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Special Insert:
Bill Kitts Mentor Program
HATS OFF TO OUR VOLUNTEERS

The YLD/Dismas House Project is a huge success!

Special thanks to the following attorneys for donating their time to lecture Dismas House residents on various legal topics:

- Roman Romero
- Kasey R. Daniel
- Marjorie Martin

YLD would also like to thank all of the attorneys and their families that donated professional clothing. Together we collected several truckloads worth of clothes. All donated clothing was given to Dismas House of New Mexico and The Crossroads. Special thanks to the following firms for accepting clothing donations:

- 13th Judicial District Attorney's Office (Cibola County)
- Cuddy, Kennedy, Albetta & Ives, L.L.P
- State Bar of New Mexico
- The Romero Law Firm
- Butt, Thornton & Baehr, P.C.
Ethics Advisory Opinions

Visit the State Bar advisory opinion archive and topical index on the State Bar Web site,* www.nmbar.org, for assistance in interpreting the New Mexico Rules of Professional Conduct.

Easy to Use ______________________

• 80 indexed, summarized opinions.

• Select Attorney Services/Practice Resources then Risk Management.

More Resources ____________________

• Risk Management Hotline, (800) 326-8155.

• Original questions, involving one’s own conduct, should be sent to the Ethics Advisory Committee, c/o State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860 or membership@nmbar.org.

* The published advisory opinions are also available at the UNM School of Law Library and the Supreme Court Library.
SEMINAR REGISTRATION FORM
CLE PROGRAMS - State Bar Center

SEPTMBER - NATIONAL TELESEMINARS

Age Discrimination in Employment Law and Litigation
11 a.m. via telephone

With a rapid aging population and better health care, more people are staying in the workforce longer than before. This raises a series of issues for recruitment, hiring and training. This program will focus on trends in litigation in this area and developing best practices for employers to avoid age-based discrimination claims.
1.0 General CLE Credit • $67

FAQ on Trusts Used in Charitable Giving and Estate Planning
11 a.m. via telephone

This program will provide a guide to the dense world of trust law in the context of charitable giving, including an overview of the types of trusts, their advantages and disadvantages, and techniques for using them in charitable giving plans.
1.0 General CLE Credit • $67

Hidden Tax Traps in Forming LLCs and Partnerships
11 a.m. via telephone

Partnerships and LLCs taxed are partnerships are very flexible organizations that offer more structuring alternatives than the traditional corporation, but often overlooked is the price of that flexibility -- in this case, a dense maze of federal income tax regulations that pose pitfalls for the uninitiated. This program will examine those pitfalls and practical strategies for avoiding them.
1.0 General CLE Credit • $67

2006 Update on Charitable Giving
11 a.m. via telephone

This program will provide our annual update on the legislative, regulatory and practice-based developments affecting the advice legal counsel provide benefactors in their charitable giving plans.
1.0 General CLE Credit • $67

FOUR WAYS TO REGISTER

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

Name____________________________________________
NM Bar #_____________________________________
Street_________________________________________
City/State/Zip__________________________________

Phone________________Fax_____________________
E-mail_________________________________________

Program Title_________________________________
Program Date_________________________________
Program Location_______________________________
Program Cost___________________________________
☐ Purchase Order (Must be attached to be registered)
☐ Check enclosed $_____________________________
Make check payable to: CLE
☐ VISA ☐ MC ☐ American Express ☐ Discover
Credit Card #_________________________________
Exp. Date_____________________________________
Authorized Signature_____________________________
Professionalism Tip

With respect to the public and to other persons involved in the legal system:
I will willingly participate in the disciplinary process.

Meetings

September

6 Employment and Labor Law Section
Board of Directors, noon, State Bar Center

9 Ethics Advisory Committee,
10 a.m., State Bar Center

11 Taxation Section Board of Directors,
noon, via teleconference

11 Attorney Support Group,
5:30 p.m., First United Methodist Church

13 Children's Law Section Board of Directors,
noon, Juvenile Justice Center

13 Membership Services Committee,
noon, State Bar Center

14 Public Law Section Board of Directors,
noon, Risk Management Division, Santa Fe

14 Business Law Section Board of Directors,
3 p.m., State Bar Center

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

State Bar Workshops

September

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

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

October

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

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

December

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

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

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

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

Board of Legal Specialization Comments Suggested
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, which provide that the names of those seeking to qualify shall be released for publication. Further, any person may comment upon any of the applicants’ 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 93070, Albuquerque, NM 87199.

Employment and Labor Law
Theresa W. Parrish
Robert P. Tinnin, Jr.

Family Law
Elizabeth A. Musselman

Judicial Performance Evaluation Commission Press Conference
The Judicial Performance Evaluation Commission (JPEC) will hold a news conference to release JPEC’s recommendations on four Appellate Court judges and 13 Bernalillo County Metropolitan Court judges standing for retention in November 2006. The news conference will be held at 10 a.m., Sept. 15, at the 2nd Judicial District Court, 400 Lomas Blvd. NW, 3rd Floor Conference Center, Albuquerque. For more information call, Louise Baca-Sena, (505) 827-4960.

Law Library
September Library Hours:
Monday–Friday, 8 a.m.–5:30 p.m.
Saturday, 10 a.m.–3 p.m.
The library will close Sept. 8 at noon and be closed Sept. 9.
October Library Hours:
Monday–Friday, 8 a.m.–6 p.m.
Closed Saturdays and Sundays
Phone: (505) 827-4850; fax: (505) 827-4852; e-mail: libref@nmcourts.com; Web site: www.supremecourtlawlibrary.com.

Minimum Continuing Legal Education Board Notice of Vacancy
One attorney vacancy exists on the Minimum Continuing Legal Education Board due to a recent resignation. Attorneys interested in volunteering time on this board may send a letter of interest and/or resume to Kathleen Jo Gibson, Chief Clerk, PO Box 848, Santa Fe, NM 87504-0848. Deadline for letters/resumes is Sept. 18.

Proposed Revisions to the Rules of Criminal Procedure for the Metropolitan Courts
The Supreme Court is considering proposed revisions to the Rules of Criminal Procedure for the Metropolitan Courts. Written comments on the proposed amendments may be sent to Kathleen J. Gibson, Chief Clerk, New Mexico Supreme Court, PO Box 848, Santa Fe, NM 87504-0848, by Sept. 18. For reference, see the Aug. 28, (Vol. 45, No. 35) Bar Bulletin.

First Judicial District Court
Destruction of Tapes Criminal, Civil, Children’s Court, Domestic, Incompetency/Mental Health, Adoption and Probate Cases 1971 to 1991
Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy tapes filed with the court in Criminal, Civil, Children’s courts, domestic, incompetency/mental health, adoption and probate cases for years 1971 to 1991, included but not limited to cases that have been consolidated. Cases on appeal are excluded. Attorneys who have cases with tapes and wish to have duplicates made, should verify tape information with the Special Services Division (505) 476-0196, from 8 a.m. to 5 p.m., Monday through Friday. Aforementioned tapes will be destroyed after Sept. 6 by Order of the Court.

Family Law Brown-Bag Meeting
The 1st Judicial Court will host its family law brown-bag meeting at noon, Sept. 12, in the Grand Jury Room, second floor of the Steve Herrera Judicial Complex in Santa Fe. The meeting will focus on the role of court monitors and GALs. For more information or to suggest agenda items to be discussed, contact Elege Simons Harwood, (505) 988-5600 or esimonsharwood@simonsfirm.com. Provide one dollar, name and Bar number and receive 1.0 CLE credit, pending approval.

Second Judicial District Court Brown-Bag Lunch
The 2nd Judicial District Court, Children’s Court Division, will host a brown-bag lunch at noon, Sept. 7, in the courthouse jury room at 5100 Second Street NW, Albuquerque. The lunch is for all attorneys who work in abuse/neglect cases including guardians ad litem, youth attorneys, CYFD attorneys and attorneys who represent respondents.

Third Judicial District Court Judicial Appointment
Governor Bill Richardson appointed Fernando Macias to fill the newly created Children’s Court judgeship in the 3rd Judicial District. Governor Richardson worked with the Legislature to create the position, which will help reduce the case load in the Las Cruces court. Macias, a former state senator and Doña Ana County manager, has served as executive director of New Mexico Legal Aid, general manager for the Border Environment Cooperation Commission and as executive director of the Mesilla Valley Economic Development Alliance. He earned his undergraduate degree from New Mexico State University and his law degree from Georgetown University Law Center. The Judicial Nominating Commission recommended Macias as one of two candidates.
for Governor Richardson to consider for the judgeship. Macias will serve through the end of the year. The position will be up for election in November 2006.

**Fifth Judicial District Court, Lea County New Office Hours**

Effective Sept. 5, the office of the district court clerk in Lea County, Lovington, will no longer be open during the lunch hour. Office hours are 8 a.m. to noon and 1 to 5 p.m.

**Swearing-In Ceremony**

Members of the Bar and legal community are invited to the swearing-in ceremony of J. Richard Brown as district court judge in the 5th Judicial District, Division IX, at 4 p.m., Sept. 15, Eddy County Courthouse, 102 N. Canal, Third Floor, Carlsbad. A reception will immediately follow the ceremony.

**Eleventh Judicial District Court Swearing-In Ceremony**

Members of the Bar and legal community are invited to the swearing-in ceremony of Karen L. Townsend as district court judge in the 11th Judicial District. The swearing-in will take place at the 11th Judicial District Court in Judge Townsend’s chambers at 3 p.m., Sept. 6, at 103 S. Oliver, Aztec. A reception will immediately follow the ceremony.

**U.S. Magistrate Courts Reappointment of Full-Time United States Magistrate Judge**

The current term of office for incumbent full-time U.S. Magistrate Judge Karen B. Molzen will expire on April 25, 2007. The U.S. District Court has established a panel of citizens, as required by law, to consider the reappointment of Judge Molzen to a new eight-year term. The duties of Judge Molzen are defined in 28 U.S.C. § 636(a) and involve the trial of federal petty and minor offenses as per 18 U.S.C. § 3401; imposition of conditions of release under 18 U.S.C. §§ 3146; conducting arraignments, non-guilty pleas, and felony guilty pleas; upon designation, conducting hearings and submitting to the judges proposed findings of fact and recommendations for dispositive motions or prisoner petitions; trial and disposition of civil cases upon consent of the litigants; and performing such other duties as conferred or imposed by law or by the Federal Rules of Criminal Procedure and/or the Rules of the U.S. District Court for the District of New Mexico. The public and members of the Bar are invited to submit comments as to whether the reappointment of Judge Molzen to a new term of office should be considered. All comments will be kept confidential and should be submitted not later than Nov. 30 to: Mr. William B. Keleher, Chairman U.S. Magistrate Merit Selection Panel PO Box AA Albuquerque, NM 87103

**State Bar News 2006 Elections Section Elections**

In accordance with the section bylaws, each State Bar section is required to appoint a nominating committee for its annual election and provide notice of the election so that any section member may indicate to the committee his or her interest in serving on the board of directors. Section members interested in serving on their board of directors should contact a member of the nominating committee by Sept. 22. See the Aug. 7, Aug. 21, and Aug. 28 issues of the Bar Bulletin or the State Bar Web site (click on Divisions/Sections/Committees, Section Election) for previously published nominating committees and a complete list of positions to be elected.

