard work but against an outdated system that fails to take into account the demographic changes of its workforce. All employees, not just women or employees with children, should have the opportunity to balance work and non-work obligations yet remain productive and valuable employees.

Sincerely,
Pat

The Committee on Women and the Legal Profession is conducting a survey of family leave policies. The survey will be e-mailed to all Bar members on May 15 and may also be accessed on the State Bar Web site at www.nmbar.org.
In the Supreme Court of the State of New Mexico

New Mexico Drug Court Recognition Month
May 2006

WHEREAS, drug courts provide the focus and leadership for community-wide, anti-drug systems, bringing together criminal justice, treatment, education, and other community partners in the fight against drug abuse and criminality;

WHEREAS, drug court programs are the original form of drug policy reform and combine intensive judicial supervision, mandatory substance abuse treatment and drug testing, and escalating sanctions and incentives in order to break the cycle of drug addiction and its concomitant crime;

WHEREAS, the judges, prosecutors, defense attorneys, treatment and rehabilitation professionals, law enforcement and corrections personnel, researchers and educators, national and community leaders, and others dedicated to the movement have had a profound impact through hard work and commitment to their communities; and

WHEREAS, the drug court movement has grown from one drug court in 1994 to over thirty drug courts that are in operation or in the planning stages.

NOW, THEREFORE, BE IT RESOLVED, that the New Mexico Supreme Court declares that a “New Mexico Drug Court Month” be established during the Month of May, 2006, recognizing the practitioners and participants who make drug courts work and the significant contributions that drug courts have made, and continue to make, in reducing drug usage and crime.

DONE in Santa Fe, New Mexico, this 9th day of May, 2006.

Richard C. Bosson, Chief Justice
Justice Pamela B. Minzner
Justice Patricio M. Serna
Justice Petra Jimenez Maes
Justice Edward L. Chávez
Sandra Beerle, an attorney with Rodey, Dickason, Sloan, Akin & Robb, P.A., has been elected to the board of directors of RCI, Inc., a nonprofit organization with a mission to empower children and adults with special needs to achieve their highest levels of self-sufficiency. Beerle, who practices in the litigation department, specializes in health care litigation.

Randilynn Lord, an assistant attorney general practicing civil litigation, was recently elected president of the New Mexico Black Lawyers Association. She has served as treasurer of the organization since 2004. Lord is a graduate of Howard University School of Law in Washington, D.C. She also attended the University of New Mexico School of Law as a visiting student while working as an intern and extern in the Consumer Protection Division of the attorney general’s office.

Jeffrey Croasdell, an attorney with the Rodey Law Firm, has received the highest (AV) rating from Martindale-Hubbell. Croasdell, a partner practicing in the litigation department, specializes in products liability, aviation, medical device, general litigation and civil rights law. Martindale-Hubbell ratings fall into two categories, legal ability and general ethical standards. Ratings reflect the confidential opinions of members of the Bar and the judiciary.

Carmela Starace has joined the law firm of Rodey, Dickason, Sloan, Akin & Robb, P.A., as an associate in the litigation department. Starace’s practice focuses primarily on products liability and general civil defense. Starace received her undergraduate degree in 1995 from Florida State University and her J.D. from the UNM School of Law in 2005.

R. Randall “Randy” Royster, is the new executive director for the Albuquerque Community Foundation. Royster was most recently vice president of human resources for Lovelace Sandia Health Systems. Royster holds a business degree from Eastern New Mexico University and graduated from the UNM School of Law.

The New Mexico Supreme Court recently appointed attorney Charles J. Vigil, a partner with the Rodey Law Firm, to a three-year term on the recently created New Mexico Client Protection Fund Commission. The commission, comprised of seven New Mexico lawyers, elected Vigil as chair, a position he will hold for the remainder of the year. Vigil practices in the litigation department in employment law, civil rights, commercial litigation, products liability and professional liability. He is also the immediate past president of the State Bar.

The New Mexico Chapter of the American Board of Trial Advocates (ABOTA) elected their chapter officers for 2006. Lance D. Richard (left) has been elected vice president. Jim Dines (center), national representative, Lawrence H. Hill (right), president, and Richard C. Civerolo (seated), secretary/treasurer. ABOTA is an organization of plaintiff and defense civil trial attorneys with representatives in every state.
State District Judge Joseph L. Rich has announced he will retire June 30. Rich, 75, said, "It's time." He was first appointed to the bench in 1988 to succeed Louis F. DePauli, Sr., and was elected that year. He has been re-elected since.

Mary Behm and Benjamin F. Feuchter have been elected shareholders at Keleher & McLeod, PA. Behm represents clients in civil litigation, health-care law, commercial litigation and insurance law and is also an adjunct law professor at the UNM School of Law. She has a law degree from UNM.

Feuchter represents clients in commercial litigation, employer defense, and tribal law issues at both the trial and appellate levels. He has a law degree from UNM.

Rebecca M. Alves has joined the Miller Stratvert Law Firm as an associate in the Albuquerque office. Alves has a bachelor’s degree, magna cum laude, in government and philosophy from the college of William and Mary and a law degree, summa cum laude, from the University of Arizona. Alves practices primarily in civil litigation and appeals.

Lucy Fivekiller Beals died unexpectedly of a sudden illness on March 25. Beals was born Dec. 27, 1951 in Lawton, OK. She was a member of the Deer Clan of the Cherokee Nation of Oklahoma and her ancestors included Polly Fivekiller, who was the sole survivor of family members who died on the Trail of Tears, the forced relocation of the Cherokees in the late 1830s. Beals is survived by her husband of 31 years, Richard R. Beals; one daughter, Crystal Jester; and five grandchildren, all residents of Albuquerque. Lucy graduated from UNM summa cum laude with a degree in anthropology after years in the “school of hard knocks,” working her way from being a waitress to a manager in various businesses. She received her Juris Doctor in 2002 and was admitted to the Bar in 2004, having tested in the top 15% of the nation’s candidates. She went into private practice and was especially active as a guardian ad litem and then as a petitioning attorney for developmentally disabled children. In addition to her love of the law and the opportunity which it provided to help people, she enjoyed cooking, particularly native Cherokee foods which she also grew. She served on the board of the Rio Grande Nature Center and as president of the Native Plant Society. She enjoyed beading, tending her antique roses, and genealogical research into her family’s roots. Beals once said, “I believe that to whom much is given, much is expected and so I seek to serve when needed.” At the time of her death, Beals was part of a task force of the Indian Law Section of the State Bar, working on developing Bar exam scholarships for individuals interested in practicing Indian law.

“People that met her and worked with her were in many or most cases just in awe of her talents, her judgment, her ability to analyze people, analyze situations. She was an awesome, awesome lady,” said Richard Beals.

Charles E. Rains, age 61, of Tulsa, OK, died on Thursday, March 9. Rains was known and respected nationally as an authority on estate tax law and planning, international law, and corporate law. An accomplished speaker, he appeared before the Arizona Federal Estate Tax Institute, Kansas City Federal Tax Symposium, American College of Trust and Estate Counsel, Offshore Trust Services, Oklahoma Bar Association, Tulsa County Bar Association, and others. Rains was known for his sense of humor, his sense of adventure and the outdoors, which led to the formation of “Camp Chuck,” an informal group of outdoor enthusiasts around the country interested in hiking, rafting, bicycling and other adventures. Travels pursuing various interests and in fulfillment of his legal career led him to Hong Kong, Bangkok, Machu Picchu, Egypt, throughout Europe and Scandinavia, the second base camp of Mount Everest, Wheeler Peak in New Mexico and various other challenging locations. Rains graduated from the University of Oklahoma and received a bachelor’s degree in accounting in 1966. He then obtained his law degree in 1968 from the University of Texas. Chuck served in the Air Force, working as a lawyer in the judge advocate’s office. When he was stationed in Greenland, he played chess with Russians across the North Pole by ham radio. In 1970, he married Roberta “Bobbie” Dixon. After discharge from the Air Force, Rains received an L.L.M. in international law from the London School of Economics and an L.L.M. in taxation from George Washington University. In 1979, Chuck practiced with Hall, Estill, Hardwick, Gable, Golden and Nelson, P.C., in Tulsa, OK and later with the Sutin, Thayer & Browne in New Mexico, Crowe & Dunlevy and Conner & Winters in Tulsa, OK, and Streich Lang in Arizona. For the last 5 years, Chuck was a principal of the Tulsa firm Rains & Saunders. Chuck is survived by his daughter, Allison Rains, age 29, who lives in Tulsa, OK.

Julian “Larry” Fowler, 70, a prosecutor for the state of New Mexico for 23 years, died from conditions created by progressive supranuclear palsy. He worked in the cities of Farmington, Gallup, Taos and Las Vegas. While working as an instructor at UNM-Taos during the mid 90s, he helped the branch start a criminal justice program. He loved baseball, listening to jazz and blues and reading.

Dewie Blanton Leach passed away Jan. 11 in Hobbs at the age of 86. Leach served in the U.S. Army during WW II and then went on to pursue his undergraduate and graduate degrees from the University of Mississippi and graduated in 1950 with his Juris Doctorate. He started his private practice in Hobbs and retired in 1995. Aside from his family, Leach’s greatest loves in life were water skiing and traveling. He spent most of his free time on the water, enjoying the company of his friends and family. He is survived by his sister Lottie May Harris; his former wife Nancy White Callaway, three daughters; six grandchildren and six great-grandchildren.

Paris “Pete” Derizotis died at age 74 on Jan. 20. He was born in Greece and came to Gallup in the 1950s. His friends said his heavy accent became part of his personality throughout his lifetime. Derizotis served as a state representative from McKinley County for four years and as a state magistrate for 18 years. In describing his relations with people, the Gallup Independent noted, “He had either cooked for them, married them, heard their problems, listened to their political concerns or sent them to jail.” In his own profile he wrote that his interest in politics came when he was a student at the University of Athens where he majored in political science and economics. Others note that he was famous in the Supreme Court offices for his lobbying efforts on behalf of the magistrate courts.
## Legal Education

### May

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Location</th>
<th>Type</th>
<th>Credits</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Packaging Your Parachute: Preparing for Law Practice Risk</td>
<td>Albuquerque</td>
<td>CNA</td>
<td>3.0 E</td>
<td>(312) 822-7767</td>
</tr>
<tr>
<td>15</td>
<td>Real Estate Law: Advanced Issues and Answers</td>
<td>State Bar Center, Albuquerque</td>
<td>National Business Institute</td>
<td>6.0 G</td>
<td>(800) 835-8525</td>
</tr>
<tr>
<td>15</td>
<td>Scientific Evidence: Constitutional Issues</td>
<td>TRT, Inc.</td>
<td>Teleconference</td>
<td>2.0 G</td>
<td>(703) 779-2006</td>
</tr>
<tr>
<td>15–17</td>
<td>Estate Planning for the Non-Traditional Family, Parts 1 and 2</td>
<td>Center for Legal Education of NMSBF</td>
<td>Teleseminar</td>
<td>2.0 G</td>
<td>(505) 797-6020</td>
</tr>
<tr>
<td>16</td>
<td>Pro Se Can You See: Navigating the Fog of the Pro Se Litigant</td>
<td>State Bar Center, Albuquerque Center for Legal Education of NMSBF</td>
<td>VR</td>
<td>1.0 P</td>
<td>(505) 797-6020</td>
</tr>
<tr>
<td>16</td>
<td>Third Annual Elder Law Seminar</td>
<td>State Bar Center, Albuquerque Center for Legal Education of NMSBF</td>
<td>VR</td>
<td>2.7 G</td>
<td>(505) 797-6020</td>
</tr>
<tr>
<td>16</td>
<td>Advanced Zoning and Land Use</td>
<td>Albuquerque Lorman Education Services</td>
<td>6.0 G</td>
<td>(715) 833-3940</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Turning the Tables: Bias Directed at Attorneys</td>
<td>TRT, Inc.</td>
<td>Teleconference</td>
<td>2.0 P</td>
<td>(703) 779-2006</td>
</tr>
<tr>
<td>16</td>
<td>Understanding Insurance Basics</td>
<td>Edward Jones</td>
<td>Satellite Broadcast</td>
<td>2.8 G</td>
<td>(314) 515-5848</td>
</tr>
<tr>
<td>16</td>
<td>Packaging Your Parachute: Preparing for Law Practice Risk</td>
<td>Santa Fe CNA</td>
<td>Teleseminar</td>
<td>3.0 E</td>
<td>(312) 822-7767</td>
</tr>
<tr>
<td>16</td>
<td>Problem Employees: Using Employment Laws to Your Advantage</td>
<td>Albuquerque Sterling Education Services</td>
<td>6.6 G</td>
<td>(715) 855-0495</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>CLE Friday</td>
<td>Roswell Paralegal Division of New Mexico</td>
<td>5.0 G</td>
<td>(505) 622-6510</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Ethical Forms of Compensation</td>
<td>TRT, Inc.</td>
<td>Teleconference</td>
<td>2.0 E</td>
<td>(703) 779-2006</td>
</tr>
<tr>
<td>19</td>
<td>Genetic Testing and Employment Discrimination</td>
<td>State Bar Center, Albuquerque Employment and Labor Law Section Center for Legal Education of NMSBF</td>
<td>3.2 G</td>
<td>(505) 797-6020</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Rules and Procedures for Federal Court Success</td>
<td>State Bar Center, Albuquerque National Business Institute</td>
<td>5.5 G</td>
<td>(800) 835-8525</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Water for Energy in the Southwest: Where Will It Be Found?</td>
<td>UNM School of Law Albuquerque UNM School of Law Utton Center, Natural Resources, Energy &amp; Environmental Section Center for Legal Education of NMSBF</td>
<td>6.2 G</td>
<td>(505) 797-6020</td>
<td></td>
</tr>
<tr>
<td>23–24</td>
<td>FMLA Update</td>
<td>Albuquerque Council on Education in Management</td>
<td>11.0 G</td>
<td>(800) 942-4494</td>
<td></td>
</tr>
</tbody>
</table>

G = General  
E = Ethics  
P = Professionalism  
VR = Video Replay  

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

---

**Bar Bulletin - May 15, 2006 - Volume 45, No. 20**

13
23 Liability Issues for Trustees: What a Trustee Must Tell Beneficiaries
Teleseminar
Center for Legal Education of NMSBF
1.0 G
(505) 797-6020
www.nmbar.org

24 Electronic Legal Resources: A World of Legal Information
UNM School of Law Library
State Bar Center, Albuquerque
Law Office Management Committee
Center for Legal Education of NMSBF
1.0 G
(505) 797-6020
www.nmbar.org

24 Wage and Hour Law
Albuquerque
National Business Institute
6.0 G
(800) 835-8525
www.nbi-sems.com

24 Is an LLC Right for You?
Albuquerque
National Business Institute
6.6 G
(800) 835-8525
www.nbi-sems.com

25 Major Issues in Arbitration
Teleconference
TRT, Inc.
2.0 G
(703) 779-2006
www.trtcle.com

24 Ethical Dilemmas: How to Solve Them
Teleconference
TRT, Inc.
2.0 E
(703) 779-2006
www.trtcle.com

26 2006 Estate Planning Update, Parts 1 and 2
Teleseminar
State Bar Center, Albuquerque
Center for Legal Education of NMSBF
2.0 G
(505) 797-6020
www.nmbar.org

24 Ethical Dilemmas: How to Solve Them
Teleconference
TRT, Inc.
2.0 E
(703) 779-2006
www.trtcle.com

30 Effective Jury Persuasion
Teleconference
TRT, Inc.
2.0 G
(703) 779-2006
www.trtcle.com

JUNE

1 Advanced Estate Planning Practice Update, Spring 2006
Teleseminar
State Bar Center, Albuquerque
Center for Legal Education of NMSBF
3.6 G
(505) 797-6020
www.nmbar.org

2 EEOC Technical Assistance Program
Albuquerque
US EEOC
6.5 G
(505) 248-5210

6 Advanced Section 1031 Exchanges
Albuquerque
National Business Institute
6.6 G
(800) 835-8525
www.nbi-sems.com

7 Cause and Effect of Arbitration Clauses: What Should You Consider When Drafting an Arbitration Clause for a Contract?
State Bar Center, Albuquerque
Business Law Section
Center for Legal Education of NMSBF
1.0 G
(505) 797-6020
www.nmbar.org

8 Corporate Counsel: Caught in the Crossfire
Teleconference
TRT, Inc.
2.0 E
(703) 779-2006
www.trtcle.com

7 Ethical Forms of Compensation
Teleconference
TRT, Inc.
2.0 E
(703) 779-2006
www.trtcle.com

8 Immigration
Las Cruces
Paralegal Division of New Mexico
1.0 G
(505) 522-2338

9 Internet Sources and Resources
Teleconference
TRT, Inc.
2.0 G
(703) 779-2006
www.trtcle.com

12 Prescriptions for Electronic Discovery
Teleconference
TRT, Inc.
2.0 G
(703) 779-2006
www.trtcle.com
**WRITS OF CERTIORARI**

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

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

**Effective May 15, 2006**

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

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Petition Filed</th>
<th>Date Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,787</td>
<td>Graham v. Hatch</td>
<td>5/5/06</td>
</tr>
<tr>
<td>NO. 29,784</td>
<td>Jacobs v. ulibarri</td>
<td>5/2/06</td>
</tr>
<tr>
<td>NO. 29,785</td>
<td>State v. Williams (COA 25,031)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,783</td>
<td>Gardiner v. Galles Chevrolet (COA 26,560)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,782</td>
<td>Flores v. Ulbarri (12-501)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,781</td>
<td>State Farm Insurance v. Jones (COA 25,507)</td>
<td>4/27/06</td>
</tr>
<tr>
<td>NO. 29,779</td>
<td>State Farm Insurance v. Jones (COA 25,507)</td>
<td>4/26/06</td>
</tr>
<tr>
<td>NO. 29,774</td>
<td>Garcia v. Hatch (12-501)</td>
<td>4/25/06</td>
</tr>
<tr>
<td>NO. 29,775</td>
<td>State v. Martinez (COA 24,601)</td>
<td>4/24/06</td>
</tr>
<tr>
<td>NO. 29,772</td>
<td>Johnson v. Janecka (12-501)</td>
<td>4/21/06</td>
</tr>
<tr>
<td>NO. 29,770</td>
<td>State v. Arroyo (COA 25,447)</td>
<td>4/21/06</td>
</tr>
<tr>
<td>NO. 29,769</td>
<td>State v. Kennedy (COA 24,873)</td>
<td>4/21/06</td>
</tr>
<tr>
<td>NO. 29,768</td>
<td>Luna v. Lewis Casing Crews (COA 26,338)</td>
<td>4/21/06</td>
</tr>
<tr>
<td>NO. 29,766</td>
<td>Ortiz v. Rustys Plumbing (COA 25,959)</td>
<td>4/21/06</td>
</tr>
<tr>
<td>NO. 29,763</td>
<td>Rehders v. Allstate Insurance Company (COA 25,284)</td>
<td>4/20/06</td>
</tr>
<tr>
<td>NO. 29,762</td>
<td>Cameron v. Thomas (COA 25,758)</td>
<td>4/18/06</td>
</tr>
<tr>
<td>NO. 29,761</td>
<td>Sedillo v. Jenecka (12-501)</td>
<td>4/17/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response due 5/15/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,732</td>
<td>State v. Diaz (COA 26,049)</td>
<td>4/17/06</td>
</tr>
<tr>
<td>NO. 29,760</td>
<td>Swanton v. Ortiz (COA 25,201)</td>
<td>4/12/06</td>
</tr>
<tr>
<td>NO. 29,757</td>
<td>State v. Billips (COA 26,093)</td>
<td>4/10/06</td>
</tr>
<tr>
<td>NO. 29,754</td>
<td>Bartlett v. Williams (12-501)</td>
<td>4/7/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response due 5/8/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,753</td>
<td>State v. Drennan (COA 26,002)</td>
<td>4/7/06</td>
</tr>
<tr>
<td>NO. 29,727</td>
<td>State v. Kittell (COA 25,292)</td>
<td>4/7/06</td>
</tr>
<tr>
<td>NO. 29,750</td>
<td>State v. Robbs (COA 25,636)</td>
<td>4/5/06</td>
</tr>
<tr>
<td>NO. 29,745</td>
<td>State v. Salazar (COA 24,468)</td>
<td>4/5/06</td>
</tr>
<tr>
<td>NO. 29,746</td>
<td>State v. Rubio (COA 25,310)</td>
<td>4/3/06</td>
</tr>
<tr>
<td>NO. 29,744</td>
<td>Johnston v. Romero (12-501)</td>
<td>4/3/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response due 5/18/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,739</td>
<td>State v. Santana (COA 25,269)</td>
<td>3/29/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response due 5/8/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,738</td>
<td>Fallis v. Blair (12-501)</td>
<td>3/28/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 4/27/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,734</td>
<td>State v. Soto (COA 24,871)</td>
<td>3/27/06</td>
</tr>
<tr>
<td>NO. 29,728</td>
<td>State v. Gastelum (COA 26,092)</td>
<td>3/22/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 5/3/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,717</td>
<td>Rael v. Blair (12-501)</td>
<td>3/15/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 4/27/06 by extn</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,707</td>
<td>Montoya v. Janecka (12-501)</td>
<td>3/7/06</td>
</tr>
<tr>
<td>NO. 29,702</td>
<td>State v. Henderson (COA 24,850)</td>
<td>3/6/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 4/20/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,694</td>
<td>Bertola v. Janecka (12-501)</td>
<td>2/27/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 4/5/06</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Certiorari Granted but not yet Submitted to the Court:**

