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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
2006 Advance Legislative Service of the State of New Mexico is now available.

Official Copy of all the enacted laws of the 47th Legislature of the State of New Mexico and signed by the governor.

Also contains Table of Changes to the NMSA 1978, Tables of the Disposition of Laws, Concordance (Chapter Number to Bill Number; Senate Bill Number to Chapter Number; House Bill Number to Chapter Number) and an Index.

Also contains handwritten markings by the Governor including line item veto strike-throughs and initialing.

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State agency and local public body subscribers to the ALS will receive the 2006 Advance Legislative Service from the New Mexico Compilation Commission.
**Lurking Dangers and What Lawyers Should Know About the New Mexico Real Estate Contract**

State Bar Center, Albuquerque • Tuesday, June 20, 2006

1.0 General CLE Credit

Co-Sponsor: Solo and Small Firm Practitioners Section

Presenter: Ronald T. Taylor, Esq.

This seminar will cover a host of issues relating to real estate contracts in New Mexico, to include the basic elements, the required steps in the default provision, the effect of *Huckins vs. Ritter* and subsequent cases, when to use a real estate contract and when to use a promissory note and mortgage, mortgage foreclosure vs. real estate contract litigation, and more.

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>11:45 a.m.</td>
<td>Registration and Lunch (provided at the State Bar Center)</td>
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<tr>
<td>12:15 p.m.</td>
<td>CLE</td>
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<tr>
<td>1:15 p.m.</td>
<td>Adjourn</td>
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- Standard Fee $45

**Diversity-Why Bother? Can We Find Answers in Ethics and Professionalism?**

State Bar Center, Albuquerque • Friday, June 23, 2006

1.0 Ethics and 1.0 Professionalism CLE Credits

Co-Sponsor: NM Hispanic Bar Association

Consider the situation in which you are representing a client in a tribal court who has been charged with a criminal violation. He has asked you to raise defenses that are not included in the tribe’s criminal code. You are not a member of this tribe. As an outsider to this tribal community, are there ethical or professional issues in raising these defenses? Join Professors Christine Zuni-Cruz and Margaret Montoya of the UNM School of Law as they present short scenarios that raise ethical questions and professionalism dilemmas in which the issues are contextually complex because of race, gender, culture, sexuality and/or physical or mental dis/abilities.

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tr>
<td>9:30 a.m.</td>
<td>Registration</td>
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<tr>
<td>10:00 a.m.</td>
<td>Diversity - Why Bother? Answers in Ethics? (1.0 Ethics)</td>
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<tr>
<td>11:00 a.m.</td>
<td>Diversity - Why Bother? Answers in Professionalism? (1.0 Professionalism)</td>
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<tr>
<td>Noon</td>
<td>Adjourn and Lunch (provided at the State Bar Center)</td>
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- Standard Fee $70
- NM Hispanic Bar Member $60

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**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 # ____________________________

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City/State/Zip ____________________________

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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.

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**Professionalism Tip**
With respect to the courts and other tribunals:
I will voluntarily withdraw claims or defenses when they are superfluous or do not have merit.

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<th>State Bar Workshops</th>
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<tr>
<td><strong>June</strong></td>
<td><strong>June</strong></td>
</tr>
<tr>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>Taxation Section Board of Directors, noon, via teleconference</td>
<td>Family Law Workshop</td>
</tr>
<tr>
<td>14</td>
<td>6 p.m., Taos Convention Center, Taos</td>
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<tr>
<td>Children’s Law Section Board of Directors, noon, Juvenile Justice Center</td>
<td>21</td>
</tr>
<tr>
<td>14</td>
<td>Consumer Debt/Bankruptcy Workshop</td>
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<tr>
<td>Criminal Law Section Board of Directors, noon, State Bar Center</td>
<td>6 p.m., Clovis-Carver Library, Clovis</td>
</tr>
<tr>
<td>16</td>
<td>22</td>
</tr>
<tr>
<td>Taxation Section Annual Meeting, 12:45 p.m., State Bar Center</td>
<td>Consumer Debt/Bankruptcy Workshop</td>
</tr>
<tr>
<td>20</td>
<td>5:30 p.m., Branigan Library, Las Cruces</td>
</tr>
<tr>
<td>Solo and Small Firm Practitioners Section Board of Directors, 11:20 a.m., State Bar Center</td>
<td>28</td>
</tr>
<tr>
<td>Section Meeting, 11:45 a.m., State Bar Center</td>
<td>Consumer Debt/Bankruptcy Workshop</td>
</tr>
<tr>
<td>21</td>
<td>6 p.m., State Bar Center, Albuquerque</td>
</tr>
<tr>
<td>Bankruptcy Law Section Board of Directors, noon, U.S. Bankruptcy Court, 10th floor conference room</td>
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</tr>
<tr>
<td>22</td>
<td>Lawyer Referral for the Elderly Workshop</td>
</tr>
<tr>
<td>Real Property, Probate and Trust Section Board of Directors, 4 p.m., Law Offices of Charles Seibert</td>
<td>Topic: Consumer Rights</td>
</tr>
<tr>
<td>22</td>
<td>1:15 p.m., Meadowlark Senior Center, Rio Rancho</td>
</tr>
<tr>
<td>Technology Committee Workshop, 5 p.m., State Bar Center</td>
<td>29</td>
</tr>
<tr>
<td>29</td>
<td>Advanced Health Care Decision Making</td>
</tr>
<tr>
<td>Senior Lawyers Division Board of Directors, 4:30 p.m., State Bar Center</td>
<td>6 p.m., Alamogordo Public Library, Alamogordo</td>
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</tbody>
</table>

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

COURT NEWS

NM Supreme Court
Judicial Performance Evaluation Commission

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., June 23, at the State Bar Center. For more information on the commission or with regard to the next scheduled meeting, call (505) 827-4960.

Board of Legal Specialization
Comments Solicited

The following attorneys 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.

Family Law
Jan Gilman-Tepper
Sandra Morgan Little

NM Court of Appeals
Open Meeting of Committee on Administrative Appeals

An ad hoc committee of district and appellate judges and lawyers practicing in the area of administrative appeals will meet at 1:30 p.m., July 11, at the State Bar Center. The purpose of the meeting is to evaluate practice and procedures under Section 39-3-1.1 now that the statute is over five years old. Some of the problems that have been noted include: (1) the time for appeal needs clarification; (2) the definition and manner of preparation of the record needs clarification; (3) the rules governing statements of issues could be improved; (4) decisions by administrators, particularly city and county governments, are sometimes inadequate for review; (5) the standards of review do not seem to be complied with; (6) some cases should go directly to the Court of Appeals; and (7) administrative decision makers, district and appellate judges and practitioners could benefit from education on the issues related to Section 39-3-1.1. Those who have interest in this area of law or who have noted these or additional problems should attend this meeting. For more information, contact Judge Lynn Pickard at (505) 827-4903 or coalp@nmcourts.com.

First Judicial District Court
Court Closure

The 1st Judicial District Court will close at noon, June 16, for Employee Appreciation/Recognition Day. The court clerk’s office will close at 11:30 a.m. The court will reopen June 19 with regularly scheduled hours.

Destruction of Tapes
Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1971 to 1995

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy tapes filed with the Court in Criminal, Civil, and Children’s courts, domestic, incompetency/mental health, adoption and probate cases for years 1971 to 1995, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through July 27. Counsel who may have cases with exhibits should verify exhibit information with the Special Services Division, (505) 841-7596/5452, from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s), and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Destruction of Tapes and Logs
Domestic Relations Cases 1972 to 1987

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 2nd Judicial District Court will destroy tapes and logs filed with the Court in domestic relations cases for years 1972 to 1987, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may have cases with exhibits should verify exhibit information with the Special Services Division, (505) 841-6711, from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Aforementioned tapes and logs will be destroyed after June 12 by Order of the Court.

Second Judicial District Court
Destruction of Exhibits

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 2nd Judicial District Court will destroy exhibits filed with the Court in criminal cases for years 1984 to 1989 and LR (Metro Court cases) for years 1987 to 1996, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through July 27. Counsel who may have cases with exhibits should verify exhibit information with the Special Services Division, (505) 841-7596/5452, from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s), and defendant exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.
Retirement Reception for Judge James F. Blackmer

A retirement reception in honor of Judge James F. Blackmer will be held from 2 to 4 p.m., June 29, at the Bernalillo County Courthouse, Frank H. Allen, Jr., Ceremonial Courtroom #338, 400 Lomas Blvd. NW, Albuquerque. All are invited to attend.

Third Judicial District Court

Judicial Vacancy

A vacancy exists on the 3rd Judicial District Court in Las Cruces as of June 2 upon the resignation of the Honorable Larry Ramirez.

The chair of the 3rd Judicial District Nominating Commission solicits applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 14 of the New Mexico Statutes Annotated 1978. Applications may be obtained from the Judicial Selection Web site: http://lawschool.unm.edu/judsel/application.php, or e-mailed/faxed/mailed by calling Sandra Bauman, (505) 277-4700.

The deadline for applications is 5 p.m., June 16. Applications received after that date will not be considered.

The District Judicial Nominating Commission will meet at 9 a.m., June 26, at the 3rd Judicial District Courthouse, 201 W. Picacho, Las Cruces, to evaluate the applicants for this position.

Nominating Commission

Seven applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the 3rd Judicial District Court due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 27, at the 3rd Judicial District Courthouse, 201 W. Picacho, Las Cruces, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Frederick D. Kennon, James Thomas Locatelli, Fernando R. Macias, Michael T. Murphy, Rita Nunez Neumann, Melissa J. Reeves, and Bernadette Ryann Sedillo.

Fifth Judicial District Court

Chaves County Nominating Commission

Four applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the 5th Judicial District Court, Chaves County, due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 13, at the Chaves County Courthouse, 400 N. Virginia Road, Roswell, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Steven L. Bell, Thomas Edward Dow, Thomas Edwin Lilley and Albert Lewis Pitts.

Eddy County Nominating Commission

Four applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the 5th Judicial District Court, Eddy County, due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., June 7, at the Eddy County Courthouse, 102 N. Canal, Carlsbad, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: James Richard Brown, Matthew Todd Byers, Raymond Lewis Romero and Thomas A. Rutledge.

Ninth Judicial District Court

Nominating Commission

Three applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the 9th Judicial District Court due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 7, at the Curry County Courthouse, 700 N. Main, Clovis, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Louis Edward DePaoli, Jr. and Robert David Pederson.

San Juan County Nominating Commission

Five applications have been received in the Judicial Selection Office as of 5 p.m.,
May 22, for the judicial vacancy on the 11th Judicial District Court, San Juan County, due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 11, at the Judicial Selection Office, Farmington, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Daniel Lee Cleavinger, Cindy Lee Gray, Eric Lane Morrow, Emeterio L. Rudolfo and Karen L. Townsend.

Thirteenth Judicial District Court Nominating Commission

Twelve applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the 13th Judicial District Court due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 12, at Sandoval County Judicial Complex, 1500 Idalia Road, Bernalillo, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Mark Alan Benford; Gerald L. Collins; Rozan Cruz; John F. Davis; Kenneth Edwin Fladager, II; Joyce Miller Gentry; Crystal A. Hyer; Patrick Charles McNertney; Paul Russell Ritzma; Sandra Eileen Rotruck; Phillip Guillermo Sapien and Stevan Jay Schoen.

Bernalillo County Metro Court Nominating Commission

Seven applications have been received in the Judicial Selection Office as of 5 p.m., May 22, for the judicial vacancy on the Bernalillo County Metropolitan Court due to the creation of a new judicial position by the New Mexico State Legislature. The District Judicial Nominating Commission will meet at 9 a.m., July 25, at the Bernalillo Metro Courthouse, Albuquerque, New Mexico, to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting.

The names of the applicants in alphabetical order are: Ann Follin Badway, Frances P. Brummett, Christopher Mark Harrington, Dennica Louise Padilla, Linda Sue Rogers, Edward Fredrick Snow and Denise S. Soto-Hall.

Santa Fe Municipal Court Brown Bag Lunch

Santa Fe Municipal Judge Ann Yalman invites all attorneys who practice in the Santa Fe Municipal Court to meet with her at noon, June 21, at Municipal Court for a discussion of practice and procedures in the Municipal Court.

U. S. Tenth Circuit Bench & Bar Conference 2006

Registration is now open for judges and attorneys to register for the 2006 10th Circuit Bench & Bar Conference at The Broadmoor Hotel in Colorado Springs, Colorado. Conference dates are September 7–9. The complimentary opening reception will take place at the nearby historic Penrose House where participants can meet and greet the circuit, district, bankruptcy and magistrate judges of the 10th Circuit.