**Appellate Practice Section Nominating Committee**

Jonathan Evan Sperber, Chair (505) 827-6150 jsperber@ose.state.nm.us

Linda Helen Bennett (505) 247-1855 hbennett@swcp.com

Caren Friedman (505) 466-6418 cfr@appellatecounsel.info

Michael T. Pottow (505) 982-1947 mtpottow@catronlaw.com

Bruce R. Rogoff (505) 827-4877 coabrr@nmcourts.com

**Family Law Section Nominating Committee**

Felissa Garcia Kelley, Chair (505) 247-7200 felissagarcia@msn.com

Lauren M. Baldwin (505) 247-9262 lbaldwinlaw@aol.com

Jon A. Feder (505) 883-3070 jaf@atkinsonkelsey.com

Elege Simons Harwood (505) 988-5600 esimonsharwood@simonsfirm.com

Mary Elizabeth Price (505) 524-6118 elizabeth.price@state.nm.us

**Prosecutors Section Nominating Committee**

Stephen Kovach, Chair (505) 827-1429 skovach@da.state.nm.us

James R.W. Braun (505) 346-7274 james.braun@usdoj.gov

Julie Ann Meade (505) 827-6693 jmeade@ago.state.nm.us

Flori J. Nunez (505) 622-4121 fnunez@da.state.nm.us

Alan R. Rackstraw (505) 476-0566 arackstraw@comcast.net

**Solo and Small Firm Practitioners Section Nominating Committee**

Ronald T. Taylor, Chair (505) 998-9060 rttaylor@aol.com

Beate Boudro (505) 522-0560 bboudro@nmia.com

Mickale C. Carter (505) 296-4090 mickale.carter@nmlawoffices.com

George Chandler (505) 662-5900 geo_c@cybermesa.com

Richard Stoops (505) 265-5560 rstoops@swcp.com
**Trial Practice Section**
Nominating Committee
- Martin Diamond, Chair
  (505) 884-0777
  madiamond@bbblaw.com
- Erika Anderson
  (505) 982-8405
eanderson@nm.net
- Robert L. Cole
  (505) 872-8626
rcolelaw@yahoo.com
- Bryan Christopher Garcia
  (505) 248-0500
bgarcia@narvaezlawfirm.com
- Eric R. Miller
  (505) 995-1017
ermf@aol.com

**Attorney Support Group**
Change in Sept. Meeting
Due to the Labor Day holiday, the next Attorney Support Group meeting will be held at 5:30 p.m., Sept. 11, at the First United Methodist Church at Fourth and Lead SW, Albuquerque. In October, the group will return to its regular schedule, meeting on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

**Casemaker**
Free Legal Research is Here
Casemaker is now live and accessible on the State Bar Web site at www.nmbar.org. Casemaker is free online legal research made available to State Bar members. Contact Veronica Cordova, vcordova@nmbar.org, or (505) 797-6039, for technical assistance or questions.

**Children’s Law Section**
Annual Art Contest
The Children’s Law Section is sponsoring its fourth annual poster and writing contest. This event is a great way for organizations and attorneys and their firms to assist in changing the lives of New Mexico’s troubled youth by supporting children’s artistic talent. The contest is for children who are currently detained or who are involved in programs such as the Youth Reporting Center, Drug Court and anti-domestic violence programs. Contestants in Bernalillo, Sandoval, Valencia and Santa Fe counties will be asked to create a work based on the theme, “Walk a Mile in My Shoes,” using tennis shoes as the medium for displaying their art.

Donations are solicited to fund contest supplies and prizes for the children whose work will be recognized and celebrated at the Bernalillo County awards ceremony to be held Nov. 3 at the Children’s Court. Tax-deductible monetary donations may be made by Sept. 15 to:
- Children’s Law Section
- State Bar of New Mexico
- PO Box 92860
- Albuquerque, NM 87199-2860.
Donations are tax-deductible through the New Mexico State Bar Foundation. Contact Sara Crecca, (505) 385-6517 or saracrecca@creccalaw.com, for more information.

**Paralegal Division**
Monthly Brown-Bag CLE for Attorneys and Paralegals
The Paralegal Division invites members of the legal community to bring a lunch and attend Introduction to the Judicial Standards Commission, presented by James Noel, Attorney at Law. The program will be held from noon to 1 p.m., Sept. 13, at the State Bar Center and offers 1.0 general CLE credits. Registration begins at the door at 11:30 a.m. and costs $16 for attorneys and $15 for paralegals, legal assistants and secretaries. For more information, contact Cheryl Passalaqua at Butt, Thornton & Baehr, P.C., (505) 884-0777.

**Public Law Section**
Annual Meeting and CLE
The Public Law Section will hold its annual meeting at 12:30 p.m., Sept. 22, in conjunction with the New Mexico Administrative Law Institute. All section members are encouraged to attend. Agenda items should be sent to Chair Al Lama, Al.Lama@state.nm.us or (505) 827-0475.

The cost of the CLE program is $189 ($169 for section members, government attorneys and paralegals). Lunch will be provided. See the CLE At-A-Glance insert in the July 17 (Vol. 45, No. 29) Bar Bulletin for more information. 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.

**Other Bars**
**Albuquerque Bar Association**
**Monthly Luncheon and CLE**
The Albuquerque Bar Association’s monthly luncheon will be held at noon, Sept. 5, at the Albuquerque Petroleum Club. Space Law and Returning to the Moon will be presented by Harrison H. “Jack” Schmitt. As an astrogeologist, businessman, space advocate, and former NASA astronaut and U.S. senator, Schmitt is uniquely qualified to think and talk about not just the science and technology of space, but the issues of politics, management, investment, legal principles and human commitment it will take to achieve success in a new era of human enterprise, achievement and settlement in space. Schmitt has recently published Return to the Moon: Exploration, Enterprise, and Energy in the Human Settlement of Space.

Lunch only: $20 members/$25 non-members; lunch and CLE: $40 members/$55 non-members; CLE only: $20 members/$30 non-members.

Register for lunch by noon, Sept. 1. Lunch is an additional $5 without reservations. Register at www.abqbar.com; by e-mail at abqbar@abqbar.com; by mail to ABA, 400 Gold SW, Suite 620, Albuquerque, NM 87102; by fax to (505) 842-0287; or call (505) 842-1151 or (505) 243-2615.

**New Mexico Defense Lawyers Association**
**September Luncheon**
The New Mexico Defense Lawyers Association will hold its September member luncheon at 11:45 a.m., Sept. 7, at the Albuquerque Petroleum Club. Guest speaker Edward Ricco will be giving appellate practice pointers. Visit www.nmdla.org for more information.

**New Mexico Women’s Bar Association**
**Annual Gala**
The New Mexico Women’s Bar Association will hold its annual gala from 5:30 to 10 p.m., Sept. 15, at the Albuquerque Marriott Hotel, located at Louisiana and I-40. The event will feature the musical machinations of Vanilla Pop. In honor of the 2006 Year of the Child, the Henrietta Pettijohn Award will be presented to Tara Ford and...
Elizabeth McGrath of the Pegasus Legal Services for Children. A UNM law student will be awarded a scholarship. Enjoy hors d’oeuvres, cocktail fare and live and silent auctions. Contact pjb@sutinfirm.com or (505) 883-3382.

**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., Sept. 13, at NYPD Pizza, 215 Central Avenue NW, Albuquerque. Guest speakers are the Honorable Clay P. Campbell, 2nd Judicial District Court; the Honorable M. Monica Zamora, 2nd Judicial District Court; the Honorable Carl J. Butkus, 2nd Judicial District Court; and Adriana Penni, independent candidate running against Judge Butkus. Each speaker 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 September 8, 2006 with Patricia Baca at pjb@sutinfirm.com. The luncheons are open to all interested persons.

**UNM School of Law**

2007 Children’s Law Institute
Jan. 10–12, 2007

The 2007 New Mexico Children’s Law Institute will be held Jan. 10–12, 2006 at the Marriott Pyramid North in Albuquerque. The conference is co-sponsored by the Supreme Court’s Court Improvement Project; the Judicial Education and Children’s Law Centers at the UNM Institute of Public Law; the Children, Youth and Families Department and the New Mexico CASA Network. The conference is intended for judges, attorneys, volunteer advocates, social workers, juvenile probation officers, educators and others who work with children and families. Attorneys usually earn as many as 12.0 CLE credits at this annual event. Save the dates and contact Judy Flynn-O’Brien, (505) 277-1050 or jafo@unm.edu, with any questions.

**7th Annual MALSA Golf Tournament**

The Mexican-American Law Student Association (MALSA) invites members of the legal community to play in MALSA’s 7th Annual Golf Tournament at 8 a.m., Sept. 30, at the Sandia Golf Club. Sponsored by the New Mexico Hispanic Bar Association, the tournament is MALSA’s largest fundraiser of the year and allows the association to provide services to its members and the community. MALSA is dedicated to the advancement of Hispanics in higher education. Each year MALSA conducts practice LSATs and admission workshops and mentors incoming law students as well as high school students through Engaging Latin American Communities for Education (ENLACE). The money raised also provides funding to offset student travel for job interviews, moot court competitions and Bar exam preparation courses. To register for the golf tournament, go to http://lawschool.unm.edu/announcements/malsa/golf/index.php or e-mail Nicholas, marshani@law.unm.edu.

**Library Fall Hours**

**Building & Circulation:**

Monday–Thursday: 8 a.m. to 11 p.m.
Friday: 8 a.m. to 6 p.m.
Saturday: 9 a.m. to 6 p.m.
Sunday: noon to 11 p.m.

**Reference:**

Monday–Thursday: 9 a.m. to 9 p.m.
Friday: 9 a.m. to 6 p.m.
Saturday: No Reference
Sunday: noon to 4 p.m.
Labor Day, Sept. 4 Closed

**Other News**

**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 and existing businesses.

The New Business Workshops are for all 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.

**New Business Workshops:** Sept. 5, 12 and 19; Oct. 3, 10 and 17; Nov. 7, 14 and 21; Dec. 5, 12 and 19.

**New Employers Workshops:** 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.

**Children’s Law Summit on Serving Former Foster Youth**

A number of child welfare system stakeholders have come together to develop a plan for serving 18- to 21-year-old youth who have exited the foster care system. As part of this planning, the Court Improvement Project of the New Mexico Supreme Court; the Children, Youth, and Families Department (CYFD); the Corrine Wolfe Children’s Law Center; the UNM School of Law; the New Mexico Citizen Review Board; the New Mexico CASA Network; and Red Mountain Family Services are sponsoring a one-day summit. Preserving Connections/Promoting Independence will explore how we can maximize independence and create the skills, supports and resources young people need to live on their own. With assistance from national legal experts, we will look at the optimal role for the court, CYFD, the youth attorney, and others.

The summit will be held from 8:30 a.m. to 4 p.m., Sept. 15, at the Hotel Albuquerque in Old Town. The registration fee of $35 includes materials and a working lunch; no CLE credits are being offered. To register, download a registration form from http://ipl.unm.edu/childlaw or contact Hilari Lipton, (505) 277-1652.

**Legal FACS Fundraising Event**

Legal FACS is excited to present its first annual fundraising event, A Celestial Celebration: An Evening to Shine. The Friends of Legal FACS invites all to be a part of this very special black tie gala from 6 to 10 p.m., Nov. 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 Bowe Jazz Quartet. For sponsorship and ticket information, contact Legal FACS, (505) 256-0417.

**New Mexico Christian Legal Aid**

New Mexico Christian Legal Aid (NMCLA) will hold its annual training session from 11:30 a.m. to 5 p.m., Sept. 22, at the State Bar Center. The training, which will be eligible for CLE credit, will cover the unique pro bono services that NMCLA provides to the homeless. Learn how to be a part of NMCLA and make a difference in our community. Free lunch will be provided. Call Denise Trujillo or Jim Roach, (505) 243-4419, for reservations and/or questions.

**Workers’ Compensation Administration**

The judges and mediators of the Workers’ Compensation Administration are holding a brown-bag lunch at noon, Sept. 15, at the Workers’ Compensation Administration, 2410 Centre SE, Albuquerque. Anyone from outside the Albuquerque area can attend by video conference at any of the Administration’s area offices.

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**Study Will Determine New Mexico’s Resource Needs for Representation of Indigent Defendants**

N.M. Sentencing Commission Requests Participation of Public Defenders and Contract Attorneys

*By Tony Ortiz, Deputy Director*

New Mexico Sentencing Commission

**T**here is a broad perception that a lack of adequate resources severely hampers the ability of the state of New Mexico to meet its constitutional mandate to provide to indigent defendants effective assistance of counsel through public defenders and contract attorneys.

Accordingly, the New Mexico Sentencing Commission has contracted with the National Center for State Courts (NCSC) to develop a clear measure of the number of attorneys (both department and contract) and support staff needed to provide effective and competent defense for all cases as part of a broad workload study that will also include judges and district attorneys. For indigent defense, reaching this goal requires gauging the attorney and staff workload associated with the delivery of quality services to the clients they represent.

For more than 30 years, NCSC has worked with courts and criminal justice agencies to address issues of organizational effectiveness, including credible and persuasive strategies to determine and obtain funding for reasonable levels of personnel and other resources.