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Petition Filed</th>
<th>Date Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,660</td>
<td>Balabas v. Ohkay Casino (COA 26,139)</td>
<td>2/8/06</td>
</tr>
<tr>
<td>NO. 29,641</td>
<td>Fallis v. Blair (12-501)</td>
<td>1/26/06</td>
</tr>
<tr>
<td></td>
<td><strong>Responses filed 3/28/06 &amp; 4/5/06</strong></td>
<td></td>
</tr>
<tr>
<td>NO. 29,626</td>
<td>Muniz v. Janecka (12-501)</td>
<td>1/12/06</td>
</tr>
<tr>
<td></td>
<td><strong>Response filed 3/13/06</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Reply filed 3/28/06</strong></td>
<td></td>
</tr>
</tbody>
</table>
**WRITS OF CERTIORARI**

**AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT**

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

**EFFECTIVE MAY 15, 2006**

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Party</th>
<th>COA Number</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,699</td>
<td>Wood v. Educational Retirement Board</td>
<td>(COA 24,819)</td>
<td>4/3/06</td>
</tr>
<tr>
<td>NO. 29,715</td>
<td>Weber v. RT Lodge</td>
<td>(COA 24,942)</td>
<td>4/10/06</td>
</tr>
<tr>
<td>NO. 29,690</td>
<td>State v. Romero</td>
<td>(COA 24,389)</td>
<td>4/10/06</td>
</tr>
<tr>
<td>NO. 29,735</td>
<td>Allen v. Edelman</td>
<td>(COA 26,024)</td>
<td>4/18/06</td>
</tr>
<tr>
<td>NO. 29,725</td>
<td>McMinn v. MBF Operating Acquisition Corp.</td>
<td>(COA 25,006)</td>
<td>4/20/06</td>
</tr>
<tr>
<td>NO. 29,689</td>
<td>Garcia v. Dorsey</td>
<td>(12-501)</td>
<td>4/20/06</td>
</tr>
<tr>
<td>NO. 29,724</td>
<td>NM Dept. of Labor v. Echostar</td>
<td>(COA 25,777)</td>
<td>4/20/06</td>
</tr>
<tr>
<td>NO. 29,751</td>
<td>State v. Bricker</td>
<td>(COA 24,719)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,752</td>
<td>Campos v. Bravo</td>
<td>(12-501)</td>
<td>5/3/06</td>
</tr>
<tr>
<td>NO. 29,515</td>
<td>State v. Bounds</td>
<td>(COA 25,131)</td>
<td>5/22/06</td>
</tr>
<tr>
<td>NO. 29,712</td>
<td>Smith v. City of Santa Fe</td>
<td>(COA 24,801)</td>
<td>6/12/06</td>
</tr>
<tr>
<td>NO. 29,437</td>
<td>City of Sunland Park v. Harris</td>
<td>(COA 25,593)</td>
<td>6/12/06</td>
</tr>
<tr>
<td>NO. 29,336</td>
<td>State v. Kerby</td>
<td>(COA 24,350)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,533</td>
<td>State v. Kerby</td>
<td>(COA 25,891)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,411</td>
<td>State v. McClure</td>
<td>(COA 25,436)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,537</td>
<td>State v. Rodarte</td>
<td>(COA 25,273)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,576</td>
<td>State v. Cook</td>
<td>(COA 25,150)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,563</td>
<td>State v. Simmons</td>
<td>(COA 25,594)</td>
<td>6/13/06</td>
</tr>
<tr>
<td>NO. 29,528</td>
<td>State v. Jensen</td>
<td>(COA 24,905)</td>
<td>6/13/06</td>
</tr>
</tbody>
</table>

**CERTIORARI GRANTED AND SUBMITTED TO THE COURT**

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

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Party</th>
<th>COA Number</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,500</td>
<td>Manning v. New Mexico Energy &amp; Minerals</td>
<td>(COA 23,396)</td>
<td>12/13/04</td>
</tr>
<tr>
<td>NO. 28,410</td>
<td>State v. Romero</td>
<td>(COA 22,836)</td>
<td>2/14/05</td>
</tr>
<tr>
<td>NO. 28,688</td>
<td>State v. Gutierrez</td>
<td>(COA 24,731)</td>
<td>2/14/05</td>
</tr>
<tr>
<td>NO. 28,660</td>
<td>State v. Johnson</td>
<td>(COA 23,463)</td>
<td>3/11/05</td>
</tr>
<tr>
<td>NO. 28,816</td>
<td>Romero v. City of Santa Fe</td>
<td>(COA 24,775)</td>
<td>5/9/05</td>
</tr>
<tr>
<td>NO. 28,823</td>
<td>Payne v. Hall</td>
<td>(COA 22,383)</td>
<td>6/13/05</td>
</tr>
<tr>
<td>NO. 28,997</td>
<td>Maestas v. Zager</td>
<td>(COA 24,200)</td>
<td>6/14/05</td>
</tr>
<tr>
<td>NO. 29,058</td>
<td>Sanchez v. Pellicer</td>
<td>(COA 25,082)</td>
<td>9/29/05</td>
</tr>
<tr>
<td>NO. 29,016</td>
<td>State v. Jade G.</td>
<td>(COA 23,810)</td>
<td>10/11/05</td>
</tr>
<tr>
<td>NO. 29,017</td>
<td>State v. Jade G.</td>
<td>(COA 23,810)</td>
<td>10/11/05</td>
</tr>
<tr>
<td>NO. 29,134</td>
<td>State v. Kathleen D.C.</td>
<td>(COA24,540)</td>
<td>11/14/05</td>
</tr>
<tr>
<td>NO. 29,202</td>
<td>Montgomery v. Lomos Altos</td>
<td>(COA 24,297)</td>
<td>11/16/05</td>
</tr>
<tr>
<td>NO. 29,196</td>
<td>Grine v. Peabody</td>
<td>(COA 24,354)</td>
<td>11/16/05</td>
</tr>
<tr>
<td>NO. 29,226</td>
<td>Upton v. Clovis</td>
<td>(COA 24,051)</td>
<td>12/12/05</td>
</tr>
<tr>
<td>NO. 29,246</td>
<td>Chavarria v. Fleetwood</td>
<td>(COA 23,847/24,444)</td>
<td>12/12/05</td>
</tr>
<tr>
<td>NO. 29,178</td>
<td>State v. Maestas</td>
<td>(COA 24,507)</td>
<td>12/13/05</td>
</tr>
<tr>
<td>NO. 28,950</td>
<td>State v. Nyce</td>
<td>(COA 25,075)</td>
<td>12/13/05</td>
</tr>
<tr>
<td>NO. 29,160</td>
<td>Benavidez v. City of Gallup</td>
<td>(COA 25,373)</td>
<td>12/13/05</td>
</tr>
<tr>
<td>NO. 29,158</td>
<td>State v. Otto</td>
<td>(COA 23,280)</td>
<td>2/13/06</td>
</tr>
<tr>
<td>NO. 29,385</td>
<td>State Farm v. Luebbers</td>
<td>(COA 23,556)</td>
<td>2/15/06</td>
</tr>
<tr>
<td>NO. 29,128</td>
<td>State v. Stephen F.</td>
<td>(COA 24,007)</td>
<td>3/14/06</td>
</tr>
<tr>
<td>NO. 29,350</td>
<td>Doe v. Santa Clara Pueblo</td>
<td>(COA 25,125)</td>
<td>3/27/06</td>
</tr>
<tr>
<td>NO. 29,351</td>
<td>Lopez v. San Felipe Pueblo</td>
<td>(COA 25,884)</td>
<td>3/27/06</td>
</tr>
<tr>
<td>NO. 29,344</td>
<td>State v. Hughey</td>
<td>(COA 24,732)</td>
<td>3/27/06</td>
</tr>
<tr>
<td>NO. 29,244</td>
<td>State v. Attson</td>
<td>(COA 25,274)</td>
<td>3/27/06</td>
</tr>
<tr>
<td>NO. 29,218</td>
<td>Montoya v. Ulibarri</td>
<td>(12-501)</td>
<td>4/10/06</td>
</tr>
<tr>
<td>NO. 29,477</td>
<td>Salazar v. Torres</td>
<td>(COA 23,841)</td>
<td>4/11/06</td>
</tr>
<tr>
<td>NO. 29,484</td>
<td>State v. Wilson</td>
<td>(COA 25,017)</td>
<td>5/22/06</td>
</tr>
<tr>
<td>NO. 29,515</td>
<td>Shiver v. NM Mutual Casualty</td>
<td>(COA 25,106)</td>
<td>5/22/06</td>
</tr>
<tr>
<td>NO. 29,286</td>
<td>State v. Gutierrez</td>
<td>(COA 25,279)</td>
<td>5/22/06</td>
</tr>
<tr>
<td>NO. 29,272</td>
<td>State v. Chee</td>
<td>(COA 25,112)</td>
<td>5/22/06</td>
</tr>
<tr>
<td>NO. 29,144</td>
<td>State v. Bounds</td>
<td>(COA 25,131)</td>
<td>5/22/06</td>
</tr>
</tbody>
</table>

**PETITION FOR WRIT OF CERTIORARI DENIED:**

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Party</th>
<th>COA Number</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,740</td>
<td>Chevron v. Taxation &amp; Revenue Department</td>
<td>(COA 24,518)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,749</td>
<td>State v. Lobato</td>
<td>(COA 24,910)</td>
<td>5/1/06</td>
</tr>
<tr>
<td>NO. 29,748</td>
<td>Mascarenas v. Mascarenas</td>
<td>(COA 26,272)</td>
<td>5/3/06</td>
</tr>
<tr>
<td>NO. 29,696</td>
<td>Vigil v. Snodgrass</td>
<td>(12-501)</td>
<td>5/5/06</td>
</tr>
</tbody>
</table>

**WRIT OF CERTIORARI QUASHED:**

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Party</th>
<th>COA Number</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 29,258</td>
<td>State v. Hunter</td>
<td>(COA 24,166)</td>
<td>5/3/06</td>
</tr>
<tr>
<td>NO. 29,325</td>
<td>Jacobo v. City of Albuquerque</td>
<td>(COA 24,459/24,256)</td>
<td>5/8/06</td>
</tr>
<tr>
<td>NO. 29,323</td>
<td>Jacobo v. City of Albuquerque</td>
<td>(COA 24,459/24,256)</td>
<td>5/8/06</td>
</tr>
</tbody>
</table>
# OPINIONS

**AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS**
Patricia C. Rivera Wallace, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fé, NM 87504-2008 • (505) 827-4925

**EFFECTIVE MAY 5, 2006**

## PUBLISHED OPINIONS

<table>
<thead>
<tr>
<th>No.</th>
<th>Date Opinion Filed</th>
<th>Dist/Case</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 24477</td>
<td>5/2/06</td>
<td>3rd Jud Dist Dona Ana CR-03-457, State v. R. Stefani (reverse and remand)</td>
<td></td>
</tr>
<tr>
<td>NO. 24883</td>
<td>5/3/06</td>
<td>3rd Jud Dist Dona Ana CV 03-59, CV-04-350, Lopez v. Las Cruces Police Dept (reverse and remand)</td>
<td></td>
</tr>
<tr>
<td>NO. 25488</td>
<td>5/3/06</td>
<td>3rd Jud Dist Dona Ana CV-04-350, Coleman v. City of Las Cruces (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26436</td>
<td>5/4/06</td>
<td>11th Jud Dist San Juan CR-05-16, State v. A. Upchurch (dismiss)</td>
<td></td>
</tr>
</tbody>
</table>

## UNPUBLISHED OPINIONS

<table>
<thead>
<tr>
<th>No.</th>
<th>Date Opinion Filed</th>
<th>Dist/Case</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. 26299</td>
<td>5/1/06</td>
<td>2nd Jud Dist Bernalillo JQ-03-54, CYFD v. Anthony G. (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26395</td>
<td>5/1/06</td>
<td>13th Jud Dist Valencia PB-05-23, Estate of Puckett (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 25377</td>
<td>5/2/06</td>
<td>3rd Jud Dist Dona Ana CR-02-898, State v. J. Aiello (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26221</td>
<td>5/3/06</td>
<td>5th Jud Dist Eddy DM-01-394, Castaneda v. Castaneda (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26279</td>
<td>5/3/06</td>
<td>5th Jud Dist Chaves CR-04-426, State v. Daniel COBOL (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 25844</td>
<td>5/4/06</td>
<td>9th Jud Dist Curry CR-03-508, State v. J. Martinez (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26227</td>
<td>5/4/06</td>
<td>1st Jud Dist Santa Fe CV-04-1485, PB-04-95, State v. G. C’DeBaca (dismiss)</td>
<td></td>
</tr>
<tr>
<td>NO. 26254, 26255</td>
<td>5/4/06</td>
<td>9th Jud Dist Roosevelt CR-03-201, State v. R. Rodriguez (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26288</td>
<td>5/4/06</td>
<td>1st Jud Dist Santa Fe CV-04-819, Heltman v Catanach (reverse)</td>
<td></td>
</tr>
<tr>
<td>NO. 26339</td>
<td>5/4/06</td>
<td>11th Jud Dist San Juan CR-04-1112, State v. E. Garcia (affirm)</td>
<td></td>
</tr>
<tr>
<td>NO. 26415</td>
<td>5/4/06</td>
<td>2nd Jud Dist Bernalillo, CV-03-1296, Branch Law Firm v. McCorkle (dismiss)</td>
<td></td>
</tr>
<tr>
<td>NO. 26440</td>
<td>5/4/06</td>
<td>2nd Jud Dist Bernalillo, CR-04-2328, State v. E. Curley (reverse and remand)</td>
<td></td>
</tr>
<tr>
<td>NO. 26193</td>
<td>5/5/06</td>
<td>11th Jud Dist San Juan CR-05-402, State v. J. Chavez (affirm)</td>
<td></td>
</tr>
</tbody>
</table>

Slip Opinions for Published Opinions may be read on the Court’s website:

**CLERK CERTIFICATES**

**FROM THE NEW MEXICO SUPREME COURT**

**CLERK’S CERTIFICATE OF NAME, ADDRESS, AND/OR TELEPHONE CHANGES**

**Meg Bailey**
Office of the County Attorney
255 Main St.
Goshen, NY 10924
(845) 291-3157
MB-02@co.orange.ny.us

**Roger Allen Bargas**
707 South First St.
PO Box 1433
Tucumcari, NM 88401-1433
(505) 461-1156
(505) 461-3012 (telecopier)

**Earl H. Baugher**
U.S. Army Corps of Engineers
4101 Jefferson Pl., NE
Albuquerque, NM 87109-3434
(505) 342-3360
(505) 342-3287 (telecopier)
Earl.Baugher@spa02.usace.army.mil

**Adam Harrison Bell**
City of Farmington
800 Municipal Dr.
Farmington, NM 87401
(505) 599-1122
(505) 599-1119 (telecopier)
ABell@fmtn.org

**James E. Bierly**
1023 Sixth St., NW
Albuquerque, NM 87102
(505) 247-0869
(505) 247-0896 (telecopier)
jamiesebyrle@hotmail.com

**D. Paul Branch**
Office of the Public Defender
301 N. Guadalupe St., Ste. 101
Santa Fe, NM 87501
(505) 827-3900
(505) 827-3999 (telecopier)
pbranch@nmpd.state.nm.us

**Walter Gilbert Bryan**
Fredlund & Bryan
523 North Linam
Hobbs, NM 88240
(505) 393-5400
(505) 393-3300 (telecopier)

**Barry J. Byrnes**
c/o BJ Byrnes, L.L.C.
PO Box 1549
Mesilla, NM 88046-1549
(505) 635-6970
barrybyrnes@comcast.net

**Scott C. Cameron**
PO Box 37351
Albuquerque, NM 87176-7351
(505) 331-0252
pclsccott@juno.com

**Michael Patrick Caruso**
875 Rosecrans St.
San Diego, CA 92106
(619) 255-5658
carusolaw@att.net

**C. Brad Cates**
PO Box 2093
Athens, TX 75751
(903) 677-3085
bradcates@earthlink.net

**Merrie L. Chappell**
Chappell Bankruptcy Institute, Inc.
8500 Central Ave., Ste. 100
Albuquerque, NM 87123
(505) 242-9311
lkcoyne_itf@qwest.net

**Robert H. Clark**
Miller Stratvert, P.A.
500 Marquette Ave., NW, Ste. 1100 (87102)
PO Box 25687
Albuquerque, NM 87125-0687
(505) 247-4408 (telecopier)
rcbclark@mstlaw.com

**Constance J. Cohn**
Office of the City Attorney
3900 Southern Blvd., SE
PO Box 15550
Río Rancho, NM 8714-0550
(505) 891-5003
(505) 891-5200 (telecopier)

**Barry J. Byrnes**
The Collins Firm, L.L.C.
6911 Taylor Ranch Dr., NW, Ste. C-9
Albuquerque, NM 87120
(505) 761-0900
(505) 761-0901 (telecopier)
gcollins@collins-firm.com

**Gerald L. Collins**
The Collins Firm, L.L.C.
6911 Taylor Ranch Dr., NW, Ste. C-9
Albuquerque, NM 87120
(505) 761-0900
(505) 761-0901 (telecopier)
gcollins@collins-firm.com

**Jean M. Conner**
3900 Southern Blvd., SE
PO Box 15550
Rio Rancho, NM 87125-0687
(505) 827-4837 (telecopier)
chappell@newmex.com

**Robert H. Clark**
Miller Stratvert, P.A.
500 Marquette Ave., NW, Ste. 1100 (87102)
PO Box 25687
Albuquerque, NM 87125-0687
(505) 247-4408 (telecopier)
rcbclark@mstlaw.com

**Lynn Carrillo Cruz**
N.M. Supreme Court
PO Box 848
Santa Fe, NM 87504-0848
(505) 827-4880
(505) 827-4837 (telecopier)
suplcc@nmcourts.com

**Maryellen R. Duprel**
Christie, Parker & Hutchison
133 E. Palace Ave.
Santa Fe, NM 87501
(505) 827-3900
(505) 827-3999 (telecopier)
dupre@christie.com

**Judith A. Crowe Faviell**
Office of the District Attorney
520 Lomas Blvd., NW
Albuquerque, NM 87102-2118
(505) 841-7096
(505) 841-7269 (telecopier)
JFaviell@da2nd.state.nm.us

**Donald R. Fenstermacher, P.C.**
PO Box 70
Albuquerque, NM 87103-0070
(505) 247-9400
(505) 247-9600 (telecopier)

**Ann Sibylle Ehresmann**
Office of the District Attorney
327 Sandoval St. (87501)
PO Box 2041
Santa Fe, NM 87504-2041
(505) 827-5000
(505) 827-5076 (telecopier)