Speakers and panelists include retired Associate Justice Sandra Day O’Connor, Associate Justices Stephen Breyer and Samuel Alito, Solicitor General Paul Clement, Erwin Chermerinsky, Robert Nagel and the “master of charisma,” Richard Greene, one of the leading communication coaches in the world. Legal media and blogging panelists include Linda Greenhouse, Byron York, Nina Totenberg, Eugene Volokh, John Hinderaker and Lyle Denniston. Breakout sessions will include topics on evidence, sentencing, technology, discrimination law, bankruptcy, religion and ethics.

The general registration fee is $250. Special registration rates are available for new attorneys (less than five years of practice) and law school students. The registration deadline is July 31. For additional information, visit http://www.ca10.uscourts.gov/judconf/index.php. For questions, e-mail ca10_judicialconference@ca10.uscourts.gov, or call (303) 844-2067.

U. S. District Court for the District of New Mexico CM/ECF and PACER Presentation

The U.S. District Court will hold presentations regarding the Court’s transition from the current e-filing system, Advanced Court Engineering (ACE), to the Case Management/Electronic Case File (CM/ECF) system. The presentations will cover information about the changes, what new procedures will be in effect and features of
the new system. The first presentation will be held from 10:30 to 11:30 a.m., June 23, in Albuquerque at the Pete V. Domenici United States Courthouse, 333 Lomas Blvd NW, in the Jury Assembly Room on the second floor. The second presentation will be held from 11 a.m. to noon, June 26, in Las Cruces at the Harold Runnels Federal Building and United States Courthouse, 200 E. Griggs, in the Jury Assembly Room on the second floor. For additional information, visit www.nmcourt.fed.us/cmecf or contact the CM/ECF Help Desk, (505) 348-2075.

STATE BAR NEWS

Annual Meeting

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 next Attorney Support Group meeting will be held at 5:30 p.m., July 3, at the First United Methodist Church at Fourth and Lead SW, Albuquerque. The group meets regularly on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

Bankruptcy Law Section and Tenth Circuit Bankruptcy Appellate Panel

An open forum presentation for the Bankruptcy Law Section will be held from 4:30 to 6 p.m., June 12, at the State Bar Center. Judge Tom R. Cornish, Eastern District of Oklahoma, Judge Robert E. Nugent, District of Kansas, and Judge William T. Thurman, District of Wyoming, will be conducting the presentation.

Public hearings will begin at 9 a.m., June 13, Pecos Courtroom, Room 340, United States Courthouse, 333 Lomas Boulevard NW, Albuquerque. The same judges will be hearing cases.

The BAP was created by a resolution of the Judicial Council of the 10th Circuit for an initial three-year period beginning July 1. On March 8, 1999, the Judicial Council of the 10th Circuit voted to authorize the permanent establishment of the BAP in the 10th Circuit. All districts in the 10th Circuit have authorized participation in the BAP.

The BAP is composed of nine active bankruptcy judges appointed by the chief judge of the 10th Circuit. A BAP judge may not hear an appeal originating from his or her own district.

The office of the clerk of the BAP is located in Denver, CO. More information may be obtained at www.bap10.uscourts.gov; by e-mail to 10th_Circuit_BAP@ca10.uscourts.gov; or by calling the BAP Clerk’s Office at (303) 335-2900.

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 Veronica Cordova, vcordova@nmbar.org, or (505) 797-6039, with questions.

Pro Hac Vice Fund

Distribution

The first distribution from the Pro Hac Vice Fund, created in early 2005, has been completed. Pursuant to Rule 24-106 NMRA, the State Bar of New Mexico collects a registration fee from non-admitted attorneys intending to appear in civil actions before New Mexico courts. The Bar holds these fees in a special Pro Hac Vice Fund, which is distributed annually to nonprofit organizations providing or supporting the provision of civil legal services to the poor. The Board of Bar Commissioners, through a grant application process, distributed $72,200 collected from out-of-state attorneys during 2005. The funded grantees were Native American Protection & Advocacy, Inc., Law Access New Mexico, DNA People’s Legal Services, Inc., New Mexico Center on Law and Poverty, Legal Fails and the Senior Citizens’ Law Office.

Senior Lawyers Division

Proposed Bylaws Amendments

At their April 21 meeting, the Board of Bar Commissioners reviewed the proposed amendments to the Senior Lawyers Division bylaws. The Board removed the requirement that amendments be made only at annual meetings. Visit www.nmbar.org, select Divisions/Sections/Committees and navigate to the Senior Lawyers Division page and review the proposed amendments that will be on the Board of Bar Commissioner’s July 20 agenda. Send comments by July 7 to Christine Morganti at the State Bar, cmorganti@nmbar.org, or by fax to (505) 828-3765.

Solo and Small Firm Practitioners Section

Meeting and CLE

The next meeting of the Solo and Small Firm Practitioners Section 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. Board members should arrive at 11:20 a.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.

Taxation Section

Annual Meeting and CLE

The Taxation Section will hold its annual meeting at 12:45 p.m., June 16, in conjunction with the 2006 Tax Symposium: Matters Affecting Federal and State Tax Practice. Agenda items should be sent to Chair Marjorie Rogers, mrogers@modrall.com, or (505) 848-1800. The standard cost of the CLE program is $179 for government attorneys and paralegals and $169 for section members. Lunch will be provided. To register call (505) 797-6020; fax (505) 797-6071; visit www.nmbar.org and select CLE; or mail CLE, PO Box 92860, Albuquerque, NM 87199. The registration form may be found on the inside back cover of the May 22 Bar Bulletin.
Technology Committee Tag Up–Free Workshop

The State Bar Technology Committee is presenting a free one-hour workshop from 5 to 6 p.m., June 22, at the State Bar Center. The presentation will demonstrate social bookmarking through http://del.icio.us, a free Web-based tool that provides storage of bookmarks and retrieval from any location at which an Internet connection exists. People who use computers in multiple locations (e.g., one at home and one at work), or receive repeated requests from colleagues to provide Web site URLs, will find a social bookmarking service very beneficial. Paralegals, attorneys and support staff are welcome, but the class is limited to 11 attendees. Make reservations by June 20 with Mary Patrick, CLE program coordinator, mpatrick@nmbar.org or (505) 797-6059. CLE credit will not be provided.

Young Lawyers Division Professional Clothing Drive

The Young Lawyers Division is collecting professional clothing to donate to both Dismas House, a nonprofit organization that transitions nonviolent offenders from incarceration to parole, and The Crossroads, a nonprofit organization that assists homeless women and children. Professional clothing donations are being accepted at the following four locations:
- 13th Judicial District Attorneys Office Cibola County
  515 High Street, Grants
- Cuddy, Kennedy, Alberita & Ives, L.L.P.
  1701 Old Pecos Trail, Santa Fe
- State Bar of New Mexico
  5121 Masthead NE, Albuquerque
- The Romero Law Firm
  1001 5th Street NW, Albuquerque
- Butt, Thornton & Baehr, P.C.
  4101 Indian School Road NE
  Albuquerque
- State Bar of New Mexico Annual Meeting, Taos Convention Center
  July 20-22, 2006

Contact Briana Zamora, bbzamora@btblaw.com, or (505) 884-0777, with questions or to volunteer as a clothing collection point outside of Albuquerque.

OTHER BARS

NM Criminal Defense Lawyers Association Summer CLE

The Summer CLE of the New Mexico Criminal Defense Lawyers Association will be held from 9 a.m. to 5 p.m., June 23, at the UNM School of Law. Timothy P. O’Toole, chief of the Special Litigation Division of the Public Defender Service for the District of Columbia, will speak on Litigating Eyewitness ID Issues in the Courtroom. Barbara Bergman, UNM law professor and current president of the National Association of Criminal Defense Lawyers, will present Creative Uses of Evidence. Other topics include Winning Motions to Suppress, Case Law Updates and Fourth Amendment Issues. There will be a membership meeting and Driscoll Award presentation at lunch. Registration begins at 8:30 a.m., and participants may earn 6.25 general CLE credits. For more information, visit www.nmcdla.org, e-mail nmcdladir@aol.com, or call (505) 992-0050. Discounts and partial scholarships are available for NMCDLA members.

NM Women’s Bar Association Bi-Monthly Networking Lunch

The next networking luncheon of the New Mexico Women’s Bar Association will be held from noon to 1:30 p.m., July 12, at NYPD Pizza, 215 Central Avenue, NW, Albuquerque. Guest speakers are judicial candidates: The Honorable Ken Martinez (2nd Judicial District Court), The Honorable Julie Atrwies (Metropolitan Court, Division 18) and attorney Sanford Siegel. Each candidate will give a brief presentation and respond to questions from the floor.

Lunch is ordered off the restaurant menu with payment made directly to NYPD Pizza. Register for the luncheon no later than July 6 with Rendie Baker-Moore, womensbarNM_admin@msn.com or Sue Chappell, sgc@sutinfirm.com. The luncheons are open to all interested persons.

OTHER NEWS

American Inns of Court Foundation Nominations Solicited for National Award

In October, the American Inns of Court Foundation will hold its Celebration of Excellence in Washington, D.C., for the purpose of publicly recognizing those judges and lawyers that have demonstrated exemplary service to the profession, the public and the American Inns of Court movement. Three national awards will be presented. The Lewis F. Powell, Jr., Award for Professionalism and Ethics recognizes exemplary service to the legal profession in the areas of legal excellence, professionalism, civility and ethics. It may be awarded to judges and lawyers that have not been directly involved with the American Inns of Court. The A. Sherman Christensen Award honors an American Inn of Court member who has provided distinguished, exceptional and significant leadership to the American Inns of Court. The Sandra Day O’Connor Award for Professional Service recognizes an Inn member in practice ten or fewer years for excellence in public interest or pro bono activities.

Nominations of one or more colleagues must be received by June 30 by letter, with supporting materials and other justification. Visit www.innsofcourt.org and click on the awards box for complete information. Nominations and questions should be directed to Cindy Dennis, Awards and Scholarships Coordinator, cdennis@innsofcourt.org, or (800) 233-3590, ext. 104.
Business and Employer Workshops

The New Mexico Taxation and Revenue Department and the Internal Revenue Service are offering free, one-day workshops in Albuquerque for businesses with or without employees. These workshops are designed to address the tax requirements for new businesses and existing businesses.

The New Business Workshops are for new business owners. Items to be covered include New Mexico gross receipts tax, IRS filing requirements and a brief summary of other new business issues. New Business Workshops are offered the first, second and third Tuesday of every month.

The New Employer Workshops are for small businesses that have employees or plan to have employees. Regulatory and tax filing requirements from six different federal and state agencies will be covered. New Employer Workshops are offered the fourth Tuesday of every month.

All workshops will be held at the New Mexico Taxation and Revenue Department, 5301 Central, NE (Bank of the West building), 10th Floor, Conference Room A, 8:15 a.m. to 3:45 p.m., with a one-hour lunch break. The workshops are free of charge and no advance registration is required.

Workshops scheduled for new businesses are: June 13 and 20; July 11 and 18; Aug. 1, 8 and 15; Sept. 5, 12 and 19; Oct. 3, 10 and 17; Nov. 7, 14 and 21; Dec. 5, 12 and 19.

Workshops scheduled for new employers are: June 27; July 25; Aug. 22; Sept. 26; Oct. 24; Nov. 28; and Dec. 26.

For additional information, contact the State of New Mexico Taxation and Revenue Department, (505) 841-6200.

Legal FACS Fundraising Event

Legal FACS is excited to present its first annual fundraising event, A Celestial Celebration: An Evening to Shine.

Legal FACS (Forms and Courthouse Services) is a nonprofit organization whose mission is to provide access to justice by empowering and educating self-represented litigants and victims of domestic violence with legal and victim support services. Founded by concerned lawyers within the Albuquerque Bar Association to provide access to the legal system, Legal FACS has provided free legal services since 1971 and social services to children and victims of domestic violence in Bernalillo, Sandoval, Valencia and Torrance Counties since 2002.

The Friends of Legal FACS, a group of concerned New Mexicans dedicated to the notion that all members of society deserve access to our legal system, invites all to be a part of this very special black tie gala from 6 to 10 p.m., November 4, at the LodeStar Astronomy Center in Albuquerque’s historic Old Town. There will be hors d’oeuvres, a cash bar and live music by the Rodney Bowie Jazz Quartet.

For sponsorship and ticket information, contact Legal FACS, (505) 256-0417.

Torrance County Pro Se Forms Clinic

Legal FACS 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 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. All pro se litigants must make an appointment and will be seen by appointment only on June 21.

National Legal Fiction Writing Competition for Lawyers

SEAK, Inc., a provider of continuing education and professional training for lawyers, is sponsoring the 5th Annual National Legal Fiction Writing Competition for Lawyers. The competition is open to any licensed attorney in the U.S. and its territories. A short story or novel excerpt in the legal fiction genre should be submitted. There is no fee to enter the competition and authors will maintain the original copyright to their materials. A cash prize of $1,000 will be awarded to the First Prize winner.