The workload model being developed for the New Mexico Public Defender Department (NMPDD) employs a multi-faceted data collection strategy that draws on statewide surveys of attorneys and staff. The NCSC and NMPDD objective in conducting this study is to develop a workload assessment approach that uses valid and accepted methods for determining an equitable allocation of defense counsel and support staff while ensuring quality services to NMPDD and contract attorney clients across the state of New Mexico.

During the month of October, NMPDD attorneys and staff, as well as all contract attorneys in the state, are asked to participate in a time study by tracking how they spent their time at work on cases with indigent defendants, documenting their actions by case type and the category of activity performed. The results of this time study will tell us current practice, that is, how attorneys and staff actually spend their time. This process is the foundation of the workload model that NMPDD is developing. The model establishes separate case weights for different case types. This accommodates the fact that case types vary in complexity, and accordingly, require different amounts of attorney and staff time and attention. The participation of contract attorneys in the time study is critical to developing the most accurate depiction of the current use of attorney and staff resources. From this information, the level of resources necessary for the state of New Mexico to properly discharge its duties can be further assessed.

To facilitate the time study, a training session will be held for attorneys and staff in Albuquerque in late September. The sessions will make use of a “train the trainer” model, which means that private attorneys who are contract lawyers will attend the Albuquerque session and then hold individual meetings with other contract attorneys in each district.

So that the study will accurately reflect the contribution that contract attorneys make on behalf of indigent defendants in New Mexico, it is essential that all contract attorneys attend a training session and participate fully throughout the entire period of the time study. To make that possible, it is **absolutely critical** that each contract attorney fill out a short Web-based survey, which may be found at http://www.ncsconline.org/nmcontract_atty. The survey asks for an estimate of how much time is typically spent on contract cases. The NCSC time study will not include details on how contract attorneys spend their time on private non-contract cases (whether criminal or otherwise), but NCSC’s ability to use the information reported by contract attorneys depends on knowing what portion of a typical work week is spent on contract cases.

The cooperation of all public defenders and contract attorneys in conducting this study is essential and is greatly appreciated. Efforts are currently being made for attorneys who participate in training and the time study to receive 1.0 professionalism CLE credit. Any attorney with questions about this study is asked to contact Dr. Matthew Kleiman (NCSC), (757) 259-1535, or Linda Freeman, (505) 277-4263.
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**Programs have various sponsors; contact appropriate sponsor for more information.**

**G = General**

**E = Ethics**

**P = Professionalism**

**VR = Video Replay**
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|    | Santa Fe                           |    | Las Cruces Center for Legal Education of NMSBF            |
|    | Paralegal Division of New Mexico   |    | 1.0 G (505) 797-6020 www.nmbar.org                       |
|    | 1.0 G (505) 982-3873               |    |                                                            |
| 14 | Advanced Estate Planning Practice | 15 | Ethical Use of Paralegals in New Mexico                  |
|    | Update, Fall 2006                  |    | Las Cruces Center for Legal Education of NMSBF            |
|    | National Satellite                 |    | 1.0 E (505) 797-6020 www.nmbar.org                       |
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|    | NMSBF                              |    |                                                            |
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|    | 2.0 G                               |    |                                                            |
|    | (703) 779-2006                     |    |                                                            |
|    | www.trtcle.com                     | 18 | Bankruptcy Law and Procedure From Start to Finish        |
| 14 | Pro Se Can You See: Navigating    |    | Albuquerque National Business Institute                   |
|    | the Fog of the Pro Se Litigant     |    | 5.0 G, 1.0 E (800) 835-8525 www.nbi-sems.com             |
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|    | 2.7 G (505) 797-6020               | 19 | Hidden Tax Traps in Forming LLCs and Partnerships         |
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|    |                                    |    | 1.0 G (505) 797-6020 www.nmbar.org                       |
| 15 | Avoiding and Resolving Fee         | 19 | Pro Se Can You See: Navigating the Fog of the Pro Se Litigant |
|    | Disputes: What You Must Do;        |    | State Bar Center                                         |
|    | What You Should Do                 |    | Center for Legal Education of NMSBF                       |
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| 21 | Advanced Gross Receipts and        | 20 | Advanced Gross Receipts and Compensating Taxation in New Mexico |
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|    | Mexico                             |    | 6.6 G (715) 833-3940 www.lorman.com                      |
|    |                                   |    |                                                            |
|    |                                   |    |                                                            |
**WRITS OF CERTIORARI**

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT

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

**EFFECTIVE SEPTEMBER 5, 2006**

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

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

(Parties preparing briefs)

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

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| NO. 29,900 | State v. Martin (COA 25,578) | 8/25/06 |
| NO. 29,908 | State v. Adame (COA 25,238) | 8/25/06 |
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| NO. 29,933 | Manzanares v. Allstate Insurance Co. (COA 25,451) | 8/25/06 |
| NO. 29,946 | State v. Schackow (COA 24,137) | 8/25/06 |
| NO. 29,960 | Armijo v. Romero (12-501) | 8/25/06 |
| NO. 29,952 | State v. Torres (COA 26,479) | 8/29/06 |
| NO. 29,958 | State v. Jacquez (COA 26,212) | 8/29/06 |

**Writ of Certiorari Quashed:**

| NO. 29,153 | State v. Armijo (COA 24,951) | 8/29/06 |
**OPINIONS**

**AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS**
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**EFFECTIVE AUGUST 25, 2006**

**PUBLISHED OPINIONS**

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**UNPUBLISHED OPINIONS**

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Slip Opinions for Published Opinions may be read on the Court’s website:
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Bill Kitts Mentor Program

Creating Partnerships for Professional Development
**Who was Bill Kitts?**

Albuquerque lawyer Bill Kitts was a professional who loved and respected the law. He committed time and expertise in assisting young and new lawyers. A great loss to the community, Bill Kitts was killed in an automobile accident in 1982. The Bill Kitts Mentor Program was formed in the fall of 1992 to remember and honor this dedicated attorney.

Contact the volunteers below to begin a networking relationship. For more assistance, or to become a mentor, contact the State Bar at membership@nmbar.org; or call (505) 797-6033.

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Defendant's motion and set the case for advance opinion.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
ALBERT S. “PAT” MURDOCH, District Judge
RAY TWOHIG
Albuquerque, New Mexico
for Appellant

JERRY TODD WERTHEIM
JONES, SNEAD, WERTHEIM
& WENTWORTH, P.A.
Santa Fe, New Mexico
for Amicus Curiae
New Mexico Criminal
Defense Lawyers Association

Certiorari Denied, No. 29,910, August 10, 2006
From the New Mexico Court of Appeals
Opinion Number: 2006-NMCA-090
STATE OF NEW MEXICO,
Plaintiff-Appellee,
versus
RAYMOND GUTIERREZ,
Defendant-Appellant.
No. 26,314 (filed: June 15, 2006)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
ALBERT S. “PAT” MURDOCH, District Judge
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Opinion
CYNTHIA A. FRY, Judge

1 Defendant filed a motion pursuant to Rule 12-204 NMRA asking this Court to review his conditions of release established by the district court. We granted Defendant’s motion and set the case for oral argument. We requested briefing from amici curiae, the New Mexico Criminal Defense Lawyers Association (NMCDLA) and the District Attorney Association. Only NMCDLA filed a brief.

2 Defendant argues that imposing cash-only bail violates his constitutional rights under Article II, Section 13 of the New Mexico Constitution. Having considered the briefs and oral argument, we hold that the cash-only bond imposed by the district court was not unconstitutional. Therefore, we affirm the district court’s order.

BACKGROUND
3 Defendant was arrested on a warrant setting his bond at $250,000 cash or surety. He was indicted for first degree murder (willful and deliberate), second degree murder and manslaughter, or in the alternative, first degree murder (depraved mind), second degree murder and manslaughter, conspiracy to commit first degree murder (willful and deliberate), shooting at or from a motor vehicle (great bodily harm), conspiracy to commit shooting at or from a motor vehicle (great bodily harm, and three counts of contributing to the delinquency of a minor. The district court entered an order setting conditions of release, setting a cash-only bond in the amount of $300,000. Defendant filed a motion to review conditions of release in the district court, which was denied.

4 After obtaining new counsel, Defendant again filed a motion to review conditions of release, specifically arguing that the cash-only bond violated Article II, Section 13 of the New Mexico Constitution. The district court held a hearing and considered several factors relevant to the motion. The court considered the likelihood of Defendant’s appearance at trial and the threat he posed to the community.

The court then noted that, in the case of surety bonds, bonding companies seem to have changed their business practices and no longer require ten percent up front; instead, they allow a defendant to pay only a small amount of cash up front with subsequent payments over a period of time. In the district court’s view, this approach did not provide enough surety that a defendant will adhere to the conditions of release and appear when required. Consequently, the district court denied Defendant’s motion to find the cash-only bond unconstitutional and his request to establish alternative conditions of release.

DISCUSSION
5 Defendant argues that the cash-only bond imposed by the district court violates the provision in Article II, Section 13 of the New Mexico Constitution that all persons “be bailable by sufficient sureties.” Defendant claims the provision is violated by a bond in which no sureties are possible because only cash in the full amount will secure the release of the defendant. Defendant acknowledges that this is an issue of first impression for New Mexico. In support of his argument, Defendant relies on cases from other jurisdictions that have held cash-only bonds violate constitutional provisions that are identical or similar to New Mexico’s, two New Mexico civil cases, and the commentary to Rule 5-401 NMRA.

6 Although Defendant does not expressly challenge the constitutionality of Rule 5-401, he implicitly argues that interpreting the rule to allow for cash-only bonds would be contrary to our constitution’s “sufficient sureties” clause. “Historically, we decide cases, if we can, by avoiding constitutional questions.” Wallis v. Smith, 2001-NMCA-017, ¶ 12 n.1, 130 N.M. 214, 22 P.3d 682. Therefore, we first address the meaning and scope of Rule 5-401. If a cash-only bond is not authorized under this rule, we need not reach the constitutional question to decide the case. Huey v. Lente, 85 N.M. 597, 598, 514 P.2d 1093, 1094 (1973) (“Courts will not decide constitutional questions unless necessary to a disposition of the case.”).

7 The interpretation of a Supreme Court rule is a question of law that we review de novo on appeal. “In doing so, we look first to the plain meaning of the rule, which requires us to give effect to the rule’s

{8} Rule 5-401(B) provides:

> If the court makes a written finding that release on personal recognizance or upon execution of an unsecured appearance bond will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, in addition to any release conditions imposed pursuant to Paragraph C of this rule, the court shall order the pretrial release of such person subject to the following types of secured bonds which will reasonably assure the appearance of the person as required and the safety of any person and the community:

1. the execution of a bail bond in a specified amount executed by the person and secured by a deposit of cash of ten percent (10%) of the amount set for bail or secured by such greater or lesser amount as is reasonably necessary to assure the appearance of the person as required. The cash deposit may be made by or assigned to a paid surety licensed under the Bail Bondsmen Licensing Law provided such paid surety also executes a bail bond for the full amount of the bail set;

2. the execution of a bail bond by the defendant or by unpaid sureties in the full amount of the bond and the pledging of real property as required by Rule 5-401(A) NMRA; or

3. the execution of a bail bond with licensed sureties as provided in Rule 5-401(B) NMRA or execution by the person of an appearance bond and deposit with the clerk of the court, in cash, of one-hundred percent (100%) of the amount of the bail set, such deposit to be returned as provided in this rule.

Any bail, property or appearance bond shall be substantially in the form approved by the Supreme Court.

{9} Rule 5-401(A) emphasizes pretrial release on personal recognizance, but allows the imposition of additional nonmonetary release conditions, where necessary, pursuant to Paragraph C. If the court determines that a secured bond is required, Paragraph B enumerates the types of secured bonds the court can order that the defendant execute, which “are set forth in the order of priority they are to be considered by the judge.” Rule 5-401 Comm. cmt. The first to be considered is an appearance bond with a cash deposit. Rule 5-401(B)(1). If this is inadequate, the court must consider a property bond, where the property belongs to defendant or other unpaid surety. Rule 5-401(B)(2).