**Nancy G. English**
Border Law Office
401 South Third St.
PO Box 1263
Tucumcari, NM 88401-1263
(505) 461-2500
(505) 461-3672 (telecopier)
nancy.blo@plateautel.net

**Richard Dennis English**
Ingram Micro, Inc.
1600 East St. Andrew
Santa Ana, CA 92705-4931
Richard.English@IngramMicro.com

**Michele U. Estrada**
Estrada Law, P.C.
8201 Golf Course, NW, Ste. D3-297
Albuquerque, NM 87120
(505) 890-1417
(505) 890-8487 (telecopier)
estradalaw@comcast.net

**Anna Sibylle Ehresmann**
Office of the District Attorney
327 Sandoval St. (87501)
PO Box 2041
Santa Fe, NM 87504-2041
(505) 827-5000
(505) 827-5076 (telecopier)

**Mark N. Fitzgerald**
PO Box 881
Los Alamos, NM 87544-0881
(505) 412-2366
CLERK CERTIFICATES

Jay Lynn Francis
Marek & Francis, P.A.
110 West Shaw
PO Drawer AA
Carlsbad, NM 88221-7520
(505) 885-6615
(505) 885-1701 (telecopier)
jay@lawyersnm.com

Nick Franklin
318 Snug Harbor Rd.
Newport Beach, CA 92663
(949) 548-5438
(949) 548-5438 (telecopier)
nickfranklin@sbcglobal.net

Amanda Gould
formerly known as Amanda Norris
Office of the U.S. Attorney
555 S. Telshor Blvd., Ste. 300
Las Cruces, NM 88011
(505) 522-3204
(505) 522-2391 (telecopier)
Amanda.Gould@usdoj.gov

Adam Hartley Greenwood
Modrall, Sperling, Roehl, Harris, & Sisk, P.A.
500 Fourth St., NW, Ste. 1000
(87102)
PO Box 2168
Albuquerque, NM 87103-2168
(505) 848-1800
(505) 848-1882 (telecopier)
ahg@modrall.com

Robert L. Greer
Baird Williams & Greer, L.L.P.
6225 N. 24th St., Ste. 125
Phoenix, AZ 85016

Amy Presley Hauser
Miller Stratvert, P.A.
PO Box 1209
Las Cruces, NM 88004-1209
(505) 523-2481
(505) 526-2215 (telecopier)
AHauser@mstLAW.com

Michelle Henrie
Brownstein Hyatt & Farber, P.C.
201 Third St., NW, Ste. 1700
Albuquerque, NM 87102
(505) 244-0770
(505) 244-9266 (telecopier)
mhenrie@bhf-law.com

Martin K. Holland
Holland Law, P.C.
9704 Amram Lane, NE
(87122-3865)
PO Box 9446
Albuquerque, NM 87199-0446
(505) 857-0954
(505) 797-1663 (telecopier)
Martin@HollandLawOffices.net

Sandra Trent Horton
1222 Commerce, Ste. 818
Dallas, TX 75202
sandy.horton@hhs.gov

Judith A. Humphrey
PO Box 948
Los Alamos, NM 87544-0948
(505) 661-9930

Colin L. Hunter
Office of Congresswoman Heather Wilson
318 Cannon House Office Building
Washington, DC 20515-0001
(202) 225-6302
colin.hunter@mail.house.gov

James M. Jackson
N.M. State Land Office
310 Old Santa Fe Trail
(87501)
PO Box 1148
Santa Fe, NM 87504-1148
(505) 827-5762
(505) 827-5766 (telecopier)
JJackson@slo.state.nm.us

Torri A. Jacobus
8209 Portales, NE
Albuquerque, NM 87109
torriairving@gmail.com

Robert D. Joe
U.S. Dept. of Interior Office of Hearings & Appeals
1011 Indian School Rd., NW, Office 322
Albuquerque, NM 87104
(505) 563-5336
(505) 563-5341 (telecopier)

M.J. Keefe
Gilpin & Keefe, P.C.
5100 Indian School Rd., NE
Albuquerque, NM 87110
(505) 244-3861
(505) 244-0044 (telecopier)
tom@lawyersnm.com

Thomas L. Marek
Marek & Francis, P.A.
110 West Shaw
PO Drawer AA
Carlsbad, NM 88221-7520
(505) 885-6615
(505) 885-1701 (telecopier)

Patricia McDonald
U.S. Dept. of Interior Office of Hearings & Appeals
1011 Indian School Rd., NW, Office 322
Albuquerque, NM 87104
(505) 563-5336
(505) 563-5341 (telecopier)

Janet A. Yazzie
U.S. Dept. of Interior Office of Hearings & Appeals
1011 Indian School Rd., NW, Office 322
Albuquerque, NM 87104
(505) 563-5330
(505) 563-5341 (telecopier)

The following attorneys have a new physical address and are at the address and telephone number immediately following:

James E. Snead
Jerry Wertheim
John Wentworth
Jerry Todd Wertheim
Carol A. Clifford
John V. Wertheim
Leon R. Hunt
Roxie P. Rawls-De Santiago
The firm name, address and telephone number are as follows:

The following attorneys are at the address and telephone number immediately following:

Stephen M. Simone
(Rsimone@srw-law.com)

Randal William Roberts
(Rroberts@srw-law.com)

Norman F. Weiss
(Nweiss@srw-law.com)

David William Frizzell
(Dfrizzell@srw-law.com)

Kathleen M. Mixon
(Kmixon@srw-law.com)

Alisa R. Wigley
(Awigley@srw-law.com)

Meena H. Allen
(Mallen@srw-law.com)

The firm name, address and telephone number are as follows:

Simone, Roberts & Weiss, P.A.
11200 Lomas Blvd., NE
(505) 982-0011
(505) 989-6288 (telecopier)

The following attorneys are at the address and telephone number immediately following:

Bar Bulletin - May 15, 2006 - Volume 45, No. 20 19
**Name ________________________________________________________________________ NM Bar No. ________________**

**Name for Badge (if different than above) ______________________________________________________________________**

**Address __________________________________________________________________________________________________**

**City ____________________________________________________________ State _______________ Zip _________________**

**Phone ___________________________ Fax _________________________ Email ______________________________________**

**Guest 1 ______________________________________________   Guest 2 ____________________________________________**

---

### EARLY REGISTRATION FEE
(Must be postmarked by July 1)

<table>
<thead>
<tr>
<th>Description</th>
<th>Price Qty</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard</td>
<td>$280</td>
<td>1</td>
</tr>
<tr>
<td>Daily &amp; Thur. &amp; Fri. &amp; Sat.</td>
<td>$150</td>
<td>1</td>
</tr>
<tr>
<td>Standard $280 + Daily $150 + Thur $150 + Fri $150 + Sat $150 = Total $750</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Add $10 to registration fee if postmarked after July 1.</td>
<td>$10</td>
<td>1</td>
</tr>
<tr>
<td>Standard + Guest $40 + Add $10 = Total $890</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

---

### SEPARATELY TICKETED EVENTS
(Transportation will be provided to the Taos Country Club)

<table>
<thead>
<tr>
<th>Event Description</th>
<th>Price Qty</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awards Luncheon, Friday, July 21</td>
<td>$15</td>
<td>1</td>
</tr>
<tr>
<td>Dinner &amp; Entertainment, Friday, July 21</td>
<td>$35</td>
<td>1</td>
</tr>
<tr>
<td>Child Dinner (12 &amp; Under), Friday, July 21</td>
<td>$15</td>
<td>1</td>
</tr>
<tr>
<td>Awards Luncheon, Saturday, July 22</td>
<td>$15</td>
<td>1</td>
</tr>
<tr>
<td>Golf Tournament (18-hole), Saturday, July 22 (1:30-5:30 p.m.)</td>
<td>$65</td>
<td>1</td>
</tr>
<tr>
<td>Taos Country Club (Handicap _________)</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

### PAYMENT OPTIONS

- Enclosed is my check in the amount of $ __________________ (Make Checks Payable to: State Bar of NM)
- VISA  
- Master Card  
- American Express  
- Discover  
- Purchase Order (Must be attached to be registered)

**Credit Card Acct. No. ___________________________________________________________ Exp. Date __________________**

**Signature ______________________________________________________________________**

---

**Internet: www.nmbar.org  Mail: SNBM, P.O. Box 9260, Albuquerque, NM 87199-2860**

**Phone: (505) 797-6020; Monday - Friday, 9 a.m. - 4 p.m.  Fax: (505) 797-6074; Open 24 Hours**

(Please have credit card information ready) (Please include credit card information)

---

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

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

---

**Hotel information is available on page 6.  Book soon!**

---

**State Bar of New Mexico’s 2006 Annual Meeting**

---

**Reaching for Excellence**

**July 20-22, 2006 • Taos Convention Center - Taos, NM**

---

**9.0 General, 2.0 Ethics and 1.0 Professionalism CLE Credits**

---

**Doug West  Heart of Light**

---

**Taos Convention Center • Taos, New Mexico**

**July 20-22, 2006**
An Ethical Morning at the Movies

Join us for 90 minutes of a fast-paced overview and examination of the ethical rules that guide us through our daily practice. Using clips from movies and television programs, we will watch illustrations of lawyers at their ethical best, worst, and in between, and then talk about how ethical issues arise in the day-to-day work we do as lawyers. The clips will then be a stepping stone to talking about what we can do as individual lawyers and as a profession to deal with such issues as they arise in our practice and to enhance the images of lawyers so we can work better with our clients and with the public. This program on legal ethics will be like nothing else you have experienced before; you may leave not just knowing more about ethics, but actually having enjoyed spending the time having your consciousness raised about these matters.

Exceptional Courtroom Performance

In reaching for excellence, attorneys are faced with many important presentations in their career, from client meetings to business development to courtroom arguments before judge or jury. How do you, as a lawyer, make sure that your listener sees the same picture and comes to the same conclusions that you did about the information you’re presenting? This dynamic session includes movie clips and live demonstrations to illustrate techniques to help you do just that. Participants learn how to use their voice, body language, and story structure to construct and deliver a clear, compelling, and persuasive presentation. Back by popular demand are Len Matheo & Lisa DeCaro of Courtroom Performance, Inc., leading authors of “The Lawyer’s Winning Edge: Exceptional Courtroom Performance.”

“They ought to cover this book with old oak barrel staves and bind it with black iron straps. Because it’s a treasure chest— and the gems inside are real… filled with genuine insights, ideas, and techniques that work…”

- James W. McElhaney on The Lawyer's Winning Edge by Lisa DeCaro and Len Matheo

Henry Does Darrow

Through excerpts from his critically-acclaimed and self-produced play All Too Human, New York Trial attorney and senior partner Henry Miller of Clark, Gagliardi & Miller, explores the motivations and the causes of Clarence Darrow. Darrow was a legend in his own lifetime, and his strategies achieved landmark judgments in American law. Called “a history lesson, style prep course for lawyers to see what we can learn from him today, and a down-home talking to one’s conscience” all wrapped into one, Miller’s presentation is sure to entertain.

FREE online legal research

As part of your Bar membership, take advantage of the State Bar of New Mexico’s newest member benefit, Casemaker online legal research at www.nmbar.org.

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 include Alabama, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

Watch for more information about Casemaker or visit www.casemaker.us.

Contact Joe Conte at jconte@nmbar.org or 505-797-6099 with questions.
Special Events

Welcoming Reception, Taos Country Club, Thursday, July 20, 5:30 – 7:30 p.m.
Join fellow associates, judges, old friends and new at the Annual Meeting “kick-off” reception at the Taos Country Club. (Transportation will be provided from the Convention Center to the Country Club.)

Equal Access to Justice
Campaign Silent Auction, Friday, July 21, 7:30 a.m. – 6 p.m., Taos Convention Center
A large array of items will be on display all day at the Taos Convention Center for attendees to place bids on those “must have” items.

President’s Reception, Friday, July 21, 5 - 6:30 p.m., Taos Convention Center
President Virginia Dugan invites all attendees to join her for a reception at the Taos Convention Center.

Atkinson & Kelsey Reception Honoring New Mexico lawyers listed in “Best Lawyers in America”
Friday, July 21, 5:30 - 6:30 p.m., Taos Convention Center
Dinner and Entertainment, Friday, July 21, 6:30 - 10 p.m., Taos Convention Center

Hotel Blocks

<table>
<thead>
<tr>
<th>Hotel Name</th>
<th>Price Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Best Western Kachina Lodge</td>
<td>$89 - $99</td>
</tr>
<tr>
<td>Brooks Street Inn Bed &amp; Breakfast</td>
<td>$99</td>
</tr>
<tr>
<td>Casa Benavides Bed &amp; Breakfast</td>
<td>$99 - $199</td>
</tr>
<tr>
<td>Casa de las Chimeneas Inn &amp; Spa</td>
<td>$380 - $275</td>
</tr>
<tr>
<td>Comfort Suites</td>
<td>$99</td>
</tr>
<tr>
<td>El Monte Sagrada Resort &amp; Spa</td>
<td>$329</td>
</tr>
<tr>
<td>Hotel La Fonda</td>
<td>$99 - $159</td>
</tr>
<tr>
<td>Inn on La Loma Plaza</td>
<td>$135 - $135</td>
</tr>
<tr>
<td>Taos Inn</td>
<td>$155 - $185</td>
</tr>
<tr>
<td>Touchstone Inn, Spa &amp; Gallery</td>
<td>$145 - $195</td>
</tr>
</tbody>
</table>

Be sure to mention the “State Bar of New Mexico room block” for the special discounted rates.

Schedule of Events

Thursday, July 20
11 a.m.       Local Bar Leaders Forum
1:30 – 3 p.m. Registration/Exhibits Open
3 – 3:30 p.m. CLE BREAKOUT
3:30 – 5 p.m. Paralegal Division

Friday, July 21
7:30 a.m. – Noon Registration
7:30 a.m. – 6 p.m. Silent Auction/Exhibits Open
7:30 – 8 a.m. Continental Breakfast
8 – 10 a.m. Plenary: Larry Cohen (Ethics)
10 – 10:30 a.m. Break
10:30 am – Noon Employment and Labor Law Section

Friday, July 22
8 a.m.  Continental Breakfast
8 – 11:30 a.m. Registration/Exhibits/Distribution of Silent Auction Items
11:30 a.m.  Awards Luncheon

Note: All events at Taos Convention Center unless otherwise noted.
Paralegal Division

Court-Supervised or Authorized Special Needs Trusts and Structured Settlements

This presentation will track an actual personal injury case pursuant to a drunk-driving accident in which the father/driver was killed and his two children were significantly injured. Pursuant to the settlement agreement, the Court approved two structured settlements and two special needs trusts for the minors. Covered will be practice tips and other pointers to ensure that the Court’s review is comprehensive when a settlement is approved and funded.

Presenters: Susan Tomita, Esq. and Susan Messenbrink

Children’s Law Section

Everything You Always Wanted to Know About Children’s Court, But Were Afraid to Ask

Have you gotten that call from a client or neighbor or relative saying that his or her child has been charged with a delinquent offense? Have you ever gone to a party and been asked an adoption question? Have you ever considered the idea of practicing in Children’s Court but were unsure how to start? Come to this program to get an overview of Children’s Court practice and have your questions answered. Experienced Children’s Court lawyers will share the joys and challenges of this area of the law.

Presenters: TBA

Real Property, Probate and Trust Law Section

1031 Exchanges

As Section 1031 Exchanges become more common place, this course provides a sound technical basis for advising clients considering this tax deferral tool. This series continues as an interactive, cross-disciplinary forum for real estate attorneys, general practitioners, realtors, CPAs, and investors. A participant will learn what constitutes like kind exchanges, the strict timing requirement for identifying properties to be exchanged, the importance of selecting a reputable Qualifying Intermediary and to whom this tax planning strategy applies. For those who are new to this series, an overview of the content of prior seminars will be reviewed at the outset of this session.

Co-Sponsor: Real Property, Probate & Trust Law Section

Moderator: James J. Owens, Esq.

Taxation Section

The Benefits and Potential Pitfalls of Limited Liability Companies (LLCs)

Limited liability companies (LLCs) are fast becoming the preferred form of business entity throughout the United States. LLCs offer owners limited liability, flexibility of management structure, and income and employment tax advantages not available to S corporations or partnerships. The presenters will provide draft operating agreements and discuss the benefits of different provisions. The session is designed to alert the general practitioner to the benefits of forming LLCs and provide guidance on avoiding some of the major pitfalls associated with forming an LLC improperly.


Employment and Labor Law Section

Background Investigations: Discriminatory Hiring v. Negligent Hiring

The requisites and pitfalls of conducting pre-employment background investigations: How much background information regarding an employee applicant does an employer need? When may the scope of the background information sought give rise to a claim of discriminatory hiring? When may the scope of a background check expose an employer to a claim of negligent hiring? What are safe boundaries? This seminar will address these questions and related issues.

Presenters: TBA

Family Law Section

Skills for Excellence in Family Law

The Family Law Section of the State Bar of New Mexico is pleased to provide a crucial update regarding the newest and latest developments in the area of Family Law. Family Law is a rapidly changing, expanding and growing area of Law making it difficult to simply “dabble” in Family Law any longer. Attorneys wishing to practice in this area of law and wishing to do it well will benefit greatly from this breakout session. In addition, this session will discuss issues and topics that are in the process of becoming law through the legislative process.

Presenters: Tom Montoya, Esq. and Jon Feder, Esq.

Trial Practice Section

Mediate This!

Mediation: What works and what doesn’t? This panel discussion will show you how to effectively mediate your cases.


Technology Utilization Committee

E-Discovery and Digital Forensics: How to Use the Smoking Gun

This session will cover techniques for cross-examination of forensics experts, expectations of courts around the U.S. in the area of e-discovery, what the different levels of e-discovery and digital forensics are, and how to work effectively with computer forensics experts.

Presenters: Jon Miller and David May

Bankruptcy Law Section

New Responsibilities of Attorneys Under BAPCPA

New responsibilities have been imposed upon attorneys giving bankruptcy advice under BAPCPA. This session will be geared toward providing attorneys with information concerning the new responsibilities. Also discussed will be the new duty of “inquiry” imposed on attorneys handling bankruptcy matters.

Presenters: Daniel J. Behles, Esq. and Gerald R. Velarde, Esq.

International and Immigration Law

Immigration Law

This presentation will illuminate and discuss general immigration issues as they relate to criminal proceedings, domestic violence and human rights issues.

Presenters: TBA

Solo and Small Firm Practitioners Section

Creating a Solo Practice or Small Firm

This program will provide a concise overview of issues attorneys confront when forming a solo practice or small firm. It is intended for attorneys who do not have a business background and want to form one of these types of practices. Concepts related to the formation of a business plan will be discussed along with the various aspects that should be considered and the decisions that must be made when owning and managing your own legal business and practice.

Presenters: Phillip G. Sapien, Esq. and Joseph A. Sapien, Esq.

Indian Law Section

Doing Business in Indian Country

A new economic force is present in the State and with it comes unique legal issues from contracts to personal injury. This session will examine the basic legal principles for practice in tribal forums.

Presenters: TBA
IN THE MATTER BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION OF THE APPLICATION OF SOCORRO TAXI, INC., d/b/a AMERICAN TRANSPORTATION, FOR A CONTRACT MOTOR CARRIER PERMIT, CASE NO. 04-00228-TR-M
T-N-T TAXI, LTD. CO., a New Mexico limited liability company, JAMES P. MOORE, d/b/a DOLLAR CAB CO., a sole proprietorship, and A-1 TAXI, INC., Appellants, versus NEW MEXICO PUBLIC REGULATION COMMISSION, Appellee, and SOCORRO TAXI, INC., d/b/a AMERICAN TRANSPORTATION, Real Party in Interest.