The deadline for submissions is June 30. For more information, interested attorneys should contact Kevin J. Driscoll, Esq., (508) 548-4542 or kevin.driscoll@verizon.net.

NM Center on Law and Poverty

2006 Legal Services Training

The New Mexico Center on Law and Poverty announces 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 State Bar. The keynote address will be delivered on the morning of June 13th by Lt. 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 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 is seeking families in New Mexico to host International Students for the upcoming 2006 school year. Welcome a young person from Brazil, Japan, Germany, Ghana, Uruguay, Sweden, Russia, Korea, China, or one of over 35 countries. Our students are between the ages of 15–18 years old and will arrive in August. YFU exchange students also have English language proficiency and have received good grades from their schools back home. Many students are awarded scholarships sponsored by governments, foundations and private corporations. Student profiles are available! Contact Shirley at (800) 872-0200 ext. 271 or visit www.yfu-usa.org for more details about hosting opportunities.
The graduates of the 2006 State Bar of New Mexico Leadership Training Institute are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandy Barnhart y Chavez, Esq.</td>
<td>N.M. Legislative Council Service</td>
</tr>
<tr>
<td>Evan C. Blackstone</td>
<td>N.M. Legislative Council Service</td>
</tr>
<tr>
<td>John Blair</td>
<td>Sheehan, Sheehan, &amp; Stelzner, P.A.</td>
</tr>
<tr>
<td>Heidi Topp Brooks, Esq.</td>
<td>N.M. Legislative Council Service</td>
</tr>
<tr>
<td>Susan G. Chappell</td>
<td>Sutin, Thayer, &amp; Browne, P.C.</td>
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<tr>
<td>Morris J. Chavez, Esq.</td>
<td>Navajo Nation Department of Justice</td>
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<tr>
<td>Brenna L. Clani</td>
<td>Advocacy Inc.</td>
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<tr>
<td>Elizabeth Collard</td>
<td>Advocacy Inc.</td>
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<tr>
<td>Frances A. Crockett, Esq.</td>
<td>Advocacy Inc.</td>
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<tr>
<td>Jaime L. Dawes</td>
<td>Sheehan, Sheehan, &amp; Stelzner, P.A.</td>
</tr>
<tr>
<td>Alisa A. Hadfield</td>
<td>2nd Judicial District Court</td>
</tr>
<tr>
<td>Amanda H. Hartmann, Esq.</td>
<td>13th Judicial District Attorney</td>
</tr>
<tr>
<td>Amme M. Hogan</td>
<td>N.M. Workers’ Compensation Administration</td>
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<tr>
<td>Trenton S. James, Esq.</td>
<td>N.M. Workers’ Compensation Administration</td>
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<tr>
<td>Carla C. Lopez</td>
<td>N.M. Gaming Control Board</td>
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<tr>
<td>Margaret R. McNett</td>
<td>Blue Cross Blue Shield of N.M.</td>
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<tr>
<td>Lorraine Montoya-Vigil</td>
<td>N.M. State Senate Majority Office</td>
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<tr>
<td>Shelley Beth Mund</td>
<td>City of Albuquerque Legal Dept.</td>
</tr>
<tr>
<td>Tiffany A. Oliver</td>
<td>Little &amp; Gilman-Tepper, P.A.</td>
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<tr>
<td>James J. Owens</td>
<td>Wellesley Family Law Center</td>
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<tr>
<td>John S. Stiff</td>
<td>John S. Stiff &amp; Associates, L.L.C.</td>
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<tr>
<td>Presiliano R. Torrez</td>
<td>13th Judicial District Attorney</td>
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<tr>
<td>Hans William Voss</td>
<td>Grant County Attorney</td>
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<tr>
<td>Marie C. Ward</td>
<td>2nd Judicial District Court</td>
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</tbody>
</table>

The Leadership Training Institute seeks to identify and train lawyers for future opportunities in leadership roles. Participants learn what it means to be a leader and how to communicate, motivate, inspire and succeed, not only in the law, but also in service to professional, political, judicial, civic and community organizations. The four-month Institute is open to all active State Bar members.
2006

PROSECUTORS OF THE YEAR

PROSECUTOR OF THE YEAR

RICHARD E. BOWMAN

Richard E. Bowman was recognized for his leadership and vision in the establishment of the 2nd Judicial District’s Metropolitan Mether Initiative as well as his many years of exceptional service as a prosecutor, teacher and leader. His creation of the Early Plea Program in 2005 continues to serve as a model across the state and has helped make it possible for the district attorney’s office to handle far more criminal cases without significant additional personnel. Bowman earned his B.A. degree in journalism in 1974 and his J.D. degree in 1985 from UNM. He began working as an assistant district attorney for the 2nd Judicial District Attorney’s Office in 1985, rose to the leadership position of a deputy district attorney in 1989 in charge of the Metro Division, and then became the supervisor of the Grand Jury Division in 1993, his current position.

LEGAL IMPACT PROSECUTOR OF THE YEAR

NIKI BRITO

Niki Brito has been at the center of cases that made groundbreaking law in New Mexico: State ex rel. Brandenburg versus Blackmer and Albuquerque Rape Crisis Center versus Blackmer. Brito was recognized for her outstanding work as a prosecutor in the Violent Crimes Division of the 2nd Judicial District, dealing with the difficult legal and emotional issues such cases entail. Brito is a graduate of Stanford University and the UNM School of Law.

COMMUNITY SERVICE PROSECUTOR OF THE YEAR

SUSAN E. PAGE

Susan E. Page was recognized for her compassion for and service to others. She reaches out to those grieving, is a mentor to young elementary school children who have little or no support, and is the initiator of many programs that help employees connect with other employees. Page initiates and conducts trainings which help individuals realize their full potential and function at a level where personal and professional happiness can be achieved. Page is a senior attorney for the Judicial Education Center at the Institute of Public Law at the UNM Law School, having recently retired after 22 years at the Bernalillo County District Attorney’s Office.

Correction: In the previous issue of the Bar Bulletin, the information for Ms. Berger should have been listed for Ms. Brito. We regret the error and are happy to correct it in this issue.

LAW ENFORCEMENT PROSECUTOR OF THE YEAR

MATTHEW E. CHANDLER

Matthew E. Chandler spearheaded the Meth Watch program in Curry and Roosevelt counties. He was the driving force behind establishing the Major Crimes Unit for the district and established an Ensuring Children’s Online Protection program for parents, teachers and children. Chandler attended the University of Tulsa Law School and graduated in 2001. He joined the 9th Judicial District Attorney’s Office in 2002 as an assistant district attorney and in 2004 was elected as the 9th Judicial District Attorney for Curry and Roosevelt counties.

ROOKIE PROSECUTOR OF THE YEAR

ALISSA N. BERGER

Alissa N. Berger graduated from Syracuse University College of Law in May 2004 and began with the 2nd Judicial District Attorney’s Office (Metro Division) in June 2005 where the biggest portion of her caseload was misdemeanor DWI and domestic violence cases. In a typical week, Berger appeared in 30–40 DWI cases and nearly that many domestic violence cases. Her annual caseload was nearly 1,000 individual cases. She is now with the Community Crimes Division in the 2nd Judicial District Attorney’s Office prosecuting felony narcotics and property crimes.
CONGRATULATIONS TO THE
2006 STATE BAR OF NEW MEXICO
ANNUAL AWARD RECIPIENTS

COURAGEOUS ADVOCACY AWARD
Gary C. Mitchell

OUTSTANDING CONTRIBUTION AWARD
Mary Ann Romero

OUTSTANDING JUDICIAL SERVICE AWARD
Judge James W. Counts

OUTSTANDING PROGRAM AWARD
State Bar of New Mexico
Consumer Issues Workshops

OUTSTANDING YOUNG LAWYER OF THE YEAR AWARD
Hector H. Balderas

PROFESSIONALISM AWARD
Graham Browne (Posthumously)
Alice Tomlinson-Lorenz

SETH D. MONTGOMERY DISTINGUISHED JUDICIAL SERVICE AWARD
Judge Peggy J. Nelson

DISTINGUISHED BAR SERVICE AWARD
Andrew G. Schultz
Norman S. Thayer

OUTSTANDING CONTRIBUTION TO PEOPLE WITH DISABILITIES AWARD
Gail S. Stewart

OUTSTANDING BAR AWARD
New Mexico Black Lawyers Association

OUTSTANDING COMMITTEE AWARD
New Mexico Medical Review Commission

QUALITY OF LIFE—LAWYER AWARD
B. Paul Briones

QUALITY OF LIFE—LEGAL EMPLOYER AWARD
Little & Gilman-Tepper, P.A.

The State Bar of New Mexico will present the awards during the Friday, July 21, luncheon in Taos. Use the form on page 15 to register for the luncheon and annual meeting. For a detailed list of programs/events for the annual meeting, see the May 15 Bar Bulletin insert or visit the State Bar’s Web site at www.nmbar.org.
# Reaching for Excellence

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

9.0 General, 2.0 Ethics and 1.0 Professionalism CLE Credits

<table>
<thead>
<tr>
<th>Name</th>
<th>NM Bar No.</th>
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Name for Badge (if different than above) ____________________________________________________________

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<tr>
<th>Address</th>
<th>City</th>
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Phone ___________________________ Fax _________________________ Email ______________________________________

Guest 1 ______________________________________________   Guest 2 ____________________________________________

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

*Includes CLE tuition, materials, MCLE filing fees, speaker costs, continental breakfasts, breaks, and receptions.*

<table>
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<tr>
<th>Price</th>
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- **Standard**
- **Daily**
- **Thur.**
- **Fri.**
- **Sat.**
- **Guest** (includes all of the above except CLE tuition and materials)
- **Add $10 to registration fee if postmarked after July 1.**

## SEPARATELY TICKETED EVENTS

- **Awards Luncheon, Friday, July 21**
- **Dinner & Entertainment, Friday, July 21**
- **Child Dinner (12 & Under), Friday, July 21**
- **Luncheon, Saturday, July 22**
- **Golf Tournament (18-hole), Saturday, July 22 (1:30-5:30 p.m.)**

  Taos Country Club (Handicap ____________)

**Total**

## PAYMENT OPTIONS

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

**Credit Card Acct. No. ____________________________ Exp. Date ____________**

**Signature ____________________________________**

**Internet:** www.nmbar.org

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

(Please include credit card information)

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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.
## LEGAL EDUCATION

### JUNE

| 12 | Prescriptions for Electronic Discovery  
Teleconference  
TRT, Inc.  
2.0 G  
(703) 779-2006  
www.trtcle.com |
| 13 | Creative Tax Planning for Real Estate Transactions, Parts 1 and 2  
Teleseminar  
Center for Legal Education of NMSBF  
2.0 G  
(505) 797-6020  
www.nmbar.org |
| 14 | Moral Character Test: Its Effect on Admissions and Retention  
Teleconference  
TRT, Inc.  
2.0 P  
(703) 779-2006  
www.trtcle.com |
| 15 | Sometimes It’s All About Losses: Understanding the “Passive Activity” and “At Risk” Limitations  
Teleseminar  
Center for Legal Education of NMSBF  
1.0 G  
(505) 797-6020  
www.nmbar.org |
| 13 | Insurance Coverage Litigation  
Albuquerque  
National Business Institute  
5.0 G, 1.0 E  
(800) 835-8525  
www.nbi-sems.com |
| 16 | 2006 Tax Symposium: Matters Affecting Federal and State Tax Practice  
State Bar Center, Albuquerque  
Center for Legal Education of NMSBF  
6.5 G  
(505) 797-6020  
www.nmbar.org |
| 14 | New Animal Legislation in New Mexico  
Albuquerque  
Paralegal Division of New Mexico  
1.0 G  
(505) 883-8181 |
| 16 | Deeds Descriptions and the Law  
Albuquerque  
PESI LLC  
7.0 G  
(715) 833-5296  
www.pesi.com |
| 13 | Sarbanes-Oxley: Does Privilege Still Exist?  
Teleconference  
TRT, Inc.  
2.0 E  
(703) 779-2006  
www.trtcle.com |
| 17 | Scientific Evidence: Constitutional Issues  
Teleconference  
TRT, Inc.  
2.0 G  
(703) 779-2006  
www.trtcle.com |
| 14 | ACE-PACER Electronic Filing  
Santa Fe  
Paralegal Division of New Mexico  
1.0 G  
(505) 982-3873 |
| 15 | Current Issues in Mediation  
Teleconference  
TRT, Inc.  
2.0 G  
(703) 779-2006  
www.trtcle.com |
| 16 | Dispute Review Board Training Course  
Albuquerque  
Construction Dispute Resolution Services  
5.5 G, 1.0 E, 1.0 P  
(505) 474-9050  
www.constructiondisputes-cdrs.com |
| 14 | Intermediate Gross Receipts and Compensating Tax in NM  
Albuquerque  
Lorman Education Services  
6.6 G  
(715) 833-3940  
www.lorman.com |
| 15 | Legal Aspects of Condominium Development and Homeowners Associations  
Albuquerque  
Lorman Education Services  
6.0 G  
(715) 833-3940  
www.lorman.com |
| 15 | Turning the Tables: Bias Directed at Attorneys  
Teleconference  
TRT, Inc.  
2.0 P  
(703) 779-2006  
www.trtcle.com |