{10} The last option is the execution of either the entire amount of the bail bond with a licensed surety or an appearance bond and cash deposit of 100 percent of the amount of bail set. Rule 5-401(B)(3). Amicus curiae NMCDLA concedes that Rule 5-401(B)(3) permits a cash-only bond but argues that it is nonetheless unconstitutional. However, Defendant disagrees and argues that the language of the rule merely provides that a defendant may, at his option, post a cash bond, not that the court may require a cash-only bond.

{11} We disagree with Defendant’s interpretation of the rule. Rule 5-401(B) is written in terms of what the “court shall order” and expressly prescribes the conditions that the court may impose on the defendant, including the execution of an appearance bond with a 100 percent cash deposit with the court. See *State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (explaining that courts must give effect to clear and unambiguous language in a statute). By its express terms, this provision affirmatively grants the court authority to determine the appropriate conditions of release on bail. The rule is not written in terms of what the defendant’s options are for posting a secured bond. If Paragraph (B)(3) was merely an option that a defendant could utilize to satisfy any of the types of secured bonds, then no purpose would be served by including it as a type of secured bond to be considered by the court. Therefore, Paragraph (B)(3) must mean that the court is given the discretion to impose cash-only bail. Otherwise, it would serve no purpose, and “[w]e presume that the drafter[s] of the [r]ule intended this language to have meaning and not be superfluous.” *State v. Anthony M.*, 1998-NMCA-065, ¶ 12, 125 N.M. 149, 958 P.2d 107.

{12} Defendant further argues that the committee commentary to the rule, which relies on a civil case, confirms that cash-only bonds are not authorized. However, we disagree with the committee commentary’s statement that “[t]he court may not require a particular type of security.” Rule 5-401 Comm. cmt.; See *State v. McCrory*, 100 N.M. 671, 673, 675 P.2d 120, 122 (1984) (stating that committee commentary is not binding authority). The case relied upon for that statement is *State v. Lucero*, which involved a civil election contest. The court in Lucero held that the district court’s imposition of a commercial surety and express exclusion of a personal or individual surety on a property bond was an abuse of discretion. 81 N.M. 578, 579, 469 P.2d 727, 728 (Ct. App. 1970). The court stated that “[n]ormally the trial court can only exercise its discretion as to the adequacy of the sureties and not as to the type of sureties.” *Id.* In so stating, the court relied on *Montoya v. McManus*, 68 N.M. 381, 362 P.2d 771 (1961) for its holding “that a demand for a corporate surety with a predetermined exclusion of all other collateral as surety is an abuse of discretion.” *Lucero*, 81 N.M. at 579, 469 P.2d at 728.

{13} These civil cases are distinguishable. In *McManus*, upon which *Lucero* relies, the petitioner in an election contest challenged the requirement that he post a bond of “commercial surety type.” *McManus*, 68 N.M. at 387, 362 P.2d at 777 (internal quotation marks omitted). The applicable statute merely required the “party to furnish bond for the payment of all costs that may be adjudged against such party.” *Id.* (internal quotation marks and citation omitted). The court determined that this statute did not prescribe the specific type of bond to be furnished. *Id.* In addition, the court relied on a prior case holding that a bond with personal sureties complied with an election recount statute requiring “a sufficient surety bond” as a condition of a recount. *Id.* (internal quotation marks omitted). In contrast, Rule 5-401 prescribes the type of secured bonds the court can impose and expressly allows the imposition of an appearance bond and cash deposit equal to 100 percent of the amount of the bail set. In addition, the question in *Lucero* was whether the judge abused his discretion in requiring a commercial bond in a civil election contest case. *Lucero* did not address the constitutionality of limiting the type of bond imposed in the
criminal context. In light of this crucial difference, we disagree with Defendant that holding cash-only bail constitutional would require us to reverse Lucero.

{14} Because we discern no prohibition in Rule 5-401 against cash-only bail, we next turn to Defendant’s constitutional argument. Defendant argues that Article II, Section 13 enables a defendant, prior to conviction, to be released on the bond set by posting the amount of the bond through “sufficient sureties.” He asserts that this provision is violated by a bond in which no sureties are possible because only cash in the full amount of the bail set can secure the defendant’s release.

{15} Article II, Section 13 of the New Mexico Constitution provides that “[a]ll persons shall, before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section.” Defendant relies on the Minnesota Supreme Court’s decision in State v. Brooks, 604 N.W.2d 345 (Minn. 2000), and its narrow definition of “sufficient sureties.” In Brooks, the court recognized that “the general purpose of bail is to ensure an accused’s appearance and submission to the judgment of the court,” but went on to conclude that its bail clause had the broader purpose of limiting the court’s power to detain an accused before trial. Brooks, 604 N.W.2d at 350. We do not agree with Brooks that the primary purpose of the constitution’s bail clause is for the protection of the accused rather than the court. Id.

{16} New Mexico’s bail clause has an entirely different purpose. We have repeatedly stated “that the purpose of bail is to secure the defendant’s attendance to submit to the punishment to be imposed by the court.” State v. Erickson, 106 N.M. 567, 568, 746 P.2d 1099, 1100 (1987); State v. Amador, 98 N.M. 270, 273, 684 P.2d 309, 312 (1984) (same); State v. Cotton Belt Ins. Co., 97 N.M. 152, 154, 637 P.2d 834, 836 (1981) (same); Ex Parte Parks, 24 N.M. 491, 493, 174 P. 206, 207 (1918), overruled in part on other grounds by Welch v. McDonald, 36 N.M. 23, 7 P.2d 292 (1931). Even Rule 5-401 directs the trial judge to consider what type of bond is required to reasonably assure the defendant’s appearance, and to ensure that the defendant’s release will not endanger the community.

{17} While we recognize that the purpose of the Federal Bail Reform Act of 1966, from which our rule is derived, was to encourage more releases on personal recognizance, we see no reason to conclude that this purpose takes precedence over the court’s concern for the safety of the community and the goal of assuring the appearance of the accused. Rule 5-401, Commit. cmt. We believe the better approach is to balance the defendant’s interest in pretrial release with the State’s interest in securing the defendant’s appearance at trial and the interest in safeguarding the community from any potential threat.

{18} Nor do we agree with Brooks that the only proper definition of “sureties” is one that “denote[s] a third person assuming the responsibility of another and the assurance for something being done.” Brooks, 604 N.W.2d at 353. Around the time our constitution was adopted, there were many dictionary definitions of the term “surety” that do not connote a third party. See Fragoso v. Fell, 111 P.3d 1027, ¶ 19 n.5 (Ariz. Ct. App. 2005) (noting dictionary definitions that did not limit the meaning of “surety” to a third person’s undertaking to answer for another). Defendant has provided no authority suggesting that the drafters of our constitution intended Article II, Section 13 to incorporate such a narrow meaning of the term “sureties.” The State indicated that there appeared to be no evidence of the framers’ intent from our constitutional convention. Moreover, while some types of secured bonds require a third person as a “surety,” a third person is not necessary where, for example, the “surety” is the defendant’s own property, as provided for in Rule 5-401(B)(2).

{19} Consequently, we agree with the Iowa Supreme Court that by including the qualifying term “sufficient” in the sureties clause, the framers must have intended to confer “a measure of discretion for the person overseeing the bailing process.” State v. Briggs, 666 N.W.2d 573, 582 (Iowa 2003); see also Fragoso, 111 P.3d 1027, ¶ 18 (agreeing that the use of the word “sufficient” in the Arizona constitution “suggests that a judge or magistrate has the discretion to impose various conditions on the form of bail sufficient to meet that purpose”). This interpretation is consistent with the purpose of bail, which is to secure the defendant’s appearance at trial. A judge must be provided with the discretion to determine, under the particular facts and circumstances of each case, the type of secured bond needed to accomplish that purpose. See Rule 5-401(B) (directing the court to consider enumerated factors in determining the “type” of bail).

{20} Defendant argues that even where the judge has determined that the defendant poses a potential threat to the safety of the community, imposing cash only bail is unnecessary because Rule 5-401 provides the district court with many other restrictions that may be imposed on a defendant to ensure the protection of the community. It is true that Rule 5-401 allows for such restrictions by providing the district court with the discretion to determine the least restrictive conditions necessary to assure the defendant’s appearance, including the imposition of a specific type of bond. A defendant’s options are expressly limited under Rule 5-401, and are dictated by the district court’s consideration and balancing of relevant factors to ensure the defendant’s appearance. We have no basis for concluding that our constitutional provision was meant to foreclose a cash-only requirement as a condition for achieving that purpose.

{21} Therefore, we conclude that Rule 5-401 expressly provides for cash-only bail, that this does not violate the New Mexico Constitution, and that a cash-only bond is permissible in appropriate circumstances. However, we caution trial judges to follow the directives of the rule in exercising their discretion to set conditions of release.

The types of secured bonds authorized are enumerated in the order of priority in which they are to be considered, with the least onerous conditions listed first. Cash-only bail is the last option and should only be imposed after careful consideration. Finally, we note that the issue of whether the district court in this case abused its discretion in setting bail at $300,000 cash is not raised by the parties. Consequently, we do not address it. For all of these reasons, we affirm the district court’s order.

{22} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Chief Judge

A. JOSEPH ALARID, Judge
Certiorari Not Applied For
From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-091

NUSRET DEMIR,
Plaintiff-Appellant,
versus
FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY,
Defendant-Appellee.
No. 26,040 (filed: June 28, 2006)

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
VALERIE A. MACKIE HULING, District Judge

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LAW OFFICES OF DAMON B. ELY
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for Appellant

OPINION

JAMES J. WECHSLER, JUDGE

{1} Plaintiff Nusret Demir appeals from an order granting summary judgment in favor of Defendant Farmers Texas County Mutual Insurance Company. There are two issues on appeal. First, Plaintiff contends that the district court erred in applying Texas law to interpret his insurance contract with Farmers. Second, Plaintiff argues that even if Texas law applies, New Mexico courts should not enforce that law because it conflicts with our own public policy. We agree that Texas law is inapplicable because it contravenes New Mexico’s public policy and we reverse.

BACKGROUND

{2} Plaintiff is a resident of Texas, and Farmers is domiciled in Texas. Farmers issued an insurance contract to Plaintiff in Texas. It is undisputed that Plaintiff was driving in New Mexico when he swerved to avoid another vehicle, resulting in a single-car accident. The driver of the other vehicle is unknown and no physical contact between the two vehicles occurred.

{3} Farmers denied Plaintiff’s claim for uninsured motorist benefits because a provision in the policy and Texas law require physical contact between the covered vehicle and the unknown vehicle. Plaintiff brought this suit in New Mexico district court seeking to recover under his policy on two theories. First, Plaintiff argued that New Mexico law determined his right to recover under the policy. Second, Plaintiff argued that even if Texas law would normally apply, it did not apply because it was contrary to New Mexico’s public policy of protecting drivers. Farmers moved for summary judgment. The district court found that Texas law applied, that Texas law permitted a restriction on recovery such as that in Plaintiff’s policy, and that policy of the state of Texas was designed to prevent fraud. It granted Farmers’ motion for summary judgment.

STANDARD OF REVIEW

{4} We review the grant of summary judgment de novo, viewing the evidence in the light most favorable to Plaintiff. See Gormley v. Coca-Cola Enters., 2005-NMSC-003, ¶ 8, 137 N.M. 192, 109 P.3d 280. Summary judgment is proper if there are no genuine issues of material fact and Farmers is entitled to judgment as a matter of law. See id.

CHOICE OF LAW

{5} The parties do not contest that Texas law would not allow recovery of uninsured motorist benefits from Farmers. Tex. Ins. Code Ann. art. 5.06-1(2)(d) (Vernon Supp. 2005) (requiring that “where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured” to allow recovery under an uninsured motorist policy). The parties also agree that New Mexico law would invalidate the no-contact clause and allow recovery. See NMSA 1978, § 66-5-301 (1983); Chavez v. State Farm Mut. Auto. Ins. Co., 87 N.M. 327, 329-30, 533 P.2d 100, 102-03 (1975) (“[T]he only limitations on [uninsured motorist] protection are those specifically set out in the statute itself, i.e., that the insured be legally entitled to recover damages and that the negligent driver be insured.”); see also Montoya v. Dairyland Ins. Co., 394 F. Supp. 1337, 1342 (D.N.M. 1975) (invalidating the “physical contact” requirement in an uninsured motorist policy in part “because the New Mexico State Legislature did not intend to allow the creation of a gap in coverage”).