No. 28,996 (filed: March 28, 2006)

APPEAL FROM THE NEW MEXICO PUBLIC REGULATION COMMISSION

ROGER E. YARBRO YARBRO & ASSOCIATES, P.A. Cloudcroft, New Mexico for Appellants

LEE W. HUFFMAN Santa Fe, New Mexico for Appellee

JACK A. SMITH SMITH LAW OFFICES, P.A. Albuquerque, New Mexico for Real Party

OPINION

EDWARD L. CHÁVEZ, JUSTICE

1 Socorro Taxi Inc., d/b/a American Transportation, (“American”) is an intrastate motor carrier of persons in New Mexico. In July 2004, American filed an application with the Public Regulation Commission (“PRC”) for a permit to provide non-emergency medical transport services throughout New Mexico under a contract with the New Mexico Human Services Department. Before the permit could be granted, the PRC, among other things, had to consider “whether granting the permit would endanger or impair the operations of motor carriers protesting the application for a permit to an extent contrary to the public interest,” NMSA 1978, Section 65-2A-10(C)(3) (2003) .

2 Written notice of American’s application was sent to potentially interested persons and the PRC published notice in the Albuquerque Journal. See NMSA 1978, § 65-2A-6 (2003). In the notices, all persons desiring to intervene, object or be heard regarding the application were instructed to file a Motion to Intervene with the PRC. T-N-T Taxi, Dollar Cab and A-1 Taxi (“Intervenors”) were among many who were mailed notice as interested persons. Apparently wanting to object or be heard, Intervenors complied with the notice from the PRC and filed timely motion(s) to intervene as certificated intrastate common motor carriers of persons. In their motions, Intervenors allege that granting the permit would be contrary to the public’s best interest, would impair their provision of services in the same territory sought to be serviced by American, and that the application by American is supported by fraudulent documents. American moved to strike the motions to intervene contending that NMSA 1978, Section 65-2A-13(B) (2003) precludes all common and contract motor carriers from protesting an application for a permit.

3 The PRC agreed with American and denied the Intervenors’ motions to intervene. The PRC entered a Final Order approving American’s application, finding in part that the matter was uncontested. Intervenors appealed directly to this Court. See NMSA 1978, § 65-2A-35 (2006). We reverse and remand to the PRC for a hearing because the Motor Carrier Act at the time of American’s application, when construed as a harmonious whole, requires the PRC to conduct a hearing when under Section 65-2A-10(C)(3) common motor carriers of persons protest an application for a permit. Intervenors qualify because they are certificated common motor carriers of persons servicing the same territory covered in American’s application and have alleged that granting the permit would be contrary to the public’s best interest.

CONSTRUING THE MOTOR CARRIER ACT AS A HARMONIOUS WHOLE, MOTOR CARRIERS OF PERSONS OPERATING WITHIN THE SAME GEOGRAPHIC TERRITORY AS AN APPLICANT MAY PROTEST AN APPLICATION FOR A PERMIT TO PROTEST WHETHER GRANTING THE APPLICATION WOULD IMPAIR OR ENDANGER THEIR OPERATIONS CONTRARY TO THE PUBLIC INTEREST

3 Effective June 17, 2005, Subsection C(3) was amended to read “whether granting the permit would endanger or impair the operations of motor carriers to an extent contrary to the public interest” deleting the requirement that when considering the public interest the PRC consider only those operations of motor carriers who actually protest an application for a permit.
(4) Whether Intervenors may protest American’s permit application turns on whether the Legislature intended to preclude all motor carriers from protesting an application for a permit under the Motor Carrier Act. The PRC concluded that by adding Section 65-2A-13(B) the Legislature intended to prohibit all motor carriers from protesting an application for a permit in furtherance of the legislative goal to streamline the regulation of motor carriers. See NMSA 1978 §§ 65-2A-2, 65-2A-5(B) (2003).

[5] When an administrative agency determines legislative intent we review de novo. State v. Rivera, 2004-NMSC-001, ¶ 9, 134 N.M. 768, 82 P.3d 939 (applying de novo review to determine ambiguity). The primary goal in interpreting a statute is to give effect to the Legislature’s intent. State v. Smith, 2004-NMSC-032, ¶ 8, 136 N.M. 372, 98 P.3d 1022. We begin the search for legislative intent by looking first to the words chosen by the Legislature and the plain meaning of the Legislature’s language, closely examining the overall structure of the statute, as well as the particular statute’s function within a comprehensive legislative scheme. Rivera, 2004-NMSC-001, ¶ 13 (citing Sims v. Sims, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153). Under the plain meaning rule, statutes are given effect as written without room for construction unless the language is doubtful, ambiguous, or adherent to the literal use of the words would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious purpose. Rivera, 2004-NMSC-001, ¶ 10 (citing State v. Jonathan M, 109 N.M. 789, 790, 791 P.2d 64, 65 (1990) and quoting State ex rel. Helman v. Gallegos, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (1994)). As will be seen, application of the plain meaning rule will lead to contradictions within the Motor Carrier Act. Therefore, in attempting to construe the Act consistent with legislative intent we must determine whether the Act may be interpreted as a harmonious whole. Rivera, 2004-NMSC-001, ¶ 13 (quoting State v. Muniz, 2003-NMSC-021, ¶ 14, 134 N.M. 152, 74 P.3d 86) (“Whenever possible . . . we must read different legislative enactments as harmonious instead of as contradicting one another”).

[6] There are three sections of the Act which require our interpretation since the first two may be contradicted by the third. The first, Section 65-2A-5(C), requires the PRC to conduct a hearing “whenever an interested person protests the application during the notice period.” Section 65-2A-3(S), defines interested person as “a motor carrier operating over the routes or in the territory involved in an application.” As instructed by the PRC in the mailed and published notice regarding American’s application for a permit, Intervenors filed timely motions to intervene as certificated intrastate common motor carriers of persons operating in the territory involved in the application. The second provision, Section 65-2A-10(C)(3), requires the PRC to consider “whether granting the permit would endanger or impair the operations of motor carriers protesting the application for a permit to an extent contrary to the public interest.” (Emphasis added). Intervenors have protested the application because they contend, among other things, that granting the application will endanger or impair their operations in a manner that would be contrary to the public interest. However, these provisions are called into question by the third provision, Section 65-2A-13(B), which provides that “a common or contract motor carrier shall not protest an application for a permit.”

[7] The PRC and American contend that the legislative purpose for enacting Section 65-2A-13(B) was to streamline the permit process and, therefore, this subsection should be interpreted to repeal by implication subsections 5 and 10. Alternatively, they argue that Section 65-2A-13(B) is more specific and therefore should be given effect over Sections 65-2A-5 & 10. We do not agree. Repeals by implication are not favored and are not resorted to unless necessary to give effect to the legislative intent. Citation Bingo, Ltd. v. Otten 1995-NMSC-003, ¶¶ 21-24, 121 N.M. 205, 910 P.2d 281. In this case, a repeal by implication is not necessary because the provisions at issue may be construed harmoniously to effect the legislative intent. In addition, because these provisions may be construed harmoniously we decline the PRC’s and American’s invitation to interpret Section 65-2A-13(B) as a more specific section that should be given effect over Sections 65-2A-5 & 10. City of Albuquerque v. New Mexico State Corp. Comm’n, 93 N.M. 719, 721, 605 P.2d 227, 229 (1979) (the problem with applying the rule that specific sections of a statute govern over more general provisions is “that one section is not readily identifiable as the more specific one of the two”).

[8] Although our interpretation of the Motor Carrier Act is influenced by the legislative declaration that it sought to streamline the regulation of motor carriers, NMSA 1978, § 65-2A-2 (2003), we are not convinced that the Legislature wanted to streamline the regulation of motor carriers by having the PRC review all applications for permits as uncontested matters. Although the Legislature encouraged the PRC to streamline and simplify its process for approving applications, Section 65-2A-5(B), it also mandated the PRC to hold a public hearing on an application whenever an interested person protests the application during the notice period. § 65-2A-5(C). Section 65-2A-3(II) defines protest to mean “a document filed with the commission by an interested person that expresses an objection to a matter before the commission.” As related to motor carriers, the Legislature limited interested persons to those motor carriers operating over the routes or in the territory involved in the application. § 65-2A-3(S). However, not just any motor carrier is an interested person entitled to file a protest, as confirmed by Section 65-2A-13(B). Indeed, had the Legislature not recognized in Section 65-2A-10(C)(3) that some motor carriers might protest, the search for legislative intent would be over and no motor carrier would be allowed to protest an application for a permit even if otherwise an interested person.

[9] However, the Legislature did acknowledge in Section 65-2A-10(C)(3) that some motor carriers might indeed protest. Perhaps a slip of the pen, but we think not. Section 65-2A-10(C)(3) imposes certain duties and responsibilities on the PRC before the PRC can grant a permit to a common motor carrier of persons. Under Section 65-2A-10(C)(3), the PRC must consider whether granting the permit would endanger or impair the operations of motor carriers protesting the application for a permit to an extent contrary to the public interest. Before the 2003 amendment, the PRC had to consider whether “the transportation to be provided under the permit is or will be consistent with the public interest.” NMSA 1978, § 65-2-87(1981). The Legislature streamlined the application process in 2003 by limiting the scope of the public interest inquiry to an inquiry dependent on the filing of protests by motor carriers. If no motor carrier protested an application, the PRC was relieved of its responsibilities under Section 65-2A-10(C)(3). Stated differently, the PRC is directed to consider only
the operations of those motor carriers who actually protest when evaluating whether granting the application will impair operations contrary to the public interest. Otherwise, if we rewrite Section 65-2A-10(C)(3) to exclude the words “protesting the application for a permit” as proposed by the PRC and American, the PRC would have to consider the effect on operations of motor carriers in general when measuring the effect on the public interest. We note that Intervenors are only three of one hundred and nine motor carriers operating in the same territory. Thus the operations of only three motor carriers not one hundred and nine need to be considered by the PRC in considering the public interest. Our interpretation honors the legislative goal of streamlining the application process since before the 2003 amendments to the Motor Carrier Act, a permit could not be issued until after a mandatory public hearing was held. NMSA 1978, § 65-2-8(B)(1981).

We also believe the 2005 amendment to Section 65-2A-10(C)(3) supports our analysis. The amendment expands the public interest analysis, yet the process is streamlined even further because the amendment now effectively precludes common motor carriers from protesting whether an application impairs or endangers the operations of motor carriers contrary to the public interest. Although the PRC must still assess whether the application for a permit is or will be consistent with the public interest, such a protest by a motor carrier is no longer recognized and as such intervention would not be appropriate and a hearing is not required for this purpose.

We believe it also important that Intervenors filed their motions to intervene pursuant to the instructions provided them by the PRC in the notice of American’s application. The PRC was presumably adhering to Commission Rule 27, which was in effect at the time of American’s application.7 Rule 27 grants an intervention of right whenever the moving party demonstrates a substantial interest in PRC actions. Since Intervenors have demonstrated a substantial interest as interested persons and as motor carriers whose operations and transportation services must be considered by the PRC before issuing a permit, we conclude that intervention was appropriate. See Thriftway v. State, 111 N.M. 763, 767, 810 P.2d 349, 353 (Ct. App. 1990) (indicating that when person(s) are adversely affected by the outcome of an agency action, and it will be difficult to protect that interest if intervention is not allowed, then, even absent statutory provisions intervention should be granted; see also Pueblo Picuris v. New Mexico Energy and Natural Resources Dept., 2001-NMCA-084, ¶ 4, 10, 131 N.M. 166, 33 P.3d 916 (stating that the Pueblo was deemed to fall within the ambit of interested persons entitled to intervene in an agency permit proceeding because the Pueblo was located in the vicinity of the proposed permit area and opposed the permit as affecting its vital interests).

In Thriftway, the Court of Appeals considered whether the Nageezi Chapter, a governmental unit of the Navajo Tribe, had a right to intervene in a San Juan County Commission proceeding where Thriftway’s liquor license application was under consideration. Under the statute which governs applications relating to a liquor license, prior to approving an application, the Commission must consider whether approving the application would adversely affect the public health, safety, or morals of residents located in the territory covered by the application. Thriftway argued that the Nageezi did not have a special interest in their transfer action because as a Tribal government, the Nageezi were different from other members of the general public, and the statute applied only to municipalities, not to Chapters. Despite Thriftway’s contention, and even though the transfer was on private land, the court held that the Nageezi Chapter could intervene because it was located within the same geographic territory to be affected by Thriftway’s liquor license. The Court reasoned that the Nageezi’s participation was necessary to Thriftway’s action because they held a sufficient interest which would otherwise be jeopardized by the San Juan County Commission action.

Like the Nageezi Chapter in Thriftway, Intervenors’ operations and transportation services are in the same geographic location covered in American’s permit application. The Motor Carrier Act requires the PRC to consider whether the operations of these motor carriers will be endangered or impaired to an extent contrary to the public interest. Intervenors, therefore, have a substantial interest in the proceedings regarding American’s application for a permit. Because we conclude that the PRC must conduct a hearing and grant Intervenors’ motion to intervene, we do not need to reach the due process argument.

CONCLUSION

Under the provisions of the Motor Carrier Act at the time of Intervenors’ protest, motor carriers operating over the routes or in the territory involved in an application for a permit may protest an application for a permit to be heard on whether granting the permit would endanger or impair their operations contrary to the public interest. Under Commission Rule 27, such motor carriers have a right to intervene in the PRC proceedings and the PRC must conduct a public hearing on the application. We reverse and remand to the PRC for proceedings consistent with this opinion.

IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Justice

WE CONCUR:

PATRICIO M. SERNA, Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Chief Justice (dissenting)

PAMELA B. MINZNER, Justice (dissenting)

MINZNER, Justice (dissenting).

I respectfully dissent. I would hold that NMSA 1978, Section 65-2A-13 (2003), does not permit common or contract motor carriers to protest an application for a permit or for a change in a permit, and therefore I would affirm the Public Regulatory Commission’s final order denying the motions of T-N-T Taxi, Ltd. Co. and others to intervene in the permit application filed by Socorro Taxi, Inc. d/b/a American Transportation. The majority has not persuaded me that the Legislature intended to create any exceptions to its rule in Section 65-2A-13(B) and I would conclude that T-N-T’s protest is barred.

When interpreting a statute, our primary goal is to give effect to the Legislature’s intent. See State v. Smith, 2004-NMSC-032, ¶ 8, 136 N.M. 372, 98 P.3d 1022; Block v. Vigil-Giron, 2004-NMSC-003, ¶ 14, 135 N.M. 24, 84 P.3d 72. I have several reasons for concluding that the Legislature intended to prevent common

7 Whether a protest can only be considered if the protesting party is allowed to intervene is not before this court.
carriers like T-N-T from protesting permit applications. First, the language relating to permit applications appears clear on its face. “A common or contract motor carrier shall not protest an application for a permit or for a change in a permit.” Section 65-2A-13(B). In addition, Section 65-2A-13, when read as a whole, appears to have a single purpose, to limit protests. Each subsection of the statute limits a particular category of protests. The comprehensiveness of the statute suggests that it was intended as a definitive statement regarding when motor carriers may protest applications made by their competitors. The limited exception created by subsection (C) illustrates this comprehensiveness. If the Legislature had intended to create other exceptions to the rules set out in Section 65-2A-13, it seems likely that it would have included them in this statute, as it did with subsection (C). Finally, this limitation on protests by motor carriers is consistent with the Legislature’s stated purpose of “streamlining and promoting uniformity of state regulation of motor carriers.” NMSA 1978, § 65-2A-2 (2003).

The majority concludes that the Legislature’s intention was not fully captured by the text of Section 65-2A-13 because the statute limits a particular category of protests. The comprehensiveness of the statute suggests that it was intended as a definitive statement regarding when motor carriers may protest applications made by their competitors. The limited exception created by subsection (C) illustrates this comprehensiveness. If the Legislature had intended to create other exceptions to the rules set out in Section 65-2A-13, it seems likely that it would have included them in this statute, as it did with subsection (C). Finally, this limitation on protests by motor carriers is consistent with the Legislature’s stated purpose of “streamlining and promoting uniformity of state regulation of motor carriers.” NMSA 1978, § 65-2A-2 (2003).

The majority concludes that the Legislature’s intention was not fully captured by the text of Section 65-2A-13 because NMSA 1978 Sections 65-2A-5(C) (2003) and 65-2A-10(C)(3) (2003, prior to 2005 amendment) refer to protests that Section 65-2A-13 largely eliminates, which creates a conflict within the statutory scheme. The Legislature has enacted the Uniform Statute and Rule Construction Act, see NMSA 1978, 12-2A-1, which offers some guidance regarding the construction of statutes and the Legislature’s intent in situations where statutes appear to conflict. Section 12-2A-10(A) provides:

If statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-enacted statute prevails. However, an earlier-enacted specific provision may override a later-enacted general statute unless the context of the later-enacted statute indicates otherwise.

NMSA 1978, § 12-2A-10(A) (1997). I believe the apparent conflict in these statutes can be reconciled while still giving full effect to the prohibition in Section 65-2A-13, and that this interpretation is more consistent with the legislative intent than the interpretation adopted by the majority.

First, Section 65-2A-5(C) instructs the Commission to hold a hearing when an interested person protests an application. Although Section 65-2A-13 significantly reduces the number of protests that may be filed, it does not wholly eliminate protests. Any tension between these sections is resolved by recognizing that a hearing must be held when a protest that is not prohibited by Section 65-2A-13 is filed. Second, in 2003, Section 65-2A-10(C)(3) required the Commission to consider “whether granting the permit would endanger or impair the operations of motor carriers protesting the application for a permit to an extent contrary to the public interest.” Thus, in 2003, the Legislature had ordered the Commission to consider the impact of the proposed permit on protesting motor carriers even though no motor carriers are permitted to protest an application for a permit under Section 65-2A-13. While this is an odd result, the sections are not in direct conflict. Section 65-2A-10(C) simply addresses a situation which, after the addition of Section 65-2A-13, will no longer occur. Although Section 65-2A-10(C) was enacted at the same time as Section 65-2A-13, as the hearing examiner observed in his order denying the motions to intervene, Section 65-2A-10 “is substantially similar in both format and language to” a comparable provision of its predecessor, enacted in 1981. Section 65-2A-13, on the other hand, appears to be entirely new. I would treat Section 65-2A-13 as the later-enacted statute under Section 12-2A-10(A) and give it full effect to the extent that there is any conflict with Section 65-2A-10(C).

Interestingly, in the face of this potential conflict the Legislature did not choose to alter Section 65-2A-13 to emphasize the right of motor carriers to appear before the Commission. Instead, in 2005, it deleted the phrase “protesting the application for a permit” from Section 65-2A-10(C)(3). Compare § 65-2A-10(C)(3) (2003, prior to 2005 amendment), with § 65-2A-10(C)(3) (2005). It seems reasonable to conclude that the Legislature took this action to remove language it determined was superfluous after the addition of Section 65-2A-13 in 2003.

I believe that the majority’s resolution of the conflict within the statutory scheme does not give full effect to the Legislature’s intent. In creating this statute, I am persuaded the Legislature made a policy decision to move away from a formal, adversarial application process and prohibit formal protests by most potential competitors. The Legislature chose between the competing goals of simplifying the application process and fully informing the Commission, and decided in favor of simplifying the application process. While the holding the majority...
reaches may serve better the interests of competitors, I respectfully suggest the Legislature made a different choice, to which we should defer. Unlike *Thriftway Marketing Corp. v. State*, 111 N.M. 763, 764, 810 P.2d 349, 350 (Ct. App. 1990), this is not a case in which we have the discretion to permit intervention. The specificity of Section 65-2A-13 seems to preclude implying a right to protest on the basis of Section 65-2A-10(C)(3). I would view the former as comparable to a comprehensive statement about standing, making an implied right in Section 65-2A-10(C)(3) inappropriate. Cf. NMSA 1978, § 12-2A-10(C) (1997) (providing that a comprehensive revision prevails over previous statutes, even if irreconcilably conflicting).

[23] For these reasons, I would affirm the Commission’s order. A majority of the Court being of a different view, I respectfully dissent.