G = General  
E = Ethics  
P = Professionalism  
VR = Video Replay  
Programs have various sponsors; contact appropriate sponsor for more information.
20 Discovery in the Electronic Age VR State Bar Center, Albuquerque Center for Legal Education of NMSBF 1.0 G (505) 797-6020 www.nmbar.org

20 Divorce Practice with Larry Rice VR State Bar Center, Albuquerque Center for Legal Education of NMSBF 6.0 G (505) 797-6020 www.nmbar.org

20 HIPAA Implications for Estate Planning Teleseminar Center for Legal Education of NMSBF 1.0 G (505) 797-6020 www.nmbar.org

20 Lurking Dangers and What Lawyers Should Know About the New Mexico Real Estate Contract State Bar Center, Albuquerque Center for Legal Education of NMSBF and Small Firm Practitioners Section 1.0 G (505) 797-6020 www.nmbar.org

21 Pro Se Can You See: Navigating the Fog of the Pro Se Litigant VR State Bar Center, Albuquerque Center for Legal Education of NMSBF 1.0 P, 1.0 E (505) 797-6020 www.nmbar.org

21 International Treaties Teleseminar TRT, Inc. 2.0 E (703) 779-2006 www.trtcle.com

21 Successful Financial Settlements for Your Divorce Client Albuquerque National Business Institute 6.0 G (800) 835-8525 www.nbi-sems.com


22 Emerging Legal and Security Issues in Health Care in NM Albuquerque Lorman Education Services 6.0 G (715) 833-3940 www.lorman.com

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

22 Retaliation Claims in Employment Litigation Teleseminar Center for Legal Education of NMSBF and Small Firm Practitioners Section 1.0 G (505) 797-6020 www.nmbar.org

23 Diversity—Why Bother? Can We Find Answers in Ethics and Professionalism? State Bar Center, Albuquerque Center for Legal Education of NMSBF and Hispanic Bar 1.0 P, 1.0 E (505) 797-6020 www.nmbar.org

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

23 Success Medical Malpractice Suits Albuquerque National Business Institute 5.0 G, 1.0 E (800) 835-8525 www.nbi-sems.com

27 Do You Really Want This Case? Teleconference TRT, Inc. 2.0 G (703) 779-2006 www.trtcle.com


28 Experts: Work Products and Discovery Teleconference TRT, Inc. 2.0 G (703) 779-2006 www.trtcle.com

28 Managing Complex Construction Law Issues Albuquerque National Business Institute 6.0 G (800) 835-8525 www.nbi-sems.com

29 Ethical Dilemmas: How to Solve Them Teleconference TRT, Inc. 2.0 E (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 Fe, NM 87504-0848 • (505) 827-4860

Effective June 12, 2006

Petitions for Writ of Certiorari Filed and Pending:

**Date Petition Filed**

<table>
<thead>
<tr>
<th>No.</th>
<th>Case Title</th>
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<tr>
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<td>State v. Maynard</td>
<td>COA 26,464</td>
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<td>29,838</td>
<td>Ripley v. Las Cruces Assn of Realtors</td>
<td>COA 26,458</td>
<td>6/1/06</td>
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<td>29,837</td>
<td>State v. Luko</td>
<td>COA 26,228</td>
<td>5/31/06</td>
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<td>29,836</td>
<td>State v. Lemmon</td>
<td>COA 26,095</td>
<td>5/31/06</td>
</tr>
<tr>
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### WRITS OF CERTIORARI

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

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

**EFFECTIVE JUNE 12, 2006**

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Submission = date of oral argument or briefs-only submission

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# 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 Fe, NM 87504-2008 • (505) 827-4925

**EFFECTIVE JUNE 2, 2006**

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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

Xavier Edward Acosta
PO Box 1115
Las Cruces, NM 88004-1115
xecostag@gmail.com

Dawn Penni Adrian
Adrian & Associates, P.C.
4300 Carlisle Blvd., NE, Ste. 4
(87107)
PO Box 21576
Albuquerque, NM 87154-1576
(505) 944-1201 (telecopier)

Katrina Albright
formerly known as Katrina Albright Hummell
1124 G Street, NE
Washington, DC 20002
(252) 412-1967
Katriina.Albright@gmail.com

Neil E. Barry
CitiBank, N.A.
Citigroup Center 13F, 2-3-14, Higashi-shinagawa
Shinagawa-ku, Tokyo 140-8639
Japan
(81-3) 546-2035
(81-3) 546-2035 (telecopier)
neil.barry@citigroup.com

Marcella Hilary Broeker
100 Melody Lane
Morgan Hill, CA 95037
(505) 860-1262
MBrooker@aol.com

Courtney L. Brown
119 NE Monroe St.
Portland, OR 97212
(503) 229-6839
BROWN.Courtney@deq.state.or.us

Joseph M. Campbell
416 Fourteenth St., NW
Albuquerque, NM 87104
(505) 248-3318
tybeelaw@qwest.net

Pamela G. Candelaria
1224 S. 2nd St., #1
Philadelphia, PA 19147
pam_candelaria@yahoo.com

Randy Castellano
U.S. Army Trial Defense Service
Building 113, Pershing Rd.
Ft. Bliss, TX 79916
(915) 259-1000
(915) 259-1001 (telecopier)
randy.castellano@us.army.mil

Shari D. Caton
Poskus, Caton & Klein, P.C.
303 East 17th Ave., Ste. 900
Denver, CO 80203
(303) 823-1600
(303) 823-1676 (telecopier)

Ilene Chase
PO Box 44305
Rio Rancho, NM 87174-4305
(505) 991-0341
(505) 991-0317 (telecopier)
ilenechase@hotmail.com

Sidney P. Childress
The Childress Law Office
5100 Indian School Rd., NE
Albuquerque, NM 87110
(505) 266-3479
(505) 266-4044 (telecopier)

Janice E. Dale
Lieuwen, La Fata & Tucker, P.A.
4101 Indian School Rd., NE
Ste. 310N
Albuquerque, NM 87110
(505) 262-6000
(505) 262-6244 (telecopier)
jdale@lieuwenlaw.com

Michael L. Danoff
Michael L. Danoff & Associates, P.C.
604 Chama, NE
Albuquerque, NM 87108
(505) 262-2383
(505) 266-4330 (telecopier)
michaeldanoff@qwest.net

Jeffery J. Davis
U.S. Department of Justice
PO Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404
(616) 456-2517 (telecopier)

John F. Davis
Thirteenth Judicial District Court
1500 Idolia Rd., Bldg. A
PO Box 600
Bernalillo, NM 87004-0600
(505) 867-8049 (telecopier)
(505) 867-8047

Richard Glenn Davis
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.
201 East Main Dr., 11th Floor
(79901)
PO Box 99123
El Paso, TX 79999-9123
(915) 533-2493
(915) 546-8333 (telecopier)

Hon. John A. Dean, Jr.
Eleventh Judicial District Court
103 S. Oliver Dr.
Aztec, NM 87510-2448
(505) 334-1940 (telecopier)

William Abel DeRaad
423 Fourteenth St., NW
Albuquerque, NM 87104-1216
(505) 242-2395
(505) 242-944 (telecopier)

Jerry A. Dickinson
N.M. Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87505
(505) 827-1047
(505) 827-2836 (telecopier)
jerry.dickinson@state.nm.us

Ethelinda Dietz
Dietz Law Offices
PO Box 25545
Albuquerque, NM 87125-0545
(505) 433-8858

John F. Dietz
Dietz & Associates
110 Sixteenth St., 14th Floor
(720) 212-0824
(720) 227-9689 (telecopier)
john@dietzlaw.com

Eric D. Dixon
Eric D. Dixon, Attorney and Counselor at Law, P.A.
(505) 888-6465 (telecopier)
(505) 888-6465 (telecopier)

Maureen C. Donovan
3806 South Boulder Way
Missouri City, TX 77459
(713) 444-1299
mdonovan5@hotmail.com

Kallie Dixon
Shapiro Bettinger Chase, L.L.P.
4273 Montgomery Blvd., NE, Ste. 110-E
Albuquerque, NM 87109-6748
(505) 888-6465 (telecopier)
(505) 888-6465 (telecopier)

Mary Dougherty
SCJDC Special Master
122 Girard, SE
Albuquerque, NM 87106
(505) 268-0095
(505) 268-9585 (telecopier)
FindingMD@qwest.net

Glen D. Dunbar
Office of the County Attorney
22123 Skyridge Lane
Richmond, TX 77469-6352
(281) 344-3989

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Clerk Certificates

Grace B. Duran
Immigration & Customs Enforcement
PO Box 2745
Las Cruces, NM 88004-2745
(787) 772-3952
(787) 766-6222 (telecopier)

Douglas A. Echols
Office of the County Attorney
100 S. Oliver Dr.
Aztec, NM 87410-2432
(505) 334-9481
(505) 334-3168 (telecopier)
dechols@sjcourts.net

Hon. George P. Eichwald
Thirteenth Judicial District Court
1500 Idalia Rd., Bldg. A
PO Box 35400
Las Cruces, NM 88005-2740
(505) 326-2006
(505) 325-1838
jayfaurot@netscape.net

T. Glenn Ellington
Ellington & Ellington, L.L.C.
1322 Paseo de Peralta
Santa Fe, NM 87501-4325
(505) 986-0677
(505) 986-1596 (telecopier)

depoinedo@nmcourts.com

John D. Ellis
Rabinowitz & Associates
PO Box 41600
Tucson, AZ 85717-1600
(602) 624-5526

Thor O. Emblem
Law Offices of Thor O. Emblem
205 W. 5th Ave., Ste. 105
PO Box 1780
Farmington, NM 87401
(505) 881-8300
(505) 883-0679 (telecopier)

Leslie Endean-Singh
1909 Cuba, #1
Alamogordo, NM 88310-5646

Lisa M. Enfield
Frey Law Firm, P.C.
10400 Academy, NE, Ste. 310
Albuquerque, NM 87111-7366
(505) 296-9400
(505) 296-9401 (telecopier)

Albert H. Engel
Michael M. Babat
460 Franklin St.
Buffalo, NY 14202-1302
(716) 886-3517
(716) 886-0017 (telecopier)

Gary Epler
Unitel Service Corp.
245 Highland St.
Portsmouth, NH 03801-5117
(603) 773-6440
(603) 773-6640 (telecopier)

Charles N. Estes, Jr.
1315 Lobo Pl., NE
Albuquerque, NM 87106-2612
(505) 266-2721

Karen Kingen Etcitty
1701 Old Pecos Trail
Santa Fe, NM 87505
(505) 982-6250

Gary E. Ewing
2142 S. Victor St., Unit D
Albuquerque, NM 87106-2612
(505) 285-4629 (telecopier)
Theart-hollar@da.state.nm.us

Steven C. Ewing
Law Offices of Steve Ewing
300 Central Ave., SW,
Albuquerque, NM 87102-2317
(505) 247-4051

T. Calder Ezzell, Jr.
Hinkle, Hensley, Shanor & Martin, L.L.P.
400 N. Pennsylvania Ave.,
Ste. 700 (88201)
PO Box 10
Roswell, NM 88202-0010
(505) 622-6510
(505) 623-9332 (telecopier)
CEzzell@hinklelawfirm.com

Steven R. Fairfield
Fairfield, Farrow & Strotz, P.C.
2400 Louisiana Blvd., NE,
Bldg. 3, Ste. 100
PO Box 35400
Albuquerque, NM 87167-5400
(505) 881-8300
(505) 889-0953 (telecopier)

Leroy Farlow
40 San Savio Ct.
Austin, TX 78738-1738
(512) 438-9541

Thomas J. Farmer
Law Offices of Frank L. Branson, P.C.
7703 Queens Garden Dr.
Dallas, TX 75248-1722
(214) 522-0200
(214) 521-5485 (telecopier)

John E. Farrow
Fairfield, Farrow & Strotz, P.C.
2400 Louisiana Blvd., NE,
Bldg. 3, Ste. 100
PO Box 35400
Albuquerque, NM 87176-5400
(505) 881-8300
(505) 889-0953 (telecopier)

Kristina L. Faught-Hollar
Office of the District Attorney
PO Box 637
Taos, NM 87571
(505) 751-2809
gfeuerman@gmail.com