{6} Plaintiff argues, as he did in the district court, that New Mexico law applies, relying primarily on State Farm Automobile Insurance Co. v. Ovitz, 117 N.M. 547, 873 P.2d 979 (1994). Ovitz involved a New Mexico insured who was injured in an accident in Hawaii. Id. at 548-49, 873 P.2d at 980-81. The insured collected his medical expenses from the owner of the other vehicle, but was precluded from further recovery under Hawaii’s no-fault system. Id. at 548, 873 P.2d at 980. He sought to recover uninsured motorist benefits under his New Mexico insurance policy. Id. at 548-49, 873 P.2d at 980-81. State Farm filed suit for a declaratory judgment on the ground that the other vehicle was not uninsured for the purposes of the insurance contract. Id. at 548, 873 P.2d at 980. Our Supreme Court held that while New Mexico law would apply to the interpretation of the contract, Hawaii law governed the meaning of some terms under the contract. Id. at 549, 873 P.2d at 981. Specifically, it determined that because the policy only allowed recovery when the insured is “legally entitled to collect from the owner of the driver of an uninsured motor vehicle,” the insured was not entitled to uninsured motorist benefits because he was not legally entitled to recover from the other owner under Hawaii law. Id.

{7} Plaintiff argues that Ovitz requires that we apply New Mexico law to determine whether he is “legally entitled to recover” from Farmers. We agree with Plaintiff that Ovitz held that the law of the place of the
accident governs Plaintiff’s right to recover from the owner or driver of the vehicle that ran him off the road. But Ovitz also held that the law of the place of the contract, the lex loci contractus, applies to interpretation of the terms of the contract. Id. Ovitz applied Hawaii law only to determine the rights of parties involved in the accident as to each other. Id. It applied New Mexico law to determine the rights of the insured as to his insurance company. Id. Applying Ovitz to this case, New Mexico law governs whether Plaintiff would be able to recover from the tortfeasor, if known, and Texas law governs whether Plaintiff may recover from Farmers.

PUBLIC POLICY EXCEPTION
{8} Having determined that Texas law governs Plaintiff’s right to recover from Farmers on his uninsured motorist coverage, we now reach the second question. Plaintiff also argues that we should not apply Texas law because it contravenes New Mexico’s public policy. When differences between the law of the forum state and the law of the state where the contract was executed concern only contract interpretation, we will apply the law of the state where the parties entered the contract. Shope v. State Farm Ins. Co., 1996-NMSC-052, ¶ 9, 122 N.M. 398, 925 P.2d 515. “To overcome the rule favoring the place where a contract is executed, there must be a countervailing interest that is fundamental and separate from general policies of contract interpretation.” Id. We will apply New Mexico law if applying the law of another state would “result in a violation of fundamental principles of justice” of New Mexico. State Farm Mut. Auto. Ins. Co. v. Ballard, 2002-NMSC-030, ¶ 9, 132 N.M. 696, 54 P.3d 537 (internal quotation marks and citation omitted).

{9} Three cases guide our analysis. Plaintiff relies on Ballard and Sandoval v. Valdez, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978). Both cases applied New Mexico law to contracts issued out of state because applying the lex loci contractus would have resulted in a violation of New Mexico’s public policy. Defendant relays primarily on Shope, which applied Virginia law to interpret a Virginia contract despite the possibility of a different outcome under New Mexico law. We address these cases in turn.

{10} In Ballard, our Supreme Court applied New Mexico rather than Georgia law despite the fact that the policy was executed in Georgia. Ballard, 2002-NMSC-030, ¶¶ 1, 3. Ballard arose out of a single-vehicle accident in New Mexico that resulted in the death of the driver and a passenger and serious injury to another passenger, the daughter of the insured owner. Id. ¶¶ 2, 5. State Farm filed an action in New Mexico district court seeking a declaratory judgment as to the extent of its liability. Id. ¶ 1. The insurance policy at issue contained a “step down” provision eliminating coverage for injury to family members of the insured in excess of the statutory minimum. Id. ¶ 4. State Farm argued that because the policy was executed in Georgia, Georgia law, permitting such provisions, should apply. Id. ¶ 6. The insured argued that the step down provision was invalid under New Mexico law. Id. Our Supreme Court held that the step down provision violated New Mexico’s public policy and refused to enforce it. Id. ¶ 11.

{11} Ballard noted that the New Mexico Mandatory Financial Responsibility Act, NMSA 1978, §§ 66-5-201 to -239 (1978, as amended through 2003), did not allow exclusion of coverage for family members. Ballard, 2002-NMSC-030, ¶ 11. It relied on Estep v. State Farm Mutual Automobile Insurance Co., 103 N.M. 105, 703 P.2d 882 (1985), for the proposition that step down provisions are not merely prohibited but also constitute “a repudiation of New Mexico’s public policy.” Ballard, 2002-NMSC-030, ¶ 11 (internal quotation marks and citation omitted). Ballard considered step down provisions to be unenforceable because they are “contrary to protecting innocent accident victims” and because “the reasons for [step down provisions] are no longer valid.” Id. ¶ 12 (internal quotation marks and citation omitted).

{12} Farmers argues that Ballard does not mandate reversal in this case for two reasons. First, Farmers contends that the insured in Ballard reasonably expected that her coverage applied to all passengers, while in this case Plaintiff reasonably expected that Texas law would apply. See Ballard, 2002-NMSC-030, ¶ 3 (noting that the insured purchased insurance “stating that she wanted the same coverage which she had in California”). But Ballard did not rely on the insured’s expectation. Rather, Ballard held that “[i]nstead of [State Farm] sold [the insured] insurance that exceeded the ‘limits required by law,’ this coverage applies equally to all accident victims, whether the victim is a family member or not, as a matter of New Mexico public policy.” Id. ¶ 14. Second, Farmers argues that Ballard involved liability coverage, which is mandatory, rather than uninsured motorist coverage, which may be rejected. Id. ¶ 1; see § 66-5-301(C). We find this argument unpersuasive because Ballard also involved coverage purchased by the insured in excess of that required by law. Ballard, 2002-NMSC-030, ¶ 14.

{13} We do note, however, that Ballard addressed not only protection of innocent accident victims, but also discrimination against a discrete group: family members of the insured. Id. ¶ 10. Plaintiff argues that this distinction is irrelevant, but language in Ballard indicates otherwise. Specifically, for the proposition that the policy’s step down provision violated fundamental principles of justice, Ballard relied in part on New Mexico’s rejection of interspousal immunity in several different contexts. Id. ¶ 12 (“Familial exclusion, whether in relation to insurance contracts . . . . or tort law, . . . . is an anachronism . . . .”). We are therefore not persuaded that the contact requirement in this case implicates such a fundamental principle of justice as that invalidating the step down provision in Ballard.

{14} Nonetheless, Ballard is highly instructive to our analysis. Our Supreme Court in Ballard used New Mexico’s public policy to invalidate a Georgia provision because it violated New Mexico insurance statutes and our common law policies and because it was not justified by other policy concerns. Id. ¶¶ 11-14. The Court rejected State Farm’s argument that the contract provision at issue should be enforced because it was designed to protect insurance companies from fraud. Id. ¶¶ 13-14. The Court also rejected the argument that the provision should be enforced because of our policy favoring freedom of contract. Id. ¶ 13.

{15} As Plaintiff notes, our policy reason for disallowing exclusions from uninsured motorist coverage is the same as one of the policies at stake in Ballard: protecting innocent accident victims. See id. ¶¶ 13-14. As did our Supreme Court in Ballard, here we do not accept the proposition that protecting insurance companies from fraudulent claims justifies enforcing an exclusion from coverage purchased in another state. Id. Texas may have a policy of protecting insurance companies, but, in the context of uninsured motorist coverage, New Mexico has chosen to protect accident victims. See, e.g., Sandoval, 91 N.M. at 708, 580 P.2d at 134 (“[T]he uninsured or unknown motorist statutes are designed to protect the injured party from the uninsured or unknown motorist. The statutes are not designed to protect the insurance company from the injured party.”) (internal quotation marks
We also do not agree with Farmers that we should balance our policy of protecting accident victims against our strong policy favoring freedom of contract. See, e.g., McMillan v. Allstate Indem. Co., 2004-NMSC-002, ¶ 10, 135 N.M. 17, 84 P.3d 65 (“New Mexico public policy favors freedom to contract and enforces contracts that do not violate law or public policy.”).

Freedom of contract is not an issue in this case. Plaintiff could not have chosen to enter into an insurance contract that did not have an exclusion for uninsured motorist coverage when no physical contact occurs. Texas law required such a provision be included in his contract. See art. 5.06-1(2).

The only meaningful distinction we see between this case and Ballard is the source of the public policy that would invalidate the contract provision. In Ballard, that source was not merely statutory. Ballard, 2002-NMSC-030, ¶ 12. In this case, Plaintiff has not pointed to any fundamental public policy other than that expressed in our uninsured motorist statutes. Nonetheless, Plaintiff argues that such a policy is not required because no such policy was discussed in Sandoval. We agree.

Sandoval applied New Mexico law to invalidate a provision in a Colorado insurance contract that limited the insured’s time in which to bring a lawsuit. Sandoval, 91 N.M. at 707, 580 P.2d at 133. Sandoval found that our uninsured motorist statute embodied the public policy of protecting injured accident victims. Id. at 708, 580 P.2d at 134. We held that New Mexico law applied because Colorado law might conflict with that policy. Id. at 707-08, 580 P.2d at 133-34. We determined that the provision in the insurance contract was “void [because it] place[d] a limitation upon or conflict[ed] with a statute granting uninsured motorist coverage.” Id. at 708, 580 P.2d at 134.

Farmers argue that Sandoval applied New Mexico law only because Colorado law was not clear. We agree that Sandoval indicated that it did not find Colorado case law addressing the issue. Id. at 707, 580 P.2d at 133. But Sandoval did not apply New Mexico law for that reason. Rather, it held the time limitation provision invalid because any other result would conflict with the policy of New Mexico’s uninsured motorist statute. Id. at 708, 580 P.2d at 134.

Unlike Ballard, Sandoval did not consider whether a public policy other than that embodied in our statutes would be violated by application of the lex locus contractus. Rather, Sandoval held that our uninsured motorist statutes required application of our law if it conflicted with the lex locus contractus because New Mexico’s uninsured motorist statutes embody our public policy of protecting accident victims. Sandoval, 91 N.M. at 707-08, 580 P.2d at 133-34. Application of Sandoval to this case requires reversal. It is clear that Texas law violates New Mexico’s public policy as expressed in our uninsured motorist statutes.

Farmers argue, relying on Shope, that Texas law should apply because any differences between New Mexico and Texas law concern mere contract interpretation. We do not agree. In Shope, our Supreme Court applied Virginia law that allowed stacking of insurance unless “clear and unambiguous language in the policy prevents it.” Shope, 1996-NMSC-052, ¶¶ 1, 6. The plaintiff in Shope purchased two insurance policies in Virginia for his Virginia automobiles. Id. ¶ 3. He and his family then moved to New Mexico without transferring the policies. Id. ¶ 4. The plaintiff’s son was killed less than two weeks later by an uninsured vehicle and the plaintiff sought to stack his uninsured motorist benefits. Id. Our Supreme Court held that New Mexico’s policy favoring stacking of uninsured motorist policies “does not rise to the level of a fundamental principle of justice.” Id. ¶¶ 7, 9. Shope went on to note that New Mexico might enforce a “truly unambiguous antistacking clause” despite our policy if enforcement is fair to the insured. Id. ¶ 10 (internal quotation marks and citation omitted).

Farmers’ reliance on Shope is misplaced. New Mexico’s public policy preventing exclusions from uninsured motorist coverage is not merely a matter of contract interpretation. Our courts will not enforce even an ambiguous provision excluding coverage for accidents involving uninsured motorists when no physical contact between the covered and the uninsured vehicle takes place. See Chavez, 87 N.M. at 329-30, 533 P.2d at 102-03. Certainly our public policy preventing exclusions from coverage is more important than our policy that merely favors stacking. Shope is inapplicable to this case because the difference between the New Mexico public policy prohibiting enforcement of an exclusion to uninsured motorist coverage and the Texas policy requiring such an exclusion is not an issue of contract interpretation.