PAMELA B. MINZNER

I CONCUR:

RICHARD C. BOSSON, Chief Justice

---

From the New Mexico Supreme Court

**Opinion Number: 2006-NMSC-017**

U.S. XPRESS, INC., a Nevada corporation, M.S. CARRIERS, INC., a Tennessee corporation, and SWIFT TRANSPORTATION COMPANY, INC., an Arizona corporation, individually and on behalf of a class of all similarly situated taxpayers, Plaintiffs-Respondents, versus STATE OF NEW MEXICO, NEW MEXICO TAXATION AND REVENUE DEPARTMENT and JAN GOODWIN, SECRETARY OF THE NEW MEXICO TAXATION AND REVENUE DEPARTMENT, Defendants-Petitioners.

No. 29,272 (filed: April 13, 2006)

**ORIGINAL PROCEEDING ON CERTIORARI**

JAMES A. HALL, DISTRICT JUDGE

C. JOSEPH LENNIHAN
JEFFREY W. LOUBET
Santa Fe, New Mexico
for Petitioners

PATRICIA A. MADRID
Attorney General
REYNOLD E. ROMERO
Special Assistant Attorney General
STEVEN L. BUNCH
Special Assistant Attorney General
JAVIER LOPEZ
Special Assistant Attorney General
Santa Fe, New Mexico
for Amicus Curiae

New Mexico Department of Transportation

TIMOTHY J. DE YOUNG
ANGELO J. ARTUSO
MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.
Albuquerque, New Mexico
for Respondents

PATRICIA A. MADRID
Attorney General
JAMES C. JACOBSEN
Assistant Attorney General
Albuquerque, New Mexico
for Respondents

ATTORNEY GENERAL OF THE STATE OF NEW MEXICO

**OPINION**

EDWARD L. CHÁVEZ, JUSTICE

[1] This case requires us to decide whether the Tax Administration Act permits the courts to recognize the doctrine of “vicarious” or “virtual” exhaustion of remedies to allow a class action to proceed when only a few members of the proposed class have exhausted their administrative remedies. Because the Tax Administration Act provides the exclusive remedies for tax refunds and requires the taxpayer to individually seek the refund, we decline to adopt vicarious or virtual exhaustion for proceedings under the Tax Administration Act, and reverse the opinion of the Court of Appeals. We affirm the district court’s finding that the numerosity requirement of the class action rule is not met in this case because the court lacks subject matter jurisdiction over proposed class members who have not exhausted their administrative remedies.

[2] Plaintiffs-Respondents in this case are three interstate trucking companies. In December of 2002, each company filed claims with the Department of Taxation and Revenue (“Department”) for refunds of four road-related taxes and fees paid for the years 1997-2000: the Weight Distance Tax Identification Card (“Cab Card”) Fee, the Litter Control and Beautification Act, the Fifty-cent Motor Vehicle Division (“MVD”) Administrative Fee, and the Hazardous Material Transportation (“Hazmat”) Fee. The claims for refunds were based on Respondents’ assertions that the collection of these taxes and fees violated the Commerce Clause of the United States Constitution. The Department granted each trucking company’s claim for refunds for the Cab Card fee, the Beautification fee, and the Hazmat fee for the years 1999-2000, but denied the claims for refunds of taxes for the years 1997-1998 based on the statute of limitations in NMSA 1978, Section...
7-1-26(D) (2006) of the Tax Administration Act. The Department also denied all of the claims for refunds of the MVD administrative fee for all years. In addition to the refund claims of these three trucking companies, approximately twenty-five additional trucking companies also filed refund claims with the Department. These claims were partially refunded and partially denied by the Department in exactly the same manner and proportion as the claims of Respondents.

[3] After exhausting their administrative remedies, U.S. Xpress, M.S. Carriers, and Swift Transportation, as named plaintiffs, filed a class action complaint for return of taxes in the First Judicial District Court. The complaint defined the class as “all interstate and intrastate motor carriers authorized to conduct business in New Mexico that have paid and/or that may be required to pay the New Mexico Weight Distance Tax Annual Filing Fee and/or the New Mexico Hazardous Material Transportation Permit Fee” and estimated the number of members of the class as exceeding three thousand companies. The named plaintiffs moved for class certification under Rule 1-023 NMRA, alleging that the class was too numerous for joinder, questions of law or fact were common to the class, the claims or defenses of the named Plaintiffs were typical of the class, and that the named Plaintiffs would adequately represent the class.

[4] Recognizing that the unnamed members of the proposed class had not yet exhausted their administrative remedies by filing refund claims with the Department, Plaintiffs argued that “virtual exhaustion” by the named members obviates the need for each class member to exhaust. The Department opposed the motion for class certification, arguing that only the legislatively crafted, comprehensive statutory tax scheme could address taxpayer refunds. The district court denied class certification on the basis that Plaintiffs were unable to meet the numerosity requirement, “because under Section 7-1-22 NMSA 1978, this court lacks jurisdiction over those members of the proposed class who have not exhausted their administrative remedies by each filing a claim for refund” with the Department. The district court recognized that the question of “vicarious exhaustion” and “virtual representation” in class actions presented “an unsettled and fundamental issue of New Mexico law,” and stayed all proceedings pending appeal under Rule 1-023(F). Respondents appealed the order denying class certification to the Court of Appeals.

[5] The Court of Appeals framed the issue on appeal as requiring a determination of “whether the legislature intended the administrative exhaustion requirement to preclude our courts from exercising jurisdiction over the purely legal claims of the absent members of a class who have not exhausted their remedies when exhaustion would be futile.” U.S. Xpress, Inc. v. N.M. Taxation & Revenue Dept., 2005-NMCA-091, ¶ 9, 138 N.M. 55, 116 P.3d 846. The Court of Appeals held that because the named plaintiffs in this case had exhausted their own administrative remedies, that exhaustion gave the district court jurisdiction over claims for refunds of the contested taxes for all putative class members, including those who had not themselves exhausted administrative remedies. Id. ¶ 23. The Court of Appeals based its decision on the Department’s uniform denial of part of each of the requested refunds, determining that further exhaustion of identical claims would be futile. Id. ¶ 15. Thus, the Court of Appeals decision allowed a form of representative exhaustion, characterized by the parties as “vicarious” or “virtual exhaustion,” when individual exhaustion of administrative remedies for each member of the class would be futile. Id. ¶ 22.

[6] The question we consider is whether the Tax Administration Act requires individual exhaustion of remedies before proceeding to challenge the constitutionality of a tax in court, and if so, whether we will recognize a doctrine of “vicarious” exhaustion. “The meaning of language used in a statute is a question of law that we review de novo.” Cooper v. Chevron U.S.A., Inc., 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61 (citation omitted). When this Court interprets the statutes of New Mexico, our “principal objective . . . is to determine and give effect to the intent of the legislature.” Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236 (internal quotations and citations omitted). The primary indicator of the legislature’s intent is the plain language of the statute. General Motors Acceptance Corp. v. Anaya, 103 N.M. 72, 76, 703 P.2d 169, 173 (1985).

[7] Applying these principles of statutory construction to the Tax Administration Act, we begin by noting that it provides taxpayers with a choice of two exclusive remedies when the taxpayer disputes liability for a tax. NMSA 1978, § 7-1-23 (2006).

Under the administrative hearing remedy, a taxpayer may protest the assessment of the tax without making payment. NMSA 1978, § 7-1-24 (2006). Alternatively, the taxpayer may pay the disputed tax and then request a refund. NMSA 1978, § 7-1-26 (2006). With either choice, Section 7-1-22 requires exhaustion of administrative remedies, stating:

“No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which the taxpayer calls into question the taxpayer’s liability for any tax or the application to the taxpayer of any provision of the Tax Administration Act, except as a consequence of the appeal by the taxpayer to the court of appeals from the action and order of the secretary, all as specified in Section 7-1-24 NMSA 1978, or except as consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978.

[8] Section 7-1-22 has been interpreted as requiring taxpayers to follow the procedures in the Tax Administration Act. Neff v. State Taxation and Revenue Dep’t., 116 N.M. 240, 244, 861 P.2d 281, 285 (Ct. App. 1993). “Additionally, by using broad language, the Legislature intended, with respect to the Tax Administration Act, to require that challenges to the validity of the Act be first presented either through the protest remedy, Section 7-1-24, or the refund remedy, Section 7-1-26.” Neff, 116 N.M. at 244, 861 P.2d at 285. The Department argues that Section 7-1-22 requires mandatory exhaustion of administrative remedies by each taxpayer, while the Respondents argue that the Legislature has not clearly required individual taxpayer exhaustion.

[9] Respondents support their argument against requiring individual exhaustion by relying on an Arizona case, Ariz. Dep’t. of Revenue v. Dougherty, 29 P.3d 862 (Ariz. 2001). Respondents’ reliance on Dougherty was represented as follows: “After carefully analyzing the state’s similar refund statutes and applicable authority, the [Arizona] Court found ‘no reason why the statutory requirements cannot be satisfied through a single representative claim . . . .’” However, a careful reading of Dougherty reveals that the Arizona and New Mexico statutes are materially different and that, had the Arizona statute been similar to New Mexico’s, the Dougherty court would have decided the case differently. The Dougherty court stated: “To begin, we note that noth-
ing in the plain language of [the Arizona exhaustion of remedies statute] requires each taxpayer to file a claim for refund. It clearly states that each claim must be filed in writing . . . .” Dougherty, 29 P.3d at 866 (emphasis in the original). The Arizona claim statute for tax refunds states: “Each claim for refund shall be filed with the department in writing and shall identify the claimant by name, address and tax identification number. Each claim shall provide the amount of the refund requested, the specific tax period involved and the specific grounds on which the claim is founded.” A.R.S. § 42-1118(E)(1999). Thus, Arizona’s determination that individual exhaustion of remedies was not required was based on the Arizona exhaustion statute, which the court interpreted as not requiring “taxpayers” to exhaust, but instead simply required that each claim be exhausted. The plain language of New Mexico’s exhaustion of remedies statute requires each taxpayer to exhaust administrative remedies by complying with Section 7-1-26. This section applies to “[a]ny person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable.” NMSA 1978, § 7-1-26 (2006). Dougherty, by contrast, supports our conclusion that the references to “a taxpayer” and “the taxpayer” in Section 7-1-22 clearly require individual taxpayer exhaustion of remedies, and an individual refund claim for each taxpayer. Thus, not only is the exhaustion requirement of Section 7-1-22 a precondition to subject matter jurisdiction, as was held in Neff, 116 N.M. at 244, 861 P.2d at 285, but it also requires exhaustion by each individual taxpayer.

10 Respondents urge us to recognize that “vicarious exhaustion” of administrative remedies by the named plaintiffs representing the entire class serves the same purposes the legislature intended in Section 7-1-22. Respondents’ argument is based on their contention that exhaustion should be considered futile here because the Department lacks authority to determine the constitutionality of the taxes at issue. The Court of Appeals agreed with this argument, finding that even with the clear statutory requirement of taxpayer exhaustion, in the context of this case involving the constitutionality of taxes the purpose and intent of the exhaustion requirement would not be served by individual taxpayer exhaustion. U.S. Xpress, 2005-NMCA-491, ¶ 11.

11 The Court of Appeals has already addressed the issue of exhaustion and constitutional challenges to a tax, and held that it was mandatory to follow the administrative procedures of Section 7-1-22 before questioning the constitutionality of a tax in court. Neff, 116 N.M. at 243, 861 P.2d at 284. In Neff, the Court of Appeals followed the reasoning of the U.S. Supreme Court in Fair Assessment in Real Estate Ass’n, Inc. v. McNary, 454 U.S. 100 (1981), which examined the requirements for a taxpayer’s challenge to the administration of a state tax on constitutional grounds. “Such taxpayers must seek protection of their [constitutional] rights by state remedies, provided of course that those remedies are plain, adequate, and complete . . . .” McNary, 454 U.S. at 116. Respondents argue that the Tax Administration Act should not require individual taxpayer pursuit of remedies when the dispute is over the constitutionality of the tax, and when the purposes of exhaustion, such as notice to the Department or development of a factual record, would not be served. Although the Court of Appeals in this case found that satisfaction of the “purpose and intent” of the exhaustion requirement was enough, we disagree. We note that Section 7-1-22 does not differentiate between instances when the purposes of exhaustion would be served and when it would not, but instead plainly insists that no court will have jurisdiction except as a consequence of an administrative appeal or a claim for a refund. “[I]f the meaning of a statute is truly clear, it is the responsibility of the judiciary to apply it as written and not second guess the legislature’s policy choices.” Derringer v. Turney, 2001-NMCA-075, ¶ 8, 131 N.M. 40, 33 P.2d 40 (internal quotations and citations omitted). We are bound by the plain meaning rule, which requires a court to give effect to the statute’s language and refrain from further interpretation when the language is clear and unambiguous. Sims v. Sims, 1996-NMSC-078, ¶ 17, 122 N.M. 618, 930 P.2d 153 (citation omitted). Unless a statute violates the Constitution, “[w]e will not question the wisdom, policy, or justness of legislation enacted by our Legislature.” Madrid v. St. Joseph Hosp., 1996-NMSC-064, ¶ 10, 122 N.M. 524, 928 P.2d 250. Therefore we reject the concept of vicarious exhaustion under Section 7-1-22 because the plain meaning of the Tax Administration Act requires individual taxpayer exhaustion of administrative remedies before the constitutionality of a tax may be challenged in court.

12 Furthermore, in the context of a claim for a tax refund and the exhaustion requirement of Section 7-1-22, we find that the “futility” doctrine advanced by the Court of Appeals has no force. Although it is true that in contexts other than the Tax Administration Act we have stated that exhaustion of statutory remedies was not required when futile, see, e.g., State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 529, 514 P.2d 40, 48 (1973) (exhaustion of remedies not required when administrative tribunal clearly lacks jurisdiction or when exhaustion would be vain and futile), we are unable to find any circumstances where we have found futility of exhaustion to be an appropriate excuse for bypassing a clear statutory directive, such as found in this case. See Neff, 116 N.M. at 244 (taxpayer must comply with exhaustion of remedies doctrine); Chavez v. City of Albuquerque, 1998-NMCA-004, ¶ 14, 124 N.M. 479, 952 P.2d 474 (exclusive administrative remedy is one which provides for “plain, adequate, and complete means of resolution through the administrative process to the courts”); Shepard v. Bd. of Educ. of Jemez Springs Mun. Schools, 81 N.M. 585, 586, 470 P.2d 306, 307 (1970) (mandamus proper remedy only after petitioner exhausted administrative remedies); McDowell v. Napolitano, 119 N.M. 696, 700, 895 P.2d 218, 222 (1995) (exhaustion of administrative remedies is absolute when a claim is first cognizable by administrative agency, and judicial interference is withheld until administrative policy has run its course); Derringer, 2001-NMCA-075, ¶ 14 (statute requiring post-decision hearing before state engineer comports with principle that a party is required to pursue available administrative remedies before resorting to courts for relief); Smith v. Southern Union Gas Co., 58 N.M. 197, 199, 269 P.2d 745, 747 (1954) (legislature has not taken away jurisdiction from courts, but has postponed jurisdiction until Department has acted on the complaint). We note with approval the Supreme Court of Vermont’s treatment of the futility and exhaustion doctrines:

The term “exhaustion” is used to describe both the judge-made common-law doctrine and a statutory direction that judicial review is available only if specified administrative procedures are first employed. Where the Legislature specifically mandates, exhaustion is required. Where the Legislature has not clearly required exhaustion, sound judicial discretion governs. The futility doctrine has been adopted as part of that
discretion to dispense with unnecessary exhaustion of administrative remedies. It has no place, however, in the face of a clear legislative command that exhaustion is required. See Neff v. State, 116 N.M. 240, 861 P.2d 281, 285 (Ct. App. 1993) Stone v. Errecart, 675 A.2d 1322, 1325 (Vt. 1996) (internal citations and quotations omitted). Therefore, we hold that the futility doctrine has no force in the context of the Tax Administration Act, in the face of the clear legislative command found in Section 7-1-22.

{13} Respondent also argues that because class actions are not specifically barred in the exhaustion statute, Section 7-1-22 should be construed so as to serve the purposes of the class action rule, Rule 1-023. We disagree with Respondents. Class actions are a procedural device, and the class action procedural rule does not effect any change on the subject matter jurisdiction limitations imposed by the Legislature through the Tax Administration Act. While Section 7-1-22 does not explicitly bar class actions for refund claims after exhaustion, neither does it give any indication that the statutory exhaustion requirement should bow to the Rules of Civil Procedure. Cf. Romero v. Philip Morris Inc., 2005-NMCA-035, ¶ 37, 137 N.M. 229, 109 P.3d 768 (stating “although [the statute] confers standing to New Mexico indirect purchasers to bring a civil action for damages, we see no indication that the Legislature intended [the statute] to single out indirect purchasers for any different or more favorable class action treatment than was intended for other persons seeking relief from a violation of the Act.”). Therefore, we reject Respondents’ argument that the exhaustion statute and Rule 1-023 are in conflict and that, by enacting the exhaustion statute, the Legislature has encroached on the province of the judiciary. In any matter brought before the court, including a class action, the court must have subject matter jurisdiction before determining if a particular procedure is appropriate. Gonzales v. Surgidev Corp., 120 N.M. 133, 138, 899 P.2d 576, 581 (1995) (citation omitted) (only relevant inquiry in determining subject matter jurisdiction is whether claim falls in scope of authority conferred upon court by constitution or statute). As the district court properly concluded, it does not have subject matter jurisdiction over those class members who have not exhausted their administrative remedies. El Dorado Utils. Inc v. Galisteo Domestic Water Users Ass’n., 120 N.M. 165, 167, 899 P.2d 608, 610 (Ct. App. 1995) (stating “[j]urisdiction of the matters in dispute does not lie in the courts until the statutorily required administrative procedures are fully complied with.”). Each member of the class must individually exhaust, and only after individual exhaustion by each class member could the district court have jurisdiction over the class. NMSA 1978, § 7-1-22. The Legislature’s limitation on jurisdiction under Section 7-1-22 is a prerequisite, rather than a conflict, to Rule 1-023.

{14} While we appreciate the efforts of the Court of Appeals to avoid unnecessary burdens to the Department, the absent members of the class, and our courts, we cannot adopt the doctrine of “vicarious representation” in the context of a class action for tax refunds. It is certainly true that each identical claim may initially be denied by the Department, but exhaustion of the statutory remedies is not futile when the procedures of the Tax Administration Act provide a plain, adequate and complete means of determining the constitutionality of the tax with ultimate resolution in the courts. We also note that once the exhaustion requirement is satisfied and a proper appeal taken to the court, a determination by the court as to the constitutionality of the tax which is adverse to the Department will likely have a preclusive effect on the Department. See Silva v. State, 106 N.M. 472, 474, 745 P.2d 380, 382 (1987) (describing doctrine of offensive collateral estoppel, used when plaintiff seeks to foreclose defendant from litigating issue defendant has previously litigated unsuccessfully).

{15} It cannot be disputed that a class action might be a more convenient process for recovering tax refunds based on the identical claims in this case. Convenience, however, does not change the clearly expressed intent of the legislature to require that tax refund claims proceed according to the requirements of the Tax Administration Act. “The courts have no authority to alter the statutory scheme, cumbersome as it may be.” In re Application of Angel Fire Corp., 96 N.M. 651, 652, 634 P.2d 202, 203 (1981). Therefore, we reverse the Court of Appeals and affirm the holding of the district court.

{16} IT IS SO ORDERED.

Edward L. Chávez, Justice

WE CONCUR:

Richard C. Bossón, Chief Justice

Pamela B. Minzner, Justice

Patricio M. Serna, Justice

Petra Jiménez Maes, Justice
Certiorari Denied, No. 29,723, April 20, 2006

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-046

AMICA MUTUAL INSURANCE COMPANY, a foreign corporation, Plaintiff-Appellant, and DIANE RAILEY, Involuntary Plaintiff-Appellant, versus GORDON PETER MCROSTIE, Defendant-Appellee.