John W. Fisk
Jeff Diamond Law Firm
PO Box 1866
Carlsbad, NM 88221-1866
(505) 885-3500
(505) 885-6138 (telecopier)

Rodney Fitzhugh
Weaver & Fitzhugh
PO Box 848
Montrose, CO 81402-0848
(970) 249-3766
(970) 249-4565 (telecopier)

Linda L. Flores
N.M. Legal Services
435 Bason Rd.
Las Cruces, NM 88005
(505) 541-4800
(505) 541-4860 (telecopier)
LindaF@nmlegalaid.org

Richard D. Flores
Office of the District Attorney
PO Box 2025
Las Vegas, NM 87701-2025
(505) 425-6746
(505) 425-9372 (telecopier)
CLERK CERTIFICATES

Thomas David Haines, Jr.
Hinkle, Hensley, Shanor & Martin, L.L.P.
400 N. Pennsylvania Ave.,
Ste. 700 (88201)
PO Box 10
Roswell, NM  88202-0010
(505) 622-6510
(505) 623-9332 (telecopier)

Christopher Dowd Hatch
N.M. Court of Appeals
PO Box 2008
Santa Fe, NM  87504-2008
(505) 827-4811
(505) 827-4946 (telecopier)
coadh@nmcourts.com

Michelle R. Haubert-Barea
Hinkle, Hensley, Shanor & Martin, L.L.P.
218 Montezuma St. (87501)
PO Box 2068
Santa Fe, NM  87504-2068
(505) 982-4554
(505) 982-8623 (telecopier)

Jeffrey D. Hewett
Lynch, Chappell & Alsup, P.C.
300 N. Marienfeld, Ste. 700
Midland, TX  79701-4322
(432) 683-4554
(432) 683-8346 (telecopier)

Jeffry D. Hewett
Lynch, Chappell & Alsup, P.C.
300 N. Marienfeld, Ste. 700
Midland, TX  79701-4322
(432) 683-4554
(432) 683-8346 (telecopier)

Kathleen Heaphy
U.S. Department of Veterans Affairs
810 Vermont Ave., NW,
Ste. 1115
Washington, DC  20420
(202) 273-6342
(202) 273-6403 (telecopier)

L. Patricia Ice
L. Patricia Ice, Attorney and Counselor, P.L.L.C.
809 N. State St., Ste. 101
Jackson, MS  39202
(601) 353-0876 (telecopier)
attysavethem@gmail.com

Kathleen Imholz
c/o Blaustein
2 Gannett Dr., Ste. 106
White Plains, NY  10604-3414
(914) 946-9650

Oeflia Infante-Garcia
U.S. District Court for the
District of New Mexico
200 E. Griggs Ave., Ste. 300
Las Cruces, NM  88001-3562
(505) 527-6819
(505) 527-6804 (telecopier)

Stephen Dean Ingram
Calvin & Ingram, P.A.
PO Box 1216
Albuquerque, NM  87103-1216
(505) 243-5400
(505) 243-1700 (telecopier)

Casey L. Irwin
Law Office of Casey L. Irwin
313 W. 3rd St., Ste. 206
La Junta, CO  81050-1465
(719) 254-4344

Benjamin C. Iseman
Stump, Callahan, Dietrich & Spears
37 N. Orange Ave., Ste. 200
Orlando, FL  32801
(407) 425-2571, Ext. 129
(407) 425-0827 (telecopier)
ben@stumplaw.com

Peter Nelson Ives
The Trust for Public Land
418 Montezuma, 2nd Floor
Santa Fe, NM  87501
(505) 690-1549
(505) 983-1893 (telecopier)
peter.ives@tpl.org

Wade L. Jackson
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third St., NW, Ste. 2200
PO Box 1888
Albuquerque, NM  87103-1888
(505) 766-7587
(505) 768-7395 (telecopier)

H. Jesse Jacobus, III
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
500 Fourth St., NW, Ste. 1000
PO Box 2168
Albuquerque, NM  87103-2168
(505) 848-1800
(505) 848-1889 (telecopier)

Elizabeth A. Jaffe
Golenbock, Eisemin, Assor & Bell
437 Madison Ave., Ste. 35
New York, NY  10022-7001
(212) 907-7388
(212) 754-0330 (telecopier)

David H. Johnson
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third St., NW, Ste. 2200
PO Box 1888
Albuquerque, NM  87103-1888
(505) 765-5900
(505) 768-7395 (telecopier)

Elizabeth A. Jaffe
Golenbock, Eisemin, Assor & Bell
437 Madison Ave., Ste. 35
New York, NY  10022-7001
(212) 907-7388
(212) 754-0330 (telecopier)

Paul Gary Johnson
Office of the Public Defender
500 S. Main, Ste. 700
Las Cruces, NM  88001-1237
(505) 534-6200
(505) 534-6209 (telecopier)

Rebecca N. Johnson
Hinkle, Hensley, Shanor & Martin, L.L.P.
400 N. Pennsylvania Ave.,
Ste. 700 (88201)
PO Box 10
Roswell, NM  88202-0010
(505) 622-6510
(505) 623-9332 (telecopier)

Timothy D. Johnson
Gordon & Mott, P.C.
4695 N. Mesa
El Paso, TX  79912
(915) 545-1133 Ext. 884
(915) 545-4433 (telecopier)
tjohnson@gordonmottpc.com

William Bluehouse Johnson
PO Box 532
Isleta Pueblo, NM  87022-0532
(505) 980-4295
(505) 899-7972 (telecopier)
wjohnson@lagunatribe.org

P. Jeffery Jones
300 Catron St., Ste. A
Santa Fe, NM  87501-1807
(505) 982-5220
(505) 984-1110 (telecopier)

Peter Romney Jones
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
PO Box 509
Sisseton, SD  57262-0509
(605) 698-3966

Sherryl A. Jones
PO Box 1869
Port Townsend, WA  98368-0058
(360) 379-8906

Roderick Juarez
Office of the District Attorney
700 N. Main, Ste. 16
Clovis, NM  88101-8664
(505) 769-2246
(505) 769-3198 (telecopier)
CLERK CERTIFICATES

Andres S. Vargas
PO Box 2066
El Prado, NM  87529-2066
(505) 776-2193
vargasan@taosnet.com

Richard C. Wade
Advocate Law Center, P.A.
821 Ford Dr.
Gallup, NM  87301
(505) 722-2055
(505) 722-0531 (telecopier)
rcwade1@msn.com

Floyd D. Wilson
Floyd D. Wilson, P.C.
6707 Academy Rd., NE
Albuquerque, NM  87109
(505) 857-0001
(505) 857-0008 (telecopier)

Harry Ira Zimmerman
12231 Academy Rd., NE,
Ste. 301-129
Albuquerque, NM  87111
(505) 293-6859
hzlaw@comcast.net

Mark R. Zobel
CMS
Attn: Mark Zobel S1-14-17
7500 Security Blvd.
Gwynn Oak, MD 21244-1850
(410) 786-6905
(410) 786-1873 (telecopier)
mark.zobel@cms.hhs.gov

Martin W. Zogg
The California Endowment
1000 North Alameda St.
Los Angeles, CA  90012
(213) 928-8760
MZogg@calendow.org

Charles William Bennett
Office of the District Attorney
327 Sandoval St. (87501)
PO Box 2041
Santa Fe, NM  87504-2041
(505) 827-5000 Ext. 151
(505) 827-5076 (telecopier)

Angela Therese Delorne-Gaines
PO Box 1751
Belcourt, ND  58316-1751
(701) 477-0634 (h)
(701) 550-9497 (w)

Patricia A. Clary
2700 Vista Grande, NW, #41
Albuquerque, NM  87120
pclary1@comcast.net

Nanette Baker Crawford
1514 Crescent Green Dr.
Houston, TX  77094
(281) 599-8290
MZogg@calendow.org

Patricia S. Karr
PO Box 2057
Fredericksburg, TX 78624-2057
(830) 990-4552

Martha J. Kaser
8955 Garfield Rd.
Parma, MI  49269
(517) 914-4782

Steven John Potter
1909 Ridge Rd.
Reisterstown, MD  21131
(410) 396-3945

Matthew E. Ortiz
PO Box 9612
Santa Fe, NM 87504-9612
(505) 988-7420
(505) 988-9579 (telecopier)
mortizlaw@msn.com

Alice E. Herter
1460 Miracerros Loop North
Santa Fe, NM  87505

Karl T. Werner
3500 Constitution, NE,
Suite A
Albuquerque, NM 87106

Jerome William Wesevich
Texas Rio Grande Legal Aid
1331 Texas Avenue
El Paso, Texas 79901

IN MEMORIAM

Edward T. Curran
3680 N. Hogan Dr.
Goodyear, AZ  85338-8544

Spencer A. Hall
PO Box 13
Lincoln, NM  88338-0013

Alan Merson
208-850 Cook Street
Victoria, BC
Canada  V8V 3K2
PROPOSED REVISIONS TO THE CHILDREN’S COURT RULES AND FORMS

The Supreme Court is considering proposed revisions to the Children’s Court Rules and Forms. If you would like to comment on the proposed amendments set forth below, please send your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before July 3, 2006, to be considered by the Court.

10-233. Sealing of records.

A. No adjudication of delinquency. When a petition for delinquency has been filed that does not result in an adjudication of delinquency, the children’s court attorney shall present the court with an order sealing the files and records in the case, which the court shall enter upon conclusion of the case.

B. Release from legal custody and supervision. When a person has been released from the legal custody and supervision of the department, and the department has not received any new allegations of delinquency regarding that person for two (2) years since the release, the department shall notify the court that two (2) years have elapsed since the release and shall present the court with an order sealing the files and records in the case, in a form prescribed by the Supreme Court, which the court shall enter.

C. Copies of order. The clerk of the court shall send copies of any sealing order to:

1. the children’s court attorney;
2. the authority granting the release;
3. the law enforcement officer, department and central depository having custody of the law enforcement files and records;
4. any other agency having custody of records or files subject to the sealing order;
5. counsel of record at the time of disposition; and
6. the person who is the subject of the sealing order, at that person’s last known mailing address.

COMMITTEE COMMENTARY

This rule is based on the 2003 statutory amendments to Section 32A-2-26 NMSA 1978, subsections G and H. These subsections provide for automatic sealing of court records for a person who is not the subject of a delinquency petition; for a person who is determined by the court not to be a delinquent offender; or for a person who has been released from legal custody and supervision and for whom no new allegations of delinquency have been received in the past two years. This rule is intended to specify the mechanism for automatic sealing, as the statute does not state how it is to be accomplished, and to provide guidance to the Children, Youth and Families Department (Department) and the courts in its implementation.

Note that the rule does not address the first part of subsection G of Section 32A-2-26, which provides that a person who is not the subject of a delinquency petition shall have his or her files automatically sealed. The fact that a delinquency petition was not filed means that the matter was handled informally by probation services. The committee believes this is a matter best left to the Department, which administers probation services. The committee strongly encourages the Department to develop a mechanism for sealing under these circumstances, as these children’s records otherwise will remain unsealed while children for whom a petition has been filed are protected by the rule.

With regard to paragraph A of the rule, there are a variety of circumstances under which a petition for delinquency is filed but does not result in an adjudication of delinquency. Such circumstances may include, but are not limited to, a satisfaction of time waiver, completion of the terms of a consent decree, an acquittal or other form of dismissal, or a ruling on appeal that concludes the case without an adjudication of delinquency. Not all courts enter formal orders of dismissal; the rule is broadly stated to accommodate different practices around the state.

Finally, the committee encourages all recipients of any sealing order under this rule to ensure that the order is given to the proper person responsible for sealing within the recipient’s agency. The rule attempts to delineate the responsible persons to the degree possible, but ultimately implementation of this rule and its underlying statute rests with the recipient individuals and agencies.

10-420 Sealing order.

[Rule 10-223]

STATE OF NEW MEXICO
COUNTY OF ____________________________
_________ JUDICIAL DISTRICT COURT
IN THE CHILDREN’S COURT
No. _____________ [number of original case]

IN THE MATTER OF:
_________________________________, a child
Date of Birth: ____________________
Social Security Number (last four digits only): _______

SEALING ORDER

The Children, Youth and Families Department has notified this court that _______________________________ (insert name of child) has been released from the legal custody and supervision of the Children, Youth and Families Department; that two (2) years have elapsed since the release; and that the Children, Youth and Families Department has not received any new allegations of delinquency regarding _______________________________ (insert name of child) during that time period.