Thus, although we agree with Farmers that the public policy at issue in this case may not rise to the level of a fundamental principle of justice, we do not believe that the language used is the issue. Regardless of the label, Ballard and Sandoval indicate that a substantial public policy is implicated, and that policy mandates reversal in this case. We agree with Plaintiff that the exclusion of uninsured motorist coverage for accidents not involving physical contact with the uninsured vehicle violates New Mexico’s public policy and cannot be enforced in courts of this state. See Chavez, 87 N.M. at 329-30, 533 P.2d at 102-03. Plaintiff seeks compensatory damages, which are designed to “protect innocent accident victims consistent with the fundamental public policy purpose” of our uninsured motorist statute. Ballard, 2002-NMSC-030, ¶ 16 (internal quotation marks and citation omitted). Plaintiff has purchased uninsured motorist coverage. We will not apply exclusions to his coverage that are prohibited by our statutes and by our public policy.

CONCLUSION

We reverse the district court’s grant of summary judgment and remand for further proceedings consistent with this opinion.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:
LYNN PICKARD, Judge
MICHAEL E. VIGIL, Judge
APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
RICHARD J. KNOWLES, District Judge
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OPINION

JAMES J. WECHSLER, Judge

{1} Although charged with crimes that require, on conviction, registration under SORNA, Defendant Timothy Williams pleaded no contest to crimes that do not require registration. The district court sentenced Defendant to probation and included a condition that Defendant provide the Bernalillo County sheriff information required under the Sex Offender Registration and Notification Act (SORNA), NMSA 1978, §§ 29-11A-1 to -10 (1995, as amended through 2005), and it gave the sheriff the discretion to process the information. Because the district court did not have the authority to require registration or to give the sheriff the discretion to process the information, we reverse this condition of probation and affirm the trial court’s judgment and sentence in all other respects.

BACKGROUND

{2} Defendant was charged with six counts of criminal sexual contact of a minor and two counts of contributing to the delinquency of a minor. By virtue of a plea and disposition agreement, Defendant entered a plea of no contest to one count of child abuse and one count of contributing to the delinquency of a minor. Among the provisions of the plea and disposition agreement, the State agreed not to object to probation with a suspended or deferred sentence, and the State and Defendant agreed to certain special conditions of probation. There was no mention of SORNA. The district court accepted the agreement. It sentenced Defendant to a period of three years’ imprisonment, suspended the sentence, and placed Defendant on supervised probation for the period of the sentence. It imposed the special conditions of probation stated in the plea and disposition agreement and added the condition that Defendant “submit all paperwork which would have been required upon a conviction enumerated in the sex offender registration act pursuant to [S]ection 29-11A-1, through [S]ection 29-11A-8, of the NMSA to the Bernalillo County Sheriff’s office for the Sheriff’s office to process at their discretion.” Defendant appeals the district court’s judgment and sentence with respect to the legality of this probation condition.

STANDARD OF REVIEW

{3} The grant of probation is a discretionary act of the sentencing court. State v. García, 2005-NMCA-065, ¶ 11, 137 N.M. 583, 113 P.3d 406; State v. Donaldson, 100 N.M. 111, 119, 666 P.2d 1258, 1266 (Ct. App. 1983). We therefore review probation terms and conditions that the sentencing court has imposed for abuse of discretion. García, 2005-NMCA-065, ¶ 10. Specifically, in deferring to a sentencing court’s discretion in setting such terms and conditions, we will not set it aside unless they “(1) have no reasonable relationship to the offense for which [the] defendant was convicted, (2) relate to activity which is not itself criminal in nature and (3) require or forbid conduct which is not reasonably related to deterring future criminality.” Donaldson, 100 N.M. at 120; 666 P.2d at 1267.

{4} However, a sentencing court may not impose an illegal sentence. See, e.g., State v. Dominguez, 115 N.M. 445, 456, 853 P.2d 147, 158 (Ct. App. 1993) (“Conditions of probation that are not authorized by law are void.”). Thus, it does not have the discretion to impose a probation term or condition that is contrary to law. We review the legality of a sentence under the de novo standard of review. See State v. Brown, 1999-NMSC-004, ¶ 8, 126 N.M. 642, 974 P.2d 136.

LEGALITY OF PROBATION CONDITION

{5} SORNA classifies certain specified crimes as “sex offenses” and defines a New Mexico resident convicted of a sex offense in New Mexico as a “sex offender.” Section 29-11A-3(D), (E). It requires sex offenders to register with the county sheriff of the county of the offender’s residence, providing information concerning the offender’s name, date of birth, social security number, address, place of employment, and the sex offenses of which the offender was convicted. Section 29-11A-4(B). The willful or knowing failure to register is a felony. Section 29-11A-4(N). SORNA further requires certain sex offenders to renew their registration annually for ten years and others to renew at least every ninety-day period for life. Section 29-11A-4(L). It mandates that the county sheriff maintain a local registry of sex offenders required to register under SORNA and forward registration information to the department of public safety, which must maintain a central registry and participate in the national sex offender registry. Section 29-11A-5(A), (B), (C). It also subjects certain specified sex offenders to its notification provisions. Section 29-11A-5.1(A); State v. Druktenis, 2004-NMCA-032, ¶ 23, 135 N.M. 223, 86 P.3d 1050. These provisions provide means for the public to access some of the registration information about the specified sex offenders. Druktenis, 2004-NMCA-032, ¶ 24.

{6} The legislature enacted SORNA to protect communities through the registration of...

The district court ordered Defendant to fulfill the registration requirements of SORNA during the period of his probation. It did so both for purposes of community protection and Defendant’s rehabilitation. We recognize the district court’s discretion to impose a probation condition that it intends for rehabilitation. See *State v. Rivera*, 2004-NMSC-001, ¶ 21, 134 N.M. 768, 82 P.3d 939 (noting that the district court has “the broad power to ensure that the goal of rehabilitation is indeed being achieved”). However, in this instance, the condition does not comport with the provision or the intent of SORNA, and, therefore, the district court did not have the authority to impose the condition.

In imposing its condition, the district court required Defendant to submit the paperwork for registration as a sex offender under SORNA. It did not merely require Defendant to provide the sheriff with Defendant’s personal information and information concerning his offenses. The mere requirement of the provision of such information for the court’s stated purpose of community protection and Defendant’s rehabilitation would presumably be reasonably related to the court’s interest to “protect the public against the commission of other offenses” and deter Defendant from “future misconduct” and would therefore be permissible. *Donaldson*, 100 N.M. at 119, 666 P.2d at 1266; see *Garcia*, 2005-NMCA-065, ¶ 11.

But the district court required more. It specifically tied the information to registration under SORNA, and it allowed the sheriff the discretion to process Defendant as a sex offender under SORNA. Defendant is not a sex offender under SORNA. He was not convicted of any of the sex offenses listed in SORNA. Section 29-11A-3(E). He was not required to register upon his conviction. The district court could not have forced him to register as punishment for his crimes. Indeed, we have questioned whether the district court even has the authority to order a defendant to register when the defendant has been convicted of a sex offense. See *State v. Brothers*, 2002-NMCA-110, ¶¶ 22, 23, 133 N.M. 36, 59 P.3d 1268 (noting that while the district court may not have had the authority to require a convicted sex offender to register, it had the authority to notify the defendant of the registration requirement).

Not only does the statutory scheme of SORNA not contemplate Defendant’s registration, it also does not contemplate any action upon the receipt of the registration information. SORNA mandates that upon receiving registration information the sheriff include the information in the local registry and forward it to the department of public safety. But the sheriff has no authority to require a convicted sex offender to take any action with regard to someone who was not convicted of a sex offense. Section 29-11A-5(A), (B) (providing that the “sheriff shall maintain a local registry of sex offenders” and that the “sheriff shall forward” information and DNA samples “obtained from sex offenders”). Nor does the department of public safety have any authority to include registration information of a non-sex offender in the central registry or to forward it to the national registry. Section 29-11A-5(C) (providing that “[t]he department of public safety shall maintain a central registry of sex offenders” and “shall send conviction information and fingerprints for all sex offenders . . . to the national sex offender registry”). Based on the district court’s oral ruling at the sentencing hearing, it is clear that the paperwork it ordered Defendant to file is registration information. See *State v. Royalbal*, 2006-NMCA-043, ¶ 9, 139 N.M. 341, 132 P.3d 598 (noting that the court’s oral comments may be “used to clarify [its] ruling”).

Although the sheriff has the mandatory responsibility to include sex offender registration information in the local registry and to forward it to the department of public safety, the sheriff has no authority under SORNA to take any action with regard to someone who was not convicted of a sex offense. See § 29-11A-5(A), (B). This important distinction is magnified by the district court’s grant of discretion to the sheriff to process Defendant’s registration information. With the mandatory language of SORNA as to a sheriff’s responsibilities, we do not believe that the legislature intended to encumber sheriffs with the burden of deciding what action to take with registration information, particularly when SORNA does not even give the sheriff the authority to receive the information. Indeed, such discretion would undermine the reliability of the registry system.

Furthermore, because the district court could not statutorily require Defendant to register under SORNA, since he was not convicted of a sex offense, the district court could not use SORNA as a punishment tool in its sentence. See, e.g., *State v. Michael V.*, 107 N.M. 305, 306, 756 P.2d 585, 586 (Ct. App. 1988) (“The fixing of penalties is a legislative function and the trial court has authority to impose only what has been authorized by the legislature.”). Indeed, SORNA is a remedial statute, not designed as a form of punishment, although it may have such an indirect effect. *Druktenis*, 2004-NMCA-032, ¶ 32. We have so held despite the potential that registration may bring detrimental consequences to the sex offender and the sex offender’s family. *Id.* ¶¶ 32-34. SORNA is nevertheless remedial because the legislative goal of public safety overrides any such individual detriment. See *id.* ¶ 34. The legislature, however, has not conducted any balance between the potential public safety benefit and the individual detriment for someone, such as Defendant, who has not been convicted of a sex offense. By including the probation condition at issue, the district court has substituted its judgment for that of the legislature. It may not make this determination.

We thus reach the conclusion that SORNA does not afford any authority for the district court to require Defendant to file SORNA registration information as ordered in the probation condition, and, as a consequence, the district court lacked the authority to order the condition. We understand the district court’s desire to protect the public and to deter Defendant from further misconduct by placing Defendant within the SORNA system. Although the district court has discretion to fashion conditions of probation reasonably designed to rehabilitate the defendant, it may not abridge statutory authority to accomplish its purpose.

**CONCLUSION**

For the foregoing reasons, we reverse the imposition of registration under SORNA as a condition of Defendant’s probation. We affirm the remainder of the district court’s judgment and sentence.

**IT IS SO ORDERED.**

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

CELIA FOY CASTILLO, Judge
Certiorari Not Applied For

From the New Mexico Court of Appeals

Opinion Number: 2006-NMCA-093

MIMBRES VALLEY IRRIGATION CO.,
   Plaintiff,
   vs.
   TONY SALOPEK, et al.,
   Defendants,
STATE OF NEW MEXICO ex rel. STATE ENGINEER,
   Plaintiff-In-Intervention-Appellee,
   vs.
SAN LORENZO COMMUNITY DITCH ASSOCIATION,
   Defendant-Appellant.

No. 25,570 (filed: June 29, 2006)

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY
J. NORMAN HODGES, District Judge

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for Appellee

PETER THOMAS WHITE
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for Appellant

OPINION

MICHAEL E. VIGIL, JUDGE

{1} This case involves a mandamus action brought in the district court seeking to enforce adjudicated rights to water in the Mimbres River Stream System in southwestern New Mexico. San Lorenzo Community Ditch Association appeals from a district court order quashing a peremptory writ of mandamus after the district court determined that a peremptory writ of mandamus was not proper because the pleadings raised issues of fact and that San Lorenzo otherwise has a plain, speedy, and adequate remedy in the ordinary course of the law. We conclude that we do not have jurisdiction over this case because no final, appealable order is before us. We dismiss the appeal.