No. 25,432 (filed: February 3, 2006)

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

DANIEL P. ULIBARRI BEATRIZ AGUIRRE-STRONG O'BRIEN & ULIBARRI, P.C.
Albuquerque, New Mexico for Appellants

GREGORY ROSS THE ROSS FIRM Santa Fe, New Mexico for Appellee

OPINION

JONATHAN B. SUTIN, JUDGE

{1} New Mexico has a savings statute which states that once a suit has been commenced, if it “fail[s] . . . for any cause, except negligence in its prosecution,” a second suit can be brought within six months and the second suit will be considered a continuation of the first suit. NMSA 1978, § 37-1-14 (1880). This statute has the effect of preventing a statute of limitations from barring a suit where the original suit was brought in a timely fashion but the statute ran before the second suit was filed. See Gathman-Matotan Architects & Planners, Inc. v. State Dep’t of Fin. & Admin., 109 N.M. 492, 493-94, 787 P.2d 411, 412-13 (1990). In this case, we are presented with the question of whether an original suit failed for “negligence in its prosecution” when it was filed in an improper venue. We conclude that the suit did not fail.

{2} We are also presented with the question of whether it was proper for the district court to refuse under a local court rule to entertain a motion to amend the complaint to add an indispensable party. The local rule prohibits a party from making a cross-motion in a response to a motion. We hold that the district court erred in refusing to grant the motion given the policy of Rule 1-015 NMRA to freely grant amendments.

BACKGROUND

{3} Plaintiff Amica Mutual Insurance Company, joining Diane Raleigh as an involuntary plaintiff, sued Defendant Gordon Peter McRostie in the Second Judicial District Court, in Bernalillo County, New Mexico, on a subrogation claim. The claim arose out of payments Plaintiff made to Raleigh after Raleigh’s vehicle accident in Florida and treatment by Defendant in New Mexico.

{4} More particularly, Plaintiff alleged that Defendant was professionally negligent in giving Raleigh a trigger point injection that caused Raleigh personal injuries. The alleged negligent injection occurred on September 5, 2000. Plaintiff’s complaint was filed on September 5, 2000. For jurisdiction and/or venue purposes, Plaintiff alleged that it was authorized to do business in New Mexico, “with its principle [sic] place for claims handling in Bernalillo County [New Mexico], and all other parties to this action are residents of New Mexico or otherwise subject to the jurisdiction of this Court.” Plaintiff attached an affidavit of Sheryl Heiner, a regional sales executive for Plaintiff in New Mexico, who stated that Plaintiff had only one office in New Mexico and that the office was located at “P.O. Box 67620, Albuquerque, New Mexico 87193-7620.”

{5} Defendant filed a verified answer raising the defense that venue was improper. Defendant also filed a motion to dismiss Plaintiff’s complaint for improper venue. Defendant denied that Plaintiff’s principal place for claims handling was Bernalillo County, and denied that Raleigh was a resident of New Mexico. Defendant also defended on the ground that he was not a proper party because “the entity providing medical services [to Raleigh] was G.P. McRostie, D.O.M., N.D., P.A.[,]” which was a professional corporation (Corporation). See NMSA 1978, §§ 53-6-1 to -14 (1963, as amended through 2001) (authorizing the incorporation of an individual to render professional services).

{6} At the hearing on the motion to dismiss for lack of venue, Plaintiff’s only witness was an employee of Stevenson & Associates, Inc., an independent insurance adjusting company. This witness testified that she had not worked on the claim in question and did not have personal knowledge of whether her firm handled the claim. She further testified that Defendant did not employ persons in New Mexico and did not have an office or physical address in the State. There was no testimony concerning the residence of Raleigh, and Defendant’s contention that Raleigh was not a resident of New Mexico remained uncontradicted. Verbally, on January 22, 2004, and in an order entered on March 18, 2004, the district court dismissed Plaintiff’s Bernalillo County complaint without prejudice for lack of venue.

{7} Plaintiff filed a new complaint against Defendant on March 25, 2004, this time in the First Judicial District Court, in Santa Fe County, New Mexico. Defendant filed an answer on May 3, 2004, affirmatively stating that the medical services in question were provided by Corporation and that Defendant was not a proper party to the action because the medical services were provided by Corporation. Defendant then filed a verified motion to dismiss on July 20, 2004, asserting that (1) the statute of limitations in NMSA 1978, § 37-1-8 (1976) barred the action and Section 37-1-14 did not save Plaintiff’s action because Plaintiff was negligent in the prosecution of its first action; and (2) Defendant was not a proper party and Corporation was a necessary and indispensable party.

{8} In one document filed on August 5, 2004, Plaintiff both responded to Defendant’s motion to dismiss and moved...
for leave to file an amended complaint to add Corporation as a party. Plaintiff took the position that its actions did not constitute negligent prosecution, asserting that, based on Heiner’s affidavit, it filed its Bernalillo County complaint with the good faith belief that Plaintiff’s principal place for handling claims in New Mexico was Albuquerque, New Mexico, which is in Bernalillo County. Plaintiff also took the position that Corporation was not a necessary or indispensable party because Plaintiff was entitled to sue Defendant directly for professional negligence. Still, Plaintiff attached to its motion to amend a proposed amended complaint against Defendant individually and as principal of Corporation.

[9] Defendant countered on August 19, 2004, with a reply asserting that not only had Defendant alerted Plaintiff early on in Plaintiff’s first action that it was Corporation and not Defendant that had provided the service, Plaintiff had in its possession an invoice showing “the McRostie corporate name.” Further, Defendant pointed out that Plaintiff made no attempt to refute Defendant’s allegation that Raleigh was not a resident of New Mexico and that the Heiner affidavit’s indication of a post office box for Plaintiff and nothing more was insufficient to trigger either jurisdiction or venue. As to Plaintiff’s motion to amend, Defendant asserted, among other things, that Plaintiff violated First Judicial District Rule LR1-306(E) NMRA by filing a cross-motion which operated as both a response to Defendant’s motion to dismiss and a motion to amend.

[10] Following a hearing in the Santa Fe County district court on Defendant’s motion to dismiss, the court entered an order granting the motion and dismissing Plaintiff’s action with prejudice. As to the statute of limitations, the court determined that under Barbeau v. Hoppenrath, 2001-NMCA-077, 131 N.M. 124, 33 P.3d 675, Section 37-1-14 could not overcome the bar of the statute of limitations. The court also determined that under LR1-306(E) Plaintiff’s motion to amend was not properly before the court and even were it properly before the court, the amendment would be futile because Plaintiff would be barred from suing Corporation under Section 37-1-8. The district court further determined that Corporation was a necessary and indispensable party.

[11] Plaintiff appeals asserting the court erred (1) in determining that its prosecution of the Bernalillo County action was negligent under Section 37-1-14, (2) by not allowing its motion to amend for violation of LR1-306(E), and (3) by denying its motion to amend to include Corporation as a defendant. We discuss each of these points and determine that the district court misapplied Barbeau and should not have disallowed or denied Plaintiff’s motion to amend.

INITIAL CONSIDERATION AND PRESERVATION

[12] Defendant asserts that Plaintiff failed to preserve relation back and continuation arguments. We disagree. These arguments were preserved through Plaintiff’s proposed amended complaint that expressly sought to overcome the bar of the statute of limitations because “[p]ursuant to [Section] 37-1-14, suit is proper,” and when Plaintiff argued at the hearing on Defendant’s motion to dismiss that its proffered amendment would relate back and allow the cause of action to go forward. Also at that hearing, Plaintiff stated that relining in Santa Fe County was “contemplated by all of the parties” and requested that the matter be allowed to continue before the court. Further, the district court was fully aware of Section 37-1-14, and even discussed at the hearing a case questioning whether a second action “was a continuation” of the first under that statute. Although the court did not specifically rule in regard to the application of Rule 1-015(C) or Section 37-1-14’s language that a second suit is “deemed a continuation of the first,” it is apparent that the court was aware of Plaintiff’s relation back contention in light of the issues brought before it by the motion to amend to add Corporation and by Plaintiff’s proposed amended complaint alleging that Section 37-1-14 allowed it to proceed in spite of the statute of limitations.

DISCUSSION

A. Section 37-1-14 and Negligent Prosecution

[13] No facts are in dispute. We will treat the court’s dismissal as a summary judgment under Rule 1-056 NMRA based on undisputed facts. Where no material facts are “in dispute, and only a legal interpretation of the facts remains,” the standard of review is whether the moving party is entitled to summary judgment as a matter of law. Barbeau, 2001-NMCA-077, ¶ 2.

[14] Section 37-1-14 reads: “If, after the commencement of an action, the plaintiff fail[s] therein for any cause, except negligence in its prosecution, and a new suit be commenced within six months thereafter, the second suit shall, for the purposes herein contemplated, be deemed a continuation of the first.” The question is whether Plaintiff’s prosecution of the Bernalillo County action was negligent, thereby erasing the otherwise saving grace of Section 37-1-14.

[15] Defendant argues that our holding in Barbeau governs this case. In Barbeau, based on a traffic accident occurring in New Mexico, and two days before the expiration of the applicable New Mexico statute of limitations, the plaintiffs filed their original action against the alleged tortfeasor and an insurer in federal court in Oregon. 2001-NMCA-077, ¶ 1, 5. The federal court dismissed the action. Id. The plaintiffs’ second action in New Mexico was dismissed when the district court determined that Section 37-1-14 did not save the plaintiffs’ claim. Id. ¶ 1, 6. Noting that “whatever forum chosen must at least arguably provide personal and subject matter jurisdiction” and have “the power to decide the matter involved[,]” this Court stated that the plaintiffs “de-feated subject matter jurisdiction by the very allegations in their [Oregon federal court] complaint.” Id. ¶ 11, 15. Also, the plaintiffs conceded that the Oregon federal court lacked personal jurisdiction. Id. ¶ 11.

We determined that “the claim was clearly improperly filed in Oregon federal court[,]” and that the plaintiffs’ actions were not strategic but instead demonstrated “a clear disregard of the elementary requirements of jurisdiction.” Id. ¶ 3, 11. Based on the foregoing circumstances, we held that the facts amounted to negligence in the prosecution of the Oregon federal court action, and we declined to save the New Mexico action under Section 37-1-14. Barbeau, 2001-NMCA-077, ¶ 16.

[16] The reasoning of Barbeau does not automatically transfer to the facts in the present case. While we cannot say that Plaintiff was free of carelessness in its lack of basis for venue in the Bernalillo County action, we are not prepared to extend Barbeau and conclude that the circumstances in the present case constitute negligent prosecution thereby eliminating the savings statute as a safe harbour for Plaintiff. There is a valid distinction to be made between filing a complaint that on its face defeats subject matter jurisdiction, and filing an action without a thorough investigation as to whether venue is proper.

[17] Subject matter jurisdiction gives a court power and authority to act. Without it, the court has no power or authority to act. Venue, required for convenience of parties,
can be waived. Once venue is waived, the court can act. Section 37-1-14 applies to a dismissal for lack of venue. Were it not for the foot in the door given Defendant by Barbeau, a case in which it was evident from the complaint itself that the Oregon federal court lacked jurisdiction, we tend to doubt the present case would have reached the appellate level on this issue. We are not persuaded that we should extend the jurisdiction error in Barbeau to the venue mistake here. When balancing the policy favoring access to judicial resolution of disputes, including that embodied in Section 37-1-14, against the venue mistake in this case, we think it appropriate to hold, and we do hold, that the circumstances do not constitute negligent prosecution. Under Section 37-1-14, the Santa Fe County action is deemed a continuation of the Bernalillo County action. The action, therefore, is not barred under Section 37-1-8.

B. Disallowance and Denial of Motion to Amend

[18] The district court order stated: “Pursuant to LR1-306(E), [the motion to amend the complaint] was not properly before the Court[.]” Notwithstanding, and even if this Court had granted such motion, Plaintiffs could not have maintained an action against the corporation pursuant to NMSA 37-1-8 (1978). The court appears to have both (1) disallowed the motion to amend, by determining that the motion “was not properly before the Court,” and (2) denied Plaintiff’s motion to amend. We review for abuse of discretion. See Lujan v. City of Albuquerque, 2003-NMCA-104, ¶ 8, 134 N.M. 207, 75 P.3d 423 (reviewing for an abuse of discretion the dismissal for failing to file a timely response to a motion for summary judgment); Lovato v. Crawford & Co., 2003-NMCA-088, ¶ 6, 134 N.M. 108, 73 P.3d 246 (reviewing for an abuse of discretion the denial of a motion to amend); see also Cottonwood Enters. v. McAlpin, 109 N.M. 78, 79-80, 781 P.2d 1156, 1157-58 (1989) (determining whether the district court abused its discretion in granting a motion to dismiss under Rule 1-041(E) NMRA).

1. Disallowance Based on LR1-306(E)

[19] LR1-306(E) states: “The practice of filing cross-motions to operate as both a motion and as a response to the original motion is prohibited.” It is arguable whether Plaintiff violated the rule. Nevertheless for the purpose of deciding the issue at hand, we will assume that the district court’s interpretation of the rule to include a motion to amend within the meaning of “cross-motion” was not erroneous. However, although we normally would prefer not to argue with a district court’s enforcement of its local rule, we cannot defer to the court’s enforcement here.

[20] Disallowance, resulting in dismissal of Plaintiff’s action, effectively disengages the saving power of Rule 1-015. Rule 1-015(A) requires amendments to be freely given, absent prejudice. See Crumpacker v. DeNaples, 1998-NMCA-169, ¶ 17, 126 N.M. 288, 968 P.2d 799 (stating that the district court is required to allow amendments freely “if the objecting party fails to show prejudice[,]”). The rule’s clear policy is that amendments should be freely granted. Amendments are favored and should be liberally permitted as justice requires. Martinez v. Research Park, Inc., 75 N.M. 672, 679-80, 410 P.2d 200, 205 (1965), overruled on other grounds by Lakeview Inv., Inc. v. Alamogordo Lake Vill., Inc., 86 N.M. 151, 520 P.2d 1096 (1974). We see nothing in the record indicating that Defendant or Corporation would be prejudiced by the amendment. The district court did not indicate that it disallowed the motion based on undue delay or undue prejudice and Defendant does not point out any prejudice in the record before us. See Lovato, 2003-NMCA-088, ¶ 6 (“Amendments should be denied only where the motion is unduly delayed or where amendment would unduly prejudice the non-movant.”). We hold that LR1-306(E) cannot override the policies underlying Rule 1-015 under the circumstances in this case.

2. Denial Based on Futility; Relation Back

[21] Our determination that LR1-306(E) should not result in disallowance of Plaintiff’s motion does not, however, end the matter. The court determined that even if it had granted the motion to amend, adding Corporation would have been futile because the action would be barred under Section 37-1-8. The circumstances raise the specific questions of whether the claims against Corporation would relate back under Rule 1-015(C) in a way that would escape the bar of Section 37-1-8 by way of Section 37-1-14.

[22] Any discussion of these statutory rules and their application, of course, requires us to assume that Corporation is a necessary and indispensable party such that, without jointer, the complaint was subject to dismissal with prejudice. On appeal, Plaintiff has not attacked the district court’s determination that Corporation is a necessary and indispensable party. Therefore, for the purposes of resolution of the issues in this appeal, Plaintiff has waived any error in regard to the district court’s determination that Corporation is an indispensable party. We therefore do not address and leave for another day the propriety of the district court’s ruling in this regard.

[23] Rule 1-015(C) states: Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment:

(1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits; and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

[24] The case of Romero v. Bachicha, 2001-NMCA-048, 130 N.M. 610, 28 P.3d 1151, interpreting Rule 1-015, is similar to the present case. In Romero, the plaintiff sued “Frank” Bachicha eight days before the statute of limitations was to expire. 2001-NMCA-048, ¶ 3. The plaintiff knew that it was “Paul” Bachicha who should have been named, but nevertheless did not amend the pleading. Id. “The process server refused to serve the complaint due to

---

1 It is not clear in the New Mexico law cited to us by the parties that a medical provider who commits negligence in the performance of professional duties, resulting in personal injury, cannot be sued individually for damages without joining the provider’s professional corporation. See Sanders, Brain, Coll & Worley, P.A. v. McKay Oil Corp., 1997-NMSC-030, ¶ 9, 123 N.M. 457, 943 P.2d 104 (holding “that, as a general matter, membership or shareholder status in a professional corporation does not shield an attorney from individual liability for his own mistakes or professional misdeeds”).
the error." Id. The district court dismissed the complaint for lack of prosecution but reinstated the action, following which the plaintiff filed an amended complaint and served it on Paul Bachicha about a year after the statute of limitations had run. Id. ¶¶ 3-4, 14. Paul Bachicha moved to dismiss asserting that the action was barred under the statute of limitations. Id. ¶ 5. This Court held that because the plaintiff had not served Paul Bachicha before amending the complaint and the amended complaint changed the party against whom the action was brought, the issues were governed by Rule 1-015(C)(1) and (2), Romero, 2001-NMCA-048, ¶ 11, 14, and, particularly, whether Paul Bachicha had been notified of the institution of the action within the statute of limitations period, which included the time for service of process. Id. ¶¶ 15, 17, 21.

{25} Here, we have held that Plaintiff’s Santa Fe County action survived the statute of limitations bar under the application of the savings statute and is therefore a continuation of the Bernalillo County action. We have also held that under Rule 1-015(A) Plaintiff should have been permitted to amend unless, of course, amendment would be futile. The district court’s determination of futility rested solely on the application of Section 37-1-8, without regard to the application of the factors in Rule 1-015(C)(1) and (2). This was an abuse of discretion. See Stinson v. Berry, 1997-NMCA-076, ¶ 9, 123 N.M. 482, 943 P.2d 129 (stating that we will reverse the denial of a motion to amend only upon a showing of clear abuse of discretion).

{26} The first Rule 1-015(C) factor, stated in subpart (C)(1), would be whether Corporation was on notice from the Bernalillo County action of the institution of the action against Defendant such that Corporation would not be prejudiced in the joinder and in having to maintain a defense on the merits of Plaintiff’s claim. This notice issue obviously would involve factual analyses of whether Defendant was the principal professional in the professional corporation “G.P. McRostie, D.O.M., N.D., P.A.” and whether, based on Defendant’s position in Corporation, Corporation had received such notice of the institution of the Bernalillo County action that Corporation would not be prejudiced in maintaining its defense on the merits. See Rivera v. King, 108 N.M. 5, 11, 765 P.2d 1187, 1193 (Ct. App. 1988) (holding that the defendants had received sufficient notice where the original defendants and the newly added defendants shared an identity of interests and were represented by attorneys who were involved in the litigation from its inception). The second factor, stated in subpart (C)(2), would be whether Corporation knew or should have known that, but for Plaintiff’s mistake as to the identity of the proper party, the action would have been brought against Corporation. This knowledge issue would involve the same factual analyses to be made in considering the notice issue under Rule 1-015(C)(1).

{27} Thus, still open for determination are the factors set out in Rule 1-015(C)(1) and (2). If those notice and knowledge factors are met, the amendment to add Corporation will not be futile. The amendment would not be futile because Plaintiff’s claims against Corporation will relate back to the date of the filing of the Santa Fe County action, the Santa Fe County action being a continuation of the Bernalillo County action. Thus, for the same reason Plaintiff’s claims against Defendant in the Santa Fe County action are not barred under Section 37-1-8 based on the application of Section 37-1-14, Plaintiff’s claims against Corporation would similarly not be barred under Section 37-1-8. We hold that the district court erred by prematurely holding that granting the proposed amendment would be futile. Section 37-1-8 will not bar Plaintiff’s claims against Corporation if the factors in Rule 1-015(C)(1) and (2) are satisfied.

CONCLUSION

{28} We reverse the district court’s dismissal with prejudice of Plaintiff’s action and remand for further proceedings consistent with this opinion.

{29} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Chief Judge

A. JOSEPH ALARID, Judge
Wendt in its Albuquerque office. Wendt and Echostar executed an agreement setting forth Wendt’s salary and how overtime would be calculated. Pursuant to the agreement, Wendt would be paid $509.62 per week regardless of whether she actually worked less than forty hours or forty hours, but she would be paid overtime calculated by dividing the number of hours worked into $509.62 and then multiplying one-half of that result by the number of hours worked in excess of forty and adding that figure to $509.62. Thus, for example, if Wendt worked forty-five hours, her regular hourly rate would be $509.62 divided by 45, or $11.32, one-half of which would be $5.66. This $5.66 would be multiplied by 5, the number of overtime hours worked, for a total of $28.30, which would be added to the $509.62, for a total of $537.92 remuneration for the week.