The Children, Youth and Families Department has further provided this court with the following names and addresses of the persons or agencies to whom the sealing order shall be sent:
1. Children’s Court attorney

__________________________________
Name    Address

2. Authority granting the release

__________________________________
Name    Address

3. Law enforcement officer, department and central depository
having custody of the law enforcement files and records

__________________________________
Name    Address

4. Any other agency having custody of records or files subject
to this order

__________________________________
Name    Address

5. Counsel of record at the time of disposition

__________________________________
Name    Address

6. Person who is the subject of this order at that person’s last
known address

__________________________________
Name    Address

IT IS THEREFORE ORDERED that the files and records in
this case shall be sealed and that the clerk of this court shall send
copies of this sealing order to the persons and agencies listed
herein.

IT IS FURTHER ORDERED that, upon entry of this sealing
order, the proceedings in the case shall be treated as if they never
occurred and all index references shall be deleted.

IT IS FURTHER ORDERED that all persons and agencies to
whom this sealing order is directed shall reply to any inquiry that
no record exists with respect to the person who is the subject of
this sealing order.

__________________________________
Children’s Court Judge

CERTIFICATE OF MAILING

I certify that I mailed a copy of this order to the above-
named persons and agencies at the above-listed addresses.

__________________________________
Clerk

__________________________________
Date
On August 26, 2002, Son was a back seat passenger in a vehicle insured by Dairyland Insurance Company when it was struck by an uninsured vehicle, resulting in severe injuries to Son. Son settled his uninsured motorist (UM) claim with Dairyland when the policy was in effect through September 13, 2001, (prior to Son’s injury) and if the accident had occurred on or before September 13, 2001, (prior to Son’s injury). Son was covered under the UM endorsement as a driver or a named insured under the corporate commercial auto policy issued by Allstate until 2001, Parents purchased commercial auto insurance policies from Allstate and paid a separate premium for UM coverage on each vehicle owned by the business. Under those policies, the form of business of the named insured was designated as “individual/husband and wife/sole proprietorship,” and Parents contended that as a result of this designation, there was UM coverage for parents individually and any family members resident in their household. The last such policy was in effect through September 13, 2001, (prior to Son’s injury) and if the accident had occurred on or before September 13, 2001, Plaintiffs argued, Son would have been entitled to stack the UM coverage for each separately insured vehicle.
In September 2001, Parents notified Allstate that they had changed the business from a sole proprietorship to a sub-chapter S corporation, and they requested that the policy be changed to reflect the change in the form of the business. Allstate thereafter issued a new policy which was in effect for the period from September 14, 2001 until September 14, 2002. The “named insured” was changed from “John G. Rehders, General Contractor” to “John G. Rehders General Contractor, Inc.” and the “form of named insured’s business” was changed from “individual” to “corporation.” However, substantially the same separate premium was charged and paid for UM coverage on each separately insured business vehicle. This was the policy in effect at the time of Son’s accident.

Plaintiffs argued that Parents intended the new policy to have the same coverage as the prior policy, and since Allstate did not provide them with a separate notice (apart from the policy itself) that changing the form of the insured from a sole proprietorship to a corporation would change the right to stack UM coverage, an ambiguity resulted. Further, Plaintiffs asserted, the policy must be construed to provide UM coverage to a corporation by itself makes no sense. Therefore, Plaintiffs asserted, the policy must be construed to apply to persons, even if the named insured is a corporation, and when a policy is issued to a small family business, the logical persons to have coverage are Parents and family members living with them. Thus, the same coverages and same policy objectives are achieved as in the case where an individual is the named insured and pays separate premiums for UM coverage on separate vehicles. Finally, Plaintiffs argued that the policy definitions relating to an “insured” for UM coverage are “ambiguous, if not inescapable, to the average insured” and the ambiguities should be resolved in their favor. In reply, Allstate argued that public policy grounds because: (1) the definition of who is insured in the policy is ambiguous and it should therefore be construed against Allstate and in Son’s favor; (2) Plaintiffs had a reasonable expectation of stacked coverage for Son; and (3) the policy definitions that exclude Son as an insured are void because the definitions, in effect, prohibit UM stacking, and thus violate the public policy of New Mexico.

Allstate appeals, arguing that the district court erred when it ruled that stacking is required under the policy without first determining whether Son is insured under the policy, because being insured is a precondition to receiving stacked coverage. Allstate further argues that Son is not an “insured” under the unambiguous terms of the corporate commercial auto policy. Plaintiffs argue that the district court’s order should be affirmed on public policy grounds because: (1) the definition of who is insured in the policy is ambiguous and it should therefore be construed against Allstate and in Son’s favor; (2) Plaintiffs had a reasonable expectation of stacked coverage for Son; and (3) the policy definitions that exclude Son as an insured are void because the definitions, in effect, prohibit UM stacking, and thus violate the public policy of New Mexico.

**STANDARD OF REVIEW**

Summary judgment is proper only when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 1-056 NMRA. The movant has the initial burden to show that there is no genuine issue as to a material fact and that judgment in its favor is therefore appropriate. *Spencer v. Health Force, Inc.*, 2005-NMSC-002, ¶ 7, 137 N.M. 64, 107 P.3d 504. The burden then shifts to the opponent to show at least...
a reasonable doubt as to the existence of a genuine issue of fact. *Id.* We view the facts in a light most favorable to the party opposing summary judgment, and draw all reasonable inferences in favor of a trial on the merits. *Id.* Where the material facts are undisputed, leaving only legal questions, our review of the district court order granting summary judgment is de novo. *Ocena v. Am. Furniture Co.*, 2004-NMSC-018, ¶ 12, 135 N.M. 539, 91 P.3d 58; *Barncastle v. Am. Nat’l Prop. & Casualty Cos.*, 2000-NMCA-095, ¶ 5, 129 N.M. 672, 11 P.3d 1234.

**DISCUSSION**

### A. Son Is Not an “Insured” Under the Corporate Commercial Auto Policy

{13} Allstate argues that before deciding whether stacked UM coverage is available under the corporate commercial auto policy, the first question which must be resolved is whether Son is an “insured” under the policy. We agree. It is fundamental that a person must be insured under an insurance policy to be entitled to receive benefits pursuant to the policy.

{14} “Stacking refers to an insured’s attempted recovery of damages by aggregating the coverage under more than one policy or under one policy covering more than one automobile.” *Gamboa v. Allstate Ins. Co.*, 104 N.M. 756, 757, 726 P.2d 1386, 1387 (1986). It follows that “the ‘stacking’ issue arises only when it is determined that the person seeking to cumulate benefits on two or more uninsured motorist coverages is an insured under those policies.” *Id.* at 758, 726 P.2d at 1388 (citing *Seaton v. Kelly*, 339 So. 2d 731, 733 (La. 1976); see *Lucero v. N.M. Pub. Sch. Ins. Auth.*, 119 N.M. 465, 466, 892 P.2d 598, 599 (1995) (holding that claimant not entitled to UM coverage because she was not an “insured” as defined in the policy); *Jaramillo v. Providence Wash. Ins. Co.*, 117 N.M. 337, 343, 871 P.2d 1343, 1349 (1994) (“The burden of proof is on the claimant to show that he or she belongs to the class of intended beneficiaries.”); *Konnick v. Farmers Ins. Co. of Ariz.*, 103 N.M. 112, 115-16, 703 P.2d 889, 892-93 (1985) (holding that step-daughter was an “insured” under the policy and entitled to stack underinsured motorist coverage).

{15} It is not our task to determine who may stack coverage under the policy, it is our task to determine whether Son himself is entitled to stacked UM coverage. See *Jaramillo*, 117 N.M. at 342, 871 P.2d at 1348. We make this determination by analyzing whether Son was covered by the UM endorsement of the policy, which presents a question of law. See *Gamboa*, 104 N.M. at 758, 726 P.2d at 1388 (stating that when reviewing policy coverage, the language of the policy must be given its natural and ordinary meaning unless the language is ambiguous). While we determine whether the insurance policy is ambiguous as a question of law, *Richardson v. Farmers Insurance Co. of Arizona*, 112 N.M. 73, 74, 811 P.2d 571, 572 (1991), we remain mindful that “the language at issue should be considered not from the viewpoint of a lawyer, or a person with training in the insurance field, but from the standpoint of a reasonably intelligent layman, viewing the matter fairly and reasonably, in accordance with the usual and natural meaning of the words.” *Rummel v. Lexington Ins. Co.*, 1997-NMSC-041, ¶ 19, 123 N.M. 752, 945 P.2d 970 (internal quotation marks and citation omitted).

{16} Plaintiffs’ briefs suggest that the failure to set forth the complete name of the corporation in the endorsement somehow misled them. However, the policy was specifically changed at the request and direction of Parents to reflect that the corporation was the insured, and the policy documents as a whole clearly demonstrate that the insured is the corporation. Moreover, the suggestion is not supported by any facts establishing that Parents believed anyone other than the corporation was the insured, and it is undisputed that the corporation was in fact the insured. Therefore, we do not further discuss or consider the suggestion. The UM endorsement of the policy states, consistent with the wishes of Parents, that the “Named Insured” is the corporation “John G. Rehders General.” The UM endorsement then explicitly defines who is an insured for UM coverage. It states:

> If the Named Insured is designated in the Declarations as:

1. **An individual**, then the following are “insureds”:
   a. Any Class 1 “insured”, meaning the Named Insured and any “family members”.
   b. Anyone other than a Class 1 “insured” “occupying” a covered “auto” or a temporary substitute for a covered “auto”. The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
   c. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.

2. A partnership, limited liability company, *corporation* or any other form of organization, then the following are “insureds”:
   a. Any Class 2 “insured”, meaning the Named Insured is not an individual Named Insured.
   b. Anyone other than a Class 1 “insured” while “occupying” a covered “auto” or a temporary substitute for a covered “auto”.
   c. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.

(Emphasis added.) Considering the foregoing language in accordance with the usual and natural meaning of the words used from the standpoint of a reasonably intelligent layman, we discern the following.

{17} First, the UM endorsement establishes two classes of an “insured” by reference to whether the “named insured” is an individual or a business organization. Unless Son qualifies as a “Class 1 insured” or a “Class 2 insured” he is not an “insured” qualified to receive UM benefits under the express terms of the policy.

{18} Second, Son does not qualify as a “Class 1 insured” under the terms of the policy because the “named insured” is not an individual, but the corporation, John G. Rehders General Contractor, Inc. An “insured” falls into “Class 1” only when an individual is designated in the declarations as the “named insured.” A “Class 1 insured” is then specifically described as that person and any “family member” of that person. A separate provision of the policy defines “family member” as “a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured’s household, including a ward or foster child.”

{19} Third, any other “insured” falls into “Class 2.” A “Class 2 insured” is specifically described as a partner of the partnership, a member of the limited liability
company and employees, directors, and stockholders of the corporation where a partnership, limited liability company, or corporation is designated in the declarations as the named insured. Son is not an employee, director, or stockholder of John G. Rehders General Contractor, Inc., the corporation designated in the declarations as the named insured. Therefore, he does not satisfy this criteria. A “Class 2 insured” also specifically includes a person “occupying a ‘covered auto’” or a “temporary substitute for a covered auto” which was “out of service because of its breakdown, repair, servicing, ‘loss,’ or destruction” at the time of the accident, and a person who is seeking to recover because of bodily injury sustained by someone else insured under the policy. There is no claim or evidence that Son satisfies any of these criteria either. Son is therefore not a “Class 2 insured.”

Both New Mexico case law and cases from other jurisdictions demonstrate that individuals who fail to meet the definition of “insured” as unambiguously defined by the policy language cannot stack UM coverage under the policy. In Gamboa, the plaintiff’s decedent was a passenger in his father’s Chevrolet that was driven by his friend. The decedent and the driver were both killed in a head-on collision with an uninsured motorist. 104 N.M. at 757, 726 P.2d at 1387. The insurer of the Chevrolet paid the estates of the decedent and the driver the limits of its UM coverage. The plaintiff also sought UM coverage under a policy insuring a Ford owned by the driver’s father that was not in any manner involved in the accident. The Supreme Court framed the sole issue on appeal as whether the decedent was an “insured” under both policies and therefore allowed to stack the UM coverages of the Chevrolet and the Ford. 104 N.M. at 757-58, 726 P.2d at 1387-88. In deciding this question of law, our Supreme Court specifically said that it “must look to the provisions of the policy; if the terms of the policy are not ambiguous, the language used must be given its natural and ordinary meaning.” Id. at 758, 726 P.2d at 1388 (quoting Sears v. Wilson, 704 P.2d 389, 390 (Kan. Ct. App. 1985)). The Supreme Court concluded that the decedent was not an “insured” under the clear, unambiguous terms of the policy providing UM coverage for the Ford. Therefore, he was not entitled to stacked UM coverage. Gamboa, 104 N.M. at 760, 726 P.2d at 1390.