BACKGROUND AND PROCEDURAL HISTORY

{2} The history of this case began in 1970 when the State Engineer filed a complaint in intervention to adjudicate all water rights having as their source of water the public surface or underground waters of the Mimbres River Stream System or Mimbres Underground Water Basin. In 1993, the final decree adjudicating those rights was filed in the district court. The final decree determined in part that San Lorenzo has water rights that are senior to those of other upstream individuals and entities who also own water rights enabling them to divert water from the Mimbres River. All defendants, their successors, assigns, lessees, and any other person having actual or constructive knowledge of the decree were “permanently enjoined from any diversion or use of the public waters of the Mimbres River Stream System and Mimbres Underground Water Basin, except in accordance with the adjudication orders and this decree.” The final decree further provided that the court would appoint a Water Master to administer the orders within the decree and that the court would retain jurisdiction of the case to enforce its adjudication orders and to otherwise administer its provisions. The district court then appointed the Water Master requested by the State Engineer.

{3} In September 2003, San Lorenzo filed a petition for preliminary and permanent injunction to enjoin upstream surface water users from diverting water from the Mimbres River when the flows of the river were insufficient to satisfy its own diversion requirements as adjudicated in the final decree. While the petition alleged that upstream surface water users were diverting surface water from the Mimbres River in derogation of its superior rights, it also acknowledged that it was not possible to determine if the cause of San Lorenzo’s water supply shortages was due to the Water Master failing to measure or monitor the diversions or because of drought conditions. In part, San Lorenzo’s petition for preliminary and permanent injunction requested the district court to enter its order:

A. Granting its preliminary and permanent injunction requiring that the respondents, their agents and employees from diverting the surface waters of the Mimbres River until and so long as the flow of the Mimbres River arriving at the San Lorenzo Community Ditch diversion dam is 6.7 cubic feet per second;

B. Issuing a mandatory injunction requiring the respondents to construct headgates, if one does not exist, and install measuring devices on their ditches.[3]

{4} The district court then filed an order of reference to the Water Master directing the Water Master to convene a meeting of San Lorenzo and private upstream ditches in an effort to apportion the water so that San Lorenzo could get its rightful priority and if no agreement among the ditches was reached, “the Water [M]aster may specify a rotation period for the allocation of water among the ditches.” A meeting was subsequently convened and the representatives of the ditches were unable to agree upon a rotation schedule for distribution of water. Accordingly, the Water Master ordered a rotation system of water distribution on April 8, 2004. San Lorenzo refused to abide by the rotation schedule established by the Water Master, and the Water Master filed a motion requesting that San Lorenzo show cause why it should not be held in contempt for failure to comply with the rotation system. The show cause hearing was set for June 29, 2004.

{5} On June 28, 2004, the day before the show cause hearing, San Lorenzo filed a
petition for peremptory writ of mandamus. The petition alleges that San Lorenzo requested that the Water Master administer priorities on the Mimbres River pursuant to the final decree and its Priority Call and Demand for Water but, because the Water Master refused to perform his duties, junior upstream water users were diverting water from the Mimbres River in violation of its senior rights. The petition alleged that the maximum diversion rate for the San Lorenzo Community ditch was computed to be at least 6.7 cubic feet per second during the month of July and that San Lorenzo had already filed a petition for preliminary and permanent injunction asking the court to enjoin the upstream holders of junior priority rights from diverting any water from the Mimbres River when the flow of the river at the San Lorenzo Community Ditch Diversion was 6.7 cubic feet per second or less. Therefore, San Lorenzo requested that the court issue a peremptory writ of mandamus to the Water Master “ordering him to administer water rights by priority in times of shortage when requested to do so by water right owners or community ditches having priority to divert and use water and to curtail or terminate the diversion and use of water by junior priority water rights that take water out-of-priority.”

{6} A “Peremptory Writ of Mandamus” was then issued by the district court. In pertinent part, the writ recites that San Lorenzo does not have a remedy at law and that San Lorenzo “makes a prima facie showing that the petitioner may be entitled to the relief sought by the Petition.” The “Peremptory Writ of Mandamus” then simply states, “IT IS THEREFORE ORDERED that the Petition for Writ of Mandamus in the above case be and hereby is granted[,]” and that the Water Master file a response to the petition within thirty days after being served with the writ.

{7} The State Engineer filed the answer on behalf of the Water Master, which admitted and denied various allegations made in the petition for peremptory writ of mandamus. In pertinent part, the Water Master asserted that the petition should be denied because San Lorenzo had an adequate remedy at law, namely the pending petition for preliminary and permanent injunctions which San Lorenzo had failed to prosecute. Further, the Water Master disputed San Lorenzo’s factual claim of a maximum diversion rate of 6.7 cubic feet per second and asserted that “reliance on a calculated maximum diversion rate alone is not dispositive of the actual rate of flow Petitioner’s [sic] require to meet existing soil and crop conditions, rather it is a maximum rate when conditions so require.”

{8} The district court held a hearing and issued a memorandum opinion after it “considered everything submitted on the Petition for Peremptory Writ of Mandamus, Peremptory Writ of Mandamus and the State Engineer and Water Master’s Answer to the Petition.” In pertinent part, the district court concluded that San Lorenzo had an injunction action pending against upstream irrigation ditches, which would in effect enforce its priority rights if it was successful. Further, the district court concluded that the Water Master and State Engineer had raised factual questions in the answer to the writ and that “[e]ffective administration will require a more detailed analysis of the entire water system, including more comprehensive measurement or estimation flows, demands, diversions and returns.” The district court therefore determined that the peremptory writ of mandamus should be quashed, and an order quashing the writ was filed. San Lorenzo appeals.

ANALYSIS

{9} The issue of whether the trial court’s order is appealable has not been raised by the parties. However, “an appellate court has the duty to determine whether it has jurisdiction of an appeal,” therefore “it will examine the record and, if required, will sua sponte question its jurisdiction.” Rice v. Gonzales, 79 N.M. 377, 378, 444 P.2d 288, 289 (1968). We conclude that the order quashing a peremptory writ of mandamus in this case is not a final, appealable order under Rule 12-201 NMRA.

{10} A mandamus proceeding is technical in nature and closely regulated by statute. See In re Grand Jury Sandoval County, 106 N.M. 764, 766, 750 P.2d 464, 466 (Ct. App. 1988) (observing that mandamus proceedings are technical in nature); Charles T. Dumars & Michael B. Browde, Mandamus In New Mexico, 4 N.M. L. Rev. 155, 157 (1974) (“The New Mexico statutes delineate in some detail the requirements for a proper mandamus action.”). The statutes regulating a mandamus proceeding are at NMSA 1978, Sections 44-2-1 to -14 (1884, as amended through 1953).

{11} Mandamus lies only to compel a public officer to perform an affirmative act where, on a given state of facts, the public officer has a clear legal duty to perform the act and there is no other plain, speedy, and adequate remedy in the ordinary course of the law. See West v. San Jon Bd. of Educ., 2003-NMCA-130, ¶ 9, 134 N.M. 498, 79 P.3d 842; Lovato v. City of Albuquerque, 106 N.M. 287, 289, 742 P.2d 499, 501 (1987). The writ applies only to ministerial duties and it will not lie when the matter has been entrusted to the judgment or discretion of the public officer. El Dorado at Santa Fe, Inc. v. Bd. of County Comm’rs, 89 N.M. 313, 316-17, 551 P.2d 1360, 1363-64 (1976). A “ministerial duty” arises only when the law directs that a public official must act when a given state of facts exists. See State ex rel. Four Corners Exploration Co. v. Walker, 60 N.M. 459, 463, 292 P.2d 329, 332 (1956) (stating a public official’s ministerial duty is “an act or thing which he is required to perform by direction of law upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case”). In the language of the statute, the writ of mandamus may only be used:

[T]o compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Section 44-2-4. Further, “[t]he writ shall not issue in any case where there is a plain, speedy and adequate remedy in the ordinary course of law.” Section 44-2-5. In light of its characteristics, it is settled that “‘Mandamus is a drastic remedy to be invoked only in extraordinary circumstances.’” State ex rel. Shell W. E & P. Inc. v. Chavez, 2002-NMCA-005, ¶ 8, 131 N.M. 445, 38 P.3d 886 (quoting Brantley Farms v. Carlsbad Irrigation Dist., 1998-NMCA-023, ¶ 12, 124 N.M. 698, 954 P.2d 763).

{12} A mandamus action is initiated by the filing of a verified application or petition for writ of mandamus. See Brantley Farms, 1998-NMCA-023, ¶ 12 (“The party seeking a writ must first file an application or petition.”); Dumars & Browde, supra at 158-159; Rule 12-504(B)(1) NMRA (providing that a writ proceeding in the exercise of the Supreme Court’s original jurisdiction is initiated by filing a verified petition setting forth the facts and the law in concise form which support issuance of the writ). The court may issue either an “alternative” writ or a “peremptory” writ. Section 44-2-6 (“The writ is either alternative or peremptory.”). An alternative writ directs the public officer to either do the act required to be performed or show
cause before the court on a certain date why he has not done so. *Id.* A peremptory writ directs the public official to perform the act without notice or an opportunity to be heard. See *Bd. of Comm’rs of Guadalupe County v. Dist. Ct. of Fourth Judicial Dist.*, 29 N.M. 244, 256, 223 P. 516, 519 (1924) (stating that a peremptory writ of mandamus is entered without notice and an opportunity to be heard and constitutes a final judgment). As such, the statute directs that it may be issued only “[w]hen the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it[.]”). Section 44-2-7. Because it is issued without notice and an opportunity to be heard, it will be an exceedingly rare case where a peremptory writ is proper. Dumars & Browde, *supra* at 161-62. This being the case, the statute directs, “in all other cases the alternative writ shall be first issued.” Section 44-2-7.

{13} The statute specifies what must be contained in the writ:

The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court out of which the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ shall be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, shall be omitted.

Section 44-2-6 (emphasis added).

{14} The writ itself is therefore required to set forth the full and complete allegations which entitle the petitioner to the writ. See *City of Sunland Park v. N.M. Pub. Regulation Comm’n*, 2004-NMCA-024, ¶ 7, 135 N.M. 143, 85 P.3d 267 (stating that the writ becomes the initial pleading in the case which should state a cause of action within itself and that the allegations of fact in the petition itself are not considered); Dumars & Browde, *supra* at 162 (stating that the writ delineates the full and complete allegations of the petition). Following service of the petition and alternative writ as directed by the court, the public official answers the factual allegations contained in the alternative writ and sets forth any legal defenses he has to the action. See *State ex. rel. Garcia v. Bd. of Comm’rs*, 21 N.M. 632, 641, 157 P. 656, 659 (1916) (holding that the answer to an alternative writ of mandamus may plead the facts, if any exist, which will defeat the writ, and set forth any legal reason why a peremptory writ should be denied). In the language of the statute, “[o]n the return day of the alternative writ, or such further day as the court allows, the party on whom the writ is served may show cause by answer, made in the same manner as an answer to a complaint in [a] civil action.” Section 44-2-9. Thus, the alternative writ serves the same function as a complaint in a civil action and the answer to the writ serves as the answer. See *City of Sunland Park*, 2004-NMCA-024, ¶ 7 (“Together, the writ and the answer form the issues that are before the court.”). Again, the statute expressly provides, “[n]o other pleading or written allegation is allowed than the writ and answer. They shall be construed and amended in the same manner as pleadings in a civil action[.]” Section 44-2-11.

{15} If the writ is not legally sufficient because it lacks the necessary allegations of fact, but the respondent nevertheless answers the allegations contained in the petition as if they were set forth in the writ, then this defect in the writ is waived and the allegations contained in the petition itself are considered. *City of Sunland Park*, 2004-NMCA-024, ¶ 8 (stating that defects in the writ can be waived and the allegations in the petition may be considered where the respondent answers the allegations as if they were set forth in the writ); *State ex rel. Burg v. City of Albuquerque*, 31 N.M. 576, 581, 249 P. 242, 245 (1926) (holding that by answering the allegations set forth in the petition as if they were set forth in the writ, the defect in the writ was waived, and the allegations contained in the petition were deemed incorporated into the writ). After the answer is filed, the issues raised by these pleadings are then tried as in any other civil case. Section 44-2-11 (“[T]he issues thereby joined [by the writ and answer] shall be tried and further proceedings had in the same manner as in a civil action.”); *Dumars & Browde* at 163 (“The mandamus statute provides that the case is to be tried on the writ and the answer.”). If no answer is made to the alternative writ, there is a default and a peremptory writ of mandamus “shall be allowed.” Section 44-2-10.