(3) Wendt initiated this case by filing a wage claim with the Director of the Labor and Industrial Division of the Department of Labor (DOL), which ruled in her favor. After Wendt assigned her wage claim to the DOL, it filed a complaint in metropolitan court, which Echostar duly answered. Echostar moved for summary judgment. In metropolitan court, the parties agreed in the trial court that there were no genuine issues of material fact, and each party claimed to be entitled to judgment as a matter of law. In these circumstances, our review is de novo. See Wilger Enters., Inc. v. Broadway Vista Partners, 2005-NMCA-088, ¶ 5, 137 N.M. 806, 115 P.3d 822.

II. DISCUSSION

A. STANDARD OF REVIEW

(5) The issue raised on appeal is whether the words “regular hourly rate of pay” contained in Section 50-4-22(C) permit employers and employees to negotiate a fluctuating workweek and resulting fluctuating rate of pay on which to calculate overtime. Construction of statutes is a question of law that we review de novo. Blackwood & Nichols Co. v. N.M. Taxation & Revenue Dep’t, 1998-NMCA-113, ¶ 5, 125 N.M. 576, 964 P.2d 137. In addition, the parties agreed in the trial court that there were no genuine issues of material fact and that summary judgment was proper for one party or another. In these circumstances also, our review is de novo. See State v. Davis, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. “Statutes are to be read in a way that facilitates their court, which affirmed the judgment of the metropolitan court. Echostar now appeals to this Court.

(4) The DOL’s position is that instead of being paid $537.92 in the above example, Wendt should have been paid $605.17, calculated as follows: $509.62 divided by 40 equals $12.74, which is the regular hourly rate. One and one-half times this hourly rate is $19.11; $19.11 multiplied by 5 equals $95.55, which should be added to $509.62, for a total of $605.17. If Wendt worked sixty hours, instead of forty-five, the calculations would be:

Echostar method
$509.62 ÷ 60 = $8.49
½ x $8.49 = $4.25
$4.25 x 20 = $85.00
$85 + $509.62 = $594.62

DOL method
$509.62 ÷ 40 = $12.74
1½ x $12.74 = $19.11
$19.11 x 20 = $382.20
$382.20 + $509.62 = $891.82

It can be readily seen that Echostar’s method results in significantly less overtime pay. For a week of eighty hours of work, the results are even more dramatic: $637.22 for that week under Echostar’s method versus $1274.02 under the DOL method.

B. GENERAL RULES OF STATUTORY CONSTRUCTION

(6) The primary goal in interpreting a statute is to give effect to the legislature’s intent. State v. Davis, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. “Statutes are to be read in a way that facilitates their...

C. MEANING OF “REGULAR HOURLY RATE OF PAY”

[7] Our cases recognize that the Act is a statute with a remedial purpose and that it must be construed liberally to accomplish that purpose. See N.M. Dep’t of Labor v. A.C. Elec., Inc., 1998-NMCA-141, ¶ 13, 125 N.M. 779, 965 P.2d 363. The Act itself declares that its policy is “to establish minimum wage and overtime compensation standards for all workers at levels consistent with their health, efficiency and general well-being” and to protect “workers against the unfair competition of wage and hours standards which do not provide adequate standards of living.” Section 50-4-19. Construing a similar statute, one of our sister states has noted that these acts’ “purposes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost.” Janes v. Otis Eng’g Corp., 757 P.2d 50, 53 (Alaska 1988) (internal quotation marks and citation omitted). Another jurisdiction with a similar statute has noted that “[p]remium pay for overtime is the primary device for enforcing limitations on the maximum hours of work.” Skyline Homes, Inc. v. Dep’t of Indus. Relations, 211 Cal. Rptr. 792, 798 (Ct. App. 1985), overruled on other grounds by Tidewater Marine W., Inc. v. Bradshaw, 59 Cal. Rptr. 2d 186, 196 (1996). In light of these purposes, it makes little sense to construe the statute to lessen the financial impact on employers the more hours that employees are required to work.

[8] We also find support for our conclusion in a 1999 amendment to Section 50-4-22(C). Prior to the amendment, Section 50-4-22(C) provided: “[n]o employee covered by the provisions of Subsection A of this section shall be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours.” In 1999, the legislature added the following language:

For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage.


[9] This additional provision specifically allows what Echostar contends should be the general rule for all employers. See 29 C.F.R. § 778.114(a), (c) (2005). Yet it expressly applies only to certain employers. Had calculating overtime based on a fixed salary for fluctuating hours been permissible under the original version of Section 50-4-22(C), there would have been no reason for the legislative amendment in 1999. Similarly, the legislative amendment would be superfluous if Echostar is correct that “regular hourly rate of pay” contemplated fixed salaries for fluctuating hours generally. As stated above, we will not construe portions of a statute to be superfluous.

Rivera, 2004-NMSC-001, ¶ 18.

D. ECHOSTAR’S ARGUMENTS

[10] Echostar’s basic argument is that its agreement with Wendt is not clearly prohibited by the applicable statutes inasmuch as Section 50-4-22(C) does not define “regular rate of pay.” Further, Echostar argues that because Section 50-4-26(A) provides criminal penalties for violations of the Act, the definition of “regular hourly rate” should encompass its agreement with Wendt unless such is clearly and unambiguously prohibited. Echostar also points out that the DOL has not enacted a specific regulation containing its definition, despite statutory authority to do so. See § 50-4-27. In light of New Mexico’s strong public policy favoring freedom of contract, Echostar contends that the DOL’s interpretation must be struck down because its contract with Wendt does not “clearly contravene some law or rule of public morals.” See United Wholesale Liquor Co. v. Brown-Forman Distillers Corp., 108 N.M. 467, 471, 775 P.2d 233, 237 (1989). Due to the notice and hearing requirements for enacting regulations, see § 50-4-27, as well as the provision of the State Rules Act requiring filing and publication, NMSA 1978, § 14-4-5 (1995), Echostar contends that any interpretation of “regular rate of pay” that prohibits its agreement with Wendt is unenforceable.

[11] As additional support for these arguments, Echostar relies on two United States Supreme Court cases decided shortly after the enactment of the federal Fair Labor Standards Act: Overnight Motor Transp. Co. v. Missel, 316 U.S. 572 (1942), succeeded by statute on other grounds as stated in Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985), and Walling v. A.H. Belo Corp., 316 U.S. 624 (1942), succeeded by statute on other grounds as stated in Condo v. Sysco Corp., I F.3d 599 (1993). We acknowledge that these cases support Echostar’s argument that a fixed rate of pay for fluctuating hours is not prohibited by the words “regular rate.” See Overnight Motor Transp. Co., 316 U.S. at 580 (indicating that employees can have different regular rates every week and that the rate is regular because it provides the same rate of pay for every hour in one week). Further, the Walling Court pointed out that it should not provide a definition of “regular rate” when Congress failed to do so, and it also pointed to the benefits for the employee of having the security of a fixed weekly income.

Walling, 316 U.S. at 634-35.

[12] We do not believe that these cases and arguments weigh in favor of permitting an employee to contract for diminishing overtime wages because, as we have stated, (1) the statute provides for time and a half; (2) the intent of the statute is to adequately compensate for overtime, to discourage overtime, and to encourage the employment of more workers; (3) a specific provision of the statute provides for basing overtime on fluctuating rates of pay for one limited category of employees; and (4) the Supreme Court authorities relied upon addressed a differently worded statute. Accordingly, we hold that the contract between Wendt and Echostar violates the public policy set forth in the Minimum Wage Act. See DiGesa v. Weingardt, 91 N.M. 441, 443, 575 P.2d 950, 952 (1978) (holding that contracts in violation of public policy are unenforceable). Thus, too, cases such as Inmiss v. Tandy Corp., 7 P.3d 807, 816 (Wash. 2000) (en banc) (permitting a fluctuating workweek under a statute which is similar to the federal statute, but different from New Mexico’s), are not persuasive either.

[13] Moreover, we are not moved by Echostar’s arguments about the State Rules Act or notice to employers under the circumstances of this case. We are aware of cases holding that administrative procedures, such as notice, hearing, and
publication, are required when an agency promulgates an interpretation of a law, regulation, or order that is intended to apply generally to all cases of a particular type. See, e.g., Tidewater Marine W., Inc., 59 Cal. Rptr. 2d at 194. However, that holding does not apply to an interpretation that arises in the context of a case-specific adjudication, even if that interpretation acts as precedent in future cases. See id. The DOL contends that the interpretation here arose in the context of this specific case. Echostar, on the other hand, points to a 1971 letter from the Attorney General to the Labor Commissioner, which seems to interpret our law to disallow “the fluctuating workweek computation of overtime pay,” and a 1987 letter from the Labor Commissioner to an attorney whose client wished to avail itself of the fluctuating workweek computation of overtime, in which the Labor Commissioner appeared to respond that such would not be permissible under New Mexico law. Thus, Echostar contends that the interpretation here was generally applicable.

{14} We need not decide whether the DOL’s interpretation amounts to a general rule that is subject to being declared void for failure of process in this case. That is because we agree with the DOL’s interpretation of the law. “If, when we agreed with an agency’s application of a controlling law, we nevertheless rejected that application simply because the agency failed to comply with [required administrative procedures], then we would undermine the legal force of the controlling law.” Id. at 198. This we will not do.

{15} Finally, we see nothing improper in the DOL’s calculation of Wendt’s wages based on a forty-hour week. Echostar contends that it is entirely arbitrary to select forty as the number of “regular” hours per week when Wendt admittedly works irregular hours each week. Echostar urges that, in some situations, the use of a forty-hour week would result in wages less than the minimum wage. For example, if a worker ordinarily worked between ten and twenty hours per week for a weekly salary of $120 and then worked fifty hours in one week, the use of a forty-hour week would result in a regular wage of $3.00 per hour. Our response is that if such ever happened, we are confident that the DOL would not use the forty-hour baseline. The facts of this case, however, indicate that Wendt worked in the vicinity of forty hours per week, and her pay stubs found in the record show a “rate” of $12.7404, which is her weekly pay divided by forty.

{16} Along these lines, we are more concerned that Echostar’s formula, permitting calculation of overtime based on a fluctuating workweek, would in extreme cases cause hourly wages to fall below the minimum wage threshold. Of course, Echostar points out that, with wages as high as Wendt’s, there is little realistic possibility that the minimum wage threshold would be breached. But just as Echostar points out that there is no express statutory authorization for selecting forty as the number of hours to be used in determining the regular hourly wage, we point out that Echostar provides no coherent rationale for determining when wages are too low to allow the fluctuating workweek for which it advocates. Its view (that calculating overtime based on a fluctuating workweek so long as the hourly rate does fall below the statutory minimum wage floor in a particular case) would, in our opinion, severely undercut the time-and-a-half provision also found in the statute. It is our duty to give effect to all parts of a statute. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599.

III. CONCLUSION

{17} We affirm the judgment of both the metropolitan court and the district court that calculating overtime based on a fluctuating workweek, pursuant to which an employee earns diminishing hourly overtime wages as the number of overtime hours increases, is inconsistent with Section 50-4-22(C).

{18} IT IS SO ORDERED.

LYNN PICKARD, Judge

WE CONCUR:
RODERICK T. KENNEDY, Judge
MICHAEL E. VIGIL, Judge
ETHICS ADVISORY OPINION
FROM THE STATE BAR OF NEW MEXICO’S ETHICS ADVISORY COMMITTEE

ADVISORY OPINION 2006-01

TOPIC: Naming Firms “& Associates”

DISCLAIMER:
The Ethics Advisory Committee is constituted for the purpose of advising inquiring lawyers on the interpretation of the Rules of Professional Conduct, as applied to the inquiring lawyer’s duties. The Committee’s opinions are not binding, and are intended only to assist lawyers in the course of their conduct.

RULES IMPlicated: Rule 16-705, Firm names and letterheads, Rule 16-701, Communications concerning a lawyer’s services.

QUESTION PRESENTED:
Can a lawyer call the lawyer’s firm “& Associates” where all lawyers are named in the heading and “& Associates” is meant to refer to support staff and occasional non-employee associated attorneys?

SHORT ANSWER:
Calling a business “& Associates” when all lawyers in the firm are named in the firm name is misleading and violates NMRPC 16-705.

FACTUAL BACKGROUND:
The lawyer is a lawyer with staff including legal assistants and contract paralegals. The lawyer on some cases associates with other lawyers sharing the fee according to the amount of work done. The lawyer wishes to call his firm “Lawyer & Associates.” Alternatively, lawyer has a partner named “Attorney” and wishes to name the firm “Lawyer, Attorney & Associates.”

ANALYSIS:
New Mexico Rule of Professional Conduct 16-705 A states that “A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 16-701. Rule 16-701 prohibits statements that may directly or indirectly be misleading concerning the lawyer’s services.” It is well accepted in the legal community that an “associate” is an attorney that works for a firm. “Associates,” at least in the legal context, do not include support staff such as legal assistants or investigators. Numerous other jurisdictions have addressed this issue and, without exception, stated that “associates” means lawyers and does not include staff. See for example, Utah, Colorado, Florida, South Carolina, and Arizona. This list is not exhaustive.

The use of the name “Lawyer & Associates” by a sole practitioner, or “Lawyer, Attorney & Associates” by a two-lawyer firm, is misleading to the public in general because it implies that more lawyers are in the firm than there actually are. This usage violates Rule 16-701.

CONCLUSION:
A lawyer may not call the firm “& Associates” when all lawyers are already named in the firm name without violating Rule 16-701. “Associates” are lawyers who are employees of the firm, not legal assistants and not other lawyers who merely associate with the firm for specific cases. Appending “& Associates” implies that there are yet more lawyers in the firm than those named.

1 http://www.cobar.org/static/comms/ethics/fo/fo_8.htm
2 The Florida Bar v. Fetterman, 439 So.2d 835 (Fla., 1983)
3 In the Matter of Mitchell, 614 S.E.2d (SC, 2005)
We are pleased to announce that

**Donald J. Letherer**

has been appointed Vice President of

**Daniels-Head Insurance Agency (NM), Inc.**

You may contact Don at

505-922-8881 or
dj32@dhianm.com

---

**REDW LLC**

*The Rogoff Firm*

Certified Public Accountants
Business Consultants
505.998.3200 www.REDW.com

At **REDW The Rogoff Firm**, we understand your need to be fully prepared and to make a persuasive argument — one that is objective, reasonable and supportable. Our experienced and credentialed professionals offer consultation and expert witness services including:

- **Business Valuation Services**
  - Gift and Estate Taxes, Buying or Selling a Business, Business Succession, Employee Stock Ownership Plans, Eminent Domain/Condemnation Matters, Intellectual Property and Intangible Assets

- **Litigation Services**
  - Commercial Damages, Business Interruption, Lost Profits, Patent/Trademark/Copyright Infringement, Forensic Accounting
Yenson, Lynn, Allen & Wosick, P.C.

is pleased to announce that

Jennifer Obrey-Espinoza
and
Felicia C. Castillo

have joined YLAW as Associates

4908 Alameda Blvd. NE, Albuquerque, NM  87113  (505) 266-3995

WILLIAM G. W. SHOOBRIDGE, Esq.

MEDIATION/ARBITRATION
SPECIAL MASTER
(Statewide)

SHOOBRIDGE LAW FIRM, P.C.
(505) 397-2496
701 North Grimes Street • Hobbs, New Mexico 88240

Popejoy & MacKenzie

ROBERT L. THOMPSON
(of counsel)
Mediator
Arbitrator
Special Master

www.popejoylaw.com
We Appreciate Your Continued Referrals In Domestic Relations and Criminal Defense

Now Offering:
Spanish Speaking Attorneys and Staff

The following Web services:
- Spanish Language Sites
- Divorce and Criminal FAQs
- Free online case evaluations
- Online child support calculator
- Free form downloads

The following attorney services:
- Co-counsel and Consulting
- Partial or full referrals

We will always respect your attorney-client relationship.

247-4LAW (247-4529)
www.nmlawyers.com

David G. Crum & Associates, P.C.
David Stotts
Attorney at Law
• Business Litigation
• Real Estate Litigation
505-857-0001

LINDA S. BLOOM P.A.
Linda S. Bloom
BANKRUPTCY
Creditors
Business Debtors
505.764.9600
lbloom@spinn.net
PO Box 218
Albuquerque, NM 87103

Norm Gagne
505-884-0777

Criminal Appeals, Motions, Memos
A Writer for the Defense
Todd Hotchkiss
Frechette & Associates, P.C.
Toll Free 1-877-247-8558

JANE YOHALEM
Appeals Specialist
(505) 988-2826

APPELLATE PRACTICE
WILLIAM LAZAR
505-988-7100
lazar@nets.com

Visit the State Bar of New Mexico's website
www.nmbar.org

David Stotts
Attorney at Law
• Business Litigation
• Real Estate Litigation
505-857-0001

LINDA S. BLOOM P.A.
Linda S. Bloom
BANKRUPTCY
Creditors
Business Debtors
505.764.9600
lbloom@spinn.net
PO Box 218
Albuquerque, NM 87103

Norm Gagne
505-884-0777

Criminal Appeals, Motions, Memos
A Writer for the Defense
Todd Hotchkiss
Frechette & Associates, P.C.
Toll Free 1-877-247-8558

JANE YOHALEM
Appeals Specialist
(505) 988-2826

APPELLATE PRACTICE
WILLIAM LAZAR
505-988-7100
lazar@nets.com

Visit the State Bar of New Mexico's website
www.nmbar.org

Classified
Positions

Children's Court Attorney - Las Cruces
The Children, Youth and Families Department is seeking to fill a vacant Children’s Court Attorney position in Las Cruces, NM. The attorney will represent the department in abuse/neglect and termination proceedings and related matters in the Las Cruces area and judicial districts. The ideal candidate will have experience in the practice of law totaling at least four years. New Mexico licensure required. Benefits include medical, dental, vision, paid vacation, and a retirement package. The salary range is $38-$67K annually, depending on experience and qualifications. Contact Ed Schissel at (505) 524-6433, ext 160, or e-mail edward.schissel@state.nm.us. The state of New Mexico is an EOE. Applicants need to contact their local Department of Labor office for a DOL job order number. All applications must be forwarded to Ed Schissel, Managing Attorney, P.O. Box 2135, Las Cruces, NM 88004.

Real Estate/Land Use Law Attorney
The Law Firm of Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for an attorney with 2-4 years experience in the real estate and/or land use area. A New Mexico practitioner with a strong academic background preferred. Firm offers excellent benefits package. Salary commensurate with experience. Please send resume, references and a writing sample to Deborah E. Mann, P.O. Box 1888, Albuquerque, NM 87103-1888 or via e-mail to hr@rodey.com. All inquiries kept confidential.

Contract Attorney
Busl local firm seeks contract attorney for immediate assistance with research, pleadings and litigation support. Bankruptcy and Litigation experience needed. Candidate can work off site. Although we are a small, casual office, we work hard and expect the same from our assistants. Please mail or fax your resume, with work history, to: The Law Office of George “Dave” Giddens, P.C., 10400 Academy N.E., Ste 350, Albuquerque, NM 87111. Fax: (505) 271-4848.

Request For Proposals #740
Sealed proposals will be received at the University of New Mexico, Purchasing Dept., UNM Business Center, Ste. 2600, MSC01 1240, Albuquerque, New Mexico 87131, for the following article: LEGAL SERVICES; The University of New Mexico, Albuquerque, New Mexico. Proposal Due Date is: Friday, June 2, 2006 at 5:00 PM (MT). Additional information may be obtained at the Purchasing Department. For further information, please contact the Sr. Contracts Specialist: Martha H. Talbott at (505) 277-8611. The Request For Proposals can be found on the UNM Purchasing Department Page at the web-site: www.unm.edu/~purch and clicking on Supplier Information, Proposals.