In Herrera v. Mountain States Mutual Casualty Co., 115 N.M. 57, 846 P.2d 1066 (1993), the plaintiff was injured in an accident while occupying an automobile owned by her parents and operated by her mother. Id. at 58, 846 P.2d at 1067. The plaintiff attempted to stack the UM coverage of four trucks owned by a corporation which employed her father. Id. Our Supreme Court affirmed the district court order granting summary judgment to the insurer, because the plaintiff was not insured under the unambiguous language of the commercial policy issued to the corporation. Id. at 59, 846 P.2d at 1068.

Finally, in Lucero, the plaintiff was injured while driving a vehicle owned and insured by her employer, and she sought damages under the UM coverage provided for the automobile. 119 N.M. at 465-66, 829 P.2d at 598-99. The policy expressly excluded UM coverage for injuries suffered by employees in the course of their employment. Id. at 466, 829 P.2d at 599. Our Supreme Court held as a matter of law that the plaintiff was not entitled to UM benefits given her status under the express terms of the policy. Id.

The trial court did not find the applicable language of the policy ambiguous, and neither do we. In American Economy Insurance Co. v. Bogdahn, 2004 OK 9, ¶ 0, 89 P.3d 1051, the insured was a closely-held corporation which operated a pharmacy. The UM endorsement identified the pharmacy as the sole “named insured” and listed the “form of business” as “a corporation.” Id. ¶ 7 (internal quotation marks omitted). In part, the endorsement defined “who is an insured” as “[1. You [; and] 2. If you are an individual, any ‘family member.’” “A ‘family member’ was then defined as “a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.” Id. The court concluded that the word “You” was not susceptible to interpretation: it plainly referred to the corporation as the named insured. Just as clearly, since the named insured was not an individual, family members were not insured. Id. ¶ 13. Therefore, the owner’s minor son was not entitled to UM benefits. Id. The court noted that the vast majority of jurisdictions conclude as a matter of law that similar policy language is not ambiguous. Id. ¶ 20 & n.3.

We conclude that Son is not an “insured” under the clear, unambiguous language of the UM endorsement and not entitled to any UM benefits under the corporate commercial auto policy issued to John G. Rehders General Contractor, Inc. Since he is not entitled to UM coverage, he is not entitled to stacked UM benefits.

B. The Insured’s Reasonable Expectations and Public Policy

The district court granted Plaintiffs summary judgment on public policy grounds. It concluded that the reasonable expectation of Parents was that they had purchased stacked UM coverage for themselves and their family and that stacking of UM coverage cannot be prohibited by language of the policy when the insurance company charges separate UM premiums for each vehicle insured. The effect of the district court order is that Son is a Class 1 insured of the corporate commercial auto policy under our UM case law, and Son is therefore entitled to stacked UM coverage for each of the seven vehicles insured by the corporation. Plaintiffs’ argument that the district court order should be affirmed is also based on public policy. They argue that Plaintiffs had a reasonable expectation of stacked coverage for Son and that the policy definitions excluding Son as an insured, in effect, prohibit UM stacking, which violates the public policy of New Mexico.

We begin our analysis by examining the background of our stacking jurisprudence. Again, “stacking” refers to the right of an insured to aggregate the coverage under two or more UM policies (interpolicy stacking), or under one UM policy covering more than one automobile (intrapolicy stacking), until all the damages of the insured are satisfied or until the limits of the applicable policies are exhausted. Morro v. Farmers Ins. Group, 106 N.M. 669, 670, 748 P.2d 512, 513 (1988); Gamboa, 104 N.M. at 757, 726 P.2d at 1387; see Lopez v. Found. Reserve Ins. Co., 98 N.M. 166, 646 P.2d 1230 (1982) (allowing intrapolicy stacking), modified in other respects by Montano v. Allstate Indem. Co., 2004-NMSC-020, ¶ 1, 135 N.M. 681, 92 P.3d 1255; Sloan v. Dairyland Ins. Co., 86 N.M. 65, 519 P.2d 301 (1974) (allowing interpolicy stacking).

“Policy stacking” refers to stacked UM coverage which is granted by the express terms of the policy itself. Jaramillo, 117 N.M. at 339 n.1, 871 P.2d at 1345 n.1. This is not a “policy stacking” case. “Judicial stacking” refers to stacked UM coverage which results from a rule of construction applied to the policy by the courts on grounds of public policy. Id. For example, in Lopez, the insured purchased a single policy insuring two vehicles and he paid a separate premium for UM coverage on each vehicle. 98 N.M. at 167, 646 P.2d at 1231. Since the policy did not clearly explain the
effect of the multiple premiums paid under the single policy insuring the two vehicles, our Supreme Court determined that the policy was ambiguous. Id. at 168, 646 P.2d at 1232. Stacking was allowed on the basis of two closely related rationales: (1) because the payment of separate premiums entitled the insured to two recoveries, and (2) to fulfill the reasonable expectations of the insured. Id. at 170-71, 646 P.2d at 1234-35.

[28] It is now well settled in New Mexico that our Supreme Court has favored “stacked” UM coverage that is issued pursuant to NMSA 1978, § 66-5-301(1983) (requiring every automobile liability insurance policy issued in New Mexico to provide for insurance against uninsured motorists unless such coverage is rejected by the insured).

Our past cases have evolved a strong judicial policy, rooted in this state’s uninsured motorists insurance statute (NMSA 1978, Section 66-5-301[1983]), favoring stacking in order that a person injured by an uninsured . . . motorist may receive compensation for his or her damages to the extent of the insurance purchased for his or her protection. Rodriguez v. Windsor Ins. Co., 118 N.M. 127, 127, 879 P.2d 759, 759 (1994), modified in other respects by Montano, 2004-NMSC-020, ¶ 1. The public policy in support of stacking in New Mexico “has always been tied to the notion that it is unfair not to allow stacking when multiple premiums are paid or when the policy is otherwise ambiguous.” Montano, 2004-NMSC-020, ¶ 15 (emphasis omitted). In this way, our stacking jurisprudence effectuates the two functions enunciated in Lopez: to ensure that the insured gets what he or she pays for, and to fulfill the reasonable expectations of the insured. Montano, 2004-NMSC-020, ¶ 21. Montano reiterates that “when multiple premiums are charged for UM coverage on multiple cars, even in the face of a truly unambiguous limitation-of-liability clause, stacking will be required.” Id. ¶ 23. Therefore, stacking is not required only when the policy clearly charges only a single premium for the UM coverage and it also unambiguously precludes stacking. Id. ¶ 15. Discussing the two objectives achieved by stacking, Montano states:

If the primary goal is to fulfill the reasonable expectations of the insured, then there is no need to look at anything beyond the language of the policy itself. If, on the other hand, the primary goal is to give insureds what they pay for, then we should, at the very least, be concerned with the actual methods used to arrive at the premium and should look behind the policy language itself.

Id. ¶ 23.

[29] To achieve the objective of our uninsured motorist statute, Section 66-5-301, our common law stacking jurisprudence recognizes two classes of insureds. In Konnick, 103 N.M. at 114-15, 703 P.2d at 891-92, the policy defined, and our Supreme Court recognized, two classes of insureds: class-one, consisting of the named insured as stated in the policy and, while residents of the same household, the spouse of that named insured and relatives of either; and class-two, consisting of any other person while occupying an insured vehicle. We note that the court-defined terms “class-one insured” and “class-two insured” do not necessarily square with the definitions for classes of insureds as articulated within insurance policies such as the one in the case at bar. Assuming that the purchaser of the policy was the same person named as the insured in the policy, our Supreme Court recognized that he could rightly expect to be covered, no matter what his location was at the time of the accident. Id. at 115 & n.2, 703 P.2d at 892 & n.2. By further referencing the two classes of insureds defined in the policy, the purchaser could also rightly expect that his spouse and relatives, while residents of the same household, would be afforded the same protection, no matter what their location. Id. Accordingly, class-one insureds were recognized as having UM coverage no matter where they were or the circumstances, because coverage was not limited to a particular vehicle, and class-two insureds were afforded coverage only because they occupied a covered vehicle. Morro, 106 N.M. at 671, 748 P.2d at 514. This classification continues to be recognized as part of our common law stacking jurisprudence. See Ponder v. State Farm Mut. Auto. Ins. Co., 2000-NMSC-033, ¶ 22, 129 N.M. 698, 12 P.3d 960; Samora v. State Farm Mut. Auto. Ins. Co., 119 N.M. 467, 469, 892 P.2d 600, 602 (1995); Juramillo, 117 N.M. at 339 n.1, 871 P.2d at 1345 n.1; Padilla v. Dairyland Ins. Co., 109 N.M. 555, 557, 787 P.2d 835, 837 (1990); Gamboa, 104 N.M. at 758, 726 P.2d at 1388.

[30] A subcategory of class-two has also recently been recognized, giving rise to three classes of UM insureds: “(1) the named insureds and members of a named insured’s household [(class-one insureds)], (2) persons who are injured while occupying an insured vehicle [(class-two insureds)], and (3) persons who sustain consequential damages as a result of personal injuries sustained by persons who are class (1) or class (2) insureds.” Phoenix Indem. Ins. Co. v. Pulis, 2000-NMSC-023, ¶ 7, 129 N.M. 395, 9 P.3d 639 (quoting Robert E. Keeton & Alan J. Widiss, Insurance Law § 4.9(e), at 400 (1988)) (alteration in original). See also Gamboa, 104 N.M. at 760, 726 P.2d at 1390, in which our Supreme Court noted that the policy at issue expressly created these three classes of insureds.

[31] Whether an UM insured falls in “Class 1” or “Class 2” has important consequences.

Class I insureds may stack all uninsured motorist policies purchased by the named insured because those policies were purchased to benefit the named insured and his or her family, but Class II insureds may only recover under the policy on the car in which they rode because the purchaser only intended occupants to benefit from that particular policy.

Ponder, 2000-NMSC-033, ¶ 22. Our strong public policy favoring stacking applies to Class I insureds. Id. ¶ 33.

[32] The judgment of the district court and Plaintiffs’ arguments in support of the judgment are based on the following reasoning. When the insured business was identified as a sole proprietorship and Parents were the named insureds, Parents were Class I insureds. Since Parents paid a separate UM premium for each vehicle, they were entitled to stack the UM coverage on all seven vehicles they insured. This fulfilled their reasonable expectation of having a recovery under each policy they paid for. Son was a Class I insured only because he lived with Parents, but this status also entitled Son to stacked UM coverage. When the insured business was changed from a sole proprietorship to a corporation, nothing really changed because separate UM premiums were still charged and paid for each of the vehicles in substantially the same amounts, and Parents were the stockholders of the corporation. Therefore, the reasonable expectation of Parents was that they remained Class I insureds and entitled to stacked UM coverage, as did Son because he lived with Parents at the time of his accident. We reject this reasoning.
The doctrine of reasonable expectations may be invoked when the language of an insurance policy or representations of the insurance company lead an insured to reasonably expect coverage. See, e.g., Barth v. Coleman, 118 N.M. 1, 878 P.2d 319, 322 (1994); Martinez v. Allstate Ins. Co., 1997-NMCA-100, ¶ 11, 124 N.M. 36, 946 P.2d 240. The doctrine is also available where policy language is ambiguous, see Rummel, 1997-NMSC-041, ¶¶ 21-22, and when the “dynamics of the insurance transaction” make way for its application. Barth, 118 N.M. at 5, 878 P.2d at 323. For example, in Ponder, the parents purchased UM coverage on eight vehicles they owned, and their daughter was a Class 1 insured entitled to stacked UM coverage because she lived with her parents. 2000-NMSC-033, ¶ 2. The daughter got married but continued living in her parents’ home with her husband. When the daughter and her husband decided to move, the mother reported to the insurance agency her daughter’s marriage and change of residence. She said she inquired on several occasions about the adequacy of the daughter’s coverage and wanted to make sure that the daughter continued to have “full coverage.” Id. ¶ 3 (internal quotation marks omitted). Specifically, she said that the daughter had married, she was expecting a baby, and was moving in and out of the home. The mother wanted to know whether the change in the daughter’s marital status limited her coverage so that, if necessary, the mother could take the necessary steps to obtain coverage that would cover the daughter on all the vehicles. Id. ¶¶ 15-16. The insurance agency repeatedly assured the mother that the daughter continued to have “full coverage” and at no time did the insurance agency tell the mother that the change in the daughter’s residence would affect the extent of her UM motorist coverage. Id. ¶¶ 3, 16. After the daughter moved out of her parents’ home, she was in an accident with an uninsured driver. Id. ¶ 1. Considering the surrounding circumstances, the conduct of the parties, and the oral expressions of their intentions, our Supreme Court held there was an ambiguity concerning the daughter’s coverage and that the mother had a reasonable expectation that the daughter had the same type and extent of coverage as when she lived with her parents. Id. ¶¶ 15, 29. The daughter was therefore afforded stacked UM coverage.