{16} In this particular case, San Lorenzo filed a verified “petition for peremptory writ of mandamus” alleging that the Water Master was failing to perform his clear legal duty to administer the adjudicated water right priorities of the Mimbres River to its detriment and that it had no plain, speedy, and adequate remedy in the course of the law. The district court thereupon issued a “Peremptory Writ of Mandamus.” However, the writ was not a true peremptory writ because it directed the Water Master to “prepare and file with [the district] court and serve on the interested parties within thirty days after the date of service of this Writ a response to the Petition for Peremptory Writ of Mandamus.” Instead, the writ which was actually issued was in the nature of an alternative writ by directing that an answer be filed. Moreover, the writ itself was defective because it did not set forth the full and complete facts which demonstrated that San Lorenzo was entitled to the writ. Nevertheless, the Water Master answered the factual allegations contained in the petition. Thus, San Lorenzo’s petition and the Water Master’s answer constituted the pleadings in the case, setting forth the issues that were before the court.

{17} Pertinent to this case, San Lorenzo’s petition alleges:

9. The court adjudicated under the San Lorenzo Community Ditch a total of 398.5 acres with a priority of December [1869] and 16.5 acres with a priority of 1875.

....

17. In December 2002 or early January 2003 the San Lorenzo Community Ditch installed three measuring devices to determine the rate of flow and the volume of water diverted by the ditch.

18. The maximum diversion rate for the San Lorenzo Community Ditch is computed to be at least 6.7 cubic feet per second during the month of July. This maximum monthly diversion rate is based on a consumptive irrigation requirement of 4.47 inches per acre, an on-farm irrigation efficiency of 50 percent, a farm delivery requirement of 0.74 feet per acre, an off-farm conveyance efficiency of 75 percent, and a total irrigated acreage of 415.4 acres. If the off-farm conveyance efficiency is 65 percent rather than 75 percent, the maximum diversion rate would be at least 7.8 cubic feet per second.
25. The Watermaster has a present ability to administer priorities using the computed maximum diversion requirement for the San Lorenzo Community Ditch and the measuring devices that have been installed on the Ditch.

In response to these allegations, the Water Master answered:

14. Respondents deny that the maximum diversion rate described in paragraph 18 of the Petition is accurate. As noted, based on 352.73 acres instead of 415.4 acres, the Office of the State Engineer hydrologist calculates a maximum diversion rate of 5.7 cubic feet per second when it is needed, but not as a continuous rate.

19. Respondents deny paragraph 25 of the Petition and affirmatively state that, while the maximum diversion rate alone is sufficient to establish the maximum amount of water San Lorenzo may require, field investigations are necessary to establish the acreage and crops actually being irrigated and the amount of the flow required in order to determine which juniors may be subject to curtailment and the duration of the curtailment. The State admits that the measuring devices at San Lorenzo could be used in administering a priority call but states that the measuring devices, standing alone, are not sufficient for strict priority administration.

20. In response to paragraph 25 of the Petition, Respondents further state that there is no device on the river itself to indicate when flows reach a certain level at the San Lorenzo Community Ditch; rather, as noted in Petitioner’s paragraph 17, the measuring devices determine only the rate of flow and volume of water diverted by the ditch. Moreover, effective administration will require a more detailed analysis of the entire Mimbres surface water system, including more comprehensive measurement or estimation of flows, demands, diversions, and returns. Finally, San Lorenzo has failed and refused to provide the Water[ M]aster or his assistants with access to the measuring devices installed on the San Lorenzo ditch.

{18} The memorandum opinion filed by the district court states that it appears that the answer filed by the Water Master raises questions of fact and that mandamus should not issue when issues of fact are raised. “The rights of the parties may not be adjudicated by mandamus.” (quoting Concerned Residents for Neighborhood, Inc. v. Shollenbarger, 113 N.M. 667, 670, 831 P.2d 603, 606 (Ct. App. 1991)). We agree with this reasoning and further conclude that no final, appealable order was entered.

{19} Where issues of fact are raised by the alternative writ and answer, a trial must first be held to resolve those factual issues to determine if the petitioner is entitled to the extraordinary writ of mandamus. “Relevant rights and duties must be established before a writ of mandamus can issue.” Schein v. N. Rio Arriba Elec. Coop., Inc., 1997-NMSC-011, ¶ 22, 122 N.M. 800, 932 P.2d 490; see State ex rel. State Highway Comm’n v. Quesenberry, 72 N.M. 291, 294, 383 P.2d 255, 257 (1963) (stating that rights between parties are not adjudicated by mandamus because it is a method of enforcing an existing right). It has only been in cases where the parties did not dispute the relevant underlying facts giving rise to a duty to act that the courts have been able to determine that the writ was properly issued. See Brantley Farms, 1998-NMCA-023, ¶ 19 (citing Perea v. Baca, 94 N.M. 624, 627, 614 P.2d 541, 544 (1980)) (“[F]inding that, because director of Department of Alcoholic Beverage Control had conceded that statutory requirements for issuing transfer of license had been satisfied, and there was no question concerning the completion of the discretionary acts, mandamus was proper.”)); El Dorado at Santa Fe, Inc., 89 N.M. at 319, 551 P.2d at 1366 (holding that the board of county commissioners had a clear duty to approve a subdivision plat where the board admitted that it had determined that the subdivision application complied with statutory requirements). Where, as in this case, the facts are disputed, a trial is contemplated because mandamus is only appropriate to compel an official to perform a duty if the duty is clear and indisputable. See Witt v. Hartman, 82 N.M. 170, 172, 477 P.2d 608, 610 (1970) (“Mandamus lies to compel the performance of a statutory duty only when it is clear and indisputable.”).

{20} The mandamus statute directs, “[i]f judgment is given for the plaintiff, he shall recover the damages which he has sustained, together with costs and disbursements, and a peremptory mandate shall be awarded without delay.” Section 44-2-12. The final judgment is then reviewable on appeal as in any other case. See Dumas & Browde, supra at 163 (“Appeals are taken from mandamus judgments in the same manner as from any other action[,]”). Section 44-2-14 provides:

{21} In all cases of proceedings by mandamus in any district court of this state, the final judgment of the court thereon shall be reviewable by appeal or writ of error in the same manner as now provided by law in other civil cases. A mandamus proceeding is treated in the same way as any other civil action to determine if a final, appealable order has been filed. In Board of Trustees of Village of Los Ranchos de Albuquerque v. Sanchez, 2004-NMCA-128, 136 N.M. 528, 101 P.3d 339, we held that although the district court issued a peremptory writ of mandamus, there was no final, appealable order because the amount of damages was not resolved even though the petition requested, and the writ ordered damages, attorney fees, and costs. Id. ¶ 11. We therefore dismissed.
the appeal because the order before us was not a final, appealable order. *Id.* ¶ 14. See also *Kucel v. N.M. Med. Review Comm’n*, 2000-NMCA-026, ¶ 16, 128 N.M. 691, 997 P.2d 823 (concluding that an order granting a writ of mandamus was a final, appealable order because it included decretal language carrying the decision into effect by compelling the director of the medical review commission to set a panel hearing).

{22} We hold that no final, appealable order was entered in the district court because further proceedings are contemplated. The petition and answer raise issues of fact that have not been decided, and no determination has been made concerning whether the Water Master has a clear duty to perform an act and whether he was performing that ministerial act. In light of our holding, we need not decide whether the pending petition for preliminary and permanent injunction San Lorenzo filed, but has not pursued, constitutes a plain, speedy, and adequate remedy in the ordinary course of the law.

CONCLUSION

{23} The appeal is dismissed and the case is remanded to the district court for further proceedings.

{24} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Chief Judge
IRA ROBINSON, Judge
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Legal Support

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

Part-Time Legal Assistant

Sole practitioner seeks part-time legal assistant. Must be computer literate and able to work independently. Send a resume to Robert L. Scott, 4425 Juan Tabo NE, Suite 100, Albuquerque, NM 87111. T: 292-8836. F: 291-1355. bob@scottlaw.cc.

Legal Research and Writing Instructor

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Litigation Paralegal  
The Rodey Law Firm is accepting resumes for a litigation paralegal position in the firm’s Santa Fe office to assist attorneys in an active litigation and health law practice. Minimum five years trial litigation experience required. Background in medical records review and organization desirable. Must be able to manage a case from the initial discovery phase through the appellate process, including drafting of pleadings, organizing and analyzing documents. Requires flexibility and the ability to handle multiple deadlines. Firm offers congenial work environment, competitive compensation and excellent benefit package. Please forward resume to hr@rodey.com or mail to Manager of Human Resources, Rodey Law Firm, P.O. Box 1888, Albuquerque, NM 87103-1888. EOE

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Experienced Divorce Paralegal (min. 5 years) for FT position with small downtown law firm, in a fast paced, fun atmosphere. Must be well organized, self motivated, and have the ability to work independently. Spanish speaker a plus. Salary DOE. Send resume, with references to: Office Administrator, 1500 Marquette NW, Albuquerque, NM 87102 or E-mail to mary@newmexlaw.com.

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Part time position available for experienced legal secretary. Three to four hours per day, mornings or afternoons. Must be knowledgeable in Wordperfect, Word, and Excel, and well organized. Prefer experience in business, tax, estate planning and probate, and real estate law. Compensation DOE. Contact Robert Gorman 243-5442.

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Legal Assistant w/exp needed for law firm representing numerous, nationwide banking/servicer clients in full range of creditor’s rights. Must thrive in a fast paced environment. Great ben include hol, vac, sick leave, health, dental, retire plan & more. Submit in confidence cover letter, resume, sal his & req to: 7430 Washington Street, NE Albuquerque, NM 87109, fax 833-3040, or email admin@littledranttel.com.

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Santa Fe - Professional Offices  
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620 Roma Avenue N.W. $550.00 per month. Includes office, all utilities (except phones), cleaning, conference rooms, access to full library, receptionist to greet clients and take calls. A must see. Call 243-3751.

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Albuquerque offices for rent 820 2nd NW, one block from courthouses, copier, fax, high speed internet, off street parking, library, statutes up to date, telephone system, conference room, receptionist, rates depending on space rented $850 to $1,000 monthly. Call Ramona @ 243-7170 for appointment.

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Prestigious Uptown location, high visibility, convenient access to I-40, Bank of America, companion restaurants, shopping, two-story atrium, extensive landscaping, ample parking, full-service lease. Two different suite sizes, 850SF & 1008SF available now and 2806SF available February 1, 2007. Buildouts for larger suite include separate kitchen area, storage and 5 windowed offices. Competitive Rates. Tenant Improvements negotiable. Call Ron Nelson or John Whisenant 883-9662.

Miscellaneous  

Personal Reader and Library Research  
Personal reader and library research needed for UNM law student. Minimum of 60 hours per month. Contact Witu Abate at (617) 372-3924 or email at abatewi@law.unm.edu.
REGISTRATION

“Anatomy of Court-Annexed Arbitration”
Thursday, September 21, 2006 • Ceremonial Court Room, Third Floor, Bernalillo County Court House
1.0 Professionalism CLE Credit

- Hands-On Arbitrator Training
- Tips & Traps for Veterans
- Handbook & Forms

11:30 a.m. Registration & Lunch
Noon CLE
Rita G. Siegel, Esq.
1:00 p.m. Adjourn

For further information, please contact:
David Levin, Director, Court Alternatives,
Second Judicial District Court
(505) 841-7475 • albddpl@nmcourts.com

Remember you are an arbitrator! If you are an active member of the State Bar of New Mexico, have been licensed to practice law for five (5) or more years and are a resident of or have an office in Bernalillo County. LR2-603IV)(A)

New Challenges of Professional Liability Insurance
State Bar Center, Albuquerque
Wednesday, September 27, 2006
1.0 General CLE Credit

Co-Sponsor: Law Office Management Committee

Finding appropriate professional liability insurance can be a challenge. In this session, we will look at some of the more important “bells and whistles” to look for in a professional liability policy, as well as the dilemma of protecting yourself while also being able to keep your coverage.

11:30 a.m. Registration & Lunch
Noon CLE
Briggs F. Cheney, Esq., Professional Liability Committee
1:00 p.m. Adjourn

NAME: ________________________________ NM Bar#: ______________________
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Register Online at www.nmbar.org
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