Associate Attorney
Small, collegial Santa Fe firm seeks motivated attorney to become part of busy real estate, business and litigation practice. Looking for attorney with 2-5 years experience, and strong research, writing and people skills. Salary commensurate with experience. Please send resume, references and short writing sample to: Cassutt, Hays & Friedman, P.A., 530-B Harkle Road, Santa Fe, New Mexico 87505. All inquiries will be kept confidential.
Assistant Trial Attorney - Sandoval County

The Thirteenth Judicial District Attorney’s Office is accepting applications for an experienced attorney to fill the position of Assistant Trial Attorney in the Sandoval County Office, Bernalillo, NM. This position requires a felony caseload and at times some misdemeanor prosecutions. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please send resumes to Filemon Gonzalez, District Office Manager, 333 Rio Rancho Blvd. Suite 303, Rio Rancho, New Mexico 87124. Deadline for submission of resumes: Immediate opening until filled.

Assistant Trial Attorney - Valencia County

The Thirteenth Judicial District Attorney’s Office is accepting applications for an experienced attorney to fill the position of Assistant Trial Attorney in the Valencia County Office, Los Lunas, NM. This position requires a felony caseload and at times some misdemeanor prosecutions. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please send resumes to Filemon Gonzalez, District Office Manager , 333 Rio Rancho Blvd. Suite 303, Rio Rancho, New Mexico 87124. Deadline for submission of resumes: Immediate opening until filled.

Executive Director

The Albuquerque Bar Association, New Mexico’s largest voluntary bar association, is seeking a qualified person for its position of Executive Director. Applicants should have the ability to manage the 700+ member organization, office staff and the Association’s Lawyer Referral Service. Qualifications include proficiency in the areas of financial/accounting, budgeting, fundraising and personnel management. Position requires a highly organized person with excellent communication skills and the ability to interact with Board of Directors, Association members, legal service organizations, and other community organizations and vendors. Web design experience and Spanish-speaker, a plus. Send cover letter and resume with references to ED Position, Albuquerque Bar Association, 400 Gold SW, Suite 620, Albuquerque, NM 87102.

Associate or Contract Attorney

Small downtown Santa Fe AV rated litigation firm seeks an associate or contact attorney with three or more years of experience. Please send resume to Post Office Box 1234, Santa Fe, NM 87504-1234.

New Mexico Public Regulation Commission - General Counsel

Insurance Division (GOVEX Position)

DESCRIPTION OF DUTIES: This classification is in the Governor Exempt Service. It is an “at will” position serving the New Mexico Public Regulation Commission (NMPRC) providing legal counsel to the Insurance Division. Nature of Work: Performs a variety of work functions of a legal nature providing legal advice to the Superintendent of Insurance and the Insurance Division; and supervision of one or more attorneys representing the Insurance Division or support staff personnel. Distinguishing Characteristics: This position reports directly to the Superintendent of Insurance, and is administratively overseen by the Chief of Staff. If functions with limited oversight and is expected to advise the NMPRC Insurance Division in all legal matters; This position is responsible for coordination of all NMPRC Insurance Division legal activities and development of the division’s standards in dealing with Federal and State statutes and regulations to ensure division compliance statewide in a fair and equitable fashion; Applying laws and regulations in evaluation of technical facts; advising the Insurance Division on sensitive issues relating to division conduct; Make legal recommendations, on regulatory cases coming before the superintendent; Oversee the advisement and counsel provided the Commission by Legal staff on the most complex legal, technical, economic and policy issues; in all issues concerning the NMPRC Insurance Division, exercising the highest level of independent professional legal judgment and rendering candid advice; This position will oversee the external legal representation, including federal and state trial and appellate courts, federal and state agency proceedings, before the legislature and in other forms for the Insurance Division; and Advise and assist the Superintendent of Insurance in rulemakings. Key Knowledge and Skills Required for Fully Competent Performance: Extensive knowledge of State and Federal Legal rules, laws, and NMPRC Insurance Division background information; Extensive knowledge of the New Mexico statutes relating to Insurance Regulation oversight; Extensive knowledge of the New Mexico legislative process; Knowledge of all aspects of the division’s programs, goals, and long-term plans; Knowledge of ex-parte rules and regulations; Skill in anticipating developing issues facing agency and assisting to develop long-term strategies and programs; Skill in effectively representing division strategies and programs in a variety of the most complex difficult, or sensitive setting, including the legislature, other agencies, and the public; Skill in understanding the broad range of the Insurance Division’s legal positions and policies and integrating those with the positions of other state agencies and private organizations to accomplish the state’s overall policies and goals; Skill in working independently, consistently exercising the highest degree of professional judgment and developing such judgment in others. Education and Experience Standards: Juris Doctorate from an accredited university; Admission to the New Mexico Bar; Two (2) years experience in working or advising a state agency, or in the practice of administrative law, or the equivalent. Statutory Requirements: N/A; Conditions of employment: N/A; FLSA status: Exempt; Bargaining Unit: Non-Bargaining Unit Eligible; Date: April 26, 2006. NOTE: Submit Letter of Interest, Resume and Writing Sample to: Daniel Mayfield, Chief of Staff, New Mexico Public Regulation Commission, 1120 Paseo de Peralta – Room 418, P. O. Box 1269 Santa Fe, NM 87504-1269.

Lawyer B Position

The New Mexico Public Education Department is seeking an attorney in the Office of General Counsel. This attorney will carry out all aspects of complaint management and resolution functions pursuant to the Individuals with Disabilities Education Act’s state-level complaint procedures. Working within state and federal special education laws and timelines, the attorney will perform intake, investigate complaints, prepare complaint resolution reports, recommend corrective actions and monitor corrective actions. This attorney will also carry out some general legal duties. Must hold a valid NM Bar license. Primarily looking for someone experienced in special education laws and regulations, or secondarily someone with public school law or administrative law experience. Salary: $34,056 – 60,543 per year w/benefits, depending on experience. Term. Send a copy of a letter of interest, your résumé, copy of Bar Card, an under 15-pg writing sample by June 5, 2006 to Public Education Department, Human Resources- Rm 131, 300 Don Gaspar, Santa Fe, NM 87501-2786. The State of NM is an EOE.

City of Española

Job Announcement

City Attorney – Performs all duties assigned by city ordinance, city rules and regulations and state and federal laws and statutes. Provides legal advice to the Mayor, City Council, City Manager, department heads and employees of the city on all aspects of municipal government. Requires skill in creative and analytical thinking, legal research and writing, case management, and independent judgment and decision-making. Applicants must possess a JD degree from an accredited law school, be an active member of the New Mexico State Bar in good standing, and have at least four (4) years experience in the area of government law or in a general law practice as a licensed attorney. The successful candidate must have strong knowledge in interviewing, case preparation and development, documents generation and litigation. Starting salary $60,000 plus full benefits package, and is negotiable. Extended deadline for applications May 31, 2006. Submit resume to 405 Paseo de De Oñate, Española, NM 87532 or email to vmartinez@espanolanm.gov
Commercial & Real Estate Attorney
Kelheimer & McLeod, P.A. is seeking an attorney who has experience, 8 years or more preferred, representing clients in complex business transactions, including financings. Applicants with background in corporate, real estate and securities law preferred. Please send letter of interest and resume to Hiring Attorney, Kelheimer & McLeod, P.A., P.O. Box AA, Albuquerque, NM 87103-1626 or fax to 505-346-1370 or email to RJF@kelheimer-law.com.

Opportunity Knocks
Excellent opportunity to grow into an equity position with a highly respected, well established small boutique law firm. We are looking for a lawyer with three to ten years litigation experience who is well respected by his or her peers and has built a good, strong practice. We’d like to find a personable individual who thrives in a small team environment and enjoys participating in client development. If you meet these criteria and you would relish an opportunity to grow into a leadership position, let’s talk. Please send us your resume to P.O. Box 92860, Abq., NM 87199, Attn: Box E. All responses will be held in strictest confidence.

Attorney
Wolf & Fox, P.C., a rapidly growing law firm with a general practice, is seeking an attorney with a minimum of two years experience for full-time employment. Experience in domestic relations and business transactions helpful. Must be a highly motivated team player. Excellent benefits. Salary DOE. Great opportunity for the right person. Please send resume to 1200 Pennsylvania NE, Albuquerque, New Mexico 87110.

The Eleventh Judicial District Attorney’s Office Division II
The District Attorney’s Office (McKinley County), is currently seeking immediate resumes immediate resumes for Assistant Trial Attorney. Duties consist of extensive criminal misdemeanor and felony prosecution in Magistrate, Children’s and District Courts. Position requires considerable knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure. Salary negotiable range from $38,000.00 to $45,000.00. Submit letter of interest and resume to R. Alfred Walker, Deputy District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail to Awalker@da.state.nm.us by 5:00 p.m. June 2, 2006.

Attorney-Litigation
Kelheimer & Keller, a long standing PI law firm, is opening branch office in Albuquerque. Looking for litigation attorney with a minimum of one year trial experience to handle cases from inception through conclusion. Successful candidate must possess strong interpersonal and communication skills and work effectively with wide range of diverse constituencies. Bi-lingual preferred. Salary commensurate with experience. Send email with resume to Elaine@kelheimer.com.

Staff Attorney
NM Center on Law and Poverty Non-profit law firm seeks highly competent attorney with exceptional drive, research, writing and verbal skills to engage in litigation and advocacy on poverty law issues. Preferred candidates will have experience in litigation, legislative, and/or administrative advocacy and a demonstrated commitment to addressing poverty or equal access to justice issues. See www.nmpovertylaw.org. Apply in confidence with letter of interest, resume, and writing sample to kim@nmpovertylaw.org. We are an equal opportunity employer.

Secretary/Legal Assistant
Full-time position available for secretary/legal assistant for small but extremely busy office. Candidate should have a minimum of 4 years experience, preferably in municipal and corporate finance and other transactional work. Strong word processing skills a must, as well as organizational and follow-up skills, proofreading, and communication skills. Competitive salary and benefit package. Please send resume to rgomez@bhf-law.com or fax to 505.244.9266.

Legal Support
High Desert Legal Staffing seeks legal secretaries and paralegals with strong computer skills for both temporary and permanent positions with leading firms in Albuquerque and Santa Fe. E-mail: LBown@highdesertstaffing.com; fax (505) 881-9089; or call (505) 881-3449 for immediate interview.

Paralegal Assistant
Full time PARALEGAL ASSISTANT needed at Albuq branch of the Rothstein Donatelli law firm. Must have some law firm experience at any level, or paralegal training. Will assist with document management and other matters in complex litigation. Submit resume to: info@rothsteinlaw.com

Secretary/Legal Assistant
Part-time, flexible hours. Applicants should be detail oriented and organized. Salary DOE. E-mail resume in word format to RJF@Torraclaw.com.

Full Time Legal Assistant
Hatch, Allen & Shepherd, P.A. a busy general civil litigation firm is seeking an experienced full time legal assistant to join our team. Applicant must have experience in Microsoft Word, heavy tape transcription and the ability to draft legal documents. A minimum of 5 years in medical malpractice, and/or insurance defense experience. We offer a great work environment and competitive salary. Generous insurance and 401K benefits. Please fax resume to Gayle Nissen at (505) 341-3434 or mail to PO Box 94750, Albuquerque, NM 87199-4750.

Full Time Legal Secretary
Established medium-sized law firm seeks full time legal secretary. Applicants should have 3 years experience in civil litigation and Workers Compensation. Must be a team player who can perform multi-tasks in a high volume, fast paced practice. Please submit cover letter, resume and salary requirements to Office Manager, YLAW, 4908 Alamed Blvd. NE, Albuquerque, NM 87113 or email to fruiz@ylawfirm.com. No phone calls please.

Legal Assistant/Office Administrator
Sole practitioner seeks full time legal secretary/office administrator with a minimum of 3 years legal experience. Must have knowledge of Corel WordPerfect, Microsoft Word, Timeslips, and QuickBooks. Please send resume to Cynthia Gelfand, Pelton & Associates, P.A., 4300 Carlisle Blvd. NE, Suite 4, Albuquerque, NM 87107, or fax to (505) 884-6860, or e-mail to ekolson@osogrande.com. No phone calls please.

Full-Time Legal Assistant
Sole practitioner seeks full time legal assistant. Prior experience preferred. Applicants need to be self-motivated, detail-oriented with strong organizational skills. Proficient in Word. Knowledge of corporate and business law, drafting pleadings and court procedures. Competitive salary and good benefits. Please send resume, references and salary requirements to 817 Gold Avenue, S.W., Albuquerque, New Mexico 87102 or by email to jjohanson@ljdpc.com.
Legal Secretary/Office Manager
Keller & Keller, a long standing PI law firm, is opening branch office in Albuquerque. Looking for a self starter w/ minimum 3 years law firm experience, basic bookkeeping knowledge, ability to multitask and manage the office. Must be computer proficient and able to work effectively with a wide range of diverse clients. Bi-lingual required. Salary commensurate with experience. Send email with resume to Elaine@2keller.com.

**CONSULTING**

Thousands of Medical Malpractice Expert Witnesses

**OFFICE SPACE**

For Sale:
4800 +/- sq. ft. building in desirable Uptown District. 2 stories; 8 large offices; 6 secretarial bays; break room; 2 conference rooms. Building can be subdivided for tenant lease options. Ample public and private parking. All new amenities including generous use of exotic woods. Full conversion of bldg including HVAC (Ref. Air); electrical & plumbing. Ideal for Law Office; Mortgage or Real Estate Company or any professional business. Offered $500 sq. ft. Showing by appointment only. contact Tony @ (505) 884-9300.

Downtown
Beautiful adobe building near MLK on north I-25 on-ramp. Convenient to courthouses with free adequate parking for staff and clients. Conference room, reception room, employee lounge, utilities and janitor service included. Broad band access, copy machine available. From $300 per month. Call Orville, (505) 867-6566; or Jon, (505) 507-5145. Oak Street Professional Bldg., 500 Oak NE.

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

Exclusive Downtown Executive Office
Kiva fireplace-separate reception area-on site parking-900 sq ft-negotiable lease terms- $500mo. 243-6794 or 259-9015.

Attractive Office Space
Uptown Area - Wyoming near Menaul. 3 Room Suite. Good parking, $550/mo. 296-4821 / 294-5533.

Executive Office Suites
Conference room, reception area, break room, built-in staff stations. Corner of Louisiana and Candelaria. 889-3899.

Office Sharing
Carlisle/Montgomery. Office available, along with secretarial space, opens to private patio, new wood floors, phone system, conference room, fax, copier, ample parking, easy freeway access; $500 per month. 4300 Carlisle NE, Suite 4. Call Greg Pelton @ 881-7800 to see this office.

Uptown
Nice. 1000 square feet, 3 offices, reception, conference room. Centrally located for clients, 10 minutes to courts for you. 12 month min. lease, $1470.00 month includes daily custodial. Great for 2-3 attorneys. 830-2020.

Albuquerque Offices For Rent
Albuquerque offices for rent 820 2nd NW, one block from courthouses, copier, fax, high speed internet, off street parking, library, statutes up to date, telephone system, conference room, receptionist, rates depending on space rented $500 to $1,000 monthly. Call Ramona @ 243-7170 for appointment.

Uptown Square Office Building
Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, two-story atrium, extensive landscaping, ample parking, full-service lease. Two different suite sizes, 850SF and 3747SF (divisible into approximately 2272SF and 1475SF spaces). 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.

**MISCELLANEOUS**

NM Digest
Current. $600. Please contact Bob Friesner in Albuquerque 346-9147, or email RJF@keleher-law.com.

For Sale

---

**Advertising sales are available for**

- **BAR BULLETIN**
- **WORLD WIDE WEB**

**Contact:**
Marcia C. Ulibarri

**to reserve your space.**
- Call (505) 797-6058
- Fax (505) 797-6075
- e-mail your ad to ads@nmbar.org

---

**NOTE**

**SUBMISSION DEADLINES**

All advertising must be submitted by e-mail or fax by 5 p.m. Wednesday, two weeks prior to publication (*Bulletin* publishes every Monday). Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by the editor and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The editor reserves the right to review and edit classified ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, two weeks prior to publication.** For more advertising information, contact: Marcia C. Ulibarri at 505.797.6058 or e-mail ad to ads@nmbar.org or fax 505.797.6075.
Genetic Testing and Employment Discrimination
State Bar Center, Albuquerque
Friday, May 19, 2006
3.2 General CLE Credits

Co-Sponsor: Employment and Labor Law Section

Employment decisions based upon predictive genetic information – reality or myth? In 2005, New Mexico became one of only a handful of states to date to approve a state-specific genetic protection policy. What does that policy actually cover, what does it mean for New Mexico employers, and how does it fit into the national scope of current legislative proceedings aimed at protecting against discrimination in health insurance and employment? In this informative seminar, we will take an in-depth look at this topic to include the potential benefits and challenges ahead.

Noon  Registration and Lunch (provided at the State Bar Center)
1:00 p.m.  Crossing Genetic Code with Legal Code: The Challenge of Integrating Genetic Science into Health Policy
Jennifer Leib, Associate Director, Government Relations & Public Policy, Affymetrix, Inc.
Former Legislative Fellow, Senator Edward M. Kennedy, Ranking Member, Committee on Health, Education, Labor, and Pensions (HELP)

1:45 p.m.  Employment and Genetic Discrimination
Frank Swain, Esq., Coalition for Genetic Fairness and Partner, Baker & Daniels, Washington, DC

2:45 p.m.  Predictive Information and the Genetic Age: A 2006 Update
Professor Jeffrey Botkin, MD, MPH, Associate Vice President for Research, University of Utah

3:30 p.m.  New Mexico’s Genetic Privacy Act of 2005
Ami Jaeger, Esq., BioLaw Group, Santa Fe

Q & A Panel
Jeffrey Botkin, Ami Jaeger, Jennifer Leib, and Frank Swain

3:45 p.m.  Break

3:00 p.m.  Adjourn

REGISTRATION – Genetic Testing and Employment Discrimination
Friday, May 19, 2006 • State Bar Center, Albuquerque
3.2 General Credits

☐ Standard Fee - $105  |  ☐ Employment and Labor Law Section Member - $95

Name: ________________________________________________________ NM Bar#: ______________________
Firm: _________________________________________________________________________________________
Address: ______________________________________________________________________________________
City/State/Zip: __________________________________________________________________________________
Phone: ______________________________________________ Fax : ______________________________________
E-mail address: ________________________________________________________________________________

Payment Options:  ☐ Enclosed is my check in the amount of $ __________________ (Make Checks Payable to: CLE)
☐ VISA  ☐ Master Card  ☐ American Express  ☐ Discover  ☐ Purchase Order (Must be attached to be registered)
Credit Card Acct. No. __________________________________________________ Exp. Date _______________

Signature _____________________________________________________________________________________

Mail this form to: CLE, PO Box 92860 Albuquerque, NM 87199 or Fax to (505) 797-6071.
Register Online at www.nmbar.org
UNM SCHOOL OF LAW ALUMNI ASSOCIATION  

Presents  

THE 5TH ANNUAL  
SUMMER GOLF CLASSIC  

Miller Stratvert PA - Tournament Sponsor  
Friday, July 7, 2006  
University South Course  

11:30 - Lunch  
12:30 p.m. - Shotgun start (18 holes)  Best Ball Scramble  

Cost: $110 per player/$425 per foursome  

Player(s) Name ________________________________________________________________  
Player(s) Name ________________________________________________________________  
Player(s) Name ________________________________________________________________  
Player(s) Name ________________________________________________________________  
Company Name  _____________________________________________________________________  
Address  ________________________________________________________________________  
City __________________________ State ____________ Zip __________  
Phone Number __________________________ Fax Number ____________________________  
______ Check enclosed in the amount of $_______ for ______ players  
______ Please charge the following credit card:  Visa _____ Master Card _____  
Card Number ____________________________ Exp. Date ________________  
______ Please send an invoice  

To register over the phone or to answer any questions,  
please contact Carmen Rawls at (505) 277-8184  

Fill-out and return this form to: UNM School of Law, MSC11-6070,  
1 University of New Mexico,  
Albuquerque, NM 87131