On the other hand, judgment against an insured is appropriate as a matter of law when the insured’s expectations do not extend to the facts of the case, or when the insured’s expectations conflict with the clear language of the policy itself. Samora, 119 N.M. at 470-71, 892 P.2d at 603-04; Martinez, 1997-NMCA-100, ¶ 11. In this case, Plaintiffs’ expectations of UM coverage for Son were not reasonable as a matter of law in light of the undisputed facts and the unambiguous language of the policy excluding Son as an insured.

Parents operated their business as a sole proprietorship for several years and made a conscious decision to change the business to a corporation and thereby obtain benefits associated with being a corporation such as tax benefits and limited personal liability. Parents then expressly directed that the insurance policy be changed to reflect that the named insured be changed to the corporation they formed to own and operate the business. We will not assume that Parents did not know that changing the form in which they operated the business had insurance coverage implications. Plaintiffs presented no evidence that Parents were confused by the unambiguous terms of the UM endorsement defining who is an insured when they received the new policy from Allstate. Father’s affidavit really only says that before and after the new policy for the corporation, he expected the insurance to provide Son with the coverage that was applicable to him. Parents now ask that we hold that the very change that they directed to be made is void and rewrite the policy back to state that Parents individually are the named insured, not the corporation. We hold that this is not a reasonable expectation under the circumstances.

Plaintiffs’ remaining arguments are premised on the assumption that because Allstate charges a separate premium for UM coverage on seven different vehicles, someone must be entitled to stacked UM coverage. The UM endorsement provides that only a Class 1 insured is entitled to stacked UM coverage. Moreover, the UM endorsement limits Class 1 insureds to those policies in which the named insured is designated in the Declarations as an individual. Thus, the policy, in effect, prohibits stacking when the named insured is a corporation. Therefore, when the named insured is a corporation, as in this case, no one has stacked coverage under the terms of the policy, even though Plaintiffs assert that someone should be entitled to stacked coverage because separate premiums were charged. Plaintiffs accordingly contend that the definition of an insured in the UM endorsement and the prohibition against stacking are void because they result in an ambiguity and they violate our public policy. Plaintiffs therefore urge us to conclude that Parents and Son are Class 1 insureds and that Son is entitled to stacked UM coverage.

Plaintiffs in effect contend that a corporate commercial auto policy must always include coverage for both a Class 1 insured and Class 2 insured when a separate UM premium is charged for each vehicle. Plaintiffs’ arguments assume that the risk assumed by Allstate for insuring the business as a sole proprietorship is identical to the risk it assumed for insuring the business as a corporation. We decline to make that assumption in this case. While Montano recognizes that actuarial methods used to arrive at the premiums are considered to determine whether the insured gets what he pays for, we have no such evidence in this case. Moreover, the authorities which pronounce the public policy that Plaintiffs rely upon are cases in which separate UM premiums were paid by or on behalf of an individual who was insured by the policy. The insurance in this case, on the other hand, is clearly and unambiguously the corporation which was named as such at the specific direction of Parents. Under the circumstances, the public policy considerations relating to UM coverage for a corporation are different.

When a corporation purchases UM coverage for the vehicles it owns and operates, it is not insuring against personal injury to itself, because a corporation does not suffer personal injuries. Instead, it is purchasing UM coverage for each person who is occupying a covered automobile. Our public policy does not require each occupant of a covered vehicle, who is not a party to the contract, to expect stacked UM coverage. Nor does our public policy require stacked UM coverage to be further extended to family members who are not even occupants of a covered vehicle when they are insured. In Benns v. Continental Casualty Co., 982 F.2d 461, 461 (10th Cir. 1993), the driver was injured by an uninsured motorist while driving a vehicle owned by his employer. Id. After receiving UM payments applicable under his employer’s policy, he sought UM coverage under a commercial auto policy issued to two corporations owned by his father because his personal vehicle was included in the policy along with the vehicles actually owned by the corporations. Id. In pertinent part, two classes of insureds defined in the policy were: “1. You; and] 2. If you are
an individual, any ‘family member.’” The policy further defined “you” as the person or entity that was listed in the policy as the named insured. Id. at 462. The corporations were listed in the policy as the named insured; therefore the driver was neither a named insured nor a ‘family member’ of a named insured, and the court held he was not entitled to UM benefits under the corporate policy. Id. The court acknowledged New Mexico’s public policy of placing an injured policy holder in the same position of recovering damages as if the tortfeasor had possessed liability insurance, but concluded that applying the policy as written did not violate our public policy because, it “granted coverage to the insured entities and over the insured vehicles in a manner that was otherwise consistent with New Mexico law and policy.” Id. at 464. The prevailing view in the United States is that when “you” in the UM endorsement is a corporation, coverage is not extended to a “family member.” See Ins. Co. of Evanston v. Bowers, 758 A.2d 213, ¶ 18 (Pa. Super. Ct. 2000) (collecting and summarizing authorities); see also 24 Eric Mills Holmes, Appleman on Insurance 2d ¶148.1[B][2] (2004) (collecting and summarizing cases where courts have refused to extend UM coverage to an individual because the named insured is a legal entity). Based on these authorities, we conclude that our public policy does not extend to Son under the circumstances of this case.

CONCLUSION

{39} The summary judgment entered in favor of Plaintiffs is reversed and the case is remanded with instructions to enter judgment in favor of Allstate.

{40} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

I CONCUR:

CELIA FOY CASTILLO, Judge

CYNTHIA A. FRY, Judge (dissenting)

FRY, Judge (dissenting).

{41} I respectfully dissent. I would affirm the district court’s summary judgment in favor of Plaintiffs on the ground that the definition of “insured” in the UM endorsement is ambiguous and should be construed according to the reasonable expectations of the insured.

{42} In determining whether an insurance policy provision is ambiguous, we consider whether the language “is susceptible to more than one meaning, when the structure of the contract is illogical, or when a particular matter of coverage is not explicitly addressed by the policy.” Rummel, 1997-NMSC-041, ¶ 19. We engage in this analysis by asking “what understanding a reasonably intelligent, non-lawyer lay person might glean from the policy, in light of the usual meaning of the words and the circumstances leading to purchase of the policy.” Berry v. Fed. Kemper Life Assur. Co., 2004-NMCA-116, ¶ 61, 136 N.M. 454, 99 P.3d 1166. “Specialized knowledge of the insurance industry case law, academic treatments, and industry norms or standards should not enter into the inquiry.” Id.

{43} Referring Rummel’s definition of ambiguity, I am convinced the UM endorsement is ambiguous because the structure of the endorsement’s definitions is illogical, and the definitions do not explicitly address the particular matter of coverage for family members when the insured is a closely held corporation. Reading the endorsement as a whole, it is clear that Allstate tried to establish two classes of insureds by reference to whether the “named insured” is an individual or a business organization, but it failed to communicate to a reasonable person the difference between the two classes.

{44} If the named insured is an individual, the endorsement plainly states in Section (B)(1)(a) that an “insured” includes “[a]ny Class 1 ‘insured’, meaning the Named Insured and any ‘family members’.” Majority opinion, ¶ 16. There is nothing confusing about this definition of a Class 1 insured. The endorsement then goes on to provide in Section (B)(2)(a) that if the named insured is “[a] partnership, limited liability company, corporation or any other form of organization,” then an insured includes “[a]ny Class 2 ‘insured’, meaning the Named Insured is not an individual Named Insured.” Majority opinion, ¶ 16. This language is far from clear. If the sentence had read, “any Class 2 ‘insured’, meaning the Named Insured,” it would be clear that a Class 2 insured is the business organization listed on the policy as the named insured. But the sentence does not read this way, and the purported definition of “Class 2 insured” adds language that creates confusion. The endorsement defines a Class 2 insured as “the Named Insured is not an individual Named Insured.” This sentence appears to be a statement of fact rather than a definition; consequently, a reasonable insured may well surmise that a “Class 2 insured” has a separate, unstated meaning. The insured would then flip through the remaining pages of the policy, looking in vain for a definition of “Class 2 insured.”

{45} The majority’s approach to this difficult language is one familiar to lawyers and members of the insurance industry: it overlooks the absence of a definition for Class 2 insured and fills in the blanks by resorting to an approach that probably makes no sense to “a reasonably intelligent, non-lawyer lay person.” Berry, 2004-NMCA-116, ¶ 61. The majority first appropriately concludes that Son is not a Class 1 insured because the family business was a corporation. The majority then concludes that Class 2 must not include family members because only Class 1 does. This approach would be fine if the endorsement actually defined Class 2 insureds in some intelligible fashion. It is certainly possible to draft an intelligible definition, as illustrated by the definitions discussed in other cases. For example, in Bogdahn, 2004 OK 9, ¶ 7, the policy defined “AN INSURED” as “1. You[; and] 2. If you are an individual, any ‘family member.’” The term “You” refers to the named insured, and the second paragraph makes it clear that family members are included only if the named insured is an individual. See also Benns, 982 F.2d at 462 (quoting the same definition as in Bogdahn). Here, however, the endorsement provides no definition of Class 2 at all. Instead, it provides an ambiguous statement that the majority must interpret through extensive legal analysis.

{46} Our Supreme Court has noted that “the insurer who drafts the policy must reasonably anticipate . . . how the language is understood by the ordinary person.” Rodriguez, 118 N.M. at 131, 879 P.2d at 763 (internal quotation marks and citation omitted). “[T]he insurer has the responsibility of issuing an intelligible policy.” Id. The insurer did not issue an understandable policy in this case; despite my legal training, even I could make no sense of the endorsement’s definition of Class 2 insureds. And, while my legal training allows me to follow the majority’s interpretive path, it is unfair to expect a lay person to be able to negotiate the necessary twists and turns.

{47} Given the ambiguity created by the endorsement’s inscrutable definition of Class 2 insureds, we should give effect to the insured’s reasonable expectations. See id. at 130, 879 P.2d at 762 (“Giving effect to the insured’s reasonable expectations, in cases of policy ambiguity, is of course a well-settled approach to construing and applying language in insurance policies.”

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In this endeavor, we consider “what the hypothetical reasonable insured would glean from the wording of the policy and the kind of insurance at issue,” rather than the expectations of the specific insured who purchased the policy. Id. In this case, a hypothetical reasonable insured would be able to glean little from reading the UM endorsement’s definition of “insured.” But we must consider the kind of insurance being purchased, so we assume the existence of the same circumstances surrounding Parents’ purchase of insurance. Thus, we assume the hypothetical insured had purchased a policy when he was a sole proprietor and understood from the intelligible language of Section (B)(1)(a) of the definition of “insured” that family members were covered. We then assume the hypothetical insured changed his form of business to a corporation. Although the record does not contain a complete copy of the policy that was in effect before the change in business form, there is no evidence suggesting that anything significant changed about the policy except the description of the form of the business on the declarations page and a minor change in the premiums charged. No one notified the insured that coverage had changed materially. Because the language of the policy did not intelligibly convey anything different, a reasonable insured could expect that UM coverage remained the same and that family members were still covered. Because Allstate failed its responsibility to communicate clearly to its insured, we should give effect to these expectations and conclude that Son is an insured under the UM endorsement.

{48} In my view, our courts should not endeavor to make sense of language that is not sensible because “by doing so we encourage the perpetuation of . . . unintelligible language” in insurance policies. Computer Corner, Inc. v. Fireman’s Fund Ins. Co., 2002-NMCA-054, ¶ 21, 132 N.M. 264, 46 P.3d 1264. The concepts insurers seek to communicate to insureds are not beyond understandable expression. By our holdings, we should discourage insurers from using obfuscation in drafting and encourage them to communicate clearly.

CYNTHIA A. FRY, Judge
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Professor Joseph Walsh, Golden Gate University, San Francisco, California
9:30 a.m. Recent Developments in Federal Income Taxation: A Comprehensive Examination of Statutory, Regulatory and Judicial Rulings Affecting Tax Law in the Past Year
Professor Ira B. Shepard, University of Houston Law Center, Houston, Texas
10:30 a.m. Break
10:45 a.m. Recent Developments in Federal Income Taxation (cont)
Professor Ira B. Shepard
11:45 a.m. Lunch (provided at the State Bar Center)
1:15 p.m. The Tax Fraud Investigations Division Gets Equipped to Fight Tax Fraud
Alvan Romero, Director of the Tax Fraud Investigations Division, NM Taxation and Revenue Department
2:15 p.m. The Top Ten Tax Scams
James H. Maes, CPA, CFE, Special Agent, NM Taxation and Revenue Department
3:15 p.m. State Tax Issues Affecting New Mexico Taxpayers: The Impact of the K-Mart and the Wal-Mart Decisions on New Mexico Tax Law
Curtis W. Schwartz, Esq, Modrall Sperling Roehl Harris & Sisk
3:45 p.m. Break
4:00 p.m. State Tax Issues Affecting New Mexico Taxpayers (cont)
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5:00 p.m. Adjourn and Reception